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Proclamation 10876 of December 29, 2024

The President

Announcing the Death of James Earl Carter, Jr.

By the President of the United States of America

A Proclamation

TO THE PEOPLE OF THE UNITED STATES:

It is my solemn duty to announce officially the death of James Earl Carter, Jr., the thirty-ninth President of the United States, on December 29, 2024.

President Carter was a man of character, courage, and compassion, whose lifetime of service defined him as one of the most influential statesmen in our history. He embodied the very best of America: A humble servant of God and the people. A heroic champion of global peace and human rights, and an honorable leader whose moral clarity and hopeful vision lifted our Nation and changed our world.

The son of a farmer and a nurse, President Carter's remarkable career in public service began in 1943 as a cadet at the United States Naval Academy. He later served in both the Atlantic and Pacific fleets before becoming a decorated lieutenant and being selected to join the elite nuclear submarine program.

After his father died, he shifted from active duty to the Navy Reserve and returned home to Plains, Georgia, to help manage his family's peanut farm. He worked hard stewarding the land while leading his community as a church deacon, Sunday school teacher, and board member of a hospital and library. His deep faith inspired a passion for public service that led him to be elected State Senator, Georgia's 76th Governor, and ultimately President of the United States.

As President, he understood that Government must be as good as its people—and his faith in the people was boundless just as his belief in America was limitless and his hope for our common future was perennial.

With President Carter's leadership, the modern Department of Education and the Department of Energy were created. He championed conservation, and his commitment to a more just world was at the heart of his foreign policy, leading on nuclear nonproliferation, signing the Panama Canal treaties, and mediating the historic 1978 Camp David Accords. His partnership with Vice President Walter Mondale is one that future administrations strived to achieve.

Following his Presidency, President Carter advanced an agenda that elevated the least among us. Guided by an unwavering belief in the power of human goodness and the God-given dignity of every human being, he worked tirelessly around the globe to broker peace; eradicate disease; house the homeless; and protect human rights, freedom, and democracy.

Through his extraordinary moral leadership, President Carter lived a noble life full of meaning and purpose. And as a trusted spiritual leader, he shepherded people through seasons of pain and joy, inspiring them through the power of his example and healing them through the power of his guidance.

As we mourn the loss of President Carter, we hold the memory of his beloved Rosalynn, his wife of over 77 years, close in our hearts. Exemplifying hope, warmth, and service, she and her husband inspired the Nation. The

love Rosalynn and President Carter shared is the definition of partnership, and their devotion to public service is the definition of patriotism.

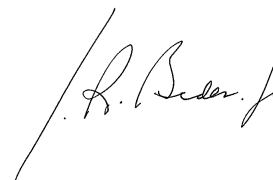
May President Carter's memory continue to be a light pointing us forward. May we continue to be guided by his spirit in our Nation and in our world.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, in honor and tribute to the memory of President James Earl Carter, Jr., and as an expression of public sorrow, do hereby direct that the flag of the United States be displayed at half-staff at the White House and on all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions for a period of 30 days from the day of his death. I also direct that, for the same length of time, the representatives of the United States in foreign countries shall make similar arrangements for the display of the flag at half-staff over their embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

I hereby order that suitable honors be rendered by units of the Armed Forces under orders of the Secretary of Defense.

I do further appoint January 9, 2025, as a National Day of Mourning throughout the United States. I call on the American people to assemble on that day in their respective places of worship, there to pay homage to the memory of President James Earl Carter, Jr. I invite the people of the world who share our grief to join us in this solemn observance.

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



Presidential Documents

Executive Order 14133 of December 30, 2024

Providing for the Closing of Executive Departments and Agencies of the Federal Government on January 9, 2025

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. All executive departments and agencies of the Federal Government shall be closed on January 9, 2025, as a mark of respect for James Earl Carter, Jr., the thirty-ninth President of the United States.

Sec. 2. The heads of executive departments and agencies may determine that certain offices and installations of their organizations, or parts thereof, must remain open and that certain employees must report for duty on January 9, 2025, for reasons of national security, defense, or other public need.

Sec. 3. January 9, 2025, shall be considered as falling within the scope of Executive Order 11582 of February 11, 1971, and of 5 U.S.C. 5546 and 6103(b) and other similar statutes insofar as they relate to the pay and leave of employees of the United States.

Sec. 4. The Director of the Office of Personnel Management shall take such actions as may be necessary to implement this order.

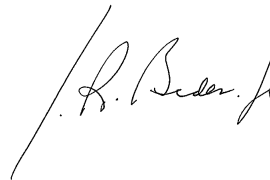
Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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



THE WHITE HOUSE,
December 30, 2024.

Rules and Regulations

Federal Register

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Friday, January 3, 2025

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF ENERGY

2 CFR Part 930

10 CFR Part 603

RIN 1991–AC19

Update and Relocation of the Department of Energy Technology Investment Agreement Regulations

AGENCY: U.S. Department of Energy.

ACTION: Interim final rule; request for comments.

SUMMARY: The Department of Energy (DOE or the Department) is issuing this interim final rule (IFR) to update, streamline, and relocate the policies, procedures, and provisions that are applicable to the award and administration of certain other transaction (OT) agreements awarded under DOE's OT authority provided in the Energy Policy Act of 2005's amendments to the Department of Energy Organization Act. DOE expects that the simplification of the implementing regulations will enable improved use of OT Agreements beyond the Technology Investment Agreements (TIAs) contemplated in the original regulations. This IFR will promote more uniform application of this authority and the policies and provisions for the award and administration of it.

DATES: Effective January 3, 2025. DOE will accept comments, data, and information regarding this IFR no later than March 4, 2025.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at www.regulations.gov. Follow the instructions in section III of this document, *Public Participation*, for submitting comments. Alternatively, interested persons may submit comments, identified by "RIN 1991–AC19—2024 Other Transaction Agreements", by any of the following methods:

■ **Email:** OTArulemaking@hq.doe.gov. Include "RIN 1991–AC19—2024 Other Transaction Agreements" in the subject line of the message.

■ **Postal Mail:** U.S. Department of Energy, Office of Acquisition Management, MA–611, 1000 Independence Avenue SW, Washington, DC 20585. Include the markings "RIN 1991–AC19 2024 Other Transaction Agreements". However, comments by email are encouraged.

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at the www.regulations.gov web page associated with RIN 1991–AC19. The docket web page contains simple instructions on how to access all documents, including public comments, in the docket. See section III of this document, *Public Participation*, for information on how to submit comments through www.regulations.gov. Please put "RIN 1991–AC19 2024 Other Transaction Agreements" in the subject line when sending an email.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Bonnell, U.S. Department of Energy, Office of Acquisition Management by email at richard.bonnell@hq.doe.gov or (301) 922–7101.

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VI. Approval by the Office of the Secretary of Energy

I. Background

DOE's OT authority is provided in sections 646(a) and (g) of the Department of Energy Organization Act (Pub. L. 95–91, as amended) (42 U.S.C. 7101 *et seq.*). Section 646(a) (42 U.S.C. 7256(a)) is a general authority for DOE to enter into contracts, leases, cooperative agreements or "other similar transactions," and to make payments to public or private entities as the Secretary "may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary." Section 646(g) (42 U.S.C. 7256(g)) was added to the DOE Organization Act by the Energy Policy Act of 2005 (Pub. L. 109–58) as an OT authority directed specifically to research, development, and demonstration (RD&D).

The authority provided under 42 U.S.C. 7256(g) provides that the Secretary of Energy has the same authority to enter into transactions as the Secretary of Defense under 10 U.S.C. 2371 in carrying out RD&D projects.¹ This authority includes statutory limits on its use, but also authorizes increased flexibilities not available under subsection (a) "General Authority" related to intellectual property and data protection.

Section 646(g)(6) of the Energy Policy Act (42 U.S.C. 7256(g)(6)) required DOE to publish guidelines for transactions under subsection (g) not later than 90 days after the enactment of the statute. DOE published an interim final rule (70 FR 69250) on November 15, 2005, and a final rule on May 9, 2006 (71 FR 27158). At least in part because of this limited statutory timeframe, the original regulations at 10 CFR part 603 were largely modeled on the applicable DOD Technology Investment Agreements (TIAs) and established TIAs as the mechanism for awarding OT agreements under section 7256(g). The purposes of a TIA are to reduce barriers that prevent some entities from participating in DOE's RD&D programs and broaden the technology base available to meet DOE mission requirements. However, TIAs

¹ 10 U.S.C. 2371 was transferred to 10 U.S.C. 4021 in 2021 (Pub. L. 116–283, as amended by Pub. L. 117–81).

are just one implementation of OTs available under 42 U.S.C. 7256(g).

OT agreements broadly, including TIAs, are more flexible than standard procurement and financial assistance instruments. They allow the DOE to negotiate commercial terms that would be otherwise unavailable in a procurement or financial assistance instrument in a manner that is more familiar to many commercial entities. Thus, unless otherwise noted in this regulation, the laws and regulations applicable to procurement and financial assistance instruments do not apply. This increased flexibility is used to: (1) strengthen our nation's economic and energy security; (2) promote scientific and technological innovation; (3) reduce barriers to participation in RD&D programs by nontraditional government performers and entities, including small businesses and disadvantaged entities; (4) promote new relationships among performers in the U.S. technology base; (5) stimulate performers to develop and use new business practices and disseminate best practices throughout the U.S. technology base; or (6) stimulate RD&D of energy-related technologies, systems, and processes for use by Federal agencies and the public.

In this IFR, DOE is removing miscellaneous references to outdated regulations from the provisions governing the use of OT agreements. DOE is aligning the revised provisions with the authorizing statute and improves the clarity, structure, organization, and administrative efficiency of the provisions to make them applicable to 42 U.S.C. 7256(g) OT agreements beyond the TIAs contemplated in the original regulations. In conjunction with the revisions under this IFR, DOE published a policy guide, "Department of Energy Guide to Other Transactions" that includes the internal DOE processes and specific functions and responsibilities of DOE staff from the provisions removed from 10 CFR part 603.

II. Discussion

While some mechanisms (procurement and financial assistance) can meet many of the Department's missions, certain programs require more innovation for successful implementation and would benefit from the flexibility that OT agreements can provide. To provide the efficiencies in the award and administration of OT agreements needed to achieve DOE's mission, there is a need to remove references to outdated regulations, internal processes, and obsolete and unnecessarily restrictive language from the provisions governing the use of OT

agreements. This IFR revises existing OTA regulatory provisions and aligns them with the authorizing statute to improve the clarity, structure, organization, and administrative efficiency and to make them applicable to all OT agreements awarded under DOE's authority at 42 U.S.C. 7256(g), not just TIAs. DOE is removing in its entirety and reserving 10 CFR part 603, relocating it in 2 CFR part 930, and renaming it "Other Transaction Agreements." DOE is removing the provisions of 10 CFR part 603 that are: specific to internal DOE processes or procedures; specific to the functions and responsibilities of DOE staff; and unnecessarily restrictive for use in all OT agreements.

DOE is relocating and revising the remaining provisions of 10 CFR part 603 and adding a deviation provision to 2 CFR part 930 that, consistent with other regulations and policies, provides DOE the authority to deviate from the issuance or use of any policy, procedure, solicitation provision, article, method, or practice of conducting actions of any kind at any stage of the OT award process or administration period that is inconsistent with the OT regulations.

III. Section by Section Analysis

The following discussion details specific revisions made in this IFR by listing sections from current 10 CFR part 603 that were not included in the new 2 CFR part 930, discussing entirely new additions to 2 CFR part 930, and explaining changes to sections of the current 10 CFR part 603 that were retained in new 2 CFR part 930.

§ 930.115 Deviation Authority

DOE is adding a new provision at 2 CFR 930.115 that is substantially similar to provisions already present and widely used in other DOE regulations to address agency deviations from the regulations. The new provision entitled "Deviation authority" gives authority to the cognizant Senior Procurement Executive (SPE), as defined by 41 U.S.C. 1702(c), for DOE or National Nuclear Security Administration to approve the issuance or use of a policy, procedure, provision, article, method, or practice of conducting actions of any kind at any stage of the award process or administration period that is inconsistent with part 930. The new language also requires a program office seeking a deviation to submit a request to the SPE justifying the deviation, and creates a process whereby a deviation from the policy, procedure, provision, article, method, or practice may be

requested and approved by the cognizant DOE official.

Sections Removed

DOE is removing provisions from 10 CFR part 603 that pertain to internal processes and procedures or that describe the function or responsibility of DOE in its decisions to award and administer OT agreements, including TIAs. The information provided in the following provisions has been included in internal guidance and training materials created for DOE personnel including DOE's Guide to Other Transactions.

- § 603.200: Contracting Officer Responsibilities
- § 603.225: Benefits of Using a TIA
- § 603.300: Difference Between an Expenditure-Based and a Fixed-Support TIA
- § 603.305: Use of a Fixed-Support TIA
- § 603.310: Use of an Expenditure-Based TIA
- § 603.315: Advantages of a Fixed-Support TIA
- § 603.405: Announcement Format
- § 603.410: Announcement Content
- § 603.500: Pre-Award Business Evaluation
- § 603.505: Program Resources
- § 603.510: Recipient Qualifications
- § 603.515: Qualification of a Consortium
- § 603.520: Reasonableness of a Total Project Funding
- § 603.540: Acceptability of Fully Depreciated Real Property or Equipment
- § 603.545: Acceptability of Costs of Prior RD&D
- § 603.550: Acceptability of Intellectual Property
- § 603.555: Value of Other Contributions
- § 603.560: Estimate of Project Expenditures
- § 603.565: Use of a Hybrid Instrument
- § 603.570: Determining Milestone Payment Amounts
- § 603.575: Repayment of Federal Cost Share
- § 603.600: Administrative Matters
- § 603.605: General Policy
- § 603.610: Flow Down Requirements
- § 603.630: Use Federally Approved Indirect Cost Rates for For-Profit Firms
- § 603.635: Cost Principles for Nonprofit Participants
- § 603.650: Designation of Auditor for For-Profit Participants
- § 603.670: Flow Down Audit Requirements to Subrecipients
- § 603.675: Reporting Use of IPA for Subawards
- § 603.685: Management of Real Property and Equipment by Nonprofit Firms

- § 603.690: Requirements for Federally-Owned Property
- § 603.695: Requirements for Supplies
- § 603.800: Scope
- § 603.810: Method and Frequency of Payment Requests
- § 603.815: Withholding Payments
- § 603.820: Interest on Advance Payments
- § 603.835: Program Income Requirements
- § 603.850: Marking of Data
- § 603.855: Protected Data
- § 603.870: Marking of Documents Related to Inventions
- § 603.880: Reports Requirements
- § 603.885: Updated Program Plans and Budgets
- § 603.890: Final Performance Report
- § 603.895: Protection of Information in Programmatic Reports
- § 603.900: Receipt of Final Performance Report
- § 603.910: Access to a For-Profit Participant's Records
- § 603.1000: Contracting Officer's Responsibilities at Time of Award
- § 603.1005: General Responsibilities
- § 603.1010: Substantive Issues
- § 603.1015: Execution
- § 603.1020: File Documents
- § 603.1100: Contracting Officer's Post-Award Responsibilities
- § 603.1105: Advance Payments or Payable Milestones
- § 603.1110: Other Payment Responsibilities
- § 603.1120: Award-Specific Audits
- § 603.1200–1340: Definitions and Following Terms
- Appendix A Applicable Federal Statutes, Executive Orders, and Government-wide Regulations
- Appendix B Flow Down Requirements for Purchases of Goods and Services

Sections Revised and Renumbered

DOE is revising the following provisions to update, clarify, streamline, or eliminate coverage that is unclear, obsolete, or unnecessarily duplicates the internal guidance and roles and responsibilities of DOE staff where appropriate. The revisions do not substantially change the existing requirements or how DOE and DOE performers adhere to the OT regulations.

- § 603.100 Purpose has been revised and renumbered to § 930.100 Purpose.
- § 603.105 Description has been revised and renumbered to § 930.400 Use of Technology Investment Agreements (TIAs).
- § 603.110 Use of TIAs has been revised and renumbered to § 930.400 Use of Technology Investment Agreements (TIAs).

- § 603.115 Approval Requirements has been revised and renumbered to § 930.110 Approval Requirements.
- § 603.120 Contracting Officer Warrant Requirements has been revised and included in § 930.110 Approval Requirements.
- § 603.125 Applicability of Other Parts of the DOE Assistance Regulations has been revised and renumbered to § 930.120 Nonprocurement debarment and suspension.
- § 603.205 Nature of the Project has been revised and renumbered to § 930.105 Other transaction (OT) agreements.
- § 603.210 Recipients has been revised and renumbered to § 930.405 TIA awardees.
- § 603.215 Recipient's Commitment and Cost Sharing has been revised and renumbered to § 930.125 Cost Sharing.
- § 603.220 Government Participation has been revised and renumbered to § 930.415 Government Participation.
- § 603.230 Fee or Profit has been revised and renumbered to § 930.130 Fee or Profit.
- § 603.400 Competitive Procedures has been revised and renumbered to § 930.135 Competition.
- § 603.415 Cost Sharing has been revised and included in § 930.125 Cost Sharing.
- § 603.420 Disclosure of Information has been revised and renumbered to § 930.140 Disclosure of Information.
- § 603.525 Value & Reasonableness of the Recipient's Cost Sharing Contribution has been revised and included in § 930.125 Cost Sharing.
- § 603.530 Acceptable Cost Sharing has been revised and included in § 930.125 Cost Sharing.
- § 603.535 Value of Proposed Real Property or Equipment has been revised and renumbered to § 930.220 Real property and equipment.
- § 603.615 Financial Management Standards for For-Profit Firms has been revised and renumbered to § 930.205 Financial Management Standards.
- § 603.620 Financial Management Standards for Nonprofit Participants has been revised and renumbered to § 930.205 Financial Management Standards.
- § 603.625 Cost Principles or Standards Applicable to For-Profit Firms has been revised and renumbered to § 930.210 Cost Principles and Standards.
- § 603.640 Audits of For-Profit Firms has been revised and included in § 930.215 Audit requirements.
- § 603.645 Periodic Audits and Award-Specific Audits of For-Profit

Participants has been revised and included in § 930.215 Audit requirements.

- § 603.655 Frequency of Periodic Audits of For-Profit Participants has been revised and included in § 930.215 Audit requirements.
- § 603.660 Other Audit Requirements has been revised and included in § 930.215 Audit requirements.
- § 603.665 Periodic Audits of Nonprofit Participants has been revised and included in § 930.215 Audit requirements.
- § 603.680 Purchase of real property and equipment by for-profit firms has been revised and included in § 930.410.
- § 603.700 Standards for Purchasing Systems of For-Profit Firms and § 603.705 Standards for Purchasing Systems of Nonprofit Organizations have been revised and included in § 930.225 Purchasing system standards.
- § 603.805 Payment Methods has been revised and renumbered to § 930.300 Payment Methods.
- § 603.825 Government Approval of Change in Plans has been revised and renumbered to § 930.305 Government Approval of Change in Plans.
- § 603.830 Pre-Award Costs has been revised and renumbered to § 930.310 Pre-Award Costs.
- § 603.840 Data and Intellectual Property Rights has been revised and renumbered to § 930.315 Negotiating Data and Patent Rights.
- § 603.845 Data Rights Requirements has been revised and renumbered to § 930.320 Data Rights.
- § 603.860 Rights to Inventions has been revised and renumbered to § 930.325 Rights in Inventions.
- § 603.865 March-In Rights has been revised and included in § 930.325 Rights in Inventions.
- § 603.875 Foreign Access to Technology and U.S. Competitiveness Provisions has been revised and renumbered to § 930.330 Research Technology and Security and U.S. Competitiveness Provisions.
- § 603.905 Record Retention Requirements has been revised and renumbered to § 930.335: Record Retention Requirements.
- § 603.915 Access to a Nonprofit Participant's Records has been revised and renumbered to § 930.340: Access to Records.
- § 603.920 Termination and Enforcement Requirements has been revised and renumbered to § 930.345 Noncompliance and Termination Requirements.

• § 603.1115 Single Audits has been revised and included in § 930.215 Audit requirements.

IV. Public Participation

DOE will accept comments, data, and information regarding this IFR on or before the date provided in the **DATES** section at the beginning of this IFR. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information the disclosure of which is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (“CBI”). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov*

provides after you have successfully uploaded your comment.

Submitting comments via email or postal mail. Comments and documents submitted via email or postal mail also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email or postal mail two well-marked copies: One copy of the document marked “confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” that deletes the information believed to be confidential. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and will treat it according to its determination. It is DOE’s policy that all comments, including any personal information provided in the comments, may be included in the public docket, without change and as received, except for information deemed to be exempt from public disclosure.

V. Procedural Requirements

A. Executive Orders 12866, 13563, and 14094

Executive Order (E.O.) 12866, “Regulatory Planning and Review,” 58

FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, “Modernizing Regulatory Review,” 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit “significant regulatory actions” to OIRA for review. OIRA has determined that this regulatory action does not constitute a “significant regulatory action” under Executive Order 12866. Accordingly, this action is not subject to review under that Executive Order by OIRA.

Consistent with Executive Orders 12866, 13563 and 14094, DOE issues this IFR only on a reasoned determination that the benefits of the rule justify its costs, and, in choosing among alternative regulatory approaches, DOE has selected those approaches that maximize net benefits.

In this IFR, DOE made a broad but largely procedural revision of its other transaction regulation to update and streamline the policies, procedures, and provisions that are currently applicable to its other transaction agreements.

The IFR updates, clarifies, or eliminates coverage that is unclear, obsolete, or unnecessarily duplicates the internal guidance and roles and responsibilities of Federal staff; streamlines the coverage's policies and performer procedures where appropriate; and adds a new provision in order to provide the standard departmental deviation authority provision language. The IFR includes several minor provision revisions, none of which are substantial and in total will have negligible impact on DOE's operations, its performers, or the economy. The revisions do not in any specific case, or in total, substantially change the existing requirements under the existing OT regulations or how DOE and DOE performers adhere to the OT regulations. The IFR does not generate any additional costs.

Finally, the IFR results in benefits to the public. Because the OT regulation has not had a comprehensive update in years, it contains outdated and duplicative content. Additionally, it has citations to outdated regulations and contains sections that are more appropriate for internal procedures and policies. The IFR streamlines the OT regulations, make it easier to read, and reflects current practice and requirements.

B. Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, generally requires public notice and an opportunity for comment before a rule becomes effective. Section 553(b) of the APA, however, exempts from the APA's notice and comment procedures rulemakings that involve "rules of agency organization, procedure, or practice." This exemption is applicable for rules that are primarily directed toward improving the efficient and effective operations of an agency. *Mendoza v. Perez*, 754 F.3d 1002, 1023 (D.C. Cir. 2014) (internal citations and quotations omitted). As a rulemaking relating to policies, procedures, and provisions that are applicable to the award and administration of certain OT agreements awarded under DOE's OT authority, DOE has determined that this rulemaking is procedural and satisfies the exemption. Therefore, notice of proposed rulemaking (and comment thereon) is not required for the removal and reservation of 10 CFR part 603 and

issuance of new 2 CFR part 930 in this IFR.

Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule. The Department intends to issue a final rule following receipt and review of comments in response to the interim final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment. As discussed previously, DOE has determined that prior notice and opportunity for public comment is unnecessary under the APA. Because a notice of proposed rulemaking is not required for this action pursuant to 5 U.S.C. 553, or any other law, no regulatory flexibility analysis has been prepared for this interim final rule. *See* 5 U.S.C. 601(2), 603(a).

D. Paperwork Reduction Act of 1995

This regulatory action does not impose any additional reporting or recordkeeping requirements subject to approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. National Environmental Policy Act of 1969

DOE has analyzed this final rule in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this final rule is covered under the categorical exclusion located at 10 CFR part 1021, subpart D, appendix A, Categorical Exclusion A5 because this final rule revises existing regulations at 10 CFR part 603. The changes update and clarify OT regulations. DOE has considered whether this action would result in extraordinary circumstances that would warrant preparation of an Environmental Assessment or EIS and has determined that no such extraordinary circumstances exist. Therefore, DOE has determined that this rulemaking does not require an Environmental Assessment or an EIS.

F. Executive Order 13132

Executive Order 13132, "Federalism", 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt state law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the

States and carefully assess the necessity for such actions. DOE has examined the IFR and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

G. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this IFR meets the relevant standards of Executive Order 12988.

H. Executive Order 13175

Under Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," 65 FR 67249 (Nov. 6, 2000), DOE may not issue a discretionary rule that has Tribal implications or that imposes substantial direct compliance costs on Indian Tribal governments. DOE has determined that this IFR will not have such effects and has concluded that Executive Order 13175 does not apply to this IFR.

I. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, Tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include a regulation that would impose upon State, local, or Tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments, in the aggregate, or the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of the title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or Tribal governments, or the private sector, of \$100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposed a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and Tribal governments. 2 U.S.C. 1534. This IFR amends the TIA regulations to provide the guidance and procedures to awarding and administering Other Transaction agreements. The IFR does not result in the expenditure by State, local, and Tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

J. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001, 44 U.S.C. 3516 note, provides for Federal agencies to review most disseminations of information to the public under implementing guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002).

DOE has reviewed the IFR under the OMB and DOE guidelines and has

concluded that it is consistent with applicable policies in those guidelines.

K. Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the OMB a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This IFR does not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of this interim final rule prior to the effective date set forth at the outset of this interim final rule. The report will state that it has been determined that this interim final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this Interim final rule; request for comments.

List of Subjects

2 CFR Part 930

Accounting, Administrative practice and procedure, Federal financial assistance, Grant programs, Reporting and recordkeeping requirements, Technology investments.

10 CFR Part 603

Accounting, Administrative practice and procedure, Federal financial assistance, Grant programs, Reporting and recordkeeping requirements, Technology investments.

Signing Authority

This document of the Department of Energy was signed on December 16, 2024, by William J. Quigley, Deputy Associate Administrator, Partnership and Acquisition Services, National Nuclear Security Administration, pursuant to delegated authority from the Administrator, National Nuclear Security Administration, and Berta L. Schreiber, Director, Office of Acquisition Management, Department of Energy, pursuant to delegated authority from the Secretary of Energy. These documents with the original signature and date are maintained by DOE/NNSA. 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 18, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends 2 CFR chapter IX and 10 CFR chapter II as follows:

Title 2

■ 1. Part 930 is added to read as follows:

PART 930—OTHER TRANSACTION AGREEMENTS

Subpart A—General

Sec.	
930.100	Purpose.
930.105	Other transaction (OT) agreements.
930.110	Approval requirements.
930.115	Deviation authority.
930.120	Nonprocurement debarment and suspension.
930.125	Cost sharing.
930.130	Fee or profit.
930.135	Competition.
930.140	Disclosure of information.

Subpart B—Pre-Award Business Evaluation

930.200	Scope.
930.205	Financial management standards.
930.210	Cost principles and standards.
930.215	Audit requirements.
930.220	Real property and equipment.
930.225	Purchasing systems standards.

Subpart C—Award Terms Related to Other Administrative Matters

930.300	Payment methods.
930.305	Government approval of changes in plans.
930.310	Pre-award costs.

- 930.315 Negotiating data and patent rights.
- 930.320 Data rights.
- 930.325 Rights in inventions.
- 930.330 Research and technology security and U.S. manufacturing and competitive requirements.
- 930.335 Record retention requirements.
- 930.340 Access to records.
- 930.345 Noncompliance and termination requirements.

Subpart D—Appropriate Use of Technology Investment Agreements

- 930.400 Use of Technology Investment Agreements (TIAs).
- 930.405 TIA awardees.
- 930.410 Purchase of real property and equipment by for-profit firms.
- 930.415 Government participation.

Authority: 42 U.S.C. 7256(g).

Subpart A—General

§ 930.100 Purpose.

This part establishes uniform policies for the award and administration of other transaction agreements for research, development, and demonstration projects awarded under the Department of Energy's "Additional Authorities" at section 646(g) of the Department of Energy Organization Act, Public Law 95–91, as amended (42 U.S.C. 7256(g)).

§ 930.105 Other transaction (OT) agreements.

For purposes of this part, An other transaction (OT) agreement means any agreement, including technology investment agreement (TIA) between the Department of Energy and/or the National Nuclear Security Administration and a non-Federal entity for the principal purpose of carrying out an research, development, and demonstration project for which the use of a Federal procurement contract, grant, or cooperative agreement is not feasible or appropriate. The OT agreement must comply with the regulations set forth in this part. Additional requirements for TIAs are set forth in subpart D of this part.

§ 930.110 Approval requirements.

(a)(1) An officer of the Department of Energy (DOE) who has been appointed by the President with the advice and consent of the Senate and who has been delegated the authority from the Secretary must approve the use of other transaction (OT) authority and may perform other functions of the Secretary as set forth under 42 U.S.C. 7256(g). This delegated authority may not be redelegated.

(2) In addition, the cognizant Senior Procurement Executive (SPE), as defined by 41 U.S.C. 1702(c), (or

designee) must concur on the award of any OT agreement.

(3) The Agreements Officer (AO) is the cognizant warranted DOE or National Nuclear Security Administration official authorized to execute and administer OT agreements.

(b) Deviation from the requirements in paragraph (a) of this section is not permitted.

§ 930.115 Deviation authority.

(a) *Deviation.* A deviation from this part is defined as the issuance or use of a policy, procedure, solicitation provision, article, method, or practice of conducting actions of any kind at any stage of the award process or administration period that is inconsistent with this part. Deviations may affect one or more than one other transaction (OT) agreements.

(b) *Request for deviation.* Requests for deviation(s) shall be submitted by the Agreements Officer, meaning the cognizant warranted Department of Energy or National Nuclear Security Administration official authorized to execute and administer OT agreements, to the cognizant Senior Procurement Executive, as defined by 41 U.S.C. 1702(c), for approval. Requests shall cite the specific section from which it is desired to deviate, shall set forth the nature of the proposed deviation(s), and shall give the reasons for the action requested.

§ 930.120 Nonprocurement debarment and suspension.

The Nonprocurement debarment and suspension requirements in 2 CFR part 180, as adopted and supplemented by 2 CFR part 901, are applicable to all other transaction agreements.

§ 930.125 Cost sharing.

(a) Cost share is required as follows:

(1) In accordance with 42 U.S.C. 7256(g)(1), to the maximum extent practicable, the awardee must provide at least half of the costs of the project;

(2) In accordance with cost share requirements in section 988 of Energy Policy Act of 2005 (EPAct 2005), Public Law 109–58, as amended (42 U.S.C. 16352), for funded research,

development, demonstration, or commercial application activities; and

(3) In accordance with any other applicable statutory cost share requirements.

(b) All awardee cost share or contributions, including cash and third-party in-kind contributions, must meet all of the following criteria:

(1) Are verifiable from the awardee's records;

(2) Are not included as contributions for any other Federal award;

(3) Are necessary and reasonable for accomplishment of the award or project objectives;

(4) Are allowable under the appropriate cost principles;

(5) Are not paid or provided by the Federal Government under another Federal award (Federal funds or property), except where the Federal statute authorizing a program specifically provides that Federal funds or property made available for such program can be applied to cost sharing requirements of other Federal programs or awards;

(6) Are not revenues or royalties from the prospective operation of an activity beyond the time considered in the award;

(7) Are not proceeds from the prospective sale of an asset of an activity;

(8) Are valued:

(i) In accordance with the appropriate cost principles;

(ii) Using the usual accounting policies of the awardee; and

(iii) Not to exceed the fair market value (of donated property, equipment, or other capital assets) or the fair rental charge (of leased land, space, or equipment);

(9) Are provided for in the budget approved by Department of Energy (DOE); and

(10) Conform to other provisions of this part, as applicable.

(c) DOE may reduce or eliminate the cost share requirement imposed by 42 U.S.C. 7256(g)(1) where the Agreements Officer (AO), meaning the cognizant warranted DOE or National Nuclear Security Administration official authorized to execute and administer other transaction agreements, determines the cost sharing is impracticable in a given case, unless there is a statutory requirement for cost sharing that applies to the particular award. When section 988 of EPAct 2005 applies to an award, the AO must obtain the required approval of the elimination or reduction of the required cost share in accordance with the section 988 of EPAct 2005.

§ 930.130 Fee or profit.

The Agreements Officer, meaning the cognizant warranted Department of Energy or National Nuclear Security Administration official authorized to execute and administer other transaction (OT) agreements, may not issue an OT agreement if any awardee, subawardees or participant is to receive fee or profit for the research, development, and demonstration (RD&D) efforts. This requirement extends to all awardees and performers

funded under the project, including any subawards for substantive program performance, but it does not preclude participants' or subawardees' payment of reasonable fee or profit when making purchases from suppliers of goods (e.g., supplies and equipment) or services needed to carry out the RD&D.

§ 930.135 Competition.

(a) Department of Energy (DOE) awards other transaction (OT) agreements using non-procurement, non-Federal financial assistance competitive processes in a merit-based selection process:

(1) In every case where required by statute; and

(2) To the maximum extent feasible, in all other cases. If it is not feasible to use competitive process, the reason for not using a competitive process must be documented by the Agreements Officer (AO), meaning the cognizant warranted DOE or National Nuclear Security Administration official authorized to execute and administer OT agreements.

(b) The AO must document any restrictions on awardee eligibility.

§ 930.140 Disclosure of information.

(a) For all other transaction (OT) agreements, trade secrets and commercial or financial information that would be protected from disclosure requirements of the Freedom of Information Act (FOIA) (codified at 5 U.S.C. 552) if obtained from a person other than a Federal agency:

(1) For a period of five years after the date on which the information is developed; or

(2) For up to thirty years after the date on which the information is developed, if the Secretary or delegate of the Secretary determines that the nature of the technology under the transaction, including nuclear technology, could reasonably require an extended period of protection from disclosure to reach commercialization.

(b) As provided in 42 U.S.C. 7256(g)(1) incorporating certain provisions of 10 U.S.C. 4021, disclosure is not required, and may not be compelled, under FOIA during that period if:

(1) A proposer submits the information in a competitive or noncompetitive process that could result in the award of an OT agreement; and

(2) The type of information is among the following types that are exempt:

(i) Proposals, proposal abstracts, and supporting documents; and

(ii) Business plans and technical information submitted on a confidential basis.

(c) If proposers desire to protect business plans and technical information for five years from FOIA disclosure requirements, they must mark them with a legend identifying them as documents submitted on a confidential basis. After the five-year period, information may be protected for longer periods if it meets any of the criteria in 5 U.S.C. 552(b) (as implemented by the DOE in 10 CFR part 1004) for exemption from FOIA disclosure requirements.

Subpart B—Pre-Award Business Evaluation

§ 930.200 Scope.

This subpart addresses administrative matters that do not impose organization-wide requirements on an awardee's business (financial management, property management, or purchasing) systems. An organization does not have to redesign its business systems to accommodate variations in these requirements. Agreements may differ in the requirements that they specify based on the awardee and the specific circumstances of the research, development, and demonstration project.

§ 930.205 Financial management standards.

(a) Any awardees that currently perform under other expenditure-based Federal procurement contracts or assistance awards are subject to the same standards for financial management systems that apply to those other Federal awards.

(b) Any awardees that do not currently perform under expenditure-based Federal procurement contracts or assistance awards should be allowed to use their existing financial management system as long as the system, at a minimum, effectively controls all project funds, including Federal funds and any required cost share. The system must have complete, accurate, and current records that document the sources of funds and the purposes for which they are disbursed. Awardees also must have procedures for ensuring that project funds are used only for purposes permitted by the agreement.

§ 930.210 Cost principles and standards.

(a) *For-profit awardees.* The cost principles in 48 CFR part 31 will generally apply to for-profit awardees.

(b) *Other than For-profit awardees.* The cost principles in 2 CFR part 200 will generally apply to states, local governments, Indian Tribes, institutes of higher education and other nonprofit entities.

(c) *Cost standards.* The Agreements Officer, meaning the cognizant warranted Department of Energy (DOE) or National Nuclear Security Administration official authorized to execute and administer other transaction agreements, may establish alternative standards in the agreement as long as that alternative provides, as a minimum, that:

(1) Federal funds and funds counted as awardees' cost sharing will be used only for costs that a reasonable and prudent person would incur in carrying out the research, development, and demonstration (RD&D) project contemplated by the agreement.

(2) Costs must be allocated to DOE and other projects in accordance with the relative benefits the projects receive.

(3) Costs allocated to DOE projects must be given consistent treatment with costs allocated to the participants' other RD&D activities (e.g., activities supported by the participants themselves or by non-Federal sponsors).

(4) The standards must also state that the Federal funds and funds counted as participants' cost sharing will be used only for costs that are consistent with the purposes stated in the governing Congressional authorizations and appropriations.

§ 930.215 Audit requirements.

(a) *For-profit awardees.* If an expenditure-based other transaction (OT) agreement provides for audits of a for-profit participant, the Agreements Officer, meaning the cognizant warranted Department of Energy or National Nuclear Security Administration official authorized to execute and administer OT agreements, also must specify:

(1) Whether the Defense Contract Auditing Agency or an Independent Public Accountant will perform the required audits.

(2) What the audits are to cover.

(3) Who will pay for the audits.

(4) The auditing standards that the auditor will use.

(5) The available remedies for noncompliance.

(6) Where the auditor is to send audit reports.

(7) The retention period for the auditor's working papers.

(8) Who will have access to the auditor's working papers.

(b) *Other than For-profit awardees.* Expenditure-based OT agreements are subject to the Single Audit Act (31 U.S.C. 7501–7507). State, local government, Indian Tribes, institutes of higher education, and nonprofit participants are subject to the requirements under that Act. Additional

information may be found at 2 CFR part 200, subpart F.

§ 930.220 Real property and equipment.

(a) The participant must include the cost of the real property or equipment as part of the proposed cost of the project. The Agreements Officer (AO), meaning the cognizant warranted Department of Energy (DOE) or National Nuclear Security Administration official authorized to execute and administer other transaction (OT) agreements, must approve the use of project funds (Federal or cost share) to purchase real property or equipment. The AO should specify the use, management, vesting of title, and disposition requirements in the award.

(b) The AO may include an alternative property provision where DOE is authorized to grant title to property or equipment acquired under an OT agreement when determined such a grant is appropriate.

§ 930.225 Purchasing systems standards.

(a) Any awardees that currently perform under other expenditure-based Federal procurement contracts or assistance awards are subject to the same standards for purchasing systems that apply to those other Federal awards.

(b) Any awardees that do not currently perform under expenditure-based Federal procurement contracts or assistance awards should be allowed to use its existing purchasing system as long as the system, at a minimum, is able to flow down the applicable requirements in Federal statutes, Executive orders, or Governmentwide regulations.

Subpart C—Award Terms Related to Other Administrative Matters

§ 930.300 Payment methods.

Available payment methods include:

(a) *Reimbursement.* Under this method, participants request reimbursement for costs incurred during a particular time period. The Department of Energy (DOE) reimburses the participant by electronic funds transfer after approval of the request by the Agreements Officer, meaning the cognizant warranted DOE or National Nuclear Security Administration official authorized to execute and administer other transaction agreements, or designee. This payment method is used for expenditure-based awards.

(b) *Advance payments.* Under this method, participants request advance payment based upon projections of the cash needs for the project, or for large purchases. Predetermined payment

schedules may be used when the timing of the participant's needs to disburse funds can be predicted in advance with sufficient accuracy to ensure the funds are used in accordance with project objectives and schedules.

(c) *Payments based on payable milestones.* Under this method payments made according to a schedule established for the award that is based on accomplishment of predetermined, well-defined, observable, and verifiable measures of technical progress, outcomes, or other payable milestones. A fixed-support award must use this payment method; however, this does not preclude the use of an initial advance payment if there is no alternative to meeting immediate cash needs. Payments based on payable milestones is the preferred method of payment for an expenditure-based award if well-defined outcomes can be identified.

§ 930.305 Government approval of changes in plans.

Department of Energy must approve any changes in project plans that may result in a need for additional Federal funding to be provided to the other transaction agreement.

§ 930.310 Pre-award costs.

Pre-award costs may be reimbursed only with the specific approval of the Agreements Officer (AO), meaning the cognizant warranted Department of Energy (DOE) or National Nuclear Security Administration official authorized to execute and administer other transaction agreements. All pre-award costs are incurred at the applicant's and/or awardee's risk. DOE is not obligated to reimburse the costs if, for any reason, the applicant does not receive an award, the award is less than anticipated and inadequate to cover the costs, or the AO did not provide prior approval for the reimbursement of the pre-award costs.

§ 930.315 Negotiating data and patent rights.

The Agreements Officer, meaning the cognizant warranted Department of Energy (DOE) or National Nuclear Security Administration official authorized to execute and administer other transaction agreements, must confer with program officials and assigned intellectual property counsel to develop an overall strategy for intellectual property taking into account inventions and data that may result from the project and future needs the Government may have for rights in them. The strategy should address program mission requirements and any

special circumstances that would support modification of standard intellectual property provisions, and should include considerations such as the extent of the awardee's contribution to the development of the technology; expected Government or commercial use of the technology; the need to provide equitable treatment among consortium or team members; and the need for DOE to engage non-traditional Government contractors with unique capabilities.

§ 930.320 Data rights.

(a) For provisions regarding data rights for any awardee entity type, the data rights requirements at 2 CFR 910.362(d), Rights in data—general rule, normally apply when the Government is to be provided with unlimited rights in data and should be used as a starting point for such other transaction (OT) agreements. Here, the “Rights in Data—General” provision in appendix A to subpart D of 10 CFR part 910 typically applies. However, if the awardee is to receive special data protection, the data requirements at 2 CFR 910.362(e), Rights in data—programs covered under special protected data statutes normally apply and should be used as a starting point for such OT agreements. Here, the “Rights in Data—Programs Covered Under Special Protected Data Statutes” provision in appendix A to subpart D of 10 CFR part 910 typically applies. Consistent with 42 U.S.C. 7256(g)(5), data protection can be provided typically for a period of up to 5 years but may be extended up to a total of 30 years in particular circumstances.

(b) However, while maintaining compliance with 42 U.S.C. 7256(g), the Agreements Officer, meaning the cognizant warranted Department of Energy (DOE) or National Nuclear Security Administration official authorized to execute and administer OT agreements, may negotiate data rights requirements that vary from those listed above. Use of or modifications to the standard rights in data provisions must be approved by cognizant DOE intellectual property counsel.

§ 930.325 Rights in inventions.

(a) When negotiating rights in inventions, the Agreements Officer (AO), meaning the cognizant warranted Department of Energy (DOE) or National Nuclear Security Administration official authorized to execute and administer other transaction (OT) agreements, should negotiate terms that represent an appropriate balance between the Government's interests and the awardee's interests. Bayh-Dole (35 U.S.C. 200–212) patent rights provisions

implemented via 37 CFR 401.14 as modified by the DOE (*see e.g.*, U.S. Competitiveness provision and Department of Energy Determination of Exceptional Circumstances Under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies) should be used as a starting point for all awardee entity types. However, the AO may negotiate rights that vary from those in modified 37 CFR 401.14. For example, Bayh-Dole March-in-Rights found in modified 37 CFR 401.14 and concerning actions that the Government may take to obtain the right to use subject inventions if the awardee fails to take effective steps to achieve practical application of the subject inventions within a reasonable time, may be modified or removed entirely. Use of or modifications to the standard rights provisions must be approved by cognizant DOE intellectual property counsel.

(b) For subawards, the OT should typically indicate that sub-awardees will get title to inventions they make but alternative terms could be included such as those specifying that sub-awardees' invention rights are to be negotiated between awardee and sub-awardee or some other disposition of invention rights.

§ 930.330 Research and technology security and U.S. manufacturing and competitiveness requirements.

(a) *Foreign access to technology.* Consistent with the objective of enhancing national security and United States competitiveness by increasing the public's reliance on United States commercial technology, the Agreements Officer, meaning the cognizant warranted Department of Energy (DOE) or National Nuclear Security Administration official authorized to execute and administer other transaction (OT) agreements, must include provisions in an OT agreement that addresses foreign access to technology developed under the OT agreement. Provisions must be included in an OT that provide, at a minimum, that any transfer of the technology must be consistent with the U.S. export control laws, regulations and the Department of Commerce Export Regulation at Chapter VII, Subchapter C, Title 15 of the CFR (15 CFR parts 730–774), as applicable.

(b) *DOE research and technology security policies.* All DOE research and technology security policies apply to OTs unless the activities being funded are outside the scope of the policies or otherwise exempted from the policies.

(c) *U.S. manufacturing and competitiveness.* Notice should be included in the OT indicating that products embodying any invention or produced through the use of any invention are subject to the U.S. Competitiveness terms outlined in modified 37 CFR 401.14. These terms may not be modified or waived without approval from cognizant DOE intellectual property counsel.

§ 930.335 Record retention requirements.

(a) Awardees must keep records related to the agreement for a period of three years after submission of the final financial status report for an expenditure-based award or final program performance report for a fixed-support award, with the following exceptions:

(1) The awardees must keep records longer than three years after submission of the final financial status report if the records relate to an audit, claim, or dispute that begins but does not reach its conclusion within the 3-year period. In that case, the awardees must keep the records until the matter is resolved and final action taken.

(2) Records for any real property or equipment acquired with project funds under the agreement must be kept for three years after final disposition.

(b) [Reserved]

§ 930.340 Access to records.

(a) The Department of Energy (DOE), through the Agreements Officer (AO), meaning the cognizant warranted DOE or National Nuclear Security Administration official authorized to execute and administer other transaction agreements, has an unfettered right of timely access to any documents, papers, or other records of the awardee which are pertinent to the Federal award, in order to inspect and make copies, audits, examinations, excerpts, and/or transcripts. The right also includes timely and reasonable access to the awardee's personnel for the purpose of interview and discussion related to such documents. The exercise of this authority is at the discretion of the AO.

(b) Inspectors General and the Comptroller General of the United States may have independent legal authority to access to records or personnel related to the Federal award. Consistent with the independent legal authority, recipients should follow the laws and regulations applicable to requests for access to records or personnel from Inspectors General and the Comptroller General of the United States.

§ 930.345 Noncompliance and termination requirements.

(a) *Noncompliance.* If an awardee materially fails to comply with the articles or terms and conditions of an agreement, whether stated in a Federal statute, regulation, assurance, application, plan, or the notice of award, the Agreements Officer (AO), meaning the cognizant warranted Department of Energy (DOE) or National Nuclear Security Administration official authorized to execute and administer other transaction (OT) agreements, may take one or more of the following actions, as appropriate:

(1) Temporarily withhold cash payments pending correction of the deficiency by the awardee or more severe enforcement action by the AO.

(2) Disallow or deny both the use of funds and any applicable cost share for all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Apply other remedies that may be legally available.

(b) *Termination.* The OT agreement must include an article that indicates that the Government may terminate the agreement in whole or in part if the awardee materially fails to comply with the articles or terms and conditions of an agreement, whether stated in a Federal statute, regulation, assurance, application, plan, or the notice of award fails to comply with the articles and requirements of the award. An agreement may include an article providing for the termination of the agreement, in whole or in part, by mutual agreement or as negotiated by the parties. In the case of proposed partial termination of the agreement, if the remaining portion of the award will not accomplish the purposes for which the agreement was made, the award may be terminated in its entirety.

(1) Unless otherwise negotiated, for terminations of an expenditure-based award, DOE's maximum liability is the lesser of:

(i) DOE's share of allowable costs incurred up to the date of termination, or

(ii) The amount of DOE funds obligated to the award.

(2) Unless otherwise negotiated, for terminations of a fixed-support based award, DOE shall pay the awardee for the last fully completed milestone.

(3) Notwithstanding paragraphs (b)(1) and (2) of this section, if the awardee initiates termination and the award includes milestone payments, the Government has no obligation to pay the

awardee beyond the last completed and paid milestone.

(c) *Right to appeal.* (1) The awardee has the right to appeal to the cognizant Senior Procurement Executive (SPE), as defined by 41 U.S.C. 1702(c), to review only the following actions:

- (i) A DOE determination that the awardee has failed to comply with the applicable requirements of the award;
- (ii) Termination of an award, in whole or in part, by DOE;
- (iii) The application by DOE of an indirect cost rate; and
- (iv) DOE disallowance of costs.

(2) In reviewing appeals authorized under paragraph (c)(1) of this section, the SPE is bound by the applicable law, statutes, and rules, including the requirements of this part, and by the articles or terms and conditions of the award.

(3) The decision of the SPE shall be the final decision of DOE.

Subpart D—Appropriate Use of Technology Investment Agreements

§ 930.400 Use of Technology Investment Agreements (TIAs).

For purposes of this part, a Technology Investment Agreements (TIA) is a special type of other transaction (OT) agreement that is an assistance instrument used to increase involvement of a for-profit entity or segment of a for-profit entity (e.g., a division or other business unit) that does a substantial portion of its business in the commercial marketplace in Department of Energy's (DOE) research, development, and demonstration (RD&D) programs. A TIA requires substantial Federal involvement in the technical or management aspects of the project. The goal for using a TIA is to broaden the technology base available to meet DOE mission requirements and foster within the technology base new relationships and practices to advance the national economic and energy security of the United States, to promote scientific and technological innovation in support of that mission, and to ensure the environmental cleanup of the national nuclear weapons complex. A TIA therefore is designed to reduce barriers to participation in RD&D programs by for-profit entities that deal primarily in the commercial marketplace. A TIA allows Agreements Officers (AO), meaning the cognizant warranted DOE or National Nuclear Security Administration official authorized to execute and administer OT agreements, to tailor Government requirements and lower or remove barriers if it can be done with proper stewardship of Federal funds. A TIA

may also promote new relationships among performers in the technology base. Collaborations among for-profit entities that deal primarily in the commercial marketplace, firms that regularly perform on the DOE RD&D programs and nonprofit organizations can enhance overall quality and productivity.

§ 930.405 TIA awardees.

(a) A Technology Investment Agreements (TIA) may be awarded to a single entity or multiple entities (e.g., a teaming arrangement) in prime award-subaward relationships.

(b) A TIA requires one or more for-profit entities, not acting in their capacity as the contractor operating a Federally Funded Research and Development Center (FFRDC), to be involved either in the:

- (1) Performance of the research, development, and demonstration (RD&D) project; or
- (2) The commercial application of the results of the RD&D project.

(c)(1) In those cases where there is only a non-profit awardee or a consortium of non-profit entities or non-profit entities and FFRDC contractors (as sub-awardees), if and as authorized, the awardees must have at least a tentative agreement with a specific for-profit entity or entities that plan on being involved in the commercial application of the results.

(2) In consultation with legal counsel, the Agreements Officer, meaning the cognizant warranted Department of Energy or National Nuclear Security Administration official authorized to execute and administer OT agreements, must review the agreement between the parties to ensure that the for-profit entity is committed to being involved in the commercial application of the results.

§ 930.410 Purchase of real property and equipment by for-profit firms.

Federal funds provided under another transaction (OT) agreement to for-profit entities must not be used to purchase real property or equipment. If the OT agreement requires the purchase of real property or equipment, the for-profit entity must use its own funds that are separate from the research, development, and demonstration project. The Agreements Officer, meaning the cognizant warranted Department of Energy or National Nuclear Security Administration official authorized to execute and administer OT agreements, should allow the for-profit participant to charge to an expenditure-based award or include in the cost estimate for fixed-support

award, only depreciation or use charges for the real property or equipment. Note that the for-profit must charge depreciation consistently with its usual accounting practices and policies. Many for-profits treat depreciation as an indirect cost. Any for-profit that usually charges depreciation indirectly for a particular type of property must not charge depreciation for that property as a direct cost to the OT agreement.

§ 930.415 Government participation.

A Technology Investment Agreements is used to carry out cooperative relationships between the Federal Government and the awardee(s) which require substantial involvement of the Government in the technical and/or management aspects of the research, development, and demonstration (RD&D) project.

Title 10

PART 603—[REMOVED AND RESERVED]

■ 2. Under the authority of 42 U.S.C. 7101 *et seq.*; 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.*, part 603 is removed and reserved.

[FR Doc. 2024–30636 Filed 1–2–25; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Parts 3550 and 3555

[Docket No. RHS–24–SFH–0034]

RIN 0575–AD32

Updating Manufactured Housing Provisions

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

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is amending the current regulations for the Single Family Housing (SFH) Direct Loan Program and the SFH Guaranteed Loan Program. The intent of this final rule is to allow the Agency to give borrowers increased purchase options within a competitive market and increase adequate housing along with an enhanced customer experience with the SFH programs.

DATES: This final rule is effective March 4, 2025.

FOR FURTHER INFORMATION CONTACT: Sonya Evans, Finance & Loan Analyst,

SFH Direct Loan Division, Rural Housing Service, Rural Development, United States Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250, Phone: 423-268-4333, Email: sonya.evans@usda.gov. Or contact Stephanie Freeman, Finance & Loan Analyst, Policy, Analysis, and Communications Branch, Single Family Housing Guaranteed Loan Division, Rural Housing Service, Rural Development, United States Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250, Phone: 314-457-6413, Email: stephanie.freeman@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

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

Well built, affordable housing is essential to the vitality of communities in rural America. RD Single Family Housing (SFH) Programs give families and individuals the opportunity to buy, build, or repair affordable homes located in rural America. Eligibility for these loans, loan guarantees, and grants is based on income and varies according to the average median income for each area.

RHS administers the following SFH Programs under 7 CFR parts 3550 and 3555 authorized by section 502 of the Housing Act of 1949, as amended, (42 U.S.C. 1472):

□ Section 502 Direct Loan Program assists low- and very low-income applicants who currently do not own adequate housing and cannot obtain other credit, the opportunity to acquire, build, rehabilitate, improve, or relocate dwellings in rural areas.

□ Section 502 Guaranteed Loan Program assists low- and moderate-income applicants the opportunity to acquire, build, rehabilitate, improve, or relocate dwellings in rural areas.

II. Discussion of Public Comments

RHS published a proposed rule on August 16, 2023 (88 FR 55601) to amend the current regulations for the Single-Family Housing Direct and Guaranteed

Programs found in 7 CFR part 3550 and 3555, respectfully. The Agency received comments from 35 respondents, including mortgage lenders, real estate agents, brokers, associations, and other interested parties. Specific public comments are addressed below:

Public Comment: Twenty-seven respondents replied favorably to the proposed rule with some indicating that manufactured homes are affordable housing options for homebuyers, will assist in alleviating the nation's housing supply shortages in response to the growing demand for low-price housing, provide a better housing affordability option relative to site-built homes, and the improved quality and durability of these type homes has increased the chances of homeownership for lower-income families.

Agency's Response: The Agency appreciates the commenters' support and has determined that no action is required.

Public Comment: Three respondents expressed support of the proposed rule but suggested that the program be expanded to include all states and include manufactured homes built after June 15, 1976, to align with the requirements set forth by other agencies and government-sponsored enterprises such as, FHA, VA, Fannie Mae, and Freddie Mac.

Agency's Response: The Agency acknowledges the recommendation and would like to note that the final rule will expand the program for financing of eligible existing manufactured housing to include all states. However, the consideration of year in which a manufactured home must be built to for eligibility takes into account the Manufactured Housing Improvement Act of 2000 which set forth Federal guidelines that all factory-built housing must meet and further amendments to the Federal Manufactured Home Construction and Safety Standards (FMHCSS). The January 1, 2006, construction on or after date was initially selected for the pilot period. This final rule changes the regulatory restrictions for the SFH Section 502 Direct Loan Program and the SFH Guaranteed Loan Program and allows the programs to lend on existing manufactured homes built in conformance with FMHCSS standards, on or after a date, as determined by the Agency, considering factors such as industry standards and practices.

Public Comment: Two respondents expressed support for the proposed rule but suggested that the existing manufactured construction year date be expanded for homes built prior to 2006.

Agency's Response: The Agency appreciates the commenters' responses. The January 1, 2006, construction on or after date was initially selected for the pilot period. This final rule revises the regulation to allow the programs to lend on existing manufactured homes built in conformance with FMHCSS standards, on or after a date, as determined by the Agency, with consideration of factors such as industry standards and practices. Existing manufactured homes financed through the section 502 Direct and Guaranteed programs cannot be built on or after a date as determined by the Agency, as identified on the HUD data plate, at the time of loan closing.

Public Comment: One respondent expressed support of the proposal and provided additional responses to the questions posed in the proposed rule. The respondent wanted to know why USDA was restricting eligibility to those homes built on or after January 1, 2006, if VA and FHA allow for manufactured homes built on or after June 15, 1976.

Agency's Response: The Agency acknowledges the recommendation. The January 1, 2006, construction on or after date was initially selected for the pilot period. This final rule revises the regulatory restrictions and allows the section 502 Direct and Guaranteed programs to lend on existing manufactured homes built in conformance with FMHCSS standards, on or after a date, as determined by the Agency, considering factors such as industry standards and practices.

Public Comment: One respondent expressed support of the proposed rule but believed that the handbook should be updated to clarify that the home must meet HUD handbooks and needs to be on piers and strapped down in accordance with HUD Standards for foundations which would be consistent with FHA guidelines.

Agency's Response: The Agency acknowledges the recommendation. RHS will require all existing manufactured homes to have been constructed and placed on a permanent foundation in accordance with 7 CFR part 1924, subpart A, exhibit J, as applicable to the Direct Program, and the FMHCSS, established by HUD and found in 24 CFR part 3280 for both Direct and Guaranteed programs.

Public Comment: One respondent replied with concerns of the proposal and believed that although there is a need for affordable housing, adding manufactured homes as an asset class would reduce the opportunity for families to build generational wealth and increase government risk due average life expectancy of a manufactured home.

Agency's Response: The Agency appreciates the commenter's response. The regulatory requirement in 7 CFR 3550.67, applicable to the 502 Direct loan program, requires that the remaining economic life of the property based on the appraisal must meet or exceed the loan term. For both the Direct and Guaranteed programs, the maximum term for financing manufactured housing cannot exceed 30 years. Once rulemaking is final, RHS will continue to require that existing manufactured homes be built in conformance with the Manufactured Housing Act of 2000 and FMHCSS, which require higher construction standards such as quality building materials, structural design provisions, and installation improvements, thus increasing the life expectancy and value.

Summary of Changes to Rule

This final rule will amend these program regulations to implement changes to permit the purchase of existing manufactured homes [(§§ 3550.52(e)(1), 3550.73(b)(1), 3555.208(a)(3), 3555.208(b)(3), and 3555.208(e)], allow the Agency to accept a lease with an unexpired term that is at least two years longer than the loan term for new energy efficient manufactured and modular home financing in land-lease communities operating on a nonprofit basis and Tribal lands [§§ 3550.58(b) and 3555.203(b)(3)], and amend the definition of a "New dwelling" for a manufactured home (§ 3555.10). For direct loans only, remove the administrative requirements from the regulations for review and approval of applications from manufactured housing dealers [§ 3550.73(c)] and revise the definition of "Manufactured home" to remove reference to RHS thermal performance standards (§ 3550.10).

This final rule will implement the changes as published in the proposed rule (88 FR 55601; August 16, 2023). The requirements of the proposed rule for 7 CFR parts 3550 and 3555 as follows:

Update the definition of manufactured home under § 3550.10, by removing reference to "RHS Thermal Performance Standards" for 502 Direct loans. SFH is exempt from RHS Thermal Performance Standards compliance.

1. Remove paragraph (c) from § 3550.73 which requires Agency approval of manufactured housing dealers for Direct loans;

2. Update the definition of a new dwelling for a manufactured home under § 3555.10, by removing reference to "purchase contract" and replacing

the text with "date of loan closing" for 502 Guaranteed loans.

3. Update §§ 3550.52(e)(1), 3550.73(b)(1), add new paragraph (a)(3) to § 3555.208, update §§ 3555.208(b)(3) and 3555.208(e) to clarify that borrowers are allowed, under the Direct and Guaranteed loan programs, to purchase existing manufactured homes constructed in conformance with FMHCSS, on or after a date, as determined by the Agency.

4. Update §§ 3550.58(b) and 3555.203(b)(3) so that, for the direct and guaranteed loan programs, the Agency will accept a land-lease with an unexpired term that is at least two years longer than the mortgage term for new energy efficient manufactured and modular home financing in Tribal and land-lease communities operating on a nonprofit basis.

IV. Regulatory Information

Statutory Authority

Section 510(k) of title V the Housing Act of 1949 [42 U.S.C. 1480(k)], as amended, authorizes the Secretary of the Department of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title; and implemented under 7 CFR parts 3550 and 3555.

Executive Order 12372, Intergovernmental Review of Federal Programs

These programs are not subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented under the USDA's regulations at 2 CFR part 415, subpart C.

Executive Order 12866 and 13563

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if a 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 promoting flexibility. This final rule has been determined to be non-significant and, therefore, was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

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

Executive Order 13132, Federalism

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

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This Executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that this final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Tribal Coordinator at: AIAN@usda.gov to request such a consultation.

Unfunded Mandates Reform Act (UMRA)

Title II of the UMRA, Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal Governments and on the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or Tribal Governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a

statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

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

National Environmental Policy Act

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

Administrative Pay-As-You-Go Act of 2023

The Administrative Pay-As-You-Go Act of 2023 (Act) (see Fiscal Responsibility Act of 2023, Pub. L. 118–5, 137 Stat. 31, div. B, title III), requires the U.S. Government Accountability Office (GAO) to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this proposed rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Civil Rights Impact Analysis

Rural Development has reviewed this final rule in accordance with USDA Regulation 4300–004, Civil Rights Impact Analysis,” to identify any major civil rights impacts the proposed rule might have on program participants on the basis of age, race, color, national origin, sex, disability, marital or familial status. After review and analysis of the final rule and available data, it has been determined that implementation of the final rule will not adversely or disproportionately impact very low-, low- and moderate-income populations, minority populations, women, Indian Tribes, or persons with disability by virtue of their race, color, national origin, sex, age, disability, or marital or familial status. No major civil rights impact is likely to result from this final rule.

Programs Affected

The programs affected by this regulation are listed in the Assistance Listing Catalog under number 10.410, Very Low to Moderate Income Housing Loans (section 502 Rural Housing Loans), and number 10.417, Very Low-Income Housing Repair Loans and Grants (specifically the section 504 direct loans and grants).

Paperwork Reduction Act

This final rule contains no new reporting or recordkeeping burden under OMB Control Number 0575–0172 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

E-Government Act Compliance

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

Non-Discrimination Policy

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or

funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, staff office; or the Federal Relay Service at (800) 877–8339.

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

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

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

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

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List of Subjects

7 CFR Part 3550

Administrative practice and procedure, Environmental impact statements, Fair housing, Grant programs—housing and community development, Housing, Loan programs—housing and community development, low- and moderate-income housing, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 3555

Administrative practice and procedure, Business and industry, Conflicts of interest, Credit, Environmental impact statements, Fair housing, Flood insurance, Grant programs—housing and community development, home improvement, Housing, Loan programs—housing and community development, low and moderate-income housing, Manufactured homes, Mortgages,

Reporting and recordkeeping requirements, Rural areas.

For the reasons discussed in the preamble, the Agency is amending 7 CFR parts 3550 and 3555 as follows:

PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3550 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart A—General

■ 2. Amend § 3550.10 by revising the first sentence of the *Manufactured home* definition to read as follows:

§ 3550.10 Definitions.

* * * * *

Manufactured home. A structure that is built to Federal Manufactured Home Construction and Safety Standards established by HUD and found at 24 CFR part 3280. * * *

* * * * *

Subpart B—Section 502 Origination

■ 3. Amend § 3550.52 by revising paragraph (e)(1) to read as follows:

§ 3550.52 Loan purposes.

* * * * *

(e) * * *

(1) Purchase an existing manufactured home (unless the unit was constructed in conformance with Federal Manufactured Home Construction and Safety Standards (FMHCSS) as evidenced by both an affixed HUD Certification label and HUD Data Plate on or after a date determined by the Agency, considering factors such as industry standards and practices; and has not been previously installed on a different homesite or had any alterations since construction in the factory (except for porches, decks or other structures which were built to engineered designs or were approved and inspected by local code officials), or for any other purposes prohibited in § 3550.73(b).

* * * * *

■ 4. Amend § 3550.58 by adding a sentence to the end of paragraph (b) to read as follows:

§ 3550.58 Ownership requirements.

* * * * *

(b) * * * For new energy efficient manufactured and modular home financing in land-lease communities operating on a nonprofit basis, and on Tribal Trust land, individual (allotted) Trust land, or Tribal restricted fee land, the Agency will accept a lease with an

unexpired term that is at least 2 years longer than the loan term.

* * * * *

■ 5. Amend § 3550.73 by:

- a. Revising paragraph (b)(1); and
- b. Removing paragraph (c) and redesignating paragraphs (d) through (h) as paragraphs (c) through (g), respectively.

The revision reads as follows:

§ 3550.73 Manufactured homes.

* * * * *

(b) * * *

(1) An existing unit and site unless it is already financed with a section 502 loan; or is an RHS REO property; or the unit was constructed in conformance with FMHCSS standards as evidenced by both an affixed HUD Certification label and a HUD Data Plate on or after date determined by the Agency, is installed on a permanent foundation which meets HUD regulations and 7 CFR part 1924, subpart A, exhibit J, and has not been previously installed on a different homesite or had any alterations since construction in the factory, except as specified in the program handbook.

* * * * *

PART 3555—GUARANTEED RURAL HOUSING PROGRAM

■ 6. The authority citation for part 3555 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1471 *et seq.*

Subpart A—General

■ 7. Amend § 3555.10 by revising the second sentence of the definition of *New dwelling* to read as follows:

§ 3555.10 Definitions and abbreviations.

* * * * *

New dwelling. * * * A manufactured home is considered a new unit if the manufacturer's date is within 12 months from the date of loan closing and the unit has never been occupied or installed at any other location as otherwise provided by Rural Development.

* * * * *

Subpart E—Underwriting the Property

■ 8. Amend § 3555.203 by revising paragraph (b)(3) to read as follows:

§ 3555.203 Ownership requirements.

* * * * *

(b) * * *

(3) The lease has an unexpired term of at least 45 years from the date of loan closing, except in the case of properties located on Tribal Trust land, individual

(allotted) Trust land, or Tribal restricted fee land, where the lease must have an unexpired term at least equal to the term of the loan. Leases on Tribal Trust land, individual Trust (allotted) land, or Tribal restricted fee land, for period of 25 years which are renewable for a second 25 year period are permissible, as are leases of a longer duration. For new energy efficient manufactured and modular home financing in land-lease communities operating on a nonprofit basis and on Tribal Trust land, the Agency will accept a lease with an unexpired term that is at least two years longer than the loan term;

* * * * *

■ 9. Amend § 3555.208 by:

- a. Adding paragraph (a)(3);
- b. Revising paragraphs (b)(3)(iii) and (iv); and
- c. Revising paragraph (e).

The addition and revisions read as follows:

§ 3555.208 Special requirements for manufactured homes.

* * * * *

(a) * * *

(3) An existing unit and site, provided:

(i) The unit was constructed in conformance with the Federal Manufactured Home Construction and Safety Standards (FMHCSS) as evidenced by both an affixed HUD Certification label and HUD Data Plate; and

(ii) The unit was installed on a permanent foundation in accordance with the manufacturer's requirements and HUD installation standards. Certification of a proper foundation is required; and

(iii) The unit has not been previously installed on a different homesite, or had any alterations since construction in the factory, except for porches, decks or other structures which were built to engineered designs or were approved and inspected by local code officials; and

(iv) The unit was constructed on or after a date determined by the Agency.

(b) * * *

(3) * * *

(iii) The unit and site are being sold from the lender's inventory, and the loan for which the unit and site served as security was a loan guaranteed by Rural Development; or

(iv) The existing manufactured home meets all of the following requirements:

(A) The unit was constructed in conformance with the Federal Manufactured Home Construction and Safety Standards (FMHCSS) as evidenced by an affixed HUD Certification label and HUD Data Plate;

(B) The unit was installed on a permanent foundation complying with manufacturer and HUD installation standards. The foundation design meets HUD standards for manufactured housing;

(C) The unit has not had any alterations or modifications since construction in the factory, except for porches, decks or other structures which were built to engineered designs or were approved and inspected by local code officials; and

(D) The unit was constructed on or after a date determined by the Agency.

* * * * *

(e) *HUD requirements.* The FMHCSS and HUD requirements may be found in 24 CFR part 3280.

* * * * *

Yvonne Hsu,

Acting Administrator, Rural Housing Service.

[FR Doc. 2024–30270 Filed 1–2–25; 8:45 am]

BILLING CODE 3410–XV–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2024–0180]

RIN 3150–AL21

List of Approved Spent Fuel Storage Casks: NAC International, Inc. MAGNASTOR® Storage System, Certificate of Compliance No. 1031, Amendment No. 14 and Revisions to Amendment Nos. 0 Through 13

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the NAC International, Inc. MAGNASTOR® Storage System listing within the “List of approved spent fuel storage casks” to include Amendment No. 14 and revisions to Amendment Nos. 0 through 13 to Certificate of Compliance No. 1031. Amendment No. 14 and revisions to Amendment Nos. 0 through 13 revise the certificate of compliance to add a revised method of evaluation for the non-mechanistic tipover accident, clarify in the technical specifications that damaged missing grid spacers only apply to pressurized-water reactor fuel assemblies, clarify inlet and outlet vent blockage and surveillance requirements in limiting condition for operation 3.1.2 in Appendix A to the certificate of compliance and associated technical

specification bases, and remove the reference to Type II Portland cement in the description of the certificate of compliance. The NRC is also correcting typographical errors in Revision 1 to Amendment Nos. 11 to 13 and Amendment No. 14 to Certificate of Compliance No. 1031.

DATES: This direct final rule is effective March 19, 2025, unless significant adverse comments are received by February 3, 2025. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2024–0180, at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

You can read a plain language description of this direct final rule at <https://www.regulations.gov/docket/NRC-2024-0180>. For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Irene Wu, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1951, email: Irene.Wu@nrc.gov, and Nishka Devaser, telephone: 301–415–5196, email: Nishka.Devaser@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2024–0180 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2024–0180. Address questions about NRC dockets to Helen Chang, telephone: 301–415–3228, email: Helen.Chang@nrc.gov. For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION**

CONTACT section of this document.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

- *NRC’s PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2024–0180 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for

submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

This rule is limited to the changes contained in Amendment No. 14 and revisions to Amendment Nos. 0 through 13 to Certificate of Compliance No. 1031 and does not include other aspects of the NAC International, Inc. MAGNASTOR® Storage System design. The NRC is using the “direct final rule procedure” for this rule because it represents a limited and routine change to an existing certificate of compliance that is expected to be non-controversial. Adequate protection of public health and safety continues to be reasonably assured. The amendment to the rule will become effective on March 19, 2025. However, if the NRC receives any significant adverse comment on this direct final rule by February 3, 2025, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register** or as otherwise appropriate. In general, absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is

apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that “[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.” Section 133 of the Nuclear Waste Policy Act states, in part, that “[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.”

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled “General License for Storage of Spent Fuel at Power Reactor Sites” (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled “Approval of Spent Fuel Storage Casks,” which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on November 21, 2008 (73 FR 70587), that approved the NAC International, Inc. MAGNASTOR® Storage System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1031.

IV. Discussion of Changes

On July 24, 2023, NAC International, Inc. submitted a request to the NRC to amend Certificate of Compliance No. 1031. NAC International, Inc. supplemented its request on June 26, 2024, October 18, 2023, and August 6, 2024. Amendment No. 14 and revisions to Amendment Nos. 0 through 13 revise the certificate of compliance to add a revised method of evaluation for the non-mechanistic tipover accident, clarify in the technical specifications

that damaged missing grid spacers only apply to pressurized-water reactor fuel assemblies, clarify inlet and outlet vent blockage and surveillance requirements in limiting condition for operation 3.1.2 in Appendix A to the certificate of compliance and associated technical specification bases, and remove the reference to Type II Portland cement in the description of the certificate of compliance. The NRC is also correcting several typographical errors in: (1) tables B2–10c and B2–10d in Revision 1 to Amendment Nos. 11 through 13 and (2) the section numbering in Appendix B to Amendment No. 14 and Revision 1 to Amendment No. 13. The changes to the aforementioned documents are identified with revisions bars in the margin of each document.

As documented in the preliminary safety evaluation report, the NRC performed a safety evaluation of the proposed certificate of compliance amendment request. The NRC determined that this amendment does not reflect a significant change in design or fabrication of the cask. Specifically, the NRC determined that the design of the cask would continue to maintain confinement, shielding, and criticality control in the event of each evaluated accident condition. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 14 and revisions to Amendment Nos. 0 through 13 would remain well within the limits specified by 10 CFR part 20, “Standards for Protection Against Radiation.” Thus, the NRC found there will be no significant change in the types or amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents.

The NRC staff determined that the amended NAC International, Inc. MAGNASTOR® Storage System cask design, when used under the conditions specified in the certificate of compliance, the technical specifications, and the NRC’s regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be reasonably assured. When this direct final rule becomes effective, persons who hold a general license under § 72.210 may, consistent with the license conditions under § 72.212, load spent nuclear fuel into NAC International, Inc. MAGNASTOR® Storage System casks that meet the criteria of the revised Amendment Nos. 0 through 13 and new Amendment No.

14 to Certificate of Compliance No. 1031.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC revises the NAC International, Inc. MAGNASTOR® Storage Cask System design listed in § 72.214, “List of approved spent fuel storage casks.” This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the “Agreement State Program Policy Statement” approved by the Commission on October 2, 2017, and published in the **Federal Register** on October 18, 2017 (82 FR 48535), this rule is classified as Compatibility Category NRC–Areas of Exclusive NRC Regulatory Authority. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR chapter I. Therefore, compatibility is not required for program elements in this category.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31885).

VIII. Environmental Assessment and Finding of No Significant Impact

Under the National Environmental Policy Act of 1969, as amended, and the NRC’s regulations in 10 CFR part 51, “Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,” the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

A. The Action

The action is to amend § 72.214 to revise the NAC International, Inc. MAGNASTOR® Storage System listing within the “List of approved spent fuel storage casks” to include Amendment No. 14 and to include revisions to Amendment Nos. 0 through 13 to Certificate of Compliance No. 1031.

B. The Need for the Action

This direct final rule amends the certificate of compliance for the NAC International, Inc. MAGNASTOR® Storage System design within the list of approved spent fuel storage casks to allow power reactor licensees to store spent fuel at reactor sites in casks with the approved modifications under a general license. Specifically, Amendment No. 14 and revisions to Amendment Nos. 0 through 13 revise the certificate of compliance to add a revised method of evaluation for the non-mechanistic tipover accident, clarify in the technical specifications that damaged missing grid spacers only apply to pressurized-water reactor fuel assemblies, clarify inlet and outlet vent blockage and surveillance requirements in limiting condition for operation 3.1.2 in Appendix A to the certificate of compliance and associated technical specification bases, and remove the reference to Type II Portland cement in the description of the certificate of compliance.

C. Environmental Impacts of the Action

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Amendment No. 14 and revisions to Amendment Nos. 0 through 13 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended.

The NAC International, Inc. MAGNASTOR® Storage System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which

a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, can include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

This amendment does not reflect a significant change in design or fabrication of the cask. Because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 14 and revisions to Amendment Nos. 0 through 13 would remain well within the 10 CFR part 20 limits. The NRC has also determined that the design of the cask as modified by this rule would maintain confinement, shielding, and criticality control in the event of an accident. Therefore, the proposed changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposures, and no significant increase in the potential for, or consequences from, radiological accidents. The NRC documented its safety findings in the preliminary safety evaluation report.

D. Alternative to the Action

The alternative to this action is to deny approval of Amendment No. 14 and revisions to Amendment Nos. 0 through 13 and not issue the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the NAC International, Inc. MAGNASTOR® Storage System in accordance with the changes described in proposed Amendment No. 14 and revisions to Amendment Nos. 0 through 13 would have to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. The environmental impacts would be the same as the proposed action.

E. Alternative Use of Resources

Approval of Amendment No. 14 and revisions to Amendment Nos. 0 through 13 to Certificate of Compliance No. 1031 would result in no irreversible and

irretrievable commitments of Federal resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions." Based on the foregoing environmental assessment, the NRC concludes that this direct final rule, "List of Approved Spent Fuel Storage Casks: NAC International, Inc. MAGNASTOR® Storage System Certificate of Compliance No. 1031, Amendment No. 14 and Revisions to Amendment Nos. 0 through 13," will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval number 3150-0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and NAC International, Inc. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if (1) it notifies the NRC in advance; (2) the spent fuel is stored under the conditions specified in the cask's certificate of compliance; and (3) the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On November 21, 2008 (73 FR 70587), the NRC issued an amendment to 10 CFR part 72 that approved the NAC International, Inc. MAGNASTOR® Storage System design by adding it to the list of NRC-approved cask designs in § 72.214.

On July 24, 2023, and as supplemented on June 26, 2024, October 18, 2023, and August 6, 2024, NAC International, Inc. submitted a request to amend Certificate of Compliance No. 1031 as described in Section IV, "Discussion of Changes," of this document.

The alternative to this action is to withhold approval of Amendment No. 14 and revisions to Amendment Nos. 0 through 13 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into the NAC International, Inc. MAGNASTOR® Storage System under the changes described in Amendment No. 14 and revisions to Amendment Nos. 0 through 13 to request an exemption from the requirements of § 72.212 and § 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary safety evaluation report and environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory; therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the regulations in 10 CFR 72.62, "Backfitting," do not apply to this direct final rule. This direct final rule revises Certificate of Compliance No. 1031 for the NAC International, Inc. MAGNASTOR® Storage System, as currently listed in § 72.214. The revision consists of the changes in Amendment No. 14 and revisions to Amendment Nos. 0 through 13 previously described, as set forth in the revised certificate of compliance and technical specifications.

Amendment No. 14 to Certificate of Compliance No. 1031 for the NAC International, Inc. MAGNASTOR® Storage System was initiated by NAC International, Inc. and was not submitted in response to new NRC requirements, or an NRC request for amendment. Amendment No. 14 applies only to new casks fabricated and used under Amendment No. 14. These changes do not affect existing users of the NAC International, Inc. MAGNASTOR® Storage System, and the current Amendment No. 13 continues to be effective for existing users. While current users of this storage system may comply with the new requirements in Amendment No. 14, this would be a voluntary decision on the part of current users. For these reasons, Amendment No. 14 to Certificate of Compliance No. 1031 does not constitute backfitting under § 72.62 or § 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52.

The general licensees using Amendment Nos. 0 through 13 that are being revised are required to meet the conditions of the revised certificates of compliance. The NRC added a condition to the revised certificates of compliance that require the general licensee to implement the revised certificates of compliance within 6 months and perform written evaluations in accordance with § 72.212(b)(5), which establish that the cask will conform to the terms, conditions, and specifications of the revised certificates of compliance. The 6-month timeframe in the condition is considered a standard timeframe for implementation, consistent with the information in Regulatory Issue Summary 2017-05, "Administration of 10 CFR part 72 Certificate of Compliance Corrections and Revisions."

NAC International, Inc. has manufactured casks under the existing Certificate of Compliance No. 1031, Amendment Nos. 0 through 13, that are being revised by this final rule. As the

vendor, NAC International, Inc. is not within the scope of the backfitting provisions in § 72.62. Under § 72.62, general licensees are entities that are within the scope of the backfitting regulations. However, according to NAC International, Inc., no general licensees have purchased the MAGNASTOR® Storage System under Certificate of Compliance No. 1031, Amendment Nos. 0 through 5, Amendment No. 8, and Amendment Nos. 10 through 12. In addition, by letter dated October 18, 2023, NAC International, Inc. provided letters from all its users for the MAGNASTOR® Storage System. None of the users in the letters are using Amendment Nos. 0 through 5, Amendment No. 8, and Amendment Nos. 10 through 12. Therefore, because Certificate of Compliance No. 1031, Amendment Nos. 0 through 5, Amendment No. 8, and Amendment Nos. 10 through 12 are not in use by a licensee and no licensee has contracted with NAC International, Inc. to utilize storage casks for these amendments, the changes in the revision to Certificate of Compliance No. 1031, Amendment Nos. 0 through 5, Amendment No. 8, and Amendment Nos. 10 through 12, which are approved in this direct final rule, do not fall within the definition of backfitting under § 72.62.

Dominion Energy Kewaunee at the Kewaunee independent spent fuel storage installation and Zion Solutions at its independent spent fuel storage installation are the two general licensees using revision 1 to Amendment No. 6 that could be affected by the issuance of

revision 2 to Amendment No. 6. In a letter to NAC International, Inc., Dominion Energy Kewaunee stated that it would voluntarily adopt revision 2 to Amendment No. 6. Zion Solutions also stated in a letter that it intends to implement the revised certificate after its issuance. Because both licensees voluntarily intend to implement the revision, the issuance of revision 2 to Amendment No. 6 does not fall within the definition of backfitting under § 72.62.

Arizona Public Service Company at the Palo Verde independent spent fuel storage installation and Duke Energy at the Catawba and McGuire independent spent fuel storage installations are the general licensees using revision 1 to Amendment No. 7 that could be affected by the issuance of revision 2 to Amendment No. 7. In their letters to NAC International, Inc., Arizona Public Service Company and Duke Energy stated that they intend to implement revision 2 to Amendment No. 7. Therefore, because the licensees voluntarily intend to implement the revision, issuance of revision 2 to Amendment No. 7 does not fall within the definition of backfitting under § 72.62.

Constellation Energy Generation at its Three Mile Island Unit 1 independent spent fuel storage installation is the only general licensee using revision 1 to Amendment No. 9 that could be affected by the issuance of revision 2 to Amendment No. 9. In its letter to NAC International, Inc., Constellation Energy Generation stated that it intends to

implement revision 2 to Amendment No. 9 in a timely manner after NRC approval of the revision has been received. Therefore, because the licensee voluntarily intends to implement the revision, issuance of revision 2 to Amendment No. 9 does not fall within the definition of backfitting under § 72.62.

Three Mile Island Nuclear Station, Unit 2 Solutions contracted with NAC International, Inc. to utilize storage casks using Amendment No. 13 and could be affected by the issuance of revision 1 to Amendment No. 13. In its letter to NAC International, Inc., Three Mile Island Nuclear Station, Unit 2 Solutions stated that it intends to implement the revised certificate for Amendment No. 13 for MAGNASTOR® Storage System at the Three Mile Island Nuclear Station, Unit 2, independent spent fuel storage installation after NRC approval of the revision. Therefore, because Three Mile Island Nuclear Station, Unit 2 Solutions voluntarily intends to implement the revision, issuance of revision 1 to Amendment No. 13 does not fall within the definition of backfitting under § 72.62.

XIII. Congressional Review Act

This direct final rule is not a rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS Accession No./ weblink/ Federal Register citation
Proposed Certificate of Compliance and Proposed Technical Specifications	
Proposed Certificate of Compliance No. 1031, Amendment No. 14	ML24211A240
Proposed Certificate of Compliance No. 1031, Amendment No. 14, Appendix A: Technical Specifications and Design Features	ML24211A241
Proposed Certificate of Compliance No. 1031, Amendment No. 14, Appendix B: Approved Contents	ML24211A242
Proposed Certificate of Compliance No. 1031, Amendment No. 0, Revision 3	ML24211A244
Proposed Certificate of Compliance No. 1031, Amendment No. 0, Revision 3, Appendix A: Technical Specifications and Design Features	ML24211A245
Proposed Certificate of Compliance No. 1031, Amendment No. 0, Revision 3, Appendix B: Approved Contents	ML24211A246
Proposed Certificate of Compliance No. 1031, Amendment No. 1, Revision 3	ML24211A247
Proposed Certificate of Compliance No. 1031, Amendment No. 1, Revision 3, Appendix A: Technical Specifications and Design Features	ML24211A248
Proposed Certificate of Compliance No. 1031, Amendment No. 1, Revision 3, Appendix B: Approved Contents	ML24211A249
Proposed Certificate of Compliance No. 1031, Amendment No. 2, Revision 3	ML24211A250
Proposed Certificate of Compliance No. 1031, Amendment No. 2, Revision 3, Appendix A: Technical Specifications and Design Features	ML24211A251
Proposed Certificate of Compliance No. 1031, Amendment No. 2, Revision 3, Appendix B: Approved Contents	ML24211A252
Proposed Certificate of Compliance No. 1031, Amendment No. 3, Revision 3	ML24211A253
Proposed Certificate of Compliance No. 1031, Amendment No. 3, Revision 3, Appendix A: Technical Specifications and Design Features	ML24211A254
Proposed Certificate of Compliance No. 1031, Amendment No. 3, Revision 3, Appendix B: Approved Contents	ML24211A255
Proposed Certificate of Compliance No. 1031, Amendment No. 4, Revision 2	ML24211A256

Document	ADAMS Accession No./ weblink/ Federal Register citation
Proposed Certificate of Compliance No. 1031, Amendment No. 4, Revision 2, Appendix A: Technical Specifications and Design Features	ML24211A257
Proposed Certificate of Compliance No. 1031, Amendment No. 4, Revision 2, Appendix B: Approved Contents	ML24211A258
Proposed Certificate of Compliance No. 1031, Amendment No. 5, Revision 2	ML24211A259
Proposed Certificate of Compliance No. 1031, Amendment No. 5, Revision 2, Appendix A: Technical Specifications and Design Features	ML24211A260
Proposed Certificate of Compliance No. 1031, Amendment No. 5, Revision 2, Appendix B: Approved Contents	ML24211A261
Proposed Certificate of Compliance No. 1031, Amendment No. 6, Revision 2	ML24211A262
Proposed Certificate of Compliance No. 1031, Amendment No. 6, Revision 2, Appendix A: Technical Specifications and Design Features	ML24211A263
Proposed Certificate of Compliance No. 1031, Amendment No. 6, Revision 2, Appendix B: Approved Contents	ML24211A264
Proposed Certificate of Compliance No. 1031, Amendment No. 7, Revision 2	ML24211A265
Proposed Certificate of Compliance No. 1031, Amendment No. 7, Revision 2, Appendix A: Technical Specifications and Design Features	ML24211A266
Proposed Certificate of Compliance No. 1031, Amendment No. 7, Revision 2, Appendix B: Approved Contents	ML24211A267
Proposed Certificate of Compliance No. 1031, Amendment No. 8, Revision 2	ML24211A268
Proposed Certificate of Compliance No. 1031, Amendment No. 8, Revision 2, Appendix A: Technical Specifications and Design Features	ML24211A269
Proposed Certificate of Compliance No. 1031, Amendment No. 8, Revision 2, Appendix B: Approved Contents	ML24211A270
Proposed Certificate of Compliance No. 1031, Amendment No. 9, Revision 2	ML24211A271
Proposed Certificate of Compliance No. 1031, Amendment No. 9, Revision 2, Appendix A: Technical Specifications and Design Features	ML24211A272
Proposed Certificate of Compliance No. 1031, Amendment No. 9, Revision 2, Appendix B: Approved Contents	ML24211A273
Proposed Certificate of Compliance No. 1031, Amendment No. 10, Revision 1	ML24211A274
Proposed Certificate of Compliance No. 1031, Amendment No. 10, Revision 1, Appendix A: Technical Specifications and Design Features	ML24211A275
Proposed Certificate of Compliance No. 1031, Amendment No. 10, Revision 1, Appendix B: Approved Contents	ML24211A276
Proposed Certificate of Compliance No. 1031, Amendment No. 11, Revision 1	ML24211A277
Proposed Certificate of Compliance No. 1031, Amendment No. 11, Revision 1, Appendix A: Technical Specifications and Design Features	ML24211A278
Proposed Certificate of Compliance No. 1031, Amendment No. 11, Revision 1, Appendix B: Approved Contents	ML24211A279
Proposed Certificate of Compliance No. 1031, Amendment No. 12, Revision 1	ML24211A280
Proposed Certificate of Compliance No. 1031, Amendment No. 12, Revision 1, Appendix A: Technical Specifications and Design Features	ML24211A281
Proposed Certificate of Compliance No. 1031, Amendment No. 12, Revision 1, Appendix B: Approved Contents	ML24211A282
Proposed Certificate of Compliance No. 1031, Amendment No. 13, Revision 1	ML24211A283
Proposed Certificate of Compliance No. 1031, Amendment No. 13, Revision 1, Appendix A: Technical Specifications and Design Features	ML24211A284
Proposed Certificate of Compliance No. 1031, Amendment No. 13, Revision 1, Appendix B: Approved Contents	ML24211A285
Preliminary Safety Evaluation Report, Certificate of Compliance No. 1031, Amendment No. 14 and Revision to Amendment Nos. 0 through 13	ML24211A243
NAC International, Inc. MAGNASTOR® Storage System Amendment No. 14 and Revisions to Amendment Nos. 0 through 13 Request Documents	
NAC International, Inc., Submission of an Amendment Request for the MAGNASTOR® Cask System, Amendment No. 14, dated July 24, 2023	ML23205A238
NAC International, Inc., Submission of Data Files to Support the NRC Review of MAGNASTOR® Amendment No. 14, dated July 24, 2023	ML23208A062
NAC International, Inc., Submission of Responses to the NRC Request for Additional Information for MAGNASTOR® Cask System, Amendment No. 14, dated June 26, 2024	ML24179A071 (package)
NAC International, Inc., Supplement to the Amendment Request No. 14 for the MAGNASTOR® Cask System, dated October 18, 2023	ML23291A167
NAC International, Inc., Supplement to the Amendment Request No. 14 for the MAGNASTOR® Cask System, dated August 6, 2024	ML24219A227
NAC International, Inc., MAGNASTOR® Cask System Users Certificate of Compliance No. 1031 Amendment Nos. 0 through 9 Intent to Adopt Letters, dated August 4, 2022	ML22216A110
Other Documents	
Rulemaking Memorandum for Amendment No. 14 and Revision to Amendment Nos. 0 through 13 for the MAGNASTOR® Storage System, dated September 20, 2024	ML24211A239
Final Rule, "Storage of Spent Fuel in NRC-Approved Storage Casks at Power Reactor Sites," published July 18, 1990	55 FR 29181
Final Rule, "List of Approved Spent Fuel Storage Casks: MAGNASTOR Addition," published November 21, 2008	73 FR 70587
Revision to Policy Statement, "Agreement State Program Policy Statement; Correction," published October 18, 2017	82 FR 48535
Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998	63 FR 31885
Regulatory Issue Summary 2017–05, "Administration of 10 CFR Part 72 Certificate of Compliance Corrections and Revisions"	ML17165A183

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at <https://www.regulations.gov> under Docket ID NRC–2024–0180. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2024–0180); (2) click the “Subscribe” link; and (3) enter an email address and click on the “Subscribe” link.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance No. 1031 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1031.

Initial Certificate Effective Date: February 4, 2009, superseded by Initial Certificate, Revision 1, on February 1, 2016, superseded by Initial Certificate, Revision 2, on October 16, 2023,

superseded by Initial Certificate, Revision 3, on March 19, 2025.

Amendment Number 1 Effective Date:

August 30, 2010, superseded by Amendment Number 1, Revision 1, on February 1, 2016, superseded by Amendment Number 1, Revision 2, on October 16, 2023, superseded by Amendment Number 1, Revision 3, on March 19, 2025.

Amendment Number 2 Effective Date:

January 30, 2012, superseded by Amendment Number 2, Revision 1, on February 1, 2016, superseded by Amendment Number 2, Revision 2, on October 16, 2023, superseded by Amendment Number 2, Revision 3, on March 19, 2025.

Amendment Number 3 Effective Date:

July 25, 2013, superseded by Amendment Number 3, Revision 1, on February 1, 2016, superseded by Amendment Number 3, Revision 2, on October 16, 2023, superseded by Amendment Number 3, Revision 3, on March 19, 2025.

Amendment Number 4 Effective Date:

April 14, 2015, superseded by Amendment Number 4, Revision 1, on October 16, 2023, superseded by Amendment Number 4, Revision 2, on March 19, 2025.

Amendment Number 5 Effective Date:

June 29, 2015, superseded by Amendment Number 5, Revision 1, on October 16, 2023, superseded by Amendment Number 5, Revision 2, on March 19, 2025.

Amendment Number 6 Effective Date:

December 21, 2016, superseded by Amendment Number 6, Revision 1, on October 16, 2023, superseded by Amendment Number 6, Revision 2, on March 19, 2025.

Amendment Number 7 Effective Date:

August 21, 2017, as corrected (ADAMS Accession No. ML19045A346), superseded by Amendment Number 7, Revision 1, on October 16, 2023, superseded by Amendment Number 7, Revision 2, on March 19, 2025.

Amendment Number 8 Effective Date:

March 24, 2020, superseded by Amendment Number 8, Revision 1, on October 16, 2023, superseded by Amendment Number 8, Revision 2, on March 19, 2025.

Amendment Number 9 Effective Date:

December 7, 2020, superseded by Amendment Number 9, Revision 1, on October 16, 2023, superseded by Amendment Number 9, Revision 2, on March 19, 2025.

Amendment Number 10 Effective

Date: January 18, 2023, superseded by Amendment Number 10, Revision 1, on March 19, 2025.

Amendment Number 11 Effective

Date: October 16, 2023, superseded by

Amendment Number 11, Revision 1, on March 19, 2025.

Amendment Number 12 Effective

Date: October 16, 2023, superseded by Amendment Number 12, Revision 1, on March 19, 2025.

Amendment Number 13 Effective

Date: November 19, 2024, superseded by Amendment Number 13, Revision 1, on March 19, 2025.

Amendment Number 14 Effective

Date: March 19, 2025.

SAR Submitted by: NAC

International, Inc.

SAR Title: Final Safety Analysis

Report for the MAGNASTOR® System.

Docket Number: 72–1031.

Certificate Expiration Date: February 4, 2029.

Model Number: MAGNASTOR®.

* * * * *

Dated: December 20, 2024.

For the Nuclear Regulatory Commission.

Mirela Gavrilas,

Executive Director for Operations.

[FR Doc. 2024–31095 Filed 1–2–25; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[NOTICE 2024–31]

Civil Monetary Penalties Annual Inflation Adjustments

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, the Federal Election Commission is adjusting for inflation the civil monetary penalties established under the Federal Election Campaign Act, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act. The civil monetary penalties being adjusted are those negotiated by the Commission or imposed by a court for certain statutory violations, and those imposed by the Commission for late filing of or failure to file certain reports required by the Federal Election Campaign Act. The adjusted civil monetary penalties are calculated according to a statutory formula and the adjusted amounts will apply to penalties assessed after the effective date of these rules.

DATES: The final rules are effective on January 3, 2025.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, Mr. Joseph P. Wenzinger, Attorney, or Ms. Terrell D. Stansbury,

Paralegal, Office of General Counsel, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (the “Inflation Adjustment Act”),¹ as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the “2015 Act”),² requires Federal agencies, including the Commission, to adjust for inflation the civil monetary penalties within their jurisdiction according to prescribed formulas. A civil monetary penalty is “any penalty, fine, or other sanction” that (1) “is for a specific monetary amount” or “has a maximum amount” under Federal law; and (2) that a Federal agency assesses or enforces “pursuant to an administrative proceeding or a civil action” in Federal court.³ Under the Federal Election Campaign Act, 52 U.S.C. 30101–45 (“FECA”), the Commission may seek and assess civil monetary penalties for violations of FECA, the Presidential Election Campaign Fund Act, 26 U.S.C. 9001–13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031–42.

The Inflation Adjustment Act requires Federal agencies to adjust their civil penalties annually, and the adjustments must take effect no later than January 15 of every year.⁴ Pursuant to guidance issued by the Office of Management and Budget (“OMB”),⁵ the Commission is now adjusting its civil monetary penalties for 2025.⁶

The Commission must adjust for inflation its civil monetary penalties “notwithstanding Section 553” of the Administrative Procedures Act (“APA”).⁷ Thus, the APA’s notice-and-comment and delayed effective date requirements in 5 U.S.C. 553(b)–(d) do

not apply because Congress has specifically exempted agencies from these requirements.⁸

Furthermore, because the inflation adjustments made through these final rules are required by Congress and involve no Commission discretion or policy judgments, these rules do not need to be submitted to the Speaker of the United States House of Representatives or the President of the United States Senate under the Congressional Review Act, 5 U.S.C. 801 *et seq.* Moreover, because the APA’s notice-and-comment procedures do not apply to these final rules, the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a). Nor is the Commission required to submit these revisions for congressional review under FECA. *See* 5 U.S.C. 30111(d)(1), (4) (providing for congressional review when Commission “prescribe[s]” a “rule of law”).

The new penalty amounts will apply to civil monetary penalties that are assessed after the date the increase takes effect, even if the associated violation predated the increase.⁹

Explanation and Justification

The Inflation Adjustment Act requires the Commission to annually adjust its civil monetary penalties for inflation by applying a cost-of-living-adjustment (“COLA”) ratio.¹⁰ The COLA ratio is the percentage that the Consumer Price Index (“CPI”) ¹¹ “for the month of October preceding the date of the adjustment” exceeds the CPI for October of the previous year.¹² To calculate the adjusted penalty, the Commission must increase the most recent civil monetary penalty amount by the COLA ratio.¹³ According to the Office of Management

and Budget, the COLA ratio for 2025 is 0.02598, or 2.598%; thus, to calculate the new penalties, the Commission must multiply the most recent civil monetary penalties in force by 1.02598.¹⁴

The Commission assesses two types of civil monetary penalties that must be adjusted for inflation. First are penalties that are either negotiated by the Commission or imposed by a court for violations of FECA, the Presidential Election Campaign Fund Act, or the Presidential Primary Matching Payment Account Act. These civil monetary penalties are set forth at 11 CFR 111.24. Second are the civil monetary penalties assessed through the Commission’s Administrative Fines Program for late filing or non-filing of certain reports required by FECA. *See* 52 U.S.C. 30109(a)(4)(C) (authorizing Administrative Fines Program), 30104(a) (requiring political committee treasurers to report receipts and disbursements within certain time periods). The penalty schedules for these civil monetary penalties are set out at 11 CFR 111.43 and 111.44.

1. 11 CFR 111.24—Civil Penalties

FECA establishes the civil monetary penalties for violations of FECA and the other statutes within the Commission’s jurisdiction. *See* 52 U.S.C. 30109(a)(5), (6), (12). Commission regulations in 11 CFR 111.24 provide the current inflation-adjusted amount for each such civil monetary penalty. To calculate the adjusted civil monetary penalty, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar.

The actual adjustment to each civil monetary penalty is shown in the chart below.

Section	Most recent civil penalty	COLA	New civil penalty
11 CFR 111.24(a)(1)	\$24,255	1.02598	\$24,885
11 CFR 111.24(a)(2)(i)	51,744	1.02598	53,088
11 CFR 111.24(a)(2)(ii)	84,852	1.02598	87,056
11 CFR 111.24(b)	7,256	1.02598	7,445
11 CFR 111.24(b)	18,139	1.02598	18,610

¹ Public Law 101–410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note), amended by Debt Collection Improvement Act of 1996, Public Law 104–134, sec. 31001(s)(1), 110 Stat. 1321, 1321–373; Federal Reports Elimination Act of 1998, Public Law 105–362, sec. 1301, 112 Stat. 3280.

² Public Law 114–74, sec. 701, 129 Stat. 584, 599.

³ Inflation Adjustment Act sec. 3(2).

⁴ Inflation Adjustment Act sec. 4(a).

⁵ *See* Inflation Adjustment Act sec. 7(a) (requiring OMB to “issue guidance to agencies on implementing the inflation adjustments required

under this Act”); *see also* Memorandum from Shalanda D. Young, Director, Office of Management and Budget, to Heads of Executive Departments and Agencies, M–25–02, Dec. 17, 2024, <https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf> (“OMB Memorandum”).

⁶ Inflation Adjustment Act sec. 5.

⁷ Inflation Adjustment Act sec. 4(b)(2).

⁸ *See, e.g., Asiana Airlines v. FAA*, 134 F.3d 393, 396–99 (D.C. Cir. 1998) (finding APA “notice and comment” requirement not applicable where Congress clearly expressed intent to depart from normal APA procedures).

⁹ Inflation Adjustment Act sec. 6.

¹⁰ The COLA ratio must be applied to the most recent civil monetary penalties. Inflation Adjustment Act, § 4(a); *see also* OMB Memorandum at 2.

¹¹ The Inflation Adjustment Act, sec. 3, uses the CPI “for all-urban consumers published by the Department of Labor.”

¹² Inflation Adjustment Act, sec. 5(b)(1).

¹³ Inflation Adjustment Act, sec. 5(a), (b)(1).

¹⁴ OMB Memorandum at 1.

2. 11 CFR 111.43, 111.44—
Administrative Fines

FECA authorizes the Commission to assess civil monetary penalties for violations of the reporting requirements of 52 U.S.C. 30104(a) according to the penalty schedules “established and published by the Commission.” 52 U.S.C. 30109(a)(4)(C)(i). The Commission has established two penalty schedules: The penalty schedule in 11 CFR 111.43(a) applies to reports that are not election sensitive, and the penalty schedule in 11 CFR 111.43(b) applies to reports that are election sensitive.¹⁵ Each penalty schedule contains two columns of penalties, one for late-filed reports and one for non-filed reports, with penalties based on the level of financial activity in the report and, if late-filed, its lateness.¹⁶ In addition, 11 CFR 111.43(c) establishes a civil monetary penalty for situations in which a committee fails to file a report and the Commission cannot calculate the relevant level of activity. Finally, 11 CFR 111.44 establishes a civil monetary penalty for failure to file timely reports of contributions received less than 20 days, but more than 48

hours, before an election. *See* 52 U.S.C. 30104(a)(6).

To determine the adjusted civil monetary penalty amount for each level of activity, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar. The new civil monetary penalties are shown in the schedules in the rule text, below.

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement, Penalties.

For the reasons set out in the preamble, the Federal Election Commission amends subchapter A of chapter I of title 11 of the *Code of Federal Regulations* as follows:

**PART 111—COMPLIANCE
PROCEDURE (52 U.S.C. 30109,
30107(a))**

■ 1. The authority citation for part 111 continues to read as follows:

Authority: 52 U.S.C. 30102(i), 30109, 30107(a), 30111(a)(8); 28 U.S.C. 2461 note; 31 U.S.C. 3701, 3711, 3716–3719, and 3720A, as amended; 31 CFR parts 285 and 900–904.

§ 111.24 [Amended]

■ 2. Section 111.24 is amended in each paragraph indicated in the left column by removing the number indicated in the middle column and adding in its place the number indicated in the right column:

Paragraph	Remove	Add
(a)(1)	\$24,255	\$24,885
(a)(2)(i)	51,744	53,088
(a)(2)(ii)	84,852	87,056
(b)	7,256	7,445
(b)	18,139	18,610

■ 3. Section 111.43 is amended by:

■ a. Revising paragraphs (a) through (c); and

■ b. Removing the heading from paragraph (d).

The revisions read as follows:

§ 111.43 What are the schedules of penalties?

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated in accordance with the following schedule of penalties:

TABLE 1 TO PARAGRAPH (a)

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$1–4,999.99 ¹	[\$43 + (\$6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$426 × [1 + (.25 × Number of previous violations)].
\$5,000–9,999.99	[\$85 + (\$6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$512 × [1 + (.25 × Number of previous violations)].
\$10,000–24,999.99	[\$183 + (\$6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$854 × [1 + (.25 × Number of previous violations)].
\$25,000–49,999.99	[\$362 + (\$34 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$1,536 × [1 + (.25 × Number of previous violations)].
\$50,000–74,999.99	[\$546 + (\$136 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$4,898 × [1 + (.25 × Number of previous violations)].
\$75,000–99,999.99	[\$724 + (\$183 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$6,349 × [1 + (.25 × Number of previous violations)].
\$100,000–149,999.99	[\$1,087 + (\$227 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$8,165 × [1 + (.25 × Number of previous violations)].
\$150,000–199,999.99	[\$1,454 + (\$271 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$9,978 × [1 + (.25 × Number of previous violations)].
\$200,000–249,999.99	[\$1,813 + (\$316 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$11,792 × [1 + (.25 × Number of previous violations)].
\$250,000–349,999.99	[\$2,722 + (\$362 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$14,514 × [1 + (.25 × Number of previous violations)].
\$350,000–449,999.99	[\$3,629 + (\$362 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$16,327 × [1 + (.25 × Number of previous violations)].
\$450,000–549,999.99	[\$4,536 + (\$362 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$17,234 × [1 + (.25 × Number of previous violations)].
\$550,000–649,999.99	[\$5,441 + (\$362 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$18,142 × [1 + (.25 × Number of previous violations)].
\$650,000–749,999.99	[\$6,349 + (\$362 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$19,049 × [1 + (.25 × Number of previous violations)].
\$750,000–849,999.99	[\$7,256 + (\$362 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$19,955 × [1 + (.25 × Number of previous violations)].
\$850,000–949,999.99	[\$8,165 + (\$362 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$20,862 × [1 + (.25 × Number of previous violations)].
\$950,000 or over	[\$9,072 + (\$362 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$21,769 × [1 + (.25 × Number of previous violations)].

¹ The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

¹⁵ Election sensitive reports are certain reports due shortly before an election. *See* 11 CFR 111.43(d)(1).

¹⁶ A report is considered to be “not filed” if it is never filed or is filed more than a certain number of days after its due date. *See* 11 CFR 111.43(e).

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated in

accordance with the following schedule of penalties:

TABLE 2 TO PARAGRAPH (b)

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$1–\$4,999.99 ¹	$[\$85 + (\$15 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$854 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$5,000–\$9,999.99	$[\$171 + (\$15 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$1,023 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$10,000–\$24,999.99	$[\$255 + (\$15 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$1,536 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$25,000–\$49,999.99	$[\$546 + (\$43 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$2,388 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$50,000–\$74,999.99	$[\$817 + (\$136 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$5,441 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$75,000–\$99,999.99	$[\$1,087 + (\$183 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$7,256 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$100,000–\$149,999.99	$[\$1,633 + (\$227 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$9,072 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$150,000–\$199,999.99	$[\$2,178 + (\$271 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$10,885 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$200,000–\$249,999.99	$[\$2,722 + (\$316 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$13,606 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$250,000–\$349,999.99	$[\$4,081 + (\$362 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$16,327 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$350,000–\$449,999.99	$[\$5,441 + (\$362 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$18,142 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$450,000–\$549,999.99	$[\$6,803 + (\$362 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$19,955 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$550,000–\$649,999.99	$[\$8,165 + (\$362 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$21,769 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$650,000–\$749,999.99	$[\$9,524 + (\$362 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$23,585 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$750,000–\$849,999.99	$[\$10,885 + (\$362 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$25,399 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$850,000–\$949,999.99	$[\$12,245 + (\$362 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$27,212 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$950,000 or over	$[\$13,606 + (\$362 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$29,027 \times [1 + (.25 \times \text{Number of previous violations})]$.

¹ The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(c) If the respondent fails to file a required report and the Commission cannot calculate the level of activity under paragraph (d) of this section, then the civil money penalty shall be \$9,978.

* * * * *

§ 111.44 [Amended]

■ 4. Section 111.44 is amended in paragraph (a)(1) by removing “\$178” and adding, in its place, “\$183”.

Dated: December 23, 2024.

On behalf of the Commission.

Sean J. Cooksey,

Chair, Federal Election Commission.

[FR Doc. 2024–31368 Filed 1–2–25; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 3

[Docket No. FAA–2023–1194; Amt. 3–3A]

RIN 2120–AL85

Extension of Compliance Date To Designate a U.S. Agent for Service for Individuals With Foreign Addresses Who Apply for Certain Certificates, Ratings, or Authorizations

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

ACTION: Final rule; delay of effective date.

SUMMARY: On October 8, 2024, the FAA published a final rule that will require individuals with foreign addresses and no U.S. physical address on file with the FAA who apply for certain certificates, ratings, or authorizations to designate a U.S. agent for service. This final rule extends the deadline for those individuals to designate a U.S. agent for service from January 6, 2025, to April 2, 2025. This final rule does not apply to

individuals with foreign addresses who currently hold certain certificates, ratings, or authorizations, as the compliance date for those individuals continues to be July 7, 2025.

DATES:

Effective date: As of January 3, 2025, the effective date of amendatory 3 in the final rule published on October 8, 2024 (89 FR 81305), is delayed from January 6, 2025, to April 2, 2025. This final rule is effective January 3, 2025, except for amendatory instruction 3 which is effective April 2, 2025.

Compliance date: The compliance date for this final rule is April 2, 2025, for applicants of any certificate, rating, or authorization issued under 14 CFR part 47, 61, 63, 65, 67, or 107.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Executive Summary

On October 8, 2024, the FAA published a final rule, U.S. Agents for

Service on Individuals With Foreign Addresses Who Hold or Apply for Certain Certificates, Ratings, or Authorizations,¹ that will require individuals with foreign addresses and no U.S. physical address on file with the FAA who either hold or apply for certain certificates, ratings, or authorizations to designate a U.S. agent for service. This final rule revises § 3.303(d)(2) of title 14 of the Code of Federal Regulations (14 CFR) to extend the compliance date for individuals who have a foreign address and no U.S. physical address of record on file with the FAA to designate a U.S. agent for service if they apply for a certificate, rating, or authorization issued under 14 CFR part 47, 61, 63, 65, 67, or 107 from January 6, 2025, to April 2, 2025. The U.S. agent for service designation will be required to be in writing in a form and manner prescribed by the Administrator, as described in Advisory Circular 3–1, through an online system: U.S. Agent for Service System (USAS). This final rule provides additional time to establish and launch USAS to facilitate the FAA's means of accepting U.S. agent for service designations.

II. Authority for the Rulemaking

The FAA's authority to issue rules on aviation safety, such as the rules governing service that are referred to in this preamble and substantively promulgated in 88 FR 38001, is found in title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority, including the authority to issue regulations. The final rule this rulemaking amends was issued under the authority described in 49 U.S.C. 44701(a)(5), which establishes the authority of the Administrator to prescribe regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security. The amended regulations herein are within the scope of that authority and are consistent with 49 U.S.C. 46103, which governs the FAA's service and provides that the FAA may effectuate service on a designated agent.

III. Good Cause for Immediate Adoption

The Administrative Procedure Act (5 U.S.C. 553(b)(B)) requires an agency to conduct notice and comment rulemaking except when the agency for good cause finds (and incorporates the

finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. Additionally, section 553(d) permits agencies, upon a finding of good cause, to issue rules with an effective date less than 30 days from the date of publication. The FAA finds good cause under 5 U.S.C. 553(b)(B) to forgo notice and opportunity for comment and the 30-day notice requirement to implement this final rule as unnecessary.

First, as discussed herein, applicants will be unable to submit information to USAS by the January 6, 2025, deadline due to development delays associated with the USAS online portal, which were circumstances ultimately beyond the FAA's general control, and which were not fully understood until well after publication of the U.S. Agent final rule in October of 2024. When FAA became aware of a development delay, it was too late to develop an alternate means of compliance in advance of January 6, 2025, as further discussed in section IV. of this preamble below. Absent a means of compliance, FAA would be unable to issue certain certificates, ratings, and authorizations. Accordingly, the FAA finds notice and the opportunity to comment unnecessary, as public comment would not impact USAS online portal development and the FAA's preparedness to accept U.S. agent designations.

For similar reasons, the FAA finds good cause to forgo the 30 days delay of effective date requirement under 5 U.S.C. 553(d) as unnecessary. If the FAA does not effectuate this final rule before January 6, 2025, which is less than 30 days after its publication, applicants would be required to meet certain regulations without an available means of compliance and FAA would have to institute a moratorium on the issuance of certain certificates, authorizations, and ratings. Accordingly, the compliance date must be immediately extended to avoid this moratorium and inconsistency between the FAA's regulations and the practical means of compliance.

IV. Discussion

On October 8, 2024, the FAA published a final rule requiring individuals with a foreign address and no U.S. physical address of record on file with the FAA who apply or hold certificates, ratings, or authorizations under 14 CFR part 47, 61, 63, 65, 67, or 107 to designate a U.S. agent for

service.² That final rule adopted current § 3.303(a), requiring these individuals to designate a U.S. agent for service in a form and manner prescribed by the Administrator. The FAA concurrently published Advisory Circular 3–1 prescribing the form and manner for compliance.³ Advisory Circular 3–1 provides in Chapter 3, Paragraph 2 that individuals designating a U.S. agent for service under § 3.303 will utilize a new FAA online system, the U.S. Agent for Service System (USAS). Currently, USAS is the only form and manner of compliance prescribed by the Administrator to meet the requirement in § 3.303(a) to designate a U.S. agent for service. The final rule also adopted § 3.303(d), which provided a compliance date of January 6, 2025, for applicants of certain certificates, ratings, or authorizations and a different compliance date of July 7, 2025, for individuals who already hold certain certificates, ratings, or authorizations. However, the FAA has determined that it will not be ready to accept U.S. agent designations in USAS by January 6, 2025. Despite early and regular USAS development engagement, unforeseen and recent issues with USAS development and integration with existing FAA systems have left the agency with insufficient time to develop an alternate means to comply with § 3.303(d)(2). An alternate means of compliance would necessitate development of new guidance to the public, processing procedures for Agency employees, and a separate system to temporarily store U.S. agent designations the agency receives from applicants pending implementation of USAS. Additionally, the agency would be unable to comply with the Paperwork Reduction Act and Privacy Act requirements associated with developing an alternative means of compliance.

To avoid a moratorium on the issuance of certain certificates, authorizations, and ratings, and to ensure FAA preparedness for the collection of U.S. agent designations in USAS, it is necessary to extend the

² U.S. Agents for Service on Individuals With Foreign Addresses Who Hold or Apply for Certain Certificates, Ratings, or Authorizations final rule, 89 FR 81305 (Oct. 8, 2024).

³ See Advisory Circular 3–1, U.S. Agents for Service on Individuals with Foreign Addresses Who Hold or Apply for Certain Certificates, Ratings, or Authorizations https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/1042728#:~:text=This%20AC%20explains%20an%20acceptable%20means%20to%20designate,information%2C%20and%20submit%20a%20new%20U.S.%20agent%20designation.

¹ 89 FR 81305.

deadline for applicants to designate a U.S. agent for service in compliance with § 3.303(a). This final rule revises the compliance date in § 3.303(d)(2) from January 6, 2025, to April 2, 2025, for applicants of certain certificates, ratings, or authorizations with foreign addresses and no U.S. physical addresses to designate a U.S. agent for service. The FAA emphasizes that the compliance date to designate a U.S. agent for service in § 3.303(d)(1) for holders of any certificate, rating, or authorization with foreign addresses and no U.S. physical addresses will remain as July 7, 2025. The FAA is retaining staggered compliance dates to ensure that USAS and the Agency is not overwhelmed by submissions.

V. Regulatory Notices and Analyses

This final rule is a non-significant rule for the purposes of section 3(f) of Executive Order (E.O.) 12866, as amended by E.O. 13563 and E.O. 14094. Any impacts caused by the three-month delay will be minimal as this rule will not impose any significant costs or have impacts beyond those analyzed in the October 8, 2024, final rule.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The FAA submitted a report for the substantive October, 2024, final rule (89 FR 81305) and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. This rule does not constitute a major rule as defined in 5 U.S.C. 804(2).

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, (Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 601–612)), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996) and the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504 Sept. 27, 2010), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, as well as

governmental jurisdictions with populations of less than 50,000.

Section 604 of the RFA requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553 after being required to publish a general notice of proposed rulemaking. RFA analysis requirements are limited to rulemakings for which the agency “is required by section 553 or any other law, to publish a general notice of proposed rulemaking for any proposed rule.” As prior notice and comment under 5 U.S.C. 553 are not required for this final rule, the analyses in 5 U.S.C. 603 and 604 are also not required.

List of Subjects in 14 CFR Part 3

Aircraft, Aviation safety, U.S. agent for service.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends title 14, Code of Federal Regulations as follows:

PART 3—GENERAL REQUIREMENTS

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

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44704, 46111, and 46103.

§ 3.303 [Amended]

- 2. Amend § 3.303(d)(2) by removing the date “January 6, 2025” and adding in its place “April 2, 2025”.

- 3. Effective April 2, 2025, further amend § 3.303 by revising paragraphs (d) and (e) to read as follows:

§ 3.303 Designation of a U.S. agent for service.

* * * * *

(d) Individuals holding any certificate, rating, or authorization issued under part 47, 61, 63, 65, 67, or 107 of this chapter must comply with the requirements listed in this subpart no later than July 7, 2025. These individuals who fail to timely designate a U.S. agent for service and comply with the requirements under this subpart may not exercise the privileges of any certificate, rating, or authorization issued under part 47, 61, 63, 65, 67, or 107, and an individual aircraft owner's aircraft registration certificate will be considered ineffective.

(e) No individual shall be issued a certificate, rating, or authorization under part 47, 61, 63, 65, 67, or 107 of this chapter unless the individual has designated a U.S. agent as required under this subpart.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC.

Michael Gordon Whitaker,
Administrator.

[FR Doc. 2024–31555 Filed 12–30–24; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 61, 68, and 91

[Docket No. FAA–2024–2580; Amdt. Nos. 11–70, 61–158, 68–3, and 91–380]

RIN 2120–AM06

Regulatory Updates to BasicMed

Correction

In rule document 2024–26935, appearing on pages 90572 through 90578 in the issue of Monday, November 18, 2024, make the following correction:

§ 11.201 [Corrected]

■ On page 90577, in the second column, instruction 2, “■ 2. Amend § 11.201 by revising the table in paragraph (b) to read as follows:” should read “■ 2. Amend § 11.201 in the table in paragraph (b) by adding in numerical order an entry for “Part 68” to read as follows:”.

[FR Doc. C1–2024–26935 Filed 1–2–25; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 142 and 194

[Docket No. FAA–2023–1275; Amdt. Nos. 142–11A and 194–1A]

RIN 2120–AL72

Integration of Powered-Lift: Pilot Certification and Operations; Miscellaneous Amendments Related to Rotorcraft and Airplanes; Correction

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

ACTION: Final rule; correction.

SUMMARY: On November 21, 2024, the Federal Aviation Administration (FAA) published a final rule titled “Integration of Powered-Lift: Pilot Certification and Operations; Miscellaneous Amendments Related to Rotorcraft and Airplanes” (RIN 2120–AL72). That final rule inadvertently duplicated two tables in the regulatory text of the Special Federal

Aviation Regulation for powered-lift. This correction removes the duplicates. Additionally, the FAA inadvertently cited an incorrect paragraph in the Training center instructor eligibility requirements section of the Code of Federal Regulations. This correction corrects the paragraph reference.

DATES: This correction is effective January 21, 2025.

FOR FURTHER INFORMATION CONTACT: Christina Grabill, AFS-810, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591; telephone (202) 267-1100; email 9-FAA-Powered-Lift@faa.gov.

SUPPLEMENTARY INFORMATION: On November 21, 2024, the “Integration of Powered-Lift: Pilot Certification and Operations” final rule (RIN 2120-AL72)

published in the **Federal Register** at 89 FR 92296. After publication, the FAA discovered that two tables had been inadvertently duplicated in the regulatory text of part 194, specifically table 1 to § 194.302 and table 1 to § 194.306. These two tables detail the provisions under parts 91 and 135 applicable to powered-lift, respectively. The first instance of each table includes revisions made prior to the publication of this rule while the second instance is the outdated and incorrect table. These revisions include adding the phrase “of this chapter,” where appropriate, and removing redundant section heading citations. This document corrects those tables by removing the incorrect text from each section. Additionally, the FAA inadvertently incorrectly cited a paragraph in § 142.47(a)(5)(iv). The FAA

had intended to cite paragraph (a)(5)(i) but instead cited § 142.47(a)(i). This document corrects that citation.

Corrections

In FR 2024-24886, published in the **Federal Register** of November 21, 2024, at 89 FR 92296, make the following corrections:

§ 142.47 [Corrected]

■ 1. On page 92489, in the first column, in § 142.47, in paragraph (a)(5)(iv) introductory text, “(a)(i)” is corrected to read “(a)(5)(i)”.

■ 2. Beginning on page 92499, table 1 to § 194.302 is corrected to read as follows:

§ 194.302 [Corrected]

* * * * *

TABLE 1 TO § 194.302

Regulation	Applicability	Additional requirements or clarification
Part 91, Subpart A General		
(a) Section 91.9(a) and (b) of this chapter.	Applies to all powered-lift	The requirement for an approved Aircraft Flight Manual is set forth in the airworthiness criteria established under § 21.17(b) of this chapter.
Part 91, Subpart B Flight Rules		
(b) Section 91.103(b)(1) of this chapter.	Applies to powered-lift for which an approved Aircraft Flight Manual containing takeoff and landing distance data is required.	
(c) Section 91.107(a)(3)(i) through (iii) of this chapter.	Applies to all powered-lift	The exception under § 91.107(a)(3) of this chapter for seaplane and float equipped rotorcraft operations during movement on the surface applies to persons pushing off a powered-lift from the dock or persons mooring the powered-lift at the dock.
(d) Section 91.119(d) of this chapter.	Applies to powered-lift operating in vertical-lift flight mode	Under § 91.119(d) of this chapter, a powered-lift may be operated in vertical-lift flight mode at less than the minimums prescribed in § 91.119(b) or (c) of this chapter, provided each person operating the powered-lift complies with any routes or altitudes specifically prescribed for powered-lift by the FAA.
(e) Section 91.126(b)(1) of this chapter.	Applies to powered-lift operating in wing-borne flight mode	If the powered-lift is operating in vertical-lift flight mode, see paragraph (f) of this section.
(f) Section 91.126(b)(2) of this chapter.	Applies to powered-lift operating in vertical-lift flight mode	If the powered-lift is operating in wing-borne flight mode, see paragraph (e) of this section.
(g) Section 91.129(e)(1) and (2), (g)(2), and (h) of this chapter.	Applies to large or turbine-powered powered-lift	
(h) Section 91.129(e)(3) of this chapter.	Applies to powered-lift preparing to land in wing-borne flight mode.	
(i) Section 91.129(f)(1) of this chapter.	Applies to powered-lift operating in wing-borne flight mode	(1) If the powered-lift is operating in vertical-lift flight mode, see paragraph (j) of this section. (2) Section 91.129(f)(1) of this chapter does not apply when the operator of a powered-lift is conducting a circling approach under part 97 of this chapter or when otherwise requested by air traffic control (ATC).
(j) Section 91.129(f)(2) of this chapter.	Applies to powered-lift operating in vertical-lift flight mode	(1) If the powered-lift is operating in wing-borne flight mode, see paragraph (i) of this section. (2) Section 91.129(f)(2) does not apply when the operator of a powered-lift is conducting a circling approach under part 97 of this chapter or when otherwise requested by ATC.
(k) Section 91.131(a)(2) of this chapter.	Applies to large powered-lift.	
(l) Section 91.151(a) and (b) of this chapter.	Applies to powered-lift	(1) A powered-lift with the performance capability, as outlined in the Aircraft Flight Manual, to conduct a landing in the vertical-lift flight mode along the entire route of flight may use the VFR fuel requirements outlined in § 91.151(b) of this chapter. (2) Powered-lift unable to meet the requirements of paragraph (l)(1) of this section must use the rule requirements outlined in § 91.151(a) of this chapter.
(m) Section 91.155(a) of this chapter.	The helicopter provision under § 91.155(a) of this chapter applies to powered-lift operating in vertical-lift flight mode and at a speed that allows the pilot to see any other traffic or obstructions in time to avoid a collision.	(1) Except as provided in § 91.155(b) of this chapter, powered-lift that meet the requirements of paragraph (m) of this section may operate under the helicopter VFR visibility minimums outlined under § 91.155(a) of this chapter in class G airspace.

TABLE 1 TO § 194.302—Continued

Regulation	Applicability	Additional requirements or clarification
(n) Section 91.155(b)(1) of this chapter.	Applies to powered-lift operating in the vertical-lift flight mode and at a speed that allows the pilot to see any other traffic or obstructions in time to avoid a collision.	(2) Powered-lift unable to meet the requirements of paragraph (m) of this section must use the VFR visibility minimums in § 91.155(a) of this chapter for aircraft other than helicopters.
(o) Section 91.155(b)(2) of this chapter.	Applies to powered-lift	(1) Powered-lift that meet the requirements of paragraph (n) of this section may use the VFR visibility minimums outlined in § 91.155(b)(1) of this chapter in Class G airspace. (2) Powered-lift unable to meet the requirements of paragraph (n) of this section must use the visibility minimums outlined in § 91.155(b)(2) of this chapter.
(p) Section 91.157(b)(3), (b)(4), and (c) of this chapter.	The helicopter exceptions outlined in § 91.157(b)(3), (b)(4), and (c) of this chapter apply to powered-lift operating in vertical-lift flight mode when those aircraft are operated at a speed that allows the pilot to see any other traffic or obstructions in time to avoid a collision.	Powered-lift operating in Class G airspace that cannot meet the requirements of paragraph (n) of this section must use the VFR visibility minimums outlined under § 91.155(b)(2) of this chapter.
(q) Section 91.167(a)(3) and (b)(2)(ii) of this chapter.	The helicopter provisions in § 91.167(a)(3) and (b)(2)(ii) of this chapter apply to powered-lift authorized to conduct copter procedures and that have the performance capability for the entire flight to conduct a landing in the vertical-lift flight mode, as outlined in the Aircraft Flight Manual.	(1) Powered-lift that meet the requirements of paragraph (q) of this section may use the helicopter provisions under § 91.167(a)(3) and (b)(2)(ii) of this chapter. (2) Powered-lift that are unable to meet the requirements outlined in paragraph (q) of this section must use the 45-minute fuel requirement outlined in § 91.167(a)(3) of this chapter and the aircraft requirement outlined in § 91.167(b)(2)(i) of this chapter.
(r) Section 91.169(b)(2)(ii) and (c)(1)(ii) of this chapter.	Applies to powered-lift authorized to conduct copter procedures and that have the performance capability to land in the vertical-lift flight mode, as outlined in the Aircraft Flight Manual.	(1) Powered-lift that meet the requirements of paragraph (r) of this section may use the helicopter provisions specified in § 91.169(b)(2)(ii) and (c)(1)(ii) of this chapter. (2) Powered-lift that are unable to meet the requirements outlined in paragraph (r) of this section must use the requirements for aircraft other than helicopters under § 91.169(b)(2)(i) and (c)(1)(i) of this chapter.
(s) Section 91.175(f)(2)(iii) of this chapter.	Applies to powered-lift with two engines or less, that takeoff in vertical-lift flight mode, and that are authorized to conduct copter procedures.	Powered-lift with two engines or less that are unable to meet the requirements outlined in this paragraph (s) must comply with § 91.175(f)(2)(i) of this chapter.
(t) Section 91.175(f)(4)(i) of this chapter.	Applies to part 135 of this chapter powered-lift operators required to comply with subpart I to part 135 of this chapter.	
Part 91, Subpart C Equipment, Instrument, and Certificate Requirements		
(u) Section 91.205(b)(11) and (14) of this chapter.	Applies to small powered-lift	Position and anti-collision lights must meet § 23.2530(b) of this chapter.
(v) Section 91.205(d)(3)(i) of this chapter.	Applies to powered-lift certified for instrument flight rules operations.	
(w) Section 91.207 of this chapter.	Applies to all powered-lift.	
(x) Section 91.219 of this chapter.	Applies to all powered-lift.	
(y) Section 91.223(a) and (c) of this chapter.	Applies to powered-lift configured with 6 or more passenger seats, excluding any pilot seat.	Instead of terrain awareness and warning system (TAWS), powered-lift must be equipped with a helicopter terrain awareness and warning system (HTAWS) that meets the requirements in TSO-C194 and Section 2 of RTCA DO-309 (incorporated by reference, see § 194.109) or a FAA-approved TAWS A/ HTAWS hybrid system.
Part 91, Subpart D Special Flight Operations		
(z) Section 91.313(g) of this chapter.	Applies to restricted category small powered-lift.	
Part 91, Subpart E Maintenance, Preventive Maintenance, and Alterations		
(aa) Section 91.409(e) through (h) of this chapter.	Applies to technically-advanced powered-lift which are powered-lift equipped with an electronically advanced system in which the pilot interfaces with a multi-computer system with increasing levels of automation in order to aviate, navigate, or communicate.	(1) Unless otherwise authorized by the Administrator, a technically advanced powered-lift must be equipped with an electronically advanced multi-computer system that includes one or more of the following installed components: (i) An electronic Primary Flight Display (PFD) that includes, at a minimum, an airspeed indicator, turn coordinator, attitude indicator, heading indicator, altimeter, and vertical speed indicator; (ii) An electronic Multifunction Display (MFD) that includes, at a minimum, a moving map using Global Positioning System (GPS) navigation with the aircraft position displayed; (iii) A multi-axis autopilot integrated with the navigation and heading guidance system; and (iv) Aircraft design with advanced fly-by-wire-flight control system that utilizes electronically operated controls with no direct mechanical link from the pilot to the control surfaces.

TABLE 1 TO § 194.302—Continued

Regulation	Applicability	Additional requirements or clarification
(bb) Section 91.411 of this chapter.	Applies to all powered-lift.	(2) The display elements described in paragraphs (aa)(1)(i) and (ii) of this section must be continuously visible.
Part 91, Subpart F Large and Turbine-Powered Multiengine Airplanes and Fractional Ownership Program Aircraft		
(cc) Section 91.501 of this chapter.	Applies to large powered-lift regardless of powerplant, as well as powered-lift operating under subpart K to part 91 of this chapter, and subject to any limitations outlined in this part.	Any sections or paragraphs within sections to subpart F to part 91 of this chapter that refer to a specific category of aircraft and that are not referenced in this table or the table to § 194.306, do not apply to powered-lift.
(dd) Section 91.503 of this chapter.	Applies to powered-lift subject to the requirements of subpart F to part 91 of this chapter as specified in paragraph (cc) of this section.	Powered-lift may comply with § 91.503(a)(5) of this chapter by having the appropriate engine or multiple-engines inoperative climb performance data available at the pilot station of the aircraft.
(ee) Section 91.505 of this chapter.	Applies to powered-lift subject to the requirements of subpart F to part 91 of this chapter as specified in paragraph (cc) of this section.	
(ff) Section 91.507 of this chapter.	Applies to powered-lift subject to the requirements of subpart F to part 91 of this chapter as specified in paragraph (cc) of this section.	
(gg) Section 91.509 of this chapter.	Applies to powered-lift subject to the requirements of subpart F to part 91 of this chapter as specified in paragraph (cc) of this section.	(1) Powered-lift operating over water under § 91.509(a) or (b) of this chapter may use either the nearest shore or the nearest off-shore heliport structure by which to measure the nautical mile limits provided in § 91.509(a) and (b). (2) The lifeline required by § 91.509(b)(5) of this chapter must be stored in accordance with § 25.1411(g) of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(hh) Section 91.511 of this chapter.	Applies to powered-lift subject to the requirements of subpart F to part 91 of this chapter as specified in paragraph (cc) of this section.	Powered-lift operating over water under § 91.511(a) of this chapter may use either the nearest shore or the nearest off-shore heliport structure by which to measure the nautical mile limits provided in § 91.511(a).
(ii) Section 91.513 of this chapter.	Applies to powered-lift subject to the requirements of subpart F to part 91 of this chapter as specified in paragraph (cc) of this section.	
(jj) Section 91.515 of this chapter.	Applies to powered-lift subject to the requirements of subpart F to part 91 of this chapter as specified in paragraph (cc) of this section.	
(kk) Section 91.517 of this chapter.	Applies to powered-lift subject to the requirements of subpart F to part 91 of this chapter as specified in paragraph (cc) of this section.	
(ll) Section 91.519 of this chapter.	Applies to powered-lift subject to the requirements of subpart F to part 91 of this chapter as specified in paragraph (cc) of this section.	
(mm) Section 91.521 of this chapter.	Applies to large powered-lift subject to the requirements of subpart F to part 91 of this chapter as specified in paragraph (cc) of this section.	The safety belt and shoulder harness required by § 91.521 of this chapter must comply with § 25.785 of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(nn) Section 91.523 of this chapter.	Applies to powered-lift having a seating capacity of more than 19 passengers subject to the requirements of subpart F to part 91 of this chapter as specified in paragraph (cc) of this section.	The carry-on baggage required by § 91.523 of this chapter must be stowed such that it can withstand the inertia forces specified in § 25.561(b)(3) of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(oo) Section 91.525 of this chapter.	Applies to powered-lift subject to the requirements of subpart F to part 91 of this chapter as specified in paragraph (cc) of this section.	
(pp) Section 91.527(a) of this chapter.	Applies to powered-lift subject to the requirements of subpart F to part 91 of this chapter as specified in paragraph (cc) of this section.	(1) Powered-lift critical surfaces, as outlined in the Aircraft Flight Manual for that aircraft, must also be determined to be free of frost, ice, or snow. (2) Powered-lift critical surfaces under this section are determined by the manufacturer.
(qq) Section 91.527(b)(2) and (3) of this chapter.	Applies to powered-lift subject to the requirements of subpart F to part 91 of this chapter as specified in paragraph (cc) of this section.	Instead of § 91.527(b)(2) and (3) of this chapter, to operate instrument flight rules (IFR) into known light or moderate icing conditions or VFR into known light or moderate icing conditions, an operator must comply with § 194.306(xx).
(rr) Section 91.527(c) of this chapter.	Applies to powered-lift subject to the requirements of subpart F to part 91 of this chapter as specified in paragraph (cc) of this section.	No pilot may fly a powered-lift into known or forecast severe icing conditions.
(ss) Section 91.531(a)(1) and (2), (b), and (c) of this chapter.	Applies to powered-lift subject to the requirements of subpart F to part 91 of this chapter as specified in paragraph (cc) of this section and that meet the additional requirements as set forth in each paragraph of § 91.531 of this chapter; § 91.531(b)(2) of this chapter applies to large powered-lift that meet the additional requirements set forth in that paragraph.	
(tt) Section 91.533 of this chapter.	Applies to powered-lift subject to the requirements of subpart F to part 91 of this chapter as specified in paragraph (cc) of this section.	

TABLE 1 TO § 194.302—Continued

Regulation	Applicability	Additional requirements or clarification
Part 91, Subpart G Additional Equipment and Operating Requirements for Large and Transport Category Aircraft		
(uu) Section 91.603 of this chapter.	Applies to large powered-lift	The aural speed warning device required by § 91.603 of this chapter must comply with § 25.1303(c)(1) of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(vv) Section 91.605(b)(1) of this chapter.	Applies to large powered-lift	The Aircraft Flight Manual must contain the takeoff weight performance information.
(ww) Section 91.605(b)(2) of this chapter.	Applies to large powered-lift	The Aircraft Flight Manual must contain the landing performance information.
(xx) Section 91.605(b)(3), (b)(4)(ii), and (c) of this chapter.	Applies to large powered-lift that execute takeoff operations using wing-borne lift and that have takeoff performance information contained in the Aircraft Flight Manual.	
(yy) Section 91.609(c), (d), (e), (i), and (j) of this chapter.	Paragraph (c) of § 91.609 of this chapter applies to powered-lift with a passenger seating configuration, excluding any pilot seats, of 10 or more seats; § 91.609(e) of this chapter applies to powered-lift with a passenger seating configuration of six or more seats and for which two pilots are required by type certification or operating rule; § 91.609(d) of this chapter applies to powered-lift required by that section to have a flight data recorder; and § 91.609(i) and (j) of this chapter apply to powered-lift required by that section to have a cockpit voice recorder and a flight data recorder.	(1) Operators of powered-lift having a passenger seating configuration, excluding any pilot seat, of 10 or more must comply with § 194.310 or § 194.311 in lieu of the appendices referenced in § 91.609(c)(1) of this chapter. (2) For compliance with § 91.609(c)(3), (e)(1), and (i) of this chapter, powered-lift must comply with the certification provisions listed in those paragraphs or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter. (3) Under § 91.609(d) of this chapter, the flight recorder must operate continuously from the earlier of when the powered-lift begins the takeoff roll or begins lift-off until the later of when the powered-lift completes the landing roll or lands at its destination.
(zz) Section 91.613(b)(2) of this chapter.	Applies to large powered-lift	The thermal/acoustic installation materials required by § 91.613(b)(2) of this chapter must meet the requirements of § 25.856 of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
Part 91, Subpart K Fractional Ownership Operations		
(aaa) Section 91.1037 of this chapter.	Applies to large powered-lift subject to the requirements of subpart K to part 91 of this chapter that are certificated to conduct landing operations in wing-borne flight mode as indicated in the Aircraft Flight Manual.	If a powered-lift operator is required to comply with this section, the operator must also comply with § 91.1025(o)(7) of this chapter.
(bbb) Section 91.1041(b) and (d) of this chapter.	Applies to all powered-lift subject to the requirements of subpart K to part 91 of this chapter.	
(ccc) Section 91.1045(a) of this chapter.	Applies to powered-lift subject to the requirements of subpart K to part 91 of this chapter with a passenger-seat configuration of more than 30 seats or a payload capacity of more than 7,500 pounds.	Under § 91.1045(a)(3) of this chapter, instead of TAWS, powered-lift must be equipped with a helicopter terrain awareness and warning system (HTAWS) that meets the requirements in TSO-C194 and Section 2 of RTCA DO-309 (incorporated by reference, see § 194.109) or a FAA-approved TAWS A/ HTAWS hybrid system.
(ddd) Section 91.1045(b) of this chapter.	Applies to powered-lift subject to the requirements of subpart K to part 91 of this chapter with a passenger-seat configuration of 30 seats or fewer, excluding each crewmember, and a payload capacity of 7,500 pounds or less.	Compliance with § 91.1045(b)(3) of this chapter requires a helicopter terrain awareness and warning system that complies with § 194.306(s).

■ 3. Beginning on page 92506, table 1 to § 194.306 is corrected to read as follows: * * * * *

§ 194.306 [Corrected]

TABLE 1 TO § 194.306

Regulation	Applicability	Additional requirements or clarification
Part 135, Subpart A General		
(a) Section 135.1(a)(9) of this chapter.	Applies to powered-lift conducting operations in accordance with subpart L of part 135 of this chapter.	
(b) Section 135.23(r) of this chapter.	Applies to powered-lift required to comply with § 135.385 of this chapter as set forth in paragraphs (hhh) and (iii) of this section.	
Part 135, Subpart B Flight Operations		
(c) Section 135.93(a) through (f) of this chapter.	Applies to all powered-lift	(1) The requirements referencing an Airplane Flight Manual under § 135.93(b) of this chapter apply to a powered-lift's Aircraft Flight Manual. (2) Under § 135.93(c) of this chapter, no person operating a powered-lift may use an autopilot enroute, including climb and descent, below the following— (i) Either:

TABLE 1 TO § 194.306—Continued

Regulation	Applicability	Additional requirements or clarification
(d) Section 135.117(a)(9) of this chapter.	Applies to powered-lift conducting operations beyond the autorotational distance from the shoreline, as defined in § 135.168(a) of this chapter, or gliding distance of a shoreline.	(A) At a minimum engagement altitude specified in the Aircraft Flight Manual; or (B) If no minimum engagement altitude is specified, 500 feet, or at an altitude that is no lower than twice the altitude loss specified in the Aircraft Flight Manual for an autopilot malfunction in cruise conditions, whichever is greater; or (ii) Notwithstanding the requirements of paragraphs (c)(2)(i)(A) and (B) of this section, at an altitude specified by the Administrator.
(e) Section 135.128(a) of this chapter.	Applies to all powered-lift	The exception under § 135.128(a) of this chapter for seaplane and float equipped rotorcraft operations during movement on the surface applies to persons pushing off a powered-lift from the dock or persons mooring the powered-lift at the dock.

Part 135, Subpart C Aircraft and Equipment

(f) Section 135.145(b) of this chapter.	Applies to all powered-lift unless the certificate holder has previously proven a powered-lift under part 135 of this chapter.	
(g) Section 135.145(d)(1) of this chapter.	Applies to all powered-lift unless a powered-lift of the same make or similar design has been proven or validated by that certificate holder under part 135 of this chapter.	
(h) Section 135.150(a)(7) of this chapter.	Applies to large powered-lift with a passenger seating configuration, excluding any pilot seat, of more than 19.	The public address system required by § 135.150(a)(7) of this chapter must comply with § 25.1423 of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(i) Section 135.150(b)(7) of this chapter.	Applies to large powered-lift with a passenger seating configuration, excluding any pilot seat, of more than 19.	The crewmember interphone system must comply with the requirements of § 135.150(b)(7) of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(j) Section 135.151(a) of this chapter.	Applies to powered-lift with a passenger seating configuration of six or more seats and for which two pilots are required by certification or operating rules.	The cockpit voice recorder must be installed and equipped in accordance with the certification provisions listed in § 135.151(a)(1) of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(k) Section 135.151(b) of this chapter.	Applies to powered-lift with a passenger seating configuration of 20 or more seats.	The cockpit voice recorder must be installed and equipped in accordance with the certification provisions listed in § 135.151(b)(1) of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(l) Section 135.151(d) of this chapter.	Applies to large powered-lift or powered-lift equipped with a cockpit voice recorder.	The cockpit voice recorder required by § 135.151(d) of this chapter must record the uninterrupted audio signal received by a boom or mask microphone in accordance with § 25.1457(c)(5) of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(m) Section 135.151(g)(1) of this chapter.	Applies to powered-lift with a passenger seating configuration of six or more seats, for which two pilots are required by certification or operating rules, and that are required to have a flight data recorder under § 135.152 of this chapter.	The cockpit voice recorder must be installed and equipped in accordance with the appropriate certification provisions listed in § 135.151(g)(1)(i) and (iv) of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(n) Section 135.151(g)(2) of this chapter.	Applies to powered-lift with a passenger seating configuration of 20 or more seats and that is required to have a flight data recorder under § 135.152 of this chapter.	The cockpit voice recorder must be installed and equipped in accordance with the appropriate certification provisions listed in § 135.151(g)(2)(i) and (iv) of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(o) Section 135.151(h) of this chapter.	Applies to powered-lift required to have a cockpit voice recorder and a flight data recorder under part 135 with installed datalink communication equipment.	
(p) Section 135.152(a) of this chapter.	Section 135.152(a) of this chapter applies to powered-lift with a passenger seating configuration of 10 to 19 seats.	Powered-lift operators must comply with § 194.312 or § 194.313 in lieu of the appendices referenced in § 135.152 of this chapter.
(q) Section 135.152(b) introductory text and (b)(3) of this chapter.	Section 135.152(b) introductory text and (b)(3) apply to powered-lift with a passenger seating configuration of 20 to 30 seats.	
(r) Section 135.152(c), (d), (f), and (j) of this chapter.	Applies to powered-lift with a passenger seating configuration, excluding crewmember seats, of 10 to 30.	(1) The flight recorder must be installed and equipped in accordance with the appropriate certification provisions listed in § 135.152 of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter. (2) Certificate holders must keep the recorded data until the powered-lift has been operating for at least 25 hours. (3) The powered-lift flight recorder must be operated continuously from the instant the powered-lift begins the takeoff roll or lift-off until the landing is completed.

TABLE 1 TO § 194.306—Continued

Regulation	Applicability	Additional requirements or clarification
(s) Section 135.154(a) and (c) of this chapter.	Applies to powered-lift configured with 6 or more passenger seats, excluding any pilot seat.	Instead of TAWS, powered-lift must be equipped with a helicopter terrain awareness and warning system (HTAWS) that meets the requirements in TSO-C194 and Section 2 of RTCA DO-309 (incorporated by reference, see § 194.109) or a FAA-approved TAWS A/HTAWS hybrid system.
(t) Section 135.158 of this chapter.	Applies to powered-lift equipped with a flight instrument pitot heating system.	Under § 135.158(a) of this chapter, no person may operate a powered-lift equipped with a flight instrument pitot heating system unless the aircraft is also equipped with an operable pitot heat indication system that complies with § 23.2605 or § 25.1326 of this chapter, or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter that provides an alert that is in clear view of a flightcrew member.
(u) Section 135.159(a)(1) of this chapter.	Applies to powered-lift with a third attitude instrument system that meets the requirements of § 135.159(a)(1) of this chapter.	
(v) Section 135.160 of this chapter.	Applies to all powered-lift.	
(w) Section 135.163(g) of this chapter.	Applies to all powered-lift	The two required generators may be mounted on a drivetrain that is driven by two separate powerplants as outlined in § 135.163(g) of this chapter for multi-engine helicopters.
(x) Section 135.165(d) of this chapter.	Applies to powered-lift having a passenger seat configuration, excluding any pilot seat, of 10 seats or more, or a powered-lift in a commuter operation, as defined in part 119 of this chapter.	
(y) Section 135.165(g)(1) of this chapter.	Applies to powered-lift for purposes of approving a single long-range navigation system and a single long-range communication system for extended over-water operations.	
(z) Section 135.168 of this chapter.	Applies to powered-lift operating beyond autorotational distance or gliding distance from the shoreline.	(1) The life preserver required by § 135.168(b)(1) of this chapter need not be worn but must be readily available for its intended use and easily accessible to each occupant when the powered-lift is a multiengine aircraft operated at a weight that will allow it to climb, with the critical engine inoperative or while experiencing a critical change of thrust, at least 50 feet a minute, at an altitude of 1,000 feet above the surface. (2) For powered-lift unable to meet the requirements of paragraph (z)(1) of this section, the occupants must wear life preservers during the flight. (3) For purposes of paragraphs (z), (ii), (jj), and (kk) of this section, <i>critical change of thrust</i> means a failure that would most adversely affect the performance or handling qualities of an aircraft.
(aa) Section 135.169(a) of this chapter.	Applies to large powered-lift	Powered-lift must comply with appropriate certification provisions listed in § 135.169(a) of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(bb) Section 135.169(b)(1) and (b)(8) of this chapter.	Applies to small powered-lift with a passenger seating configuration, excluding pilot seats, of 10 seats or more.	(1) Under § 135.169(b)(1) of this chapter, small powered-lift with a passenger seating configuration of 10 seats or more must comply with the applicable requirements for transport category powered-lift or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter. (2) Under § 135.169(b)(8) of this chapter, small powered-lift with a passenger seating configuration of 10 seats or more must comply with the applicable requirements under part 23 of this chapter referenced in § 135.169(b)(8) of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(cc) Section 135.169(d) of this chapter.	Applies to large powered-lift with a cargo or baggage compartment of 200 cubic feet or greater.	The cargo and baggage compartments required by § 135.169(d) of this chapter must comply with the certification provisions listed in that paragraph or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(dd) Section 135.170(b)(1) of this chapter.	Applies to large powered-lift; § 135.170(b)(1)(ii) applies to large powered-lift with a passenger capacity of 20 or more.	Powered-lift must comply with appropriate certification provisions listed in § 135.170(b)(1) of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(ee) Section 135.170(b)(2) of this chapter.	Applies to large powered-lift	The seat cushions required by § 135.170(b)(2) of this chapter must comply with § 25.853 of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(ff) Section 135.170(c)(2) of this chapter.	Applies to large powered-lift	The seat cushions required by § 135.170(c)(2) of this chapter must comply with § 25.856 of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(gg) Section 135.178 of this chapter.	Applies to powered-lift having a passenger-seating configuration of more than 19 seats.	The additional emergency equipment must comply with appropriate certification provisions listed in § 135.178 of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.

TABLE 1 TO § 194.306—Continued

Regulation	Applicability	Additional requirements or clarification
(hh) Section 135.180 of this chapter.	Applies to powered-lift with a passenger seat configuration, excluding any pilot seat, of 10 to 30 seats.	The Aircraft Flight Manual must contain the information outlined in § 135.180(b) of this chapter.
(ii) Section 135.181(a)(2) of this chapter.	Applies to powered-lift	No person may operate a multiengine powered-lift carrying passengers over-the-top or in IFR conditions at a weight that will not allow it to climb, with the critical engine inoperative or while experiencing a critical change of thrust as defined in paragraph (z) of this section, at least 50 feet a minute when operating at the MEAs of the route to be flown or 5,000 feet MSL, whichever is higher.
(jj) Section 135.181(b) of this chapter.	Applies to powered-lift conducting offshore passenger operations.	Multiengine powered-lift carrying passengers offshore may conduct such operations in over-the-top or in IFR conditions at a weight that will allow the powered-lift to climb at least 50 feet per minute with the critical engine inoperative or while experiencing a critical change of thrust as defined in paragraph (z) of this section, when operating at the MEA of the route to be flown or 1,500 feet MSL, whichever is higher.
(kk) Section 135.183(c) of this chapter.	Applies to powered-lift	No person may operate a land aircraft carrying passengers over water unless it is a multiengine aircraft operated at a weight that will allow it to climb, with the critical engine inoperative or while experiencing a critical change of thrust as defined in paragraph (z) of this section, at least 50 feet a minute, at an altitude of 1,000 feet above the surface.
(ll) Section 135.183(d) of this chapter.	Applies if the powered-lift is equipped with flotation devices and carrying passengers over water.	
Part 135, Subpart D VFR/IFR Operating Limitations and Weather Requirements		
(mm) Section 135.203(a) of this chapter.	Applies to powered-lift except those operating in the vertical-lift flight mode under paragraph (nn) of this section.	The Administrator may authorize a lower minimum altitude for a powered-lift if the FAA has determined, during type certification, the lower minimum altitude enables a transition from wing-borne to vertical-lift flight mode and the aircraft can conduct a safe autorotation, or an approved equivalent maneuver, to a landing but no lower than 300 feet above the surface.
(nn) Section 135.203(b) of this chapter.	Applies to powered-lift operating in vertical-lift flight mode that are certificated and able to conduct an autorotation or an approved equivalent maneuver to a landing.	Powered-lift that do not meet the requirements of this paragraph (nn) must use the VFR minimum altitudes outlined in paragraph (mm) of this section.
(oo) Section 135.205(a) of this chapter.	Applies to all powered-lift except as provided in paragraph (pp) of this section.	
(pp) Section 135.205(b) of this chapter.	Applies to powered-lift operating in vertical-lift flight mode and at a speed that allows the pilot adequate opportunity to see and avoid any other air traffic or any obstructions in time to avoid a collision.	Powered-lift that do not meet the requirements of this paragraph (pp) must use the VFR visibility requirements outlined in § 135.205(a) of this chapter.
(qq) Section 135.207 of this chapter.	Applies if the powered-lift does not have the flight instrumentation listed in § 135.159 of this chapter installed and operable.	
(rr) Section 135.209(a) of this chapter.	Applies to all powered-lift except as provided in paragraph (ss) of this section.	(1) The Administrator may authorize deviations from § 135.209(a) of this chapter for specific routes with one or more predetermined suitable landing areas if the FAA finds the operation can be conducted safely. If the Administrator authorizes such a deviation, an operations specification will be issued to the operator containing, at a minimum, the specific routes and the VFR fuel reserve specified in minutes. The Administrator may, at any time, terminate any grant of deviation authority issued under this paragraph. (2) <i>Suitable landing area</i> for purposes of this paragraph (rr) and paragraph (ss) of this section means an area that provides the operator reasonable capability to land without causing undue hazard to persons or property. These suitable landing areas must be site specific, designated by the operator, and accepted by the FAA.
(ss) Section 135.209(b) of this chapter.	Applies to powered-lift with the performance capability, as provided in the Aircraft Flight Manual, for the entire flight to conduct a landing in the vertical-lift flight mode.	The Administrator may authorize deviations from § 135.209(b) of this chapter for specific routes with one or more predetermined suitable landing areas if the FAA finds the operation can be conducted safely. If the Administrator authorizes such a deviation, an operations specification will be issued to the operator containing, at a minimum, the specific routes and the VFR fuel reserve specified in minutes. The Administrator may, at any time, terminate any grant of deviation authority issued under this paragraph.
(tt) Section 135.221(b) of this chapter.	Applies to powered-lift authorized to conduct copter procedures and which can land in the vertical-lift flight mode, as provided in the Aircraft Flight Manual.	Powered-lift that do not meet these criteria must use the alternate airport minimums specified for aircraft in § 135.221(a) of this chapter.
(uu) Section 135.223(a)(3) of this chapter.	Applies to powered-lift authorized to conduct copter procedures and that have the performance capability, as provided in the Aircraft Flight Manual, to conduct a landing in the vertical-lift flight mode for the entire flight.	(1) A powered-lift that meets the requirements of paragraph (uu) of this section may use the 30-minute fuel requirements specified for helicopters in § 135.223(a)(3) of this chapter. (2) Powered-lift that are unable to meet the requirements outlined in paragraph (uu) of this section must use the 45-minute fuel requirement outlined in § 135.223(a)(3) of this chapter.
(vv) Section 135.225(e) of this chapter.	Applies to all powered-lift.	

TABLE 1 TO § 194.306—Continued

Regulation	Applicability	Additional requirements or clarification
(ww) Section 135.227(b) of this chapter.	Applies to all powered-lift	(1) Powered-lift critical surfaces, as outlined in the aircraft flight manual for that aircraft, must also be determined to be free of frost, ice, or snow. (2) Powered-lift critical surfaces under this section are determined by the manufacturer.
(xx) Section 135.227(d) of this chapter.	Applies to powered-lift that are type certificated and appropriately equipped for operations in icing conditions.	
(yy) Section 135.229(b)(2)(ii) of this chapter.	Applies to powered-lift taking off or landing in vertical-lift flight mode and equipped with landing lights oriented in a direction that enables the pilot to see the area to be used for landing or takeoff marked by reflective material.	If a powered-lift is not taking off or landing in vertical-lift flight mode and is not equipped with landing lights oriented in a direction that enables the pilot to see the area to be used for landing or takeoff marked by reflective material, the powered-lift must take off or land at an airport with boundary or runway marker lights.
Part 135, Subpart F Crewmember Flight Time and Duty Period Limitations and Rest Requirements		
(zz) Section 135.271 of this chapter.	Applies to powered-lift conducting operations in accordance with subpart L to part 135 of this chapter.	
Part 135, Subpart I Airplane Performance Operating Limitations		
(aaa) Section 135.361(a) of this chapter.	As applicable to each powered-lift considering size and certification basis and subject to any limitations outlined in this part.	Any sections or paragraphs within sections to subpart I to part 135 of this chapter that refer to a specific category of aircraft and that are not referenced in the table 1 to § 194.302 or this table, do not apply to powered-lift.
(bbb) Section 135.363(b) through (e) of this chapter.	As applicable to each powered-lift, regardless of power plant type, considering size and certification basis.	
(ccc) Section 135.363(f) of this chapter.	Applies to powered-lift that must comply with §§ 135.365 through 135.387 of this chapter as set forth in paragraphs (ddd) through (jjj) of this section.	
(ddd) Section 135.379(a) and (d) of this chapter.	Applies to large powered-lift	The Aircraft Flight Manual must contain the takeoff weight performance information.
(eee) Section 135.379(c), (e), (f), and (g) of this chapter.	Applies to large powered-lift certificated to conduct takeoff operations that utilize wing-borne lift as indicated in the aircraft flight manual.	The accelerate-stop distance required by § 135.379(c)(1) of this chapter must comply with § 25.109 of this chapter or such airworthiness criteria as the FAA may find provide an equivalent level of safety in accordance with § 21.17(b) of this chapter.
(fff) Section 135.381 of this chapter.	Applies to large powered-lift	
(ggg) Section 135.383(c) of this chapter.	Applies to large powered-lift	
(hhh) Section 135.385(a) of this chapter.	Applies to large powered-lift	The Aircraft Flight Manual must contain the landing weight performance information.
(iii) Section 135.385(b), (d), (e), and (f) of this chapter.	Applies to large powered-lift certificated to conduct landing operations that utilize wing-borne lift and that have landing performance information contained in the aircraft flight manual.	Section 135.385(f) only applies to eligible on-demand operators.
(jjj) Section 135.387(a) and (b) of this chapter.	Applies to large powered-lift certificated to conduct landing operations that utilize wing-borne lift and that have landing performance information contained in the aircraft flight manual.	(1) Powered-lift operating under § 135.387(a) of this chapter must be able to complete a full stop landing within 60 percent of the effective length of the runway. (2) Section 135.387(b) only applies to eligible on-demand operators.
(kkk) Section 135.397(b) of this chapter.	Applies to small powered-lift having a passenger-seating configuration of more than 19 seats and that utilize wing-borne lift during takeoff and landing.	The Aircraft Flight Manual must contain the takeoff and landing weight performance information.
Part 135, Subpart J Maintenance, Preventive Maintenance, and Alterations		
(lll) Section 135.429(d) of this chapter.	Applies to powered-lift that operate in remote areas or sites	
Part 135, Subpart L Helicopter Air Ambulance Equipment, Operations, and Training Requirements		
(mmm) Section 135.601 of this chapter.	Applies to powered-lift conducting operations in accordance with subpart L to part 135 of this chapter.	
(nnn) Section 135.603 of this chapter.	Applies to powered-lift conducting operations in accordance with subpart L to part 135 of this chapter.	(1) Under § 135.603 of this chapter, no certificate holder may use, nor may any person serve as, a pilot in command of an air ambulance operation unless that person meets the requirements of § 135.243 of this chapter and holds a powered-lift instrument rating or an airline transport pilot certificate with a category rating for that aircraft, that is not limited to VFR. (2) See § 194.249 of this chapter for references to class in part 135 of this chapter.
(ooo) Section 135.605 of this chapter.	Applies to powered-lift conducting operations in accordance with subpart L to part 135 of this chapter.	Powered-lift must be equipped with a helicopter terrain awareness and warning system (HTAWS) that meets the requirements in TSO-C194 and Section 2 of RTCA DO-309 (incorporated by reference, see § 194.109) or a FAA-approved TAWS A/HTAWS hybrid system.
(ppp) Section 135.607 of this chapter.	Applies to powered-lift conducting operations in accordance with subpart L to part 135 of this chapter.	
(qqq) Section 135.609 of this chapter.	Applies to powered-lift conducting operations in accordance with subpart L to part 135 of this chapter.	(1) For nonmountainous local flying areas, powered-lift must comply with the following weather minimums: (i) During day operations in a vertical-lift or wing-borne flight mode, a ceiling of 800 feet and visibility of 2 SM;

TABLE 1 TO § 194.306—Continued

Regulation	Applicability	Additional requirements or clarification
(rrr) Section 135.611 of this chapter. (sss) Section 135.613(a) of this chapter.	Applies to powered-lift conducting operations in accordance with subpart L to part 135 of this chapter. Applies to powered-lift conducting operations in accordance with subpart L to part 135 of this chapter.	(ii) During night operations in a vertical-lift flight mode, a ceiling of 800 feet and visibility of 3 SM; and (iii) During night operations in a wing-borne flight mode, a ceiling of 1,500 feet and visibility of 3 SM. (2) For nonmountainous, non-local flying areas, powered-lift must comply with the following weather minimums: (i) During day operations in a vertical-lift or wing-borne flight mode, a ceiling of 800 feet and visibility of 3 SM; (ii) During night operations in a vertical-lift flight mode, a ceiling of 1,000 feet and visibility of 3 SM. (iii) During night operations in a wing-borne flight mode, a ceiling of 1,500 feet and visibility of 3 SM. (3) For mountainous local flying areas, powered-lift must comply with the following weather minimums: (i) During day operations in a vertical-lift or wing-borne flight mode, a ceiling of 800 feet and visibility of 3 SM; (ii) During night operations in a vertical-lift flight mode, a ceiling of 1,000 feet and visibility of 3 SM. (iii) During night operations in a wing-borne flight mode, a ceiling of 2,500 feet and visibility of 3 SM. (4) For mountainous non-local flying areas, powered-lift must comply with the following weather minimums: (i) During day operations in a vertical-lift or wing-borne flight mode, a ceiling of 1,000 feet and visibility of 3 SM; and (ii) During night operations in a vertical-lift flight mode, a ceiling of 1,000 feet and visibility of 5 SM; (iii) During night operations in a wing-borne flight mode, a ceiling of 2,500 feet and visibility of 5 SM.
(ttt) Section 135.613(b) of this chapter.	Applies to powered-lift conducting operations in accordance with subpart L to part 135.	(1) Section 135.613(a)(1) of this chapter only applies to powered-lift equipped and certified to conduct PinS approaches annotated with a "Proceed VFR" segment. (2) The applicable VFR weather minimums under § 135.613(a)(2) of this chapter for powered-lift operating in the wing-borne flight mode are: (i) For Day Operations: No less than a 1,000-foot ceiling and 2 statute miles flight visibility; and (ii) For Night Operations: No less than a 1,500-foot ceiling and 3 statute miles flight visibility. (3) The applicable VFR weather minimums under § 135.613(a)(2) of this chapter for powered-lift operating in the vertical-lift mode are: (i) For Day Operations: No less than a 600-foot ceiling and 2 statute miles flight visibility; and (ii) For Night Operations: No less than a 600-foot ceiling and 3 statute miles flight visibility.
(uuu) Section 135.615 of this chapter.	Applies to powered-lift conducting operations in accordance with subpart L to part 135 of this chapter.	(1) Under § 135.613(b)(1) of this chapter, for transitions from VFR to IFR upon departure, the VFR weather minimums outlined for powered-lift under paragraph (sss) of this section apply if: (i) An FAA-approved obstacle departure procedure is followed; and (ii) An IFR clearance is obtained on or before reaching a pre-determined location that is not more than 3 NM from the departure location. (2) Under § 135.613(b)(2) of this chapter, if the departure does not meet the requirements of paragraph (ttt)(1) of this section, the VFR weather minimums required by the SFAR for the class of airspace apply.
(vvv) Section 135.617 of this chapter.	Applies to powered-lift conducting operations in accordance with subpart L to part 135 of this chapter.	(1) For powered-lift operating in wing-borne flight mode during the enroute phase of flight, under § 135.615(a)(3), (b), and (c) of this chapter, the following minimums apply: (i) For day operations: no less than 500 feet above the surface or no less than 500 feet horizontally from any obstacle; or (ii) For night operations: at an altitude no less than 1,000 feet above the highest obstacle within a horizontal distance of 5 miles from the course intended to be flown or, in designated mountainous terrain, no less than 2,000 feet above the highest obstacle within a horizontal distance of 5 miles from the course intended to be flown. (2) For powered-lift operating in vertical-lift flight mode during the enroute phase of flight, under § 135.615(a)(3), (b), and (c) of this chapter, the following minimums apply: (i) No less than 300 feet for day operations. (ii) No less than 500 feet for night operations.

TABLE 1 TO § 194.306—Continued

Regulation	Applicability	Additional requirements or clarification
(www) Section 135.619 of this chapter.	Applies to powered-lift operators with 10 or more powered-lift, helicopters, or any combination thereof, assigned to the certificate holder's operations specifications for air ambulance operations.	
(xxx) Section 135.621 of this chapter.	Applies to powered-lift conducting operations in accordance with subpart L to part 135 of this chapter.	

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC.

Brandon Roberts,

Executive Director, Office of Rulemaking.

[FR Doc. 2024–30331 Filed 1–2–25; 8:45 am]

BILLING CODE 4910–13–P

INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201, 206, 207, and 210

Practice and Procedure: Rules of General Application, Safeguards, Antidumping and Countervailing Duty Investigations, and Section 337 Adjudication and Enforcement

AGENCY: International Trade Commission.

ACTION: Final rule.

SUMMARY: The United States International Trade Commission (“Commission”) amends its Rules of Practice and Procedure concerning rules of general application, safeguards, antidumping and countervailing duty investigations, and section 337 adjudication and enforcement. The amendments are necessary to make certain technical corrections, to clarify certain provisions, to harmonize different parts of the Commission’s rules, and to address concerns that have arisen in Commission practice. The intended effect of the proposed amendments is to facilitate compliance with the Commission’s Rules and improve the administration of agency proceedings.

DATES: Effective February 3, 2025. The rule amendments as stated herein shall apply to investigations and proceedings instituted subsequent to the aforementioned date.

FOR FURTHER INFORMATION CONTACT:

Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal at 202–

205–1810. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. This rulemaking seeks to improve provisions of the Commission’s existing Rules of Practice and Procedure, including increasing the efficiency of its proceedings and reducing the burdens and costs on the parties and the agency. The Commission proposed amendments to its rules governing proceedings conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as well as Title VII of the Tariff Act of 1930, which comprises 19 U.S.C. 1671–1677n, sections 201–202, 204, and 406 of the Trade Act of 1974 (19 U.S.C. 2251–2252, 2254, and 2436), and sections 301–302 of the United States-Mexico-Canada Implementation Act (19 U.S.C. 4551–4552).

This rulemaking was undertaken to make certain technical corrections, to clarify certain provisions, to harmonize different parts of the Commission’s rules, and to address concerns that have arisen in Commission practice. The intended effect of the amendments is to facilitate compliance with the Commission’s Rules and improve the administration of agency proceedings. The Commission is concurrently considering additional amendments to its rules to be reflected in future Notices of Proposed Rulemaking.

The current rulemaking is consistent with the Commission’s plan to ensure that the Commission’s rules are effective, as detailed in the Commission’s Plan for Retrospective Analysis of Existing Rules, published February 14, 2012, and found at 77 FR 8114. This plan was issued in response to Executive Order 13579 of July 11, 2011, and established a process under which the Commission will periodically review its significant regulations to determine whether any such regulations should be modified, streamlined,

expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving regulatory objectives. This process includes a general review of existing regulations in 19 CFR parts 201, 206, 207, and 210.

Although the Commission considers these rules to be procedural rules which are excepted from notice-and-comment under 5 U.S.C. 553(b)(3)(A), the Commission invited the public to comment on all the proposed rules amendments consistent with its ordinary practice. This practice entails the following steps: (1) publication of a notice of proposed rulemaking (“NPRM”); (2) solicitation of public comments on the proposed amendments; (3) Commission review of public comments on the proposed amendments; and (4) publication of final amendments at least thirty (30) days prior to their effective date. The Commission published a NPRM in the **Federal Register** at 89 FR 22012–39 (Mar. 28, 2024), proposing to amend the Commission’s Rules of Practice and Procedure concerning rules of general application, safeguards, antidumping and countervailing duty investigations, and section 337 adjudication and enforcement.

The NPRM requested public comment on the proposed rules within sixty (60) days of publication of the NPRM, *i.e.*, by May 20, 2024. The Commission received four sets of comments from organizations or law firms, including one each from the ITC Trial Lawyers Association (“ITCTLA”); the Customs and International Bar Association (“CITBA”); the ITC Modernization Alliance (“IMA”); and the law firm of Sterne, Kessler, Goldstein & Fox P.L.L.C. (“Sterne Kessler”). The IMA is a coalition of companies in the technology, telecom, and automotive industries that have participated in section 337 investigations, including Amazon, Apple, Comcast, Google, HP, Intel, Microsoft, and Samsung, among others.

The Commission has carefully considered all comments that it received. The Commission’s response is provided below in a section-by-section analysis. The Commission appreciates

the time and effort of the commentators in preparing their submissions.

Regulatory Analysis of Proposed Amendments to the Commission's Rules

The Commission has determined that these rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of proposed rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission chose to publish a notice of proposed rulemaking, these regulations are “agency rules of procedure and practice,” and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the rules will not result in expenditure in the aggregate by State, local, and Tribal governments, or by the private sector, of \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments, as defined in 5 U.S.C. 601(5).

The rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104–121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The amendments are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)).

Overview of the Amendments to the Regulations

Many of the final rules set forth in this notice are identical to the correspondingly numbered proposed rules published in the NPRM on March 28, 2024. 89 FR 22012–39 (Mar. 28, 2024). For many of the proposed rules, only positive comments were received or no comment was received. Specifically, the commentators generally support replacing gender-specific language with gender-neutral language in the rules. These rules are:

§§ 201.3a, 201.8, 201.15, 201.20, 201.32, 207.10, 207.15, 210.4, 210.12, 210.14, 210.15, 210.20, 210.25, 210.28, 210.31, 210.32, 210.34, 210.37, 210.49, 210.65, and 210.67. The commentators also generally support the elimination of paper copies and the permanent implementation of e-filing requirements. These rules are: §§ 201.8, 201.12, 201.14, 206.2, 206.8, 207.10, 207.15, 207.23, 207.25, 207.28, 207.30, 207.61, 207.62, 207.65, 207.67, 207.68, 210.4, 210.8, 210.14, and 210.75. The Commission has therefore determined to adopt the proposed gender-neutral language and e-filing requirements in the rules as stated in the NPRM. The Commission finds no reason to change those proposed rules on its own (except for certain technical, non-substantive changes) before adopting them as final rules. Thus, the preamble to those unchanged proposed rules is as set forth in the section-by-section analysis of the proposed rules found in the NPRM 89 FR at 22012–39.

The section-by-section analysis below includes a discussion of all modifications suggested by the commentators. As a result of some of the comments, the Commission has determined to modify one (1) of the proposed amendments from the proposals in the NPRM. Regarding the provisions of § 210.12 that govern the content, sufficiency, and submission of a complaint alleging a violation of section 337, the Commission has determined to remove the language “of each element” from paragraph (a)(8)(i) to address the ITCTLA’s concern that different jurisdictions may apply different legal standards for unfair acts alleged under section 337(a)(1)(A). The Commission agrees with the ITCTLA that section 337(a)(1)(A) broadly prohibits “[u]nfair methods of competition and unfair acts,” and thus the proposed amendments to paragraph (a)(8)(i) should be applied in a manner that balances the Commission’s goals of making clear that bare assertions of unfair acts or methods of competition are insufficient with the need to allege sufficient information to enable the Commission to determine whether a cause of action exists. The Commission has also determined to make four (4) additional changes for consistency or to address its recent precedent. Regarding the provisions of § 207.10 governing filing of petitions with the Commission, the Commission has determined to substitute the language “he or she” from paragraph (b)(1)(i) with “the Secretary.” Regarding the provisions of § 210.14 governing consolidation of investigations, the Commission has

determined to substitute the language “he or she” from paragraph (g) with “the administrative law judge.” The Commission has also determined to substitute the language “its standing to” in § 210.12 (g)(9)(iv) and (g)(10)(ii) to “establish that it can bring pursuant to § 210.12(a)(7).” The Commission has recently clarified that § 210.12(a)(7) informs who may bring a complaint.

The analysis below refers to the rules as they appeared in the NPRM. The commentary in the NPRM published on March 28, 2024, is considered part of the preamble to the final rules to the extent that such commentary is not inconsistent with the discussion below. See 89 FR at 22012–39.

Section-by-Section Analysis

Part 201—Rules of General Application

Subpart B—Initiation and Conduct of Investigations

Section 201.15

Section 201.15 provides general provisions for attorneys and others practicing and appearing before the Commission. The Commission proposed in the NPRM to revise paragraph (a) to indicate that no separate application for admission to practice before the Commission is required. It also proposed revising the paragraph to provide that attorneys practicing or desiring to practice before the Commission must maintain a bar membership in good standing in any State of the United States or the District of Columbia and must report any change in status including, but not limited to, disbarment or suspension by any bar association, court, or agency. The Commission welcomed comments on whether these requirements should be mandatory or permissive and how the Commission should use this information. The Commission further proposed that non-attorneys desiring to appear before the Commission may be required to show that they are acceptable in the capacity in which they seek to appear.

The Commission also proposed to revise paragraph (b) to clarify that the restrictions on a former officer or employee of the Commission from practicing or appearing before the Commission in connection with a matter which was pending in any manner or form in the Commission during that person’s employment applies to both former attorney and non-attorney employees of the Commission.

Additionally, for the reasons noted above regarding gender neutral language amendments, under § 201.3a(c), the Commission proposed to change certain

gender-specific language in § 201.15(a) and (b) to remove several references to “he,” “him,” and “his.” No substantive changes are intended.

Comments

The CITBA supports requiring all attorneys appearing before the Commission to maintain good standing and active bar membership in at least one U.S. state or the District of Columbia. It also supports mandatory reporting of any change in that status by the attorney to the Commission and by the Commission to such bars, including but not limited to disbarment or suspension by any bar association, court, or agency. The CITBA submits that “the Commission has a need to know and an obligation to report such information to authorities in a position to take appropriate actions beyond restricting the attorneys’ appearance in Commission proceedings.”

As discussed above in the Overview of the Amendments to the Regulations, the commentators generally support these changes as well as replacing gender-specific language with gender-neutral language in the rules.

Commission Response

No commentator opposes the proposed changes to § 201.15. The Commission has therefore determined to adopt the proposed rule as stated in the NPRM. The Commission does not include in the rule a requirement that the Commission report the status or any change in status of an attorney to any bar association, court, or agency, though retains the discretion to do so in appropriate circumstances. It is not clear that CITBA is advocating for such a rule and in any event has not stated the basis for its assertion that the Commission has an obligation to report such information nor is the Commission aware of such an obligation.

Part 207—Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States

Subpart B—Preliminary Determinations

Section 207.15

Section 207.15 provides for written briefs and a conference in preliminary phase antidumping and countervailing duty investigations. Consistent with the proposed amendments to § 201.8, the Commission proposed to eliminate the requirement for submission of paper copies of briefs. The Commission proposed to only require submission of paper copies of written witness testimony when it is provided on the

day of the conference, but not when it is filed electronically prior to the date of the conference. For the reasons noted in its explanation for the proposed change under § 201.3a(c), the Commission proposed to change certain gender-specific language to remove a reference to “he.” The Commission also proposed to remove language related to electronic filing since that requirement is in § 201.8 and to replace the term “Director” with “presiding official” for consistency.

Comments

CITBA comments that permitting parties to either file witness testimony electronically the day before a conference or submit paper copies of written witness testimony the day of the conference would create a perverse incentive for parties to only submit paper copies the day of the conference, to avoid revealing their testimony to opposing parties prior to the conference. CITBA urges the Commission to adopt a requirement that written witness testimony must be filed by a deadline of 4 p.m. the day before a conference for the submission.

Commission Response

The proposed amendments to § 207.15 would give parties, who desire to submit written testimony, the option of submitting their written witness testimony electronically either before the date of the conference, unaccompanied by paper copies, or on the day of the conference, but with the added requirement that nine (9) paper copies of the witness testimony also be filed. This is a change from the current rule which allows for the submission of written testimony but only through the provision of paper copies the day of the conference. The purpose of this change is to provide parties greater flexibility and eliminate the requirement for paper copies for those parties who wish to submit written testimony but find providing paper copies burdensome. The proposed amendments to § 207.15, however, would not alter the current rule that a party may provide written witness testimony in connection with its presentation at the conference but is not required to do so. The Commission recognizes that some witnesses may choose to submit paper copies the day of the conference, or not to file written testimony at all, to avoid revealing their testimony in advance. The Commission, however, encourages parties where possible to file witness testimony electronically no later than the day before the conference. Filing witness testimony before the conference is helpful to Commission staff, because

having an advanced opportunity to review the testimony facilitates staff’s understanding of the issues to be addressed during the conference. Written witness testimony is also helpful to Commission staff as they may follow along as testimony is presented and note areas for questions. The Commission, however, has chosen not to impose a requirement that witness testimony be filed the day before the conference and instead to adopt a rule that provides flexibility for parties to choose to file testimony either electronically no later than the day before the conference, or the same day with paper copies.

Subpart C—Final Determinations, Short Life Cycle Products

Section 207.24

Section 207.24 provides procedures for hearings. The Commission proposed to only require submission of paper copies of written witness testimony when it is provided on the day of the hearing, but not when it is filed electronically prior to the date of the hearing. The Commission proposed to delete the reference to § 201.13(f), consistent with the clarifications proposed for that section.

Comments

CITBA comments that permitting parties to either file witness testimony electronically the day before a hearing or submit paper copies of written witness testimony the day of the hearing would create a perverse incentive for parties to only submit paper copies the day of the hearing, to avoid revealing their testimony to opposing parties prior to the conference. CITBA urges the Commission to adopt a requirement that written witness testimony must be filed by a deadline of 4 p.m. the day before a hearing for the submission of all witness testimony.

Commission Response

The proposed amendments to § 207.24 would give parties the option of submitting written witness testimony electronically either before the date of the hearing, unaccompanied by paper copies, or on the day of the hearing, but with the added requirement that nine paper copies of the witness testimony also be filed. This is a change from the current rule which allows for the submission of written testimony but only through the provision of paper copies the day of the hearing. The purpose of this change is to provide parties greater flexibility and eliminate the requirement for paper copies for those parties who wish to submit

written testimony but find providing paper copies burdensome. The proposed amendments, however, would not alter the current rule that a party may provide written witness testimony in connection with its presentation at the hearing but is not required to do so. The Commission recognizes that some witnesses may choose to submit paper copies the day of the hearing, or not to file written testimony at all, to avoid revealing their testimony in advance. The Commission, however, encourages parties where possible to file witness testimony electronically no later than the day before the hearing. Filing witness testimony before the hearing is helpful to Commissioners and staff, because having an advanced opportunity to review the testimony facilitates Commissioners' and staff's understanding of the issues to be addressed during the hearing. Witness testimony is also helpful to Commissioners and staff as they may follow along as testimony is presented and note areas for questions. The Commission, however, has chosen not to impose a requirement that witness testimony be filed the day before the hearing and instead to adopt a rule that provides flexibility for parties to choose to file testimony either electronically no later than the day before the hearing, or the same day with paper copies.

Subchapter C—Investigations of Unfair Practices in Import Trade (Section 337)
Part 210—Adjudication and Enforcement

Subpart B—Commencement of Preinstitution Proceedings and Investigations

Section 210.10

Section 210.10 provides the general provisions for institution of an investigation. The Commission proposed in the NPRM to amend paragraph (a)(1) of this section to add that the Commission will not institute an investigation within thirty (30) days after the complaint is filed if the Commission determines that the complaint or any exhibits or attachments thereto contain excessive designations of confidentiality that are not warranted under §§ 201.6(a) and 210.5 of this chapter. Proposed paragraph (a)(7) explains that, under such circumstances, the Commission may require the complainant to file new nonconfidential versions of the aforesaid submissions in accordance with § 210.8 and may determine that the thirty (30)-day period for deciding whether to institute an investigation shall begin to run anew from the date that the new nonconfidential versions

are filed with the Commission. This is consistent with existing § 210.55(b) of this chapter, which contains similar provisions pertaining to complaints accompanied by a motion for temporary relief, and was also proposed to be added to § 210.75, which concerns enforcement complaints.

Comments

The ITCTLA supports the proposed amendments to § 210.10 and recognizes that the proposed amendments “put[] stakeholders on notice of a specific mechanism the Commission may employ to curtail CBI designation abuses.” The ITCTLA noted that, although the term “excessive” is not “clearly defined,” it recognizes that the suggested language “is consistent with long-standing rules and practice and can be interpreted in that context.” The ITCTLA thus views the proposed changes as “codifying existing Commission practices targeting excessive redactions and causing few, if any, delays to institution of a complaint.”

Sterne Kessler proposes including an explicit statement that any decision to not institute will occur only “after appropriate notice to correct the excessive designations” has been provided to complainant.

The ITCTLA and Sterne Kessler offer the same comments regarding confidentiality designations in § 210.75.

Commission Response

The Commission agrees with the ITCTLA that the proposed amendments to §§ 210.10 and 210.75 implement existing Commission practice regarding excessive designations of confidentiality as set forth under §§ 201.6(a) and 210.5 of this chapter. The Commission considers Sterne Kessler's concern to be adequately addressed by the proposed addition of paragraph (a)(7) in § 210.10, which provides that the Commission may require the complainant to file new nonconfidential versions of the submissions determined to contain excessive designations of confidentiality in accordance with § 210.8, and that the thirty (30)-day period for the Commission to decide whether to institute an investigation may begin to run anew from the date that the new nonconfidential versions are filed with the Commission. As the ITCTLA recognizes, a complainant can seek guidance from the Office of Unfair Import Investigations during the pre-filing period regarding redactions to a complaint or any exhibits or attachments thereto. The Commission has therefore determined to adopt the

proposed rules for §§ 210.10 and 210.75 as stated in the NPRM.

Subpart C—Pleadings

Section 210.12

Section 210.12 contains the provisions governing the content, sufficiency, and submission of a complaint alleging a violation of section 337. The Commission proposed in the NPRM to make several amendments to the existing rule. Specifically:

For the reasons discussed in the NPRM in connection with § 201.8, the Commission proposed to replace “agent” in paragraph (a)(1) with “corporate representative” and to amend certain gender-specific language in paragraphs (a)(1) and (j). The Commission proposed in the NPRM to amend § 210.12(a)(1) to require a complaint to include email addresses for the complainant and its duly authorized officer, attorney, or corporate representative who has signed the complaint. The proposed amendment to § 210.12(a)(3) removes reference to the Tariff Schedules of the United States that applied prior to January 1, 1989. The proposed amendment to § 210.12(a)(5) expands the required disclosure to include information about arbitrations concerning the alleged unfair methods of competition and unfair acts, or the subject matter thereof.

The Commission proposed in the NPRM to amend § 210.12(a)(6)(i) by reorganizing the rule to more clearly distinguish between the information required to support a complaint based on an alleged domestic industry that exists and the information required to support a complaint based on an alleged domestic industry in the process of being established for complaints that allege a violation based on infringement of a U.S. patent, or a federally registered copyright, trademark, mask work, or vessel hull design. The Commission also proposed correcting typographical errors in spacing and punctuation in paragraphs 210.12(a)(6)(ii) and 210.12(a)(6)(iii).

The Commission proposed amending § 210.12(a)(7) by removing an extraneous “and” at the end of paragraph (a)(7).

The Commission proposed amending § 210.12(a)(8)(i) and (ii) to clarify that, for complaints based on an unfair act or method of competition under section 337(a)(1)(A), the complaint's statement of facts should include factual allegations that would show the existence of each element of the cause of action underlying the unfair act or method of competition. The purpose of these amendments would be to make

clear that bare assertions of unfair acts or methods of competition without factual allegations supporting all elements of a cognizable legal theory do not meet the requirements of § 210.12(a)(2). For example, a complaint based on trade secret misappropriation would have to include factual allegations sufficient to establish every element of a trade secret misappropriation claim. The Commission also proposed correcting the terminal punctuation for § 210.12(a)(8)(ii) and requires that the complaint state the elements of the proposed legal theory.

The Commission proposed amending § 210.12(a)(9)(v) by adding a requirement to disclose known domestic patent applications that correspond to the patents asserted in the investigation in addition to the existing required disclosure of foreign patent applications. The Commission expressed interest in comments from the public regarding the burden this amendment would place on complainants.

The Commission proposed correcting the terminal punctuation for § 210.12(a)(9)(xi) and adds an “and” at the end of § 210.12(a)(10)(i) for grammatical purposes.

The Commission proposed amending § 210.12(a)(11) by adding a requirement that a complaint seeking a general exclusion order must plead factual allegations sufficient to show that such an order is available under the requirements of section 337(d)(2). The Commission noted that this information has been voluntarily included in various complaints filed under the current rules. This proposed amendment would formalize the requirement to include such information in complaints going forward. The Commission believes this amendment will lead to greater efficiency in investigations where general exclusion orders are requested. The proposed rule also adds an “and” at the end of § 210.12(a)(11)(ii) for grammatical purposes.

The Commission proposed amending § 210.12(b) to change the word “all” to “exemplary,” as the Commission recognizes that it might not be feasible to submit physical samples of all imported articles.

The Commission proposed amending paragraphs 210.12(c)–(h) to remove the reference to the “original” complaint because the rules propose to remove paper filings. The Commission proposed amending § 210.12(c)(2) by eliminating the requirement that the complaint be accompanied by the applicable pages of each technical reference mentioned in the prosecution history of each involved

U.S. patent. The Commission believes that this requirement is no longer necessary given the availability of such materials online. The Commission also proposed amending § 210.12(c) by removing the requirement in subparagraph (2) for four (4) copies of the patent, because it is duplicative of § 210.12(a)(9)(i), and by adding new subparagraph (2) requiring one copy of each prosecution history of any priority applications for the asserted patents to accompany a patent-based complaint.

Comments

Regarding the proposed amendments to paragraphs 210.12(a)(8)(i) and (ii), the ITCTLA is concerned that potentially different legal standards among different judicial circuits for what constitutes an unfair act subject to section 337(a)(1)(A) may “make it difficult for a complainant to be certain that it is adequately including factual allegations and legal theories that would show the existence of each element of the cause of action,” especially where the Commission has not previously set out a standard for a violation of that cause of action. The ITCTLA notes that, unlike patent infringement cases, which are reviewed by a single appeals court, non-patent “unfair acts are reviewed by appellate courts throughout the United States resulting in standards that can vary among circuits.” As such, the ITCTLA is “concerned that the proposed amendment could lead to non-institution of claims for complaints that provide a good faith attempt to articulate the factual and legal elements of a particular cause of action.” It also believes “[t]his uncertainty could [] discourage parties from bringing new or novel causes of action to the Commission.” Thus, while the ITCTLA “supports efforts to require specificity in pleading (a)(1)(A) claims,” it urges the Commission to apply the rule in a manner consistent with section 337(a)(1)(A)’s “goal of broadly permitting parties to allege violations of Section 337 for unfair methods of competition and unfair acts.”

Sterne Kessler supports adding the requirement in paragraph (a)(9)(v) to disclose known domestic patent applications that correspond to the patents asserted in the investigation. It believes this requirement is “especially critical for non-public applications filed within the eighteen-month publication window or for which a non-publication request was filed.” It notes that “[a]ny such information could be treated as Confidential Business Information and presumably is available to complainants despite the additional burden associated with its disclosure.” Sterne Kessler also

proposes amending §§ 210.12(a)(9)(viii) and (ix), and 210.13(b)(1), to clarify that respondents “are required to disclose non-infringement and invalidity claim charts with their Response.”

The IMA notes that, while having no specific comments on or issues with the proposed amendments to § 210.12, it has concerns which are not addressed by the proposed amendments. In particular, the IMA recommends amending §§ 210.12(a)(9) and 210.13(b) to add a requirement for parties to disclose the existence of third-party litigation funding, which it asserts has been on the rise according to data it presents regarding patent litigation in district courts. The IMA believes disclosure of whether third-party litigation funding is involved in a particular case, and the transparency it brings, are important to allow the Commission to accurately assess conflicts, ensure fairness to the parties in a dispute, and assess the effect of an exclusion order on the public interest.

Commission Response

The ITCTLA’s concerns about the potentially differing legal standards applied by different judicial circuits for unfair acts subject to section 337(a)(1)(A) appear to be limited to § 210.12(a)(8)(i) and do not concern the proposed amendments to paragraph (a)(8)(ii). The Commission agrees with the ITCTLA that section 337(a)(1)(A) generally prohibits “[u]nfair methods of competition and unfair acts,” and thus the proposed amendments to paragraph (a)(8)(i) should be applied in a manner that addresses the Commission’s goals of making clear that bare assertions of unfair acts or methods of competition are insufficient and the need to allege sufficient information to enable the Commission to determine whether a cause of action is properly pled. Upon consideration of the proposed rule, the Commission has determined to remove the language “of each element” from paragraph (a)(8)(i). The Commission believes this change addresses the ITCTLA’s concerns that different jurisdictions may articulate different standards for certain causes of action.

No commentator opposes adding the requirement in paragraph (a)(9)(v) to disclose known domestic patent applications that correspond to the patents asserted in the investigation. The Commission has therefore determined to adopt the remainder of proposed rule 210.12 as stated in the NPRM.

The Commission has determined not to consider at this time Sterne Kessler’s suggestion to require respondents to disclose non-infringement and

invalidity claim charts with their Response because it was not part of the NPRM. The Commission notes the proposal and may consider it in future rulemakings.

The IMA's proposal to require parties to disclose the existence of third-party litigation funding in an investigation was not part of the NPRM. The Commission notes the proposal and may consider it in future rulemakings.

Section 210.14

Section 210.14 generally provides for amendments to the pleadings and notice of investigation. Paragraph (a) provides for pre-institution amendments to the complaint and notice of investigation, while paragraph (b) provides for post-institution amendments.

The Commission proposed amending the heading of this section to indicate the existing severance provision under paragraph (h). The Commission further proposed to add the requirement that amended complaints, exhibits, and supplements thereto, filed under this section shall be filed electronically with the Secretary pursuant to § 210.4.

The Commission further proposed to amend paragraphs (a) and (b)(1) to clarify that any proposed amendment to the complaint and notice of investigation that introduces an additional unfair act or an additional respondent must comply with the content requirements of § 210.12(a). *See Certain Skin Rejuvenation Resurfacing Devices, Components Thereof, and Products Containing the Same*, Inv. No. 337-TA-1262, Notice of Commission Decision to Review, and on Review, to Vacate and Remand an Initial Determination Granting Complainants' Motion to Amend the Complaint and Notice of Investigation (Sept. 22, 2021). For example, an amendment to add a cause of action under section 337(a)(1)(A) to an investigation instituted under section 337(a)(1)(B) of that Act would be required to contain all of the information required in the relevant portions of § 210.12(a) of the Commission's Rules. The purpose of the amendment is to ensure that the public, all affected parties, and/or new respondents have adequate notice of the scope of any substantive amendment to the complaint and notice of investigation.

For § 210.14(b)(1), the requirement is also intended to provide the presiding administrative law judge and the Commission with the information needed to determine whether good cause exists to allow the proposed amendment after institution. This section is also amended to make clear that the complainant shall serve the

motion to amend the complaint and notice of investigation on any new proposed respondent and on all current respondents. It also is amended to require the Commission to serve the amended complaint and notice of investigation on any new respondent and the embassies of the relevant foreign countries after the Commission determines to affirm or not review an initial determination granting the motion. Further, this section is amended to require complainants to file service copies of the complaint and exhibits, including paper service copies of the amended complaint, for each new respondent and for the embassy of the country in which the respondent is located by the close of the next business day after the amended complaint is filed.

Section 210.14(b)(1) currently lacks any indication of whether and when a response to an amended complaint and/or notice of investigations is required. The absence of such guidance has led to inconsistent practice across investigations. Accordingly, the Commission proposed to amend § 210.14(b)(1) by clarifying that responses from respondents currently in the investigation are required, and that they shall be due within ten (10) days of the service of the order (for amendments only to the complaint), or of the Commission determination affirming or not reviewing an initial determination (for amendments to the complaint and notice of investigation), as applicable, that grants a motion to amend the complaint and/or notice of investigation. The Commission intends that any response to an amended complaint and/or notice of investigation should conform to the same content requirements applicable to a response to an initial complaint and notice of investigation, as provided in § 210.13(b). The Commission also proposed specifying that if any additional respondents are added to the investigation, they shall have twenty (20) days from the date of service of the amended complaint and notice of investigation to file a written response.

Section 210.14(g) currently allows two or more investigations to be consolidated if: (1) the Commission consolidates the investigations; or (2) the presiding administrative law judge consolidates investigations before that judge. There is no mechanism under the current rule for investigations before different administrative law judges to be consolidated absent Commission intervention. The proposed amendment to § 210.14(g) would address this by providing that the Chief Administrative Law Judge may consolidate

investigations that are before different presiding administrative law judges and assign an administrative law judge to preside over the consolidated investigations.

Comments

Sterne Kessler recommends requiring complainants to provide the Commission (and, accordingly, all parties to the investigation, as well as the public) with a redlined copy of any amended pleadings, in addition to a clean copy of the amended pleadings under both paragraphs (a) and (b).

Commission Response

The Commission does not adopt Sterne Kessler's recommendation to require complainants to provide a redlined copy of the amended pleadings. Because amended pleadings are filed electronically with the Secretary, parties can easily generate a redlined copy of the amended pleadings.

Subpart E—Discovery and Compulsory Process

Section 210.28

Section 210.28 concerns the procedures governing depositions taken during Commission investigations. Current § 210.28(a) limits the number of fact depositions that each party, including the Commission investigative attorney, may take in an investigation. The Commission is aware that disputes have arisen over whether depositions of non-party witnesses count towards the limits in § 210.28(a). In response to those disputes, the Commission proposed to amend the rule by adding a sentence clarifying that party and non-party depositions, alike, count toward the limits recited in paragraph (a). A notice for a corporation to designate deponents, however, shall continue to count as only one deposition and shall include all corporate representatives so designated to respond.

The Commission further proposed to change the limit for complainants as a group from five (5) fact depositions per respondent to a total of twenty (20) fact depositions, regardless of the number of respondents. This amendment effects a simplification of the current rule, which permits a complainant group to take the greater of either twenty depositions or five per respondent. It also provides for the same number of fact depositions for complainants as a group and respondents as a group. The amendment does not abrogate the presiding administrative law judge's authority to increase the number of fact depositions allowed on a showing of good cause by

any party. Thus, the Commission does not anticipate that the proposed amendment will foreclose a complainant group from taking additional depositions if good cause to do so exists.

While current § 210.28 limits the number of depositions that may be taken, there is no provision specifying the maximum permissible length of a deposition. By contrast, Federal Rule of Civil Procedure 30 presumptively limits depositions to one (1) day of seven (7) hours. The Committee Notes to the 2000 Amendments to Federal Rule of Civil Procedure 30(d) explain that the one-day limitation was designed to restrain undue cost and delay that can result from overlong depositions. Fed. R. Civ. P. 30(d) (2000 Advisory Committee Note). The Committee Notes explain that the rule contemplates reasonable breaks throughout the day and that only time occupied by the actual deposition will be counted. They further explain that, for purposes of the durational limit, the deposition of each person designated in response to a deposition noticed under Federal Rule of Civil Procedure 30(b)(6) should be considered a separate deposition. *Id.*

The Commission proposed to amend § 210.28 by adding a new paragraph (b), which includes a presumptive durational limitation of one (1) day of seven (7) hours to depositions conducted under that section consistent with Federal Rule of Civil Procedure 30. The Commission intends for the limitation to control in the absence of an agreement among the parties or an order of the presiding administrative law judge otherwise. The amended rule requires the presiding administrative law judge to grant additional time as needed, to the extent consistent with the provisions of paragraphs 210.27(b) through 210.27(d), which govern the scope of and limitations on discovery, respectively. The reference to those paragraphs is intended to ensure that additional time is only granted in proportion to the needs of the investigation. The Commission intends for the same computational rules to apply as are laid out in the Committee Notes to the 2000 Amendments to Federal Rule of Civil Procedure 30. Specifically, only time actually spent conducting the deposition will count towards the seven (7) hour limit, and for the purpose of the durational limit each individual designated in response to a deposition notice directed to a party will be considered a separate deponent. Nothing in this proposed rule should be construed to alter the provision in paragraph (a) that specifies that each notice of deposition to a party is

counted as a single deposition for purposes of calculating the total number of depositions that may be taken by a party.

Due to the addition of new paragraph (b), the Commission proposed to redesignate current paragraphs (b) through (i) as paragraphs (c) through (j), respectively.

Current paragraph (f), which in the proposed rule would be redesignated as paragraph (g), requires the party taking a deposition to promptly serve a copy of the deposition transcript on the Commission investigative attorney. As written, current paragraph (f) could be read as not requiring service of exhibits marked during the deposition. In order to remove that ambiguity, the Commission proposed amending current paragraph (f), redesignated as paragraph (g), to make clear that copies of the deposition exhibits must be included when the transcript is served on the Commission investigative attorney.

For the reasons noted above under § 210.4, the Commission also proposed to amend certain gender-specific language in current paragraphs (c) and (h)(4), redesignated as paragraphs (d) and (i)(4), respectively, by replacing references to “he” and “him.” The Commission also proposed to add that testimony may be taken by “videoconference” to current paragraph (c) (redesignated as (d)).

Comments

The ITCTLA cautions against clarifying that party and non-party depositions, alike, count toward the limits recited in paragraph (a) for two reasons. First, it believes including non-party depositions in the twenty-deposition limit under paragraph (a) would “impede the development of a fulsome evidentiary record on a number of issues, particularly those relating to the public interest,” but also issues relating to domestic industry, patent validity, and infringement. For example, the ITCTLA explains that disputes over validity often require the parties to obtain evidence from third parties regarding prior art references and potential prior public uses. Moreover, it explains that non-party discovery may be needed to fully understand the products accused of infringement and the domestic industries of third parties upon which a complainant relies, and the impact of the public interest considerations on non-parties. The ITCTLA further believes that applying a twenty-deposition limit to complainants as a group regardless of the number of respondents could impede the ability to obtain sufficient evidence against each

respondent in investigations involving more than four respondents. This is a particular concern “in cases involving widespread infringement, particularly general exclusion order cases.”

Second, the ITCTLA states that requiring approval before exceeding the deposition limit “will either add to the motion practice before the Administrative Law Judges or not be effective within the short discovery period in ITC proceedings.” In particular, it explains that the need for non-party discovery often is not evident until some discovery is completed, or initial contentions disclosed, at which point there is little time remaining [in] the fact discovery period.” The ITCTLA warns that the proposed rule could cause parties to routinely file motions for increased depositions at the outset of each case.

Concerning new paragraph (b), the ITCTLA recommends exempting translated depositions from the presumptive seven-hour limit because they “commonly take longer (often 1.5 to 2 times normal deposition lengths) to complete.” Sterne Kessler recommends increasing the presumptive durational limit for depositions to ten (10) hours if, for example, an interpreter is required to translate the deposition.

Commission Response

The Commission declines to adopt the ITCTLA’s suggestion to remove the twenty-deposition limit under paragraph (a) or to exclude non-party depositions from that limit. While the Commission agrees with the ITCTLA that non-party discovery may be important to certain issues that arise in section 337 investigations, this does not provide a basis to distinguish depositions of party witnesses from a non-party witness for purposes of this rule. The Commission notes that Rule 30(a)(2)(A)(i) of Federal Rule of Civil Procedure also does not distinguish between party and non-party witness depositions. In addition, the proposed change to § 210.28(a) allows twice as many depositions as Rule 30(a)(2)(A)(i) of Federal Rule of Civil Procedure, which establishes a limitation of ten (10) depositions being taken by a party unless leave of court is obtained. As for the ITCTLA’s concern that requiring approval from the administrative law judge before exceeding the twenty-deposition limit will “not be effective within the short discovery period in ITC proceedings,” it is precisely because of that short period that a clear limit on the number of depositions at the outset of an investigation is necessary. Thus, the Commission believes that the proposed rule provides an adequate number of

depositions for most investigations and provides the administrative law judge with appropriate flexibility in increasing the number of depositions as appropriate. Therefore, the final rule is unchanged from the proposed rule.

Regarding the ITCTLA's and Sterne Kessler's concerns about the need for additional time if an interpreter is required to translate the deposition, the Commission declines to exempt depositions using an interpreter or impose a predetermined durational limit of ten (10) hours for translated depositions. Rather, the proposed rule encourages parties to agree to a reasonable length for translated depositions. Absent an agreement and in keeping with the Federal rules, the Commission notes that parties may seek additional time for depositions beyond the default seven (7) hour limit by order of the presiding administrative law judge. Indeed, the notes to Federal Rule of Civil Procedure 30 indicate the need for an interpreter is one circumstance justifying an order extending deposition time limits.

Section 210.30

Section 210.30 is similar to Federal Rule of Civil Procedure 34 and provides procedures governing requests for production or inspection of documents and things, as well as entry upon land, during discovery. Section 210.30, like Federal Rule of Civil Procedure 34, includes provisions permitting a party from whom information is requested to object to the request. Current § 210.30 differs from Federal Rule of Civil Procedure 34, however, in that it does not require an objecting party to state whether it is withholding any responsive materials on the basis of its objection. As explained in the Committee Notes to the 2015 amendments to Federal Rule of Civil Procedure 34, which added the requirement, the purpose of the amendment was to "end the confusion that frequently arises when a producing party states several objections and still produces information, leaving the requesting party uncertain whether any relevant and responsive information has been withheld on the basis of the objections." Fed. R. Civ. P. 34 Advisory Committee Notes—2015 Amendment. For similar reasons, the Commission proposed to amend § 210.30(b)(2) to include a requirement that any objection to a request to provide information must state whether any responsive materials are being withheld on the basis of that objection and that the party must permit inspection of any other materials not being withheld.

For the reasons noted above under § 210.4, the Commission proposed to amend certain gender-specific language in paragraph (a)(1) by replacing "his behalf" with "that party's behalf." In paragraph (b)(2) of § 210.30, the Commission also proposed to change "10 days" to "ten (10) days" for clarity. No substantive change is intended.

Comments

The ITCTLA supports aligning § 210.30(b)(2) with the Federal Rule of Civil Procedure 34. However, it believes the proposed rule "may appear unnecessarily burdensome to the producing party without further explanation by the Commission." In particular, the ITCTLA recommends that the Commission include a reference to the full Advisory Committee Note on FRCP 34(b)(2)(C), which clarifies that:

The producing party does not need to provide a detailed description or log of all documents withheld, but does need to alert other parties to the fact that documents have been withheld and thereby facilitate an informed discussion of the objection. An objection that states the limits that have controlled the search for responsive and relevant materials qualifies as a statement that the materials have been 'withheld.'

The ITCTLA also recommends that the Commission state that federal court decisions will be used to guide interpretation of the proposed changes to § 210.30(b)(2).

Commission Response

The Commission proposed amending § 210.30(b)(2) to conform to the 2015 amendments to FRCP 34(b)(2)(C). Accordingly, the Commission agrees with the ITCTLA that the proposed rule should be interpreted in view of the full 2015 Committee Notes, including the helpful guidance about what the producing party's obligation does and does not require in practice, and federal court decisions interpreting FRCP 34(b)(2)(C). As the ITCTLA points out, that guidance provides that parties would not be required to provide "an 'objection log'—similar to a privilege log—that specifically listed all of the documents not being produced as a result of the objection." Fed. R. Civ. P. 34 Advisory Committee Notes—2015 Amendment. Moreover, the Committee Notes explain:

Rather, the rule is satisfied so long as the objecting party does something to "alert the other parties to the fact that documents have been withheld and thereby facilitate an informed discussion of the objection." To that end, the 2015 Committee Note provides this very sensible solution: "[a]n objection that states the limits that have controlled the search for responsive and relevant materials qualifies as a statement that the materials

have been 'withheld.'" For example, if document request seeks materials going back ten years, and a party thinks that time period is too long, a response that objects to the length of the time period and states that the party will search for and produce documents going back three years sufficiently identifies the materials being withheld on the basis of the objection.

Fed. R. Civ. P. 34 Advisory Committee Notes—2015 Amendment.

No other comments concerning the proposed amendments to § 210.30 were received other than general support for the use of gender-neutral language in the rules. The Commission has therefore determined to adopt the proposed rule as stated in the NPRM with the above clarifications proposed by the ITCTLA.

List of Subjects in 19 CFR Parts 201, 206, 207, and 210

Administration practice and procedure, Business and industry, Customs duties and inspection, Imports, Investigations Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the United States International Trade Commission proposes to amend 19 CFR parts 201, 206, 207, and 210 as follows:

PART 201—RULES OF GENERAL APPLICATION

■ 1. The authority citation for part 201 is revised to read as follows:

Authority: 19 U.S.C. 1335; 19 U.S.C. 2482; the Administrative Procedure Act (5 U.S.C. 551, *et seq.*), unless otherwise noted.

Subpart A—Miscellaneous

■ 2. Amend § 201.3a by revising paragraph (c) to read as follows:

§ 201.3a Missing children information.

* * * * *

(c) The procedure established in paragraph (b) of this section will result in missing children information being inserted in an estimated 25 percent of the Commission's penalty mail and will cost an estimated \$1,500 for the first year of implementation. The Chief Administrative Officer shall make such changes in the procedure as the Officer deems appropriate to maximize the use of missing children information in the Commission's mail.

Subpart B—Initiation and Conduct of Investigations

■ 3. Amend § 201.8 by revising paragraphs (a) and (c), revising and republishing paragraph (d), and revising paragraphs (e) through (g) to read as follows:

§ 201.8 Filing of documents.

(a) *Applicability; where to file; date of filing.* This section applies to all Commission proceedings except, notwithstanding any other section of this chapter, those conducted under 19 U.S.C. 1337, which are covered by requirements set out in part 210 of this chapter. Documents shall be filed with the office of the Secretary through the Commission's Electronic Document Information System (EDIS) website at <https://edis.usitc.gov>. If a paper filing is required or authorized under paragraphs (d)(2) and (3) of this section, documents shall be filed at the office of the Secretary in Washington, DC. Such documents, if properly filed within the hours of operation specified in § 201.3(c), will be deemed to be filed on the date on which they are actually received by the Commission.

* * * * *

(c) *Specifications for documents.* Each document filed under this chapter shall be signed, double-spaced, clear and legible, except that a document of two pages or less in length need not be double-spaced. All submissions shall be in letter-sized format (8.5 x 11 inches), except copies of documents prepared for another agency or a court (e.g., pleadings papers). The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

(d) *Filing.* (1) All documents filed with the Commission shall be filed electronically. All filings shall comply with the procedures set forth in the Commission's Electronic Document Information System website at <https://edis.usitc.gov>. See also https://www.usitc.gov/press_room/edisupport.htm. Failure to comply with the requirements of this chapter and the Handbook on Filing Procedures that apply to the filing of a document may result in the rejection of the document as improperly filed.

(2) Supplementary material and witness testimony provided for under § 201.13 or § 207.15 or § 207.24 of this chapter shall also be filed in accordance with the provisions of the applicable section.

(3) The Secretary may provide for exceptions and modifications to the filing requirements set out in this chapter. A person seeking an exception should consult the Handbook on Filing Procedures.

(4) During any period in which the Commission is closed, deadlines for filing documents electronically and by other means are extended so that documents are due on the first business day after the end of the closure.

(e) *Identification of party filing document.* Each document filed with the Commission for the purpose of initiating any investigation shall show on the first page thereof the name, address, and telephone number of the party or parties by whom or on whose behalf the document is filed and shall be signed by the party filing the document or by a duly authorized officer, attorney, or corporate representative of such party. Also, any attorney or corporate representative filing the document shall give a current address, electronic mail address, and telephone number. The signature of the person signing such a document constitutes a certification that the person has read the document, that to the best of that person's knowledge and belief the statements contained therein are true, and that the person signing the document was duly authorized to sign it.

(f) *Nonconfidential copies.* In the event that confidential treatment of a document is requested under § 201.6(b), a nonconfidential version of the document shall be filed, in which the confidential business information shall have been deleted and which shall have been conspicuously marked "nonconfidential" or "public inspection." The nonconfidential version shall be filed electronically. In the event that confidential treatment is not requested for a document under § 201.6(b), the document shall be conspicuously marked "No confidential version filed," and the document shall be filed in accordance with paragraph (d) of this section. The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

(g) *Cover sheet.* For documents that are filed electronically, parties must complete the cover sheet form for such filing online at <https://edis.usitc.gov> at the time of the electronic filing. When making a paper filing, parties must complete the cover sheet form on-line at <https://edis.usitc.gov> and print out the cover sheet for submission to the Office of the Secretary with the paper filing. The party submitting the cover sheet is responsible for the accuracy of all information contained in the cover sheet, including, but not limited to, the security status and the investigation number, and must comply with applicable limitations on disclosure of business proprietary information or confidential information under § 201.6 and §§ 206.8, 206.17, 207.3, and 207.7 of this chapter.

■ 4. Revise § 201.12 to read as follows:

§ 201.12 Requests.

Any party to a nonadjudicative investigation may request the Commission to take particular action with respect to that investigation. Such requests shall be filed by letter addressed to the Secretary, shall be placed by the Secretary in the record, and shall be served on all other parties. The Commission shall take such action or make such response as it deems appropriate.

■ 5. Amend § 201.13 by revising paragraphs (d) and (f) to read as follows:

§ 201.13 Conduct of nonadjudicative hearings.

* * * * *

(d) *Witness list.* Each person who files a notice of participation pursuant to paragraph (c) of this section shall simultaneously file with the Secretary a list of the witnesses that person intends to call at the hearing.

* * * * *

(f) *Supplementary material.* (1) A party to the investigation may file with the Secretary supplementary material for acceptance into the record. The party shall file any such material with the Secretary no later than the day of the hearing. Supplementary materials must be marked with the name of the organization submitting it. As used herein, the term *supplementary material* refers to:

(i) Additional graphic material such as charts and diagrams used to illuminate an argument or clarify a position; and

(ii) Information not available to a party at the time its prehearing brief was filed.

(2) Supplementary material does not include witness statements which are addressed in §§ 207.15 and 207.24 of this chapter.

* * * * *

■ 6. Amend § 201.14 by revising paragraph (b)(3) to read as follows:

§ 201.14 Computation of time, additional hearings, postponements, continuances, and extensions of time.

* * * * *

(b) * * *

(3) A request that the Commission take any of the actions described in this section shall be filed with the Secretary and served on all parties to the investigation.

■ 7. Revise § 201.15 to read as follows:

§ 201.15 Attorneys and others practicing or appearing before the Commission.

(a) *In general.* No register of attorneys who may practice before the Commission is maintained. No separate application for admission to practice

before the Commission is required. Attorneys practicing before the Commission, or desiring to so practice, must maintain a bar membership in good standing in any State of the United States or the District of Columbia. Persons practicing before the Commission must report any discipline or suspension by any bar association, court, or agency. Non-attorneys desiring to appear before the Commission may be required to show to the satisfaction of the Commission that they are acceptable in the capacity in which they seek to appear. Any person practicing or appearing before the Commission, or desiring to do so, may for good cause shown be suspended or barred from practicing or appearing before the Commission, or may be subject to such lesser sanctions as the Commission deems appropriate, but only after having been afforded an opportunity to present that person's views in the matter.

(b) *Former officers or employees.* No former officer or employee of the Commission who personally and substantially participated in a matter which was pending in any manner or form in the Commission during that person's employment shall be eligible to practice or appear before the Commission in connection with such matter. No former officer or employee of the Commission shall be eligible to practice or appear before the Commission in connection with any matter which was pending in any manner or form in the Commission during that person's employment without first obtaining written consent from the Commission.

■ 8. Amend § 201.16 by:

■ a. Revising paragraphs (d) and (e); and
■ b. Removing the parenthetical authority citation at the end of the section.

The revisions read as follows:

§ 201.16 Service of process and other documents.

* * * * *

(d) *Additional time after service by mail.* Whenever a party or Federal agency or department has the right or is required to perform some act or take some action within a prescribed period after the service of a document upon it and the document is served upon it by mail, three (3) calendar days shall be added to the prescribed period, except that when mailing is to a person located in a foreign country, ten (10) calendar days shall be added to the prescribed period. Computation of additional time for Commission proceedings conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) is set out in § 210.6 of this chapter.

(e) *Additional time after service by express delivery.* Whenever a party or Federal agency or department has the right or is required to perform some act or take some action within a prescribed period after the service of a document upon it and the document is served by express delivery, one (1) calendar day shall be added to the prescribed period if the service is to a destination in the United States, and five (5) calendar days shall be added to the prescribed period if the service is to a destination outside the United States. "Service by express delivery" refers to a method that would provide delivery by the next business day within the United States and refers to the equivalent express delivery service when the delivery is to a foreign location. Computation of additional time for Commission proceedings conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) is set out in § 210.6 of this chapter.

* * * * *

Subpart C—Availability of Information to the Public Pursuant to 5 U.S.C. 552

■ 9. Amend § 201.20 by revising paragraphs (d)(2)(iii), (e), and (g)(2) to read as follows:

§ 201.20 Fees.

* * * * *

(d) * * *

(2) * * *

(iii) *The contribution of an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding."* The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications—e.g., expertise in the subject area and ability and intention to effectively convey information to the general public—shall be considered. It will be presumed that a representative of the news media (as defined in paragraph (j)(8) of this section) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requesters who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requesters, to identify a particular person who represents that that person actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

* * * * *

(e) *Notice of anticipated fees in excess of \$25.00.* Where the Secretary determines or estimates that the fees to be assessed under this section may amount to more than \$25.00, the Secretary shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the Secretary shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than \$25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice of the requester pursuant to this paragraph (e) shall offer the opportunity to confer with agency personnel in order to reformulate the request to meet the requester's needs at a lower cost.

* * * * *

(g) * * *

(2) Where a requester has previously failed to pay a records access fee within thirty (30) days of the date of billing, the Secretary may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before beginning to process a new request or continuing to process a pending request from that requester.

* * * * *

Subpart D—Safeguarding Individual Privacy Pursuant to 5 U.S.C. 552a

■ 10. Amend § 201.32 by revising paragraph (b) to read as follows:

§ 201.32 Specific exemptions.

* * * * *

(b) Pursuant to 5 U.S.C. 552a(k)(1) and (2), records contained in the system entitled "Freedom of Information Act and Privacy Act Records" have been exempted from paragraphs (c)(3), (d), (e)(1), (e)(4)(G) through (I) and (f) of the Privacy Act. Pursuant to section 552a(k)(1) of the Privacy Act, the Commission exempts records that contain properly classified information pertaining to national defense or foreign policy. Application of exemption (k)(1) may be necessary to preclude individuals' access to or amendment of such classified information under the Privacy Act. Pursuant to section 552a(k)(2) of the Privacy Act, and in order to protect the effectiveness of Inspector General investigations by

preventing individuals who may be the subject of an investigation from obtaining access to the records and thus obtaining the opportunity to conceal or destroy evidence or to intimidate witnesses, the Commission exempts records insofar as they include investigatory material compiled for law enforcement purposes. However, if any individual is denied any right, privilege, or benefit to which that individual is otherwise entitled under Federal law due to the maintenance of this material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

PART 206—INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARD ACTIONS, MARKET DISRUPTION, TRADE DIVERSION, AND REVIEW OF RELIEF ACTION

■ 11. The authority citation for part 206 continues to read as follows:

Authority: 19 U.S.C. 1335, 2112 note, 2251–2254, 2436, 3805 note, 4051–4065, 4101, and 4551–4552.

Subpart A—General

■ 12. Revise § 206.2 to read as follows:

§ 206.2 Identification of type of petition or request.

An investigation under this part may be commenced on the basis of a petition, request, resolution, or motion as provided for in the statutory provisions listed in §§ 206.1 and 206.31. Each petition or request, as the case may be, filed by an entity representative of a domestic industry under this part shall state clearly on the first page thereof “This is a [petition or request] under section [citing the statutory provision] and Subpart [B, C, D, E, F, or G] of part 206 of the rules of practice and procedure of the United States International Trade Commission.” The petition or request, along with all exhibits, appendices, and attachments, must be filed in accordance with § 201.8 of this chapter.

■ 13. Amend § 206.8 by revising paragraph (d) to read as follows:

§ 206.8 Service, filing, and certification of documents.

* * * * *

(d) *Briefs.* All briefs filed in proceedings subject to this part shall be filed in accordance with § 201.8 of this chapter.

PART 207—INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

■ 14. The authority citation for part 207 continues to read as follows:

Authority: 19 U.S.C. 1335, 1671–1677n, 2482, 3513, 4582.

Subpart B—Preliminary Determinations

■ 15. Amend § 207.10 by revising paragraphs (a) and (b)(1)(i) to read as follows:

§ 207.10 Filing of petition with the Commission.

(a) *Filing of the petition.* Any interested party who files a petition with the administering authority pursuant to section 702(b) or section 732(b) of the Act in a case in which a Commission determination under title VII of the Act is required, shall file copies of the petition and all exhibits, appendices, and attachments thereto, pursuant to § 201.8 of this chapter, with the Secretary on the same day the petition is filed with the administering authority. If the petition complies with the provisions of § 207.11, it shall be deemed to be properly filed on the date on which the electronic filing of the petition is received by the Secretary, provided that, if the petition is filed with the Secretary after 12 noon, eastern time, the petition shall be deemed filed on the next business day. Notwithstanding § 207.11, a petitioner need not file an entry of appearance in the investigation instituted upon the filing of its petition, which shall be deemed an entry of appearance.

(b) * * *

(1)(i) The Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 207.7(a)(4), the Secretary approves an application under § 207.7(a). A copy of the petition including all business proprietary information shall then be served by petitioner on those approved applicants in accord with § 207.3(b) within two (2) calendar days of the time notification is made by the Secretary.

* * * * *

■ 16. Revise § 207.15 to read as follows:

§ 207.15 Written briefs and conference.

Each party may submit to the Commission on or before a date specified in the notice of investigation issued pursuant to § 207.12 a written brief containing information and arguments pertinent to the subject

matter of the investigation. Briefs shall be signed, shall include a table of contents, and shall contain no more than fifty (50) pages of textual material. Any person not a party may submit a brief written statement of information pertinent to the investigation within the time specified and the same manner specified for the filing of briefs. In addition, the presiding official may permit persons to file within a specified time answers to questions or requests made by the Commission's staff. If the presiding official deems it appropriate, the presiding official shall hold a conference. The conference, if any, shall be held in accordance with the procedures in § 201.13 of this chapter, except that in connection with its presentation a party may provide written witness testimony at the conference. The party shall file the written testimony in accordance with § 201.8(d) of this chapter no later than the date of the conference. If the written testimony is filed on the day of the conference, the party shall also file with the Secretary on that day nine (9) true paper copies of any such written testimony. The presiding official may request the appearance of witnesses, take testimony, and administer oaths.

Subpart C—Final Determinations, Short Life Cycle Products

■ 17. Amend § 207.23 by revising the first and second sentences to read as follows:

§ 207.23 Prehearing brief.

Each party who is an interested party shall submit to the Commission, no later than five (5) business days prior to the date of the hearing specified in the notice of scheduling, a prehearing brief. Prehearing briefs shall be signed and shall include a table of contents. * * *

■ 18. Amend § 207.24 by revising paragraph (b) to read as follows:

§ 207.24 Hearing.

* * * * *

(b) *Procedures.* Any hearing shall be conducted after notice published in the **Federal Register**. The hearing shall not be subject to the provisions of 5 U.S.C. subchapter II, chapter 5, or to 5 U.S.C. 702. Each party shall limit its presentation at the hearing to a summary of the information and arguments contained in its prehearing brief, an analysis of the information and arguments contained in the prehearing briefs described in § 207.23, and information not available at the time its prehearing brief was filed. Unless a portion of the hearing is closed, presentations at the hearing shall not

include business proprietary information. In connection with its presentation, a party may provide written witness testimony at the hearing. The party shall file the written testimony in accordance with § 201.8(d) of this chapter no later than the date of the hearing. If the written testimony is filed on the day of the hearing, the party shall also file with the Secretary on that day nine (9) true paper copies of any such written testimony. In the case of testimony to be presented at a closed session held in response to a request under paragraph (d) of this section, confidential and non-confidential versions shall be filed in accordance with § 207.3. Any person not a party may make a brief oral statement of information pertinent to the investigation.

* * * * *

■ 19. Revise § 207.25 to read as follows:

§ 207.25 Posthearing briefs.

Any party may file a posthearing brief concerning the information adduced at or after the hearing with the Secretary within a time specified in the notice of scheduling or by the presiding official at the hearing. No such posthearing brief shall exceed fifteen (15) pages of textual material. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this section.

■ 20. Revise § 207.28 to read as follows:

§ 207.28 Anticircumvention.

Prior to providing advice to the administering authority pursuant to section 781(e)(3) of the Act, the Commission shall publish in the **Federal Register** a notice that such advice is contemplated. Any person may file one written submission concerning the matter described in the notice no later than fourteen (14) days after publication of the notice. The submission shall contain no more than fifty (50) pages of textual material. The Commission shall by notice provide for additional submissions as it deems necessary.

■ 21. Amend § 207.30 by revising paragraph (b) to read as follows:

§ 207.30 Comment on information.

* * * * *

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to § 207.25. Comments shall

only concern such information, and shall not exceed fifteen (15) pages of textual material. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. Comments containing new factual information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to investigations subject to the provisions of section 771(7)(G)(iii) of the Act, and with respect to changes in bracketing of business proprietary information in the comments permitted by § 207.3(c).

Subpart F—Five-Year Reviews

§ 207.61 [Amended]

■ 22. Amend § 207.61 by removing paragraph (e).

■ 23. Amend § 207.62 by revising paragraph (b)(2) to read as follows:

§ 207.62 Rulings on adequacy and nature of Commission review.

* * * * *

(b) * * *
(2) Comments shall be submitted within the time specified in the notice of institution. In a grouped review, only one set of comments shall be filed per party. Comments shall not exceed fifteen (15) pages of textual material. Comments containing new factual information shall be disregarded.

* * * * *

■ 24. Amend § 207.65 by revising the first and second sentences to read as follows:

§ 207.65 Prehearing briefs.

Each party to a five-year review may submit a prehearing brief to the Commission on the date specified in the scheduling notice. A prehearing brief shall be signed and shall include a table of contents. * * *

■ 25. Amend § 207.67 by revising paragraph (a) to read as follows:

§ 207.67 Posthearing briefs and statements.

(a) *Briefs from parties.* Any party to a five-year review may file with the Secretary a posthearing brief concerning the information adduced at or after the hearing within a time specified in the scheduling notice or by the presiding official at the hearing. No such posthearing brief shall exceed fifteen

(15) pages of textual material. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this section.

* * * * *

■ 26. Amend § 207.68 by revising paragraph (b) to read as follows:

§ 207.68 Final comments on information.

* * * * *

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to § 207.67. Comments shall only concern such information, and shall not exceed fifteen (15) pages of textual material. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. Comments containing new factual information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to changes in bracketing of business proprietary information in the comments permitted by § 207.3(c).

PART 210—ADJUDICATION AND ENFORCEMENT

■ 27. The authority citation for part 210 continues to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337.

Subpart A—Rules of General Applicability

■ 28. Amend § 210.4 by revising paragraphs (b) and (d)(1)(i), revising and republishing paragraph (f), and revising paragraphs (g) and (h) to read as follows:

§ 210.4 Written submissions; representations; sanctions.

* * * * *

(b) *Signature.* Every pleading, written motion, and other paper of a party or proposed party who is represented by an attorney in an investigation or a related proceeding under this part shall be signed by at least one attorney of record in the attorney's individual name. A party or proposed party who is not represented by an attorney shall sign, or a duly authorized officer or

corporate representative of that party or proposed party shall sign, the pleading, written motion, or other paper. Each paper shall state the signer's address and telephone number, if any. Pleadings, written motions, and other papers need not be under oath or accompanied by an affidavit, except as provided in § 210.12(a)(1), § 210.13(b), § 210.18, § 210.52(d), § 210.59(b), or another section of this part or by order of the administrative law judge or the Commission. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after omission of the signature is called to the attention of the submitter.

* * * * *

(d) * * *

(1) * * *

(i) *By motion.* A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate paragraph (c) of this section. It shall be served as provided in paragraph (i) of this section, but shall not be filed with or presented to the presiding administrative law judge or the Commission unless, within seven (7) days after service of the motion (or such other period as the administrative law judge or the Commission may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. *See also* § 210.25(a) through (c). If warranted, the administrative law judge or the Commission may award to the party or proposed party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

* * * * *

(f) *Filing of documents.* (1) Written submissions that are addressed to the Commission during an investigation or a related proceeding shall comply with the Commission's Handbook on Filing Procedures, which is issued by and available from the Secretary and posted on the Commission's Electronic Document Information System website at <https://edis.usitc.gov>. Failure to comply with the requirements of this chapter and the Handbook on Filing Procedures in the filing of a document may result in the rejection of the document as improperly filed.

(2) All documents filed under this part shall be filed electronically.

(3) Sections 210.8 and 210.12 set out additional requirements for a complaint

filed under § 210.8. Additional requirements for a complaint filed under § 210.75 are set forth in § 210.75.

(4)(i) If a complaint, a supplement or amendment to a complaint, a motion for temporary relief, or the documentation supporting a motion for temporary relief contains confidential business information as defined in § 201.6(a) of this chapter, the complainant shall file nonconfidential copies of the complaint, the supplement or amendment to the complaint, the motion for temporary relief, or the documentation supporting the motion for temporary relief concurrently with the requisite confidential copies, as provided in § 210.8(a). A nonconfidential copy of all exhibits, appendices, and attachments to the document shall be filed in electronic form on one CD-ROM, DVD, or other portable electronic media approved by the Secretary, separate from the media used for the confidential version.

(ii)(A) Persons who file the following submissions that contain confidential business information covered by an administrative protective order, or that are the subject of a request for confidential treatment, must file nonconfidential copies and serve them on the other parties to the investigation or related proceeding within ten (10) calendar days after filing the confidential version with the Commission:

(1) A response to a complaint and all supplements and exhibits thereto;

(2) All submissions relating to a motion to amend the complaint or notice of investigation; and

(3) All submissions addressed to the Commission.

(B) Other sections of this part may require, or the Commission or the administrative law judge may order, the filing and service of nonconfidential copies of other kinds of confidential submissions. If the submitter's ability to prepare a nonconfidential copy is dependent upon receipt of the nonconfidential version of an initial determination, or a Commission order or opinion, or a ruling by the administrative law judge or the Commission as to whether some or all of the information at issue is entitled to confidential treatment, the nonconfidential copies of the submission must be filed within 10 calendar days after service of the Commission or administrative law judge document in question. The time periods for filing specified in this paragraph (f)(4)(ii)(B) apply unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

(5) The Secretary may provide for exceptions and modifications to the filing requirements set out in this chapter. A person seeking an exception should consult the Handbook on Filing Procedures.

(6) Documents shall be filed with the Office of the Secretary through the Commission's Electronic Document Information System (EDIS) website at <https://edis.usitc.gov>. If a paper filing is required or authorized under paragraph (f)(5) of this section, documents shall be filed at the office of the Secretary in Washington, DC. Such documents, if properly filed within the hours of operation specified in § 201.3(c) of this chapter, will be deemed to be filed on the date on which they are actually received by the Commission.

(7) Each document filed with the Commission for the purpose of initiating any investigation shall be considered properly filed if it conforms with the pertinent rules prescribed in this chapter. Substantial compliance with the pertinent rules may be accepted by the Commission provided good and sufficient reason is stated in the document for inability to comply fully with the pertinent rules.

(8) During any period in which the Commission is closed, deadlines for filing documents electronically and by other means are extended so that documents are due on the first business day after the end of the closure.

(g) *Cover sheet.* For documents that are filed electronically, parties must complete the cover sheet form for such filing on-line at <https://edis.usitc.gov> at the time of the electronic filing. When making a paper filing, parties must complete the cover sheet form online at <https://edis.usitc.gov> and print out the cover sheet for submission to the Office of the Secretary with the paper filing. The party submitting the cover sheet is responsible for the accuracy of all information contained in the cover sheet, including, but not limited to, the security status and the investigation number, and must comply with applicable limitations on disclosure of confidential information under § 210.5.

(h) *Specifications.* (1) Each document filed under this chapter shall be double-spaced, clear and legible, except that a document of two pages or less in length need not be double-spaced. All submissions shall be in letter-sized format (8.5 × 11 inches), except copies of documents prepared for another agency or a court (e.g., patent file wrappers or pleadings papers). Typed matter shall not exceed 6.5 × 9.5 inches using 11-point or larger type and shall be double-spaced between each line of text using the standard of 6 lines of type

per inch. Text and footnotes shall be in the same size type. Quotations more than two lines long in the text or footnotes may be indented and single-spaced. Headings and footnotes may be single-spaced.

(2) The presiding administrative law judge may impose any specifications the administrative law judge deems appropriate for submissions that are addressed to the administrative law judge.

* * * * *

■ 29. Amend § 210.7 by revising paragraph (a)(2) to read as follows:

§ 210.7 Service of process and other documents; publication of notices.

(a) * * *

(2) The service of all initial determinations as defined in § 210.42, all cease and desist orders as set forth in § 210.50(a)(1), all show cause orders issued under § 210.16(b)(1)(i), and all documents containing confidential business information as defined in § 201.6(a) of this chapter, issued by or on behalf of the Commission or the administrative law judge on a private party, shall be effected by serving a copy of the document by express delivery, as defined in § 201.16(e) of this chapter, on the person to be served, on a member of the partnership to be served, on the president, secretary, other executive officer, or member of the board of directors of the corporation, association, or other organization to be served, or, if an attorney represents a person or entity to be served in connection with an investigation under part 210, by serving a copy by express delivery on such attorney.

* * * * *

Subpart B—Commencement of Preinstitution Proceedings and Investigations

■ 30. Amend § 210.8 by revising the introductory text and paragraphs (a), (b) introductory text, (c)(1) introductory text, and (c)(2) and adding paragraph (c)(3) to read as follows:

§ 210.8 Commencement of preinstitution proceedings.

A preinstitution proceeding is commenced by filing with the Secretary a signed complaint.

(a) *Filing and service copies.* (1)(i) A complaint, enforcement complaint, supplement, or amendment under § 210.14(a) thereto, filed under this section shall be filed with the Secretary pursuant to § 210.4. By close of business the next business day following official receipt of the complaint, complainant

must deliver copies to the Secretary for service by the Secretary as follows:

(A) For each proposed respondent, one (1) true paper copy of the nonconfidential version of the complaint, one (1) true paper copy of the confidential version of the complaint, if any, and one (1) true paper copy of any supplements or amendments under § 210.14(a), along with one (1) true copy of the nonconfidential exhibits and one (1) true copy of the confidential exhibits in electronic form on a CD ROM, DVD, or other portable electronic media approved by the Secretary; and

(B) For the government of the foreign country in which each proposed respondent is located as indicated in the complaint, one (1) true paper copy of the nonconfidential version of the complaint.

(ii) Failure to timely provide service copies may result in a delay or denial of institution of an investigation under § 210.10 for failure to properly file the complaint.

(2) If the complaint, enforcement complaint, supplement, or amendment under § 210.14(a) thereto, is seeking temporary relief, the complainant must also by close of business the next business day following official receipt of the complaint, deliver copies to the Secretary for service as follows: for each proposed respondent, one (1) true paper copy of the nonconfidential version of the motion and one (1) true paper copy of the confidential version of the motion along with one (1) true copy of the nonconfidential exhibits and one (1) true copy of the confidential exhibits filed with the motion in electronic form on a CD ROM, DVD, or other portable electronic media approved by the Secretary.

(b) *Provide specific information regarding the public interest.* Complainant must file, concurrently with the complaint, a separate statement of public interest, not to exceed five (5) pages, inclusive of attachments, addressing how issuance of the requested relief, *i.e.*, a general exclusion order, a limited exclusion order, and/or a cease and desist order, in this investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. If the complainant files a confidential version of its submission on public interest, it shall file a public version of the submission no later than one business day after the deadline for

filing the submission. In particular, the submission should:

* * * * *

(c) * * *

(1) When a complaint is filed, the Secretary to the Commission will publish a notice in the **Federal Register** inviting comments from the public, interested government agencies, and proposed respondents on any issues arising from the complaint and potential exclusion and/or cease and desist orders. In response to the notice, members of the public, interested government agencies, and proposed respondents may provide specific information regarding the public interest and other issues in a written submission not to exceed five (5) pages, inclusive of attachments, to the Secretary to the Commission within eight (8) calendar days of publication of notice of the filing of a complaint. Members of the public, interested government agencies, and proposed respondents may address how issuance of the requested exclusion order and/or a cease and desist order in this investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. If a member of the public, interested government agency, or proposed respondent files a confidential version of its submission, it shall file a public version of the submission with the Secretary to the Commission and provide a copy of the public version of the submission to complainant no later than one (1) business day after the deadline for filing the submission. Submissions addressing the public interest should:

* * * * *

(2) Complainant may file a reply to any submissions received under paragraph (c)(1) of this section not to exceed five (5) pages, inclusive of attachments, to the Secretary to the Commission within three (3) calendar days following the filing of the submissions. Notwithstanding § 201.14(a) of this chapter, computation of the reply time period will begin with the first business day following the day on which submissions under paragraph (c)(1) are due, but will include subsequent Saturdays, Sundays, and Federal legal holidays. If the complainant files a confidential version of its submission, it shall file a public version of the submission no later than one (1) business day after the deadline for filing the submission.

(3) No further submissions will be accepted unless requested by the Commission.

* * * *

■ 31. Amend § 210.10 by revising paragraphs (a)(1)(iii) and (iv) and adding paragraphs (a)(1)(v) and (a)(7) to read as follows:

§ 210.10 Institution of investigation.

(a)(1) * * *

(iii) The complainant requests that the Commission postpone the determination on whether to institute an investigation;

(iv) The complainant withdraws the complaint; or

(v) The complaint or any exhibits or attachments thereto contain excessive designations of confidentiality that are not warranted under § 201.6(a) of this chapter and § 210.5.

* * * *

(7) If the Commission determines that the complaint or any exhibits or attachments thereto contain excessive designations of confidentiality that are not warranted under § 201.6(a) of this chapter and § 210.5, the Commission may require the complainant to file new nonconfidential versions of the aforesaid submissions in accordance with § 210.4(f)(7)(i) and may determine that the thirty (30) day period for deciding whether to institute an investigation shall begin to run anew from the date the new nonconfidential versions are filed with the Commission in accordance with § 210.4(f)(7)(i).

* * * *

■ 32. Amend § 210.11 by:

■ a. Revising paragraphs (a)(1) and (2);

■ b. Removing paragraph (a)(3); and

■ c. Redesignating paragraph (a)(4) as paragraph (a)(3).

The revisions read as follows:

§ 210.11 Service of complaint and notice of investigation upon institution.

(a)(1) Upon institution of an investigation, the Commission shall serve:

(i) Copies of the nonconfidential version of the complaint, the nonconfidential exhibits, and the notice of investigation upon each respondent; and

(ii) Copies of the nonconfidential version of the complaint and the notice of investigation upon the embassy in Washington, DC, of the country in which each proposed respondent is located as indicated in the complaint.

(2) If the Commission institutes temporary relief proceedings, upon institution of an investigation, the Commission shall also serve copies of the nonconfidential version of the

motion for temporary relief, the nonconfidential version of the complaint, and the notice of investigation upon each respondent.

* * * *

Subpart C—Pleadings

■ 33. Revise and republish § 210.12 to read as follows:

§ 210.12 The complaint.

(a) *Contents of the complaint.* In addition to conforming with the requirements of §§ 210.4 and 210.5, the complaint shall—

(1) Be under oath and signed by the complainant or the complainant's duly authorized officer, attorney, or corporate representative, with the name, address, email address, and telephone number of the complainant and any such officer, attorney, or corporate representative given on the first page of the complaint, and include a statement attesting to the representations in § 210.4(c)(1) through (3).

(2) Include a statement of the facts constituting the alleged unfair methods of competition and unfair acts.

(3) Describe specific instances of alleged unlawful importations or sales, and shall provide the Harmonized Tariff Schedule of the United States item number(s) for such importations.

(4) State the name, address, and nature of the business (when such nature is known) of each person alleged to be violating section 337 of the Tariff Act of 1930.

(5) Include a statement as to whether the alleged unfair methods of competition and unfair acts, or the subject matter thereof, are or have been the subject of any court or agency litigation, or of any arbitration, and, if so, include a brief summary of such proceeding.

(6)(i) If the complaint alleges a violation of section 337 based on infringement of a U.S. patent, or a federally registered copyright, trademark, mask work, or vessel hull design, under section 337(a)(1)(B), (C), (D), or (E) of the Tariff Act of 1930, include a statement as to whether an alleged domestic industry exists or is in the process of being established as defined in section 337(a)(2). Include the following information with the statement:

(A) For complaints alleging that a domestic industry exists, a detailed description of the relevant domestic industry as defined in section 337(a)(3) that allegedly exists including facts showing significant/substantial investment and employment, and also

including the relevant operations of any licensees;

(B) For complaints alleging a domestic industry that is in the process of being established, a detailed description of the relevant domestic industry that is in the process of being established including facts showing that complainant is actively engaged in the steps leading to the exploitation of its intellectual property rights and that there is a significant likelihood that an industry will be established in the future, and also including the relevant operations of any licensees; and

(C) Relevant information that should be included in the statements pursuant to paragraphs (a)(6)(i)(A) and (B) of this section includes but is not limited to:

(1) Significant investment in plant and equipment;

(2) Significant employment of labor or capital; or

(3) Substantial investment in the exploitation of the subject patent, copyright, trademark, mask work, or vessel hull design, including engineering, research and development, or licensing;

(ii) If the complaint alleges a violation of section 337 of the Tariff Act of 1930 based on unfair methods of competition and unfair acts in the importation or sale of articles in the United States that have the threat or effect of destroying or substantially injuring an industry in the United States or preventing the establishment of such an industry under section 337(a)(1)(A)(i) or (ii), include a detailed statement as to whether an alleged domestic industry exists or is in the process of being established (*i.e.*, for the latter, facts showing that there is a significant likelihood that an industry will be established in the future), and include a detailed description of the domestic industry affected, including the relevant operations of any licensees; or

(iii) If the complaint alleges a violation of section 337 of the Tariff Act of 1930 based on unfair methods of competition or unfair acts that have the threat or effect of restraining or monopolizing trade and commerce in the United States under section 337(a)(1)(A)(iii), include a description of the trade and commerce affected.

(7) Include a description of the complainant's business and its interests in the relevant domestic industry or the relevant trade and commerce. For every intellectual property based complaint (regardless of the type of intellectual property right involved), include a showing that at least one complainant is the owner or exclusive licensee of the subject intellectual property.

(8) If the alleged violation involves an unfair method of competition or an unfair act other than those listed in paragraph (a)(6)(i) of this section:

(i) Include in the statement of facts required by paragraph (a)(2) of this section factual allegations that would show the existence of the cause of action underlying the unfair act or method of competition; and

(ii) State a specific theory, and elements thereof, and provide supporting factual allegations concerning the existence of a threat or effect to destroy or substantially injure a domestic industry, to prevent the establishment of a domestic industry, or to restrain or monopolize trade and commerce in the United States. The information that should ordinarily be provided includes the volume and trend of production, sales, and inventories of the involved domestic article; a description of the facilities and number and type of workers employed in the production of the involved domestic article; profit-and-loss information covering overall operations and operations concerning the involved domestic article; pricing information with respect to the involved domestic article; when available, volume and sales of imports; and other pertinent data.

(9) Include, when a complaint is based upon the infringement of a valid and enforceable U.S. patent—

(i) The identification of each U.S. patent and a certified copy thereof (a legible copy of each such patent will suffice for each required copy of the complaint);

(ii) The identification of the ownership of each involved U.S. patent and a certified copy of each assignment of each such patent (a legible copy thereof will suffice for each required copy of the complaint);

(iii) The identification of each licensee under each involved U.S. patent;

(iv) A copy of each license agreement (if any) for each involved U.S. patent that complainant relies upon to establish that it can bring pursuant to paragraph (a)(7) of this section the complaint or to support its contention that a domestic industry as defined in section 337(a)(3) exists or is in the process of being established as a result of the domestic activities of one or more licensees;

(v) When known, a list of each foreign patent, each foreign or domestic patent application (not already issued as a patent), and each foreign or domestic patent application that has been denied, abandoned or withdrawn, corresponding to each involved U.S.

patent, with an indication of the prosecution status of each such patent application;

(vi) A nontechnical description of the invention of each involved U.S. patent;

(vii) A reference to the specific claims in each involved U.S. patent that allegedly cover the article imported or sold by each person named as violating section 337 of the Tariff Act of 1930, or the process under which such article was produced;

(viii) A showing that each person named as violating section 337 of the Tariff Act of 1930 is importing or selling the article covered by, or produced under the involved process covered by, the specific, asserted claims of each involved U.S. patent. The complainant shall make such showing by appropriate allegations, and when practicable, by a chart that applies each asserted independent claim of each involved U.S. patent to a representative involved article of each person named as violating section 337 of the Tariff Act or to the process under which such article was produced;

(ix) A showing that an industry in the United States, relating to the articles protected by the patent exists or is in the process of being established. The complainant shall make such showing by appropriate allegations, and when practicable, by a chart that applies an exemplary claim of each involved U.S. patent to a representative involved domestic article or to the process under which such article was produced;

(x) Drawings, photographs, or other visual representations of both the involved domestic article or process and the involved article of each person named as violating section 337 of the Tariff Act of 1930, or of the process utilized in producing the imported article, and, when a chart is furnished under paragraphs (a)(9)(viii) and (ix) of this section, the parts of such drawings, photographs, or other visual representations should be labeled so that they can be read in conjunction with such chart; and

(xi) The expiration date of each patent asserted.

(10) Include, when a complaint is based upon the infringement of a federally registered copyright, trademark, mask work, or vessel hull design—

(i) The identification of each licensee under each involved copyright, trademark, mask work, and vessel hull design; and

(ii) A copy of each license agreement (if any) that complainant relies upon to establish that it can bring pursuant to paragraph (a)(7) of this section the complaint or to support its contention

that a domestic industry as defined in section 337(a)(3) exists or is in the process of being established as a result of the domestic activities of one or more licensees.

(11) Contain a request for relief, including a statement as to whether a limited exclusion order, general exclusion order, and/or cease and desist orders are being requested, and if temporary relief is requested under section 337(e) and/or (f) of the Tariff Act of 1930, a motion for such relief, which shall either accompany the complaint as provided in § 210.52(a) or follow the complaint as provided in § 210.53(a). Complaints requesting issuance of a general exclusion order shall include a statement of factual allegations that would satisfy the requirements of section 337(d)(2), including, for example:

(i) Factual allegations showing that a general exclusion order is necessary to prevent circumvention of a limited exclusion order; or

(ii) Factual allegations showing a pattern of violation of section 337 and difficulty in identifying the source of infringing products.

(12) Contain a clear statement in plain English of the category of products accused. For example, the caption of the investigation might refer to “certain electronic devices,” but the complaint would provide a further statement to identify the type of products involved in plain English such as mobile devices, tablets, or computers.

(b) *Submissions of articles as exhibits.* At the time the complaint is filed, if practicable, the complainant shall submit both the domestic article and exemplary imported articles that are the subject of the complaint.

(c) *Additional material to accompany each patent-based complaint.* There shall accompany the submission of each complaint based upon the alleged unauthorized importation or sale of an article covered by, or produced under a process covered by, the claims of a valid U.S. patent the following:

(1) One (1) certified copy of the U.S. Patent and Trademark Office prosecution history for each involved U.S. patent, plus three additional copies thereof; and

(2) One (1) copy of the prosecution histories of any priority applications for each involved U.S. patent.

(d) *Additional material to accompany each registered trademark-based complaint.* There shall accompany the submission of each complaint based upon the alleged unauthorized importation or sale of an article covered by a federally registered trademark, one certified copy of the Federal registration

and three additional copies, and one certified copy of the prosecution history for each federally registered trademark.

(e) *Additional material to accompany each complaint based on a non-federally registered trademark.* There shall accompany the submission of each complaint based upon the alleged unauthorized importation or sale of an article covered by a non-federally registered trademark the following:

(1) A detailed and specific description of the alleged trademark;

(2) Information concerning prior attempts to register the alleged trademark; and

(3) Information on the status of current attempts to register the alleged trademark.

(f) *Additional material to accompany each copyright-based complaint.* There shall accompany the submission of each complaint based upon the alleged unauthorized importation or sale of an article covered by a copyright one certified copy of the Federal registration and three additional copies.

(g) *Additional material to accompany each registered mask work-based complaint.* There shall accompany the submission of each complaint based upon the alleged unauthorized importation or sale of a semiconductor chip in a manner that constitutes infringement of a federally registered mask work, one certified copy of the Federal registration and three additional copies.

(h) *Additional material to accompany each vessel hull design-based complaint.* There shall accompany the submission of each complaint based upon the alleged unauthorized importation or sale of an article covered by a vessel hull design, one certified copy of the Federal registration (including all deposited drawings, photographs, or other pictorial representations of the design), and three additional copies.

(i) *Initial disclosures.* Complainant shall serve on each respondent represented by counsel who has agreed to be bound by the terms of the protective order one copy of each document submitted with the complaint pursuant to paragraphs (c) through (h) of this section within five days of service of a notice of appearance and agreement to be bound by the terms of the protective order.

(j) *Duty to supplement complaint.* Complainant shall supplement the complaint prior to institution of an investigation if complainant obtains information upon the basis of which complainant knows or reasonably should know that a material legal or

factual assertion in the complaint is false or misleading.

■ 34. Amend § 210.13 by revising the first sentence of paragraph (b) introductory text to read as follows:

§ 210.13 The response.

* * * * *

(b) * * * In addition to conforming to the requirements of §§ 210.4 and 210.5, each response shall be under oath and signed by respondent or by respondent's duly authorized officer, attorney, or corporate representative with the name, address, email address, and telephone number of the respondent and any such officer, attorney, or corporate representative given on the first page of the response. * * *

* * * * *

■ 35. Amend § 210.14 by:

■ a. Revising the section heading;

■ b. Adding introductory text; and

■ c. Revising paragraphs (a), (b)(1), and (g).

The revisions and addition read as follows:

§ 210.14 Amendments to pleadings and notice; supplemental submissions; counterclaims; severance and consolidation of investigations.

Amended complaints, exhibits, and supplements thereto, filed under this section shall be filed with the Secretary pursuant to § 210.4.

(a) *Preinstitution amendments.* The complaint may be amended at any time prior to the institution of the investigation. Any amendment that introduces an additional unfair act or additional respondent shall be in the form of an amended complaint that complies with the requirements of § 210.12(a). If, prior to institution, the complainant seeks to amend a complaint to add a respondent or to assert an additional unfair act not in the original complaint, including asserting a new patent or patent claim, then the complaint shall be treated as if it had been filed on the date the amendment is filed for purposes of §§ 210.8(b) and (c), 210.9, and 210.10(a).

(b) * * *

(1) After an investigation has been instituted, the complaint or notice of investigation may be amended only by leave of the Commission for good cause shown and upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation. A motion for amendment must be made to the presiding administrative law judge. Complainant shall serve one (1) copy of any motion to amend the complaint and notice of investigation to name an additional respondent after institution

on the proposed respondent and on all other respondents. If the proposed amendment of the complaint would introduce an additional unfair act or an additional respondent, the motion shall be accompanied by a proposed amended complaint that complies with the requirements of § 210.12(a). If the proposed amendment of the complaint would require amending the notice of investigation, the presiding administrative law judge may grant the motion only by filing with the Commission an initial determination. All other dispositions of such motions shall be by order. Respondents shall have ten (10) calendar days from the date of service of an order granting the motion or, in cases where the amendment requires amending the notice of investigation, a Commission determination affirming or not reviewing an initial determination granting the motion, to file a written response to the amended complaint and/or notice of investigation. The contents of such response shall be governed by § 210.13(b).

(i) If the amended complaint and notice of investigation name an additional respondent, the Commission shall serve one (1) copy of the amended complaint and notice of investigation on the additional respondent and the embassies of the relevant foreign countries, in the manner specified in § 201.16(b) of this chapter, after a Commission determination affirming or not reviewing an initial determination granting the motion.

(ii) By close of business the next business day following official receipt of the amended complaint, Complainant must deliver copies to the Secretary for service by the Secretary as follows:

(A) For each proposed additional respondent, one (1) true paper copy of the nonconfidential version of the amended complaint and one (1) true paper copy of the confidential version of the amended complaint, if any, along with one (1) true copy of the nonconfidential exhibits and one (1) true copy of the confidential exhibits in electronic form on a CD ROM, DVD, or other portable electronic media approved by the Secretary; and

(B) For the government of the foreign country in which each proposed respondent is located as indicated in the amended complaint, one (1) true paper copy of the nonconfidential version of the complaint shall be filed.

(iii) Unless otherwise ordered in the notice of investigation or by the presiding administrative law judge, an additional respondent named in the amended complaint and notice of investigation shall have twenty (20)

days from the date of service of the amended complaint and notice of investigation to file a written response in the manner specified in § 210.13.

* * * * *

(g) *Consolidation of investigations.*

The Commission may consolidate two or more investigations. If the investigations are currently before the same presiding administrative law judge, the administrative law judge may consolidate the investigations. If the investigations are not currently before the same presiding administrative law judge, the chief administrative law judge may consolidate the investigations and assign an administrative law judge to preside over the consolidated investigations. The investigation number in the caption of the consolidated investigation will include the investigation numbers of the investigations being consolidated. The investigation number in which the matter will be proceeding (the lead investigation) will be the first investigation number named in the consolidated caption.

* * * * *

Subpart D—Motions

■ 36. Amend § 210.15 by revising paragraphs (a)(2) and (c) to read as follows:

§ 210.15 Motions.

(a) * * *

(2) When an investigation or related proceeding is before the Commission, all motions shall be addressed to the Chair of the Commission. All such motions shall be filed with the Secretary and shall be served upon each party. Motions may not be filed with the Commission during preinstitution proceedings except for motions for temporary relief pursuant to § 210.53.

* * * * *

(c) *Responses to motions.* Within ten (10) days after service of any written motions, or within such longer or shorter time as may be designated by the administrative law judge or the Commission, a nonmoving party, or in the instance of a motion to amend the complaint or notice of investigation to name an additional respondent after institution, the proposed respondent, shall respond or may be deemed to have consented to the granting of the relief asked for in the motion. The moving party shall have no right to reply, except as permitted by the administrative law judge or the Commission.

* * * * *

■ 37. Amend § 210.16 by revising paragraphs (b)(1)(i) and (b)(2) and (3) to read as follows:

§ 210.16 Default.

* * * * *

(b) * * *

(1)(i) If a respondent has failed to respond or appear in the manner described in paragraph (a)(1) of this section, a party may file a motion for, or the administrative law judge may issue *sua sponte*, an order directing the respondent to show cause why it should not be found in default.

* * * * *

(2) Any party may file a motion for issuance of, or the administrative law judge may issue *sua sponte*, an initial determination finding a party in default for abuse of process under § 210.4(c) or failure to make or cooperate in discovery under § 210.33. A motion for a finding of default as a sanction for abuse of process or failure to make or cooperate in discovery shall be granted by initial determination or denied by order.

(3)(i) A proposed respondent may file a notice of intent to default under this section with the administrative law judge at any time before the issuance of the final initial determination.

(ii) Upon the filing of a notice of intent to default under paragraph (b)(3)(i) of this section, the administrative law judge shall issue an initial determination finding the respondent in default without first issuing the show-cause order of paragraph (b)(1)(i) of this section. Such default will be treated in the same manner as any other default under this section.

* * * * *

§ 210.17 [Amended]

■ 38. Amend § 210.17 by removing paragraph (h) and designating the undesignated paragraph at the end of the section as paragraph (h).

■ 39. Amend § 210.18 by revising paragraph (b) to read as follows:

§ 210.18 Summary determinations.

* * * * *

(b) *Opposing affidavits; oral argument; time and basis for determination.* Any nonmoving party may file opposing affidavits within ten (10) days after service of the motion for summary determination. At the discretion of the administrative law judge or at the request of any party, the administrative law judge may set the matter for oral argument and call for the submission of briefs or memoranda. The determination sought by the moving

party shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.

* * * * *

■ 40. Amend § 210.20 by revising paragraph (a) to read as follows:

§ 210.20 Declassification of confidential information.

(a) Any party may move to declassify documents (or portions thereof) that have been designated confidential by the submitter but that do not satisfy the confidentiality criteria set forth in § 201.6(a) of this chapter. All such motions, whether brought at any time during the investigation or after conclusion of the investigation shall be addressed to and ruled upon by the presiding administrative law judge, or if the investigation is not before a presiding administrative law judge, by the chief administrative law judge or such administrative law judge as the chief administrative law judge may designate.

* * * * *

■ 41. Amend § 210.25 by revising paragraphs (d) and (f) to read as follows:

§ 210.25 Sanctions.

* * * * *

(d) If an administrative law judge's order concerning sanctions is issued before the initial determination concerning violation of section 337 of the Tariff Act of 1930 or termination of the investigation, it may be appealed under § 210.24(b)(1) with leave from the administrative law judge, if the requirements of that section are satisfied. If the order is issued concurrently with the initial determination, or if the administrative law judge denies leave to appeal a previously issued order under § 210.24(b)(1), the order may be appealed by filing a petition meeting the requirements of § 210.43(b) within the same time period specified in § 210.43(a) in which a petition for review of the initial determination terminating the investigation may be filed. The Commission will determine whether to adopt the order after disposition of the initial determination concerning violation of section 337 or termination of the investigation.

* * * * *

(f) If a motion for sanctions is filed with the administrative law judge during an investigation, the administrative law judge may defer

adjudication of the motion until after the administrative law judge has issued a final initial determination concerning violation of section 337 of the Tariff Act of 1930 or termination of investigation. If the administrative law judge defers adjudication in such a manner, the administrative law judge's ruling on the motion for sanctions must be in the form of a recommended determination and shall be issued no later than thirty (30) days after issuance of the Commission's final determination on violation of section 337 or termination of the investigation. Parties may submit comments on the recommended determination within ten (10) days from the service of the recommended determination. Parties may submit responses thereto within five (5) business days from service of any comments.

Subpart E—Discovery and Compulsory Process

■ 42. Amend § 210.27 by:

- a. Revising and republishing paragraph (b);
- b. Revising paragraph (e)(2)(ii); and
- c. Redesignating paragraph (e)(5)(iii) as paragraph (e)(5)(ii)(C).

The revisions read as follows:

§ 210.27 General provisions governing discovery.

* * * * *

(b) *Scope of discovery.* Regarding the scope of discovery for the temporary relief phase of an investigation, see § 210.61 and the limitations of paragraph (d) of this section. For the permanent relief phase of an investigation, unless otherwise ordered by the administrative law judge, a party may obtain discovery, subject to the limitations of paragraph (d) of this section, regarding any matter, not privileged, that is proportional to the needs of the investigation and relevant to the following:

(1) The claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things;

(2) The identity and location of persons having knowledge of any discoverable matter;

(3) The appropriate remedy for a violation of section 337 of the Tariff Act of 1930 (see § 210.42(a)(1)(ii)(A)); or

(4) The appropriate bond for the respondents, under section 337(j)(3) of the Tariff Act of 1930, during Presidential review of the remedial order (if any) issued by the Commission (see § 210.42(a)(1)(ii)(B)).

* * * * *

(e) * * *

(2) * * *

(ii) If there exists a disagreement about the basis for the claim of privilege or protection as attorney work product, within seven (7) days of service of the notice, the claimant and the parties shall meet and confer in good faith to resolve the claim of privilege or protection. If, after meeting and conferring there continues to be a disagreement, within five (5) days after the conference, a party may file a motion to compel the production of the document and may, in the motion to compel, use a description of the document from the notice produced under this paragraph (e)(2). In connection with the motion to compel, the party may submit the document *in camera* for consideration by the administrative law judge. The person that produced the document must preserve the document until the claim of privilege or protection is resolved.

* * * * *

■ 43. Amend § 210.28 by:

- a. Revising paragraph (a);
- b. Redesignating paragraphs (b) through (i) as paragraphs (c) through (j);
- c. Adding new paragraph (b); and
- d. Revising newly redesignated paragraph (d), the last sentence of newly redesignated paragraph (e), and newly redesignated paragraphs (g) and (i)(4).

The revisions and addition read as follows:

§ 210.28 Depositions.

(a) *When depositions may be taken.* Following publication in the **Federal Register** of a Commission notice instituting the investigation, any party may take the testimony of any person, including a party, by deposition upon oral examination or written questions. The presiding administrative law judge will determine the permissible dates or deadlines for taking such depositions. Unless stipulated otherwise by the parties, the complainants as a group and the respondents as a group may each take a maximum of twenty (20) fact depositions. If the Office of Unfair Import Investigations is a party, the Commission investigative attorney may take a maximum of ten (10) fact depositions and is permitted to participate in all depositions taken by any parties in the investigation. The presiding administrative law judge may set the maximum number of depositions permitted to be taken by an intervenor. Depositions of party witnesses and non-party witnesses alike shall count towards the limits on fact depositions. A notice for a corporation to designate deponents shall count as only one

deposition and shall include all corporate representatives so designated to respond. The presiding administrative law judge may increase or limit the number of depositions on written motion for good cause shown.

(b) *Duration.* Unless otherwise ordered by the presiding administrative law judge or stipulated by the parties, including, when participating in the investigation, the Commission investigative attorney, a deposition is limited to one (1) day of seven (7) hours. The presiding administrative law judge must allow additional time, in a manner consistent with § 210.27(b) through (d), if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

* * * * *

(d) *Notice of examination.* A party desiring to take the deposition of a person shall give notice in writing to every other party to the investigation. The administrative law judge shall determine the appropriate period for providing such notice. A party upon whom a notice of deposition is served may make objections to a notice of deposition and state the reasons therefor within ten (10) days of service of the notice of deposition. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. A notice may provide for the taking of testimony by telephone or videoconference, but the administrative law judge may, on motion of any party, require that the deposition be taken in the presence of the deponent. The parties may stipulate in writing, or the administrative law judge may upon motion order, that the testimony at a deposition be recorded by other than stenographic means. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(e) * * * See paragraph (j) of this section concerning the effect of errors and irregularities in depositions.

* * * * *

(g) *Service of deposition transcripts on the Commission staff.* The party taking the deposition shall promptly serve one copy of the deposition transcript and exhibits on the Commission investigative attorney.

* * * * *

(i) * * *

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part that ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

* * * * *

■ 44. Amend § 210.30 by revising paragraphs (a)(1) and (b)(2) to read as follows:

§ 210.30 Requests for production of documents and things and entry upon land.

(a) * * *

(1) To produce and permit the party making the request, or someone acting on that party's behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained), or to inspect and copy, test, or sample any tangible things that are in the possession, custody, or control of the party upon whom the request is served; or

* * * * *

(b) * * *

(2) The party upon whom the request is served shall serve a written response within ten (10) days or the time specified by the administrative law judge. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest. The party submitting the request may move for an order under § 210.33(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request.

* * * * *

■ 45. Amend § 210.31 by revising paragraphs (b) through (d) to read as follows:

§ 210.31 Requests for admission.

* * * * *

(b) *Answers and objections to requests for admissions.* A party answering a request for admission shall repeat the request for admission immediately preceding the answer to the request. The

matter may be deemed admitted unless, within ten (10) days or the period specified by the administrative law judge, the party to whom the request is directed serves upon the party requesting the admission a sworn written answer or objection addressed to the matter. If objection is made, the reason therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter as to which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party has made reasonable inquiry and states that the information known to or readily obtainable by that party is insufficient to enable the party to admit or deny. A party who considers that a matter as to which an admission has been requested presents a genuine issue for a hearing may not object to the request on that ground alone; the party may deny the matter or set forth reasons why it cannot be admitted or denied.

(c) *Sufficiency of answers.* The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objecting party sustains the burden of showing that the objection is justified, the administrative law judge shall order that an answer be served. If the administrative law judge determines that an answer does not comply with the requirements of this section, the administrative law judge may order either that the matter is admitted or that an amended answer be served. The administrative law judge may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to a hearing under this part.

(d) *Effect of admissions; withdrawal or amendment of admission.* Any matter admitted under this section may be conclusively established unless the administrative law judge on motion permits withdrawal or amendment of the admission. The administrative law judge may permit withdrawal or amendment when the presentation of the issues of the investigation will be subserved thereby and the party who obtained the admission fails to satisfy the administrative law judge that withdrawal or amendment will prejudice that party in maintaining its

position on the issue of the investigation. Any admission made by a party under this section is for the purpose of the pending investigation and any related proceeding as defined in § 210.3.

■ 46. Amend § 210.32 by revising paragraphs (a)(3) and (c)(2) to read as follows:

§ 210.32 Subpoenas.

(a) * * *

(3) The administrative law judge shall rule on all applications filed under paragraph (a)(1) or (2) of this section and may issue subpoenas when warranted. The administrative law judge shall also rule on any motion seeking foreign judicial assistance to obtain testimony or documents outside the United States.

* * * * *

(c) * * *

(2) *Ruling.* Such applications shall be ruled upon by the administrative law judge, who may issue such subpoenas when warranted. To the extent that the motion is granted, the administrative law judge shall provide such terms and conditions for the production of the material, the disclosure of the information, or the appearance of the official or employee as may appear necessary and appropriate for the protection of the public interest.

* * * * *

■ 47. Amend § 210.33 by revising paragraphs (b) introductory text and (b)(3) and (6) to read as follows:

§ 210.33 Failure to make or cooperate in discovery; sanctions.

* * * * *

(b) *Non-monetary sanctions for failure to comply with an order compelling discovery.* The administrative law judge may issue, based on a party's motion or *sua sponte*, non-monetary sanctions for failure to comply with an order compelling discovery. Such failure to comply may include failure of a party, or an officer or corporate representative of a party, to comply with an oral or written order including, but not limited to, an order for the taking of a deposition or the production of documents, an order to answer interrogatories, an order issued pursuant to a request for admissions, or an order to comply with a subpoena. Any such sanction may be ordered in the course of the investigation or concurrently with the administrative law judge's final initial determination on violation. The administrative law judge may take such action in regard to a failure to comply with an order compelling discovery as

is just, including, but not limited to the following:

* * * * *

(3) Rule that the party may not introduce into evidence or otherwise rely upon testimony by the party, officer, or corporate representative, or documents, or other material in support of the party's position in the investigation;

* * * * *

(6) Order any other non-monetary sanction available under Rule 37(b) of the Federal Rules of Civil Procedure.

* * * * *

■ 48. Amend § 210.34 by revising paragraphs (a) introductory text, (c)(2), (d) introductory text, and (d)(5) and redesignating "Note to paragraph (d)" as "Note 1 to paragraph (d)".

The revisions read as follows:

§ 210.34 Protective orders; reporting requirement; sanctions and other actions.

(a) *Issuance of protective order.* Upon motion by a party or by the person from whom discovery is sought or by the administrative law judge *sua sponte*, and for good cause shown, the administrative law judge may make any order that may appear necessary and appropriate for the protection of the public interest or that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

* * * * *

(c) * * *

(2) If the breach occurs while the investigation is before an administrative law judge, any determination on sanctions of the type enumerated in paragraphs (c)(3)(i) through (iv) of this section shall be in the form of a recommended determination. The Commission may then consider both the recommended determination and any related orders in making a determination on sanctions. When the motion is addressed to the administrative law judge for sanctions of the type enumerated in paragraph (c)(3)(v) of this section, the administrative law judge shall grant or deny a motion by issuing an order.

* * * * *

(d) *Reporting requirement.* Each person who is subject to a protective order issued pursuant to paragraph (a) of this section shall report in writing to the Commission immediately upon learning that confidential business information disclosed to that person pursuant to the protective order is the subject of:

* * * * *

(5) Any other written request, if the request or order seeks disclosure, by that person or any other person, of the subject confidential business information to a person who is not, or may not be, permitted access to that information pursuant to either a Commission protective order or § 210.5(b).

* * * * *

Subpart F—Prehearing Conferences and Hearings

■ 49. Amend § 210.35 by revising paragraph (a) introductory text to read as follows:

§ 210.35 Prehearing conferences.

(a) *When appropriate.* The administrative law judge in any investigation may direct counsel or other representatives for all parties to meet with the administrative law judge for one or more conferences to consider any or all of the following:

* * * * *

■ 50. Amend § 210.37 by revising paragraph (g) to read as follows:

§ 210.37 Evidence.

* * * * *

(g) *Excluded evidence.* When an objection to a question propounded to a witness is sustained, the examining party may make a specific offer of what that party expects to prove by the answer of the witness, or the administrative law judge may as a matter of discretion receive and report the evidence in full. Rejected exhibits, adequately marked for identification, shall be retained with the record so as to be available for consideration by any reviewing authority.

■ 51. Amend § 210.38 by revising paragraph (d) to read as follows:

§ 210.38 Record.

* * * * *

(d) *Certification of record.* Any record created, including all physical exhibits entered into evidence or such photographic reproductions thereof as the administrative law judge approves, shall be certified to the Commission by the administrative law judge at the time the administrative law judge files an initial determination, or a recommended determination, or at such earlier time as the Commission may order.

■ 52. Revise § 210.40 to read as follows:

§ 210.40 Briefs and notices of supplemental authority.

(a) At the time a motion for summary determination under § 210.18(a) or a motion for termination under § 210.21(a) is made, or when it is found

that a party is in default under § 210.16, or at the close of the reception of evidence in any hearing held pursuant to this part (except as provided in § 210.63), or within a reasonable time thereafter fixed by the administrative law judge, any party may file briefs in support of that party's positions, in the form specified by the administrative law judge, for the administrative law judge's consideration. Such briefs shall be in writing, shall be served upon all parties in accordance with § 210.4(g), and shall contain adequate references to the record and the authorities on which the submitter is relying.

(b) If pertinent and significant authorities come to a party's attention after the party's brief has been filed but before the final initial determination has issued, the party may promptly advise the administrative law judge by filing a written notice of supplemental authority, no more than two (2) double-spaced pages in length. The notice must be served on all other parties and must describe the relevance of the supplemental authority, with reference to specific pages in either the party's briefs or the transcript of the evidentiary hearing. Any other party may file a response of no more than two (2) double-spaced pages within five (5) business days after the date of service of the notice of supplemental authority.

Subpart G—Determinations and Actions Taken

■ 53. Amend § 210.42 by:

■ a. Revising paragraphs (c)(1) and (h)(3);

■ b. Removing paragraph (h)(5);

■ c. Redesignating paragraph (h)(6) as paragraph (h)(5) and revising it; and

■ d. Adding new paragraph (h)(6).

The revisions and addition read as follows:

§ 210.42 Initial determinations.

* * * * *

(c) * * *

(1) The administrative law judge shall grant the following types of motions by issuing an initial determination or shall deny them by issuing an order: a motion to amend the complaint or notice of investigation pursuant to § 210.14(b); a motion for a finding of default pursuant to §§ 210.16 and 210.17; a motion for summary determination pursuant to § 210.18; a motion for intervention pursuant to § 210.19; a motion for termination pursuant to § 210.21; a motion to suspend an investigation pursuant to § 210.23; or a motion to set a target date for an original investigation exceeding 16 months pursuant to § 210.51(a)(1); or a motion to set a target

date for an enforcement proceeding exceeding twelve (12) months pursuant to § 210.51(a)(2).

* * * *

(h) * * *

(3) An initial determination filed pursuant to paragraph (c)(1) of this section shall become the determination of the Commission thirty (30) days after the date of service of the initial determination, except as provided for in paragraph (h)(5) of this section, unless the Commission, within thirty (30) days after the date of such service shall have ordered review of the initial determination or certain issues therein or by order has changed the effective date of the initial determination.

* * * *

(5) The disposition of an initial determination filed pursuant to paragraph (c)(1) of this section which grants a motion for summary determination pursuant to § 210.18 that would terminate the investigation in its entirety if it were to become the Commission's final determination, shall become the final determination of the Commission forty-five (45) days after the date of service of the initial determination, unless the Commission has ordered review of the initial determination or certain issues therein, or by order has changed the effective date of the initial determination.

(6) The disposition of an initial determination filed pursuant to paragraph (c)(2) of this section, concerning possible forfeiture or return of a respondent's bonds as governed by § 210.50(d) or possible forfeiture or return of a complainant's temporary relief bond as governed § 210.70(c), shall become the final determination of the Commission forty-five (45) days after the date of service of the initial determination, unless the Commission has ordered review of the initial determination or certain issues therein, or by order has changed the effective date of the initial determination.

* * * *

■ 54. Amend § 210.43 by revising paragraph (a)(1) to read as follows:

§ 210.43 Petitions for review of initial determinations on matters other than temporary relief.

(a) * * *

(1) Except as provided in paragraph (a)(2) of this section, any party to an investigation may request Commission review of an initial determination issued under § 210.42(a) or (c), § 210.50(d)(3), § 210.70(c), or § 210.75(a)(3) by filing a petition with the Secretary. A petition for review of an initial determination issued under

§ 210.42(a)(1) and a petition for review of any sanctions order issued under § 210.25(d) must be filed within twelve (12) days after service of the initial determination or order. A petition for review of an initial determination issued under § 210.42(a)(3) must be filed within five (5) business days after service of the initial determination. A petition for review of an initial determination issued under § 210.42(c) that terminates the investigation in its entirety on summary determination, or an initial determination issued under § 210.42(a)(2), § 210.50(d)(3), § 210.70(c), or § 210.75(a)(3), must be filed within ten (10) days after service of the initial determination. Petitions for review of all other initial determinations under § 210.42(c) must be filed within five (5) business days after service of the initial determination. A petition for review of an initial determination issued under § 210.50(d)(3) or § 210.70(c) must be filed within ten (10) days after service of the initial determination.

* * * *

■ 55. Amend § 210.45 by revising paragraph (c) to read as follows:

§ 210.45 Review of initial determinations on matters other than temporary relief.

* * * *

(c) *Determination on review.* On review, the Commission may affirm, reverse, modify, vacate, or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge. In addition, the Commission may take no position on specific issues or portions of the initial determination of the administrative law judge. The Commission also may make any findings or conclusions that in its judgment are proper based on the record in the proceeding. If the Commission's determination on review terminates the investigation in its entirety, a notice will be published in the **Federal Register**.

■ 56. Revise § 210.48 to read as follows:

§ 210.48 Disposition of petitions for reconsideration.

The Commission may affirm, reverse, modify, or vacate its determination, in whole or part, including any action ordered by it to be taken thereunder. When appropriate, the Commission may remand to the administrative law judge via an order, specifying any necessary additional findings, determinations, or recommendations.

■ 57. Amend § 210.49 by revising paragraph (d) to read as follows:

§ 210.49 Implementation of Commission action.

* * * *

(d) *Finality of affirmative Commission action.* If the President does not disapprove the Commission's action within a 60-day period beginning the day after a copy of the Commission's action is delivered to the President, or if the President notifies the Commission before the close of the 60-day period that the President approves the Commission's action, such action shall become final the day after the close of the 60-day period or the day the President notifies the Commission of the President's approval, as the case may be.

* * * *

■ 58. Amend § 210.51 by revising paragraphs (a) introductory text and (a)(2) to read as follows:

§ 210.51 Period for concluding investigation.

(a) *Permanent relief.* Within forty-five (45) days after institution of an original investigation as to whether there is a violation of section 337 or an investigation that is an enforcement proceeding, the administrative law judge shall issue an order setting a target date for completion of the investigation. After the target date has been set, it can be modified by the administrative law judge for good cause shown before the investigation is certified to the Commission or by the Commission after the investigation is certified to the Commission.

* * * *

(2) *Enforcement proceedings.* If the target date does not exceed twelve (12) months from the date of institution of the enforcement proceeding, the order of the administrative law judge shall be final and not subject to interlocutory review. If the target date exceeds twelve (12) months, the order of the administrative law judge shall constitute an initial determination. Any extension of the target date beyond twelve (12) months shall be by initial determination.

* * * *

Subpart H—Temporary Relief

■ 59. Revise § 210.63 to read as follows:

§ 210.63 Briefs.

The administrative law judge shall determine whether and, if so, to what extent the parties shall be permitted to file briefs under § 210.40 concerning the issues involved in adjudication of the motion for temporary relief.

■ 60. Revise § 210.65 to read as follows:

§ 210.65 Certification of the record.

When the administrative law judge issues an initial determination concerning temporary relief pursuant to § 210.66(a), the administrative law judge shall also certify to the Commission the record upon which the initial determination is based.

■ 61. Amend § 210.66 by revising paragraphs (c) and (f) to read as follows:

§ 210.66 Initial determination concerning temporary relief; Commission action thereon.

* * * * *

(c) The Commission will not modify, reverse, or vacate an initial determination concerning temporary relief unless the Commission finds that a finding of material fact is clearly erroneous, that the initial determination contains an error of law, or that there is a policy matter warranting discussion by the Commission. All parties may file written comments concerning any clear error of material fact, error of law, or policy matter warranting such action by the Commission. Such comments must be limited to thirty-five (35) pages in an ordinary investigation and forty-five (45) pages in a “more complicated” investigation. The comments must be filed no later than seven (7) calendar days after issuance of the initial determination in an ordinary case and ten (10) calendar days after issuance of the initial determination in a “more complicated” investigation. In computing the aforesaid 7-day and 10-day deadlines, intermediary Saturdays, Sundays, and Federal holidays shall be included. If the initial determination is issued on a Friday, however, the filing deadline for comments shall be measured from the first business day after issuance. If the last day of the filing period is a Saturday, Sunday, or Federal holiday as defined in § 201.14(a) of this chapter, the filing deadline shall be extended to the next business day. The parties shall serve their comments on other parties by messenger, overnight delivery, or equivalent means.

* * * * *

(f) If the Commission determines to modify, reverse, or vacate the initial determination, the Commission will issue a notice and, if appropriate, a Commission opinion. If the Commission does not modify, reverse, or vacate the administrative law judge’s initial determination within the time provided under paragraph (b) of this section, the initial determination will automatically become the determination of the Commission. Notice of the Commission’s determination concerning the initial determination will be issued on the statutory deadline for

determining whether to grant temporary relief, or as soon as possible thereafter, and will be served on the parties. Notice of the determination will be published in the **Federal Register** if the Commission’s disposition of the initial determination has resulted in a determination that there is reason to believe that section 337 has been violated and a temporary remedial order is to be issued. If the Commission determines (either by reversing or modifying the administrative law judge’s initial determination, or by adopting the initial determination) that the complainant must post a bond as a prerequisite to the issuance of temporary relief, the Commission may issue a supplemental notice setting forth conditions for the bond if any (in addition to those outlined in the initial determination) and the deadline for filing the bond with the Commission.

■ 62. Amend § 210.67 by revising paragraph (a) to read as follows:

§ 210.67 Remedy, the public interest, and bonding.

* * * * *

(a) While the motion for temporary relief is before the administrative law judge, the administrative law judge may compel discovery on matters relating to remedy, the public interest and bonding (as provided in § 210.61). The administrative law judge also is authorized to make findings pertaining to the public interest, as provided in § 210.66(a). Such findings may be superseded, however, by Commission findings on that issue as provided in paragraph (c) of this section.

* * * * *

Subpart I—Enforcement Procedures and Advisory Opinions

■ 63. Amend § 210.75 by revising paragraphs (a)(1) introductory text and (a)(1)(i)(B) and (C) and adding paragraphs (a)(1)(i)(D) and (a)(1)(v) to read as follows:

§ 210.75 Proceedings to enforce exclusion orders, cease and desist orders, consent orders, and other Commission orders.

(a) * * *

(1) The Commission may institute an enforcement proceeding upon the filing of an enforcement complaint pursuant to §§ 210.4 and 210.8(a) by the complainant in the original investigation or the complainant’s successor in interest, by the Office of Unfair Import Investigations, or by the Commission. Notwithstanding § 210.8(a)(1)(ii), no paper copies of enforcement complaints or exhibits thereto are required for the government

of the foreign country in which each alleged violator is located. If a proceeding is instituted, the Commission shall publish in the **Federal Register** a notice of institution and shall serve copies of the nonconfidential version the enforcement complaint, the nonconfidential exhibits, and the notice of investigation upon each alleged violator. Within fifteen (15) days after the date of service of such a complaint, the named respondent shall file a response to it.

(i) * * *

(B) The filing party requests that the Commission postpone the determination on whether to institute an investigation;

(C) The filing party withdraws the complaint; or

(D) The complaint or any exhibits or attachments thereto contain excessive designations of confidentiality that are not warranted under § 201.6(a) of this chapter and § 210.5.

* * * * *

(v) If the Commission determines that the complaint or any exhibits or attachments thereto contain excessive designations of confidentiality that are not warranted under § 201.6(a) of this chapter and § 210.5, the Commission may require the complainant to file new nonconfidential versions of the aforesaid submissions in accordance with § 210.4(f)(7)(i) and may determine that the thirty (30) day period for deciding whether to institute an investigation shall begin to run anew from the date the new nonconfidential versions are filed with the Commission in accordance with § 210.4(f)(7)(i).

* * * * *

■ 64. Amend § 210.76 by revising the paragraph (a) heading and paragraphs (a)(1) and (3) to read as follows:

§ 210.76 Modification or rescission of exclusion orders, cease and desist orders, consent orders, and seizure and forfeiture orders.

(a) *Petitions for modification or rescission of exclusion orders, cease and desist orders, consent orders, and seizure and forfeiture orders.* (1) Whenever any person believes that changed conditions of fact or law, or the public interest, require that an exclusion order, cease and desist order, consent order, or seizure and forfeiture order be modified or rescinded, in whole or in part, such person may file a petition, pursuant to section 337(k)(1) of the Tariff Act of 1930, requesting that the Commission make a determination that the conditions which led to the issuance of an exclusion order, cease and desist order, consent order, or seizure and

forfeiture order no longer exist. The Commission may also on its own initiative consider such action. The petition shall state the changes desired and the changed circumstances or public interest warranting such action, shall include materials and argument in support thereof, and shall be served on all parties to the investigation in which the exclusion order, cease and desist order, consent order, or seizure and forfeiture order was issued. Any person may file a response to the petition within ten (10) days of service of the petition. If the Commission makes such a determination, it shall notify the

Secretary of the Treasury and U.S. Customs and Border Protection.
* * * * *
(3) If the petition requests modification or rescission of an order issued pursuant to section 337(d), (e), (f), (g), or (i) of the Tariff Act of 1930 on the basis of a licensing or other settlement agreement, the petition shall contain copies of the licensing or other settlement agreements, any supplemental agreements, any documents referenced in the petition or attached agreements, and a statement that there are no other agreements, written or oral, express or implied

between the parties concerning the subject matter of the investigation. If the licensing or other settlement agreement contains confidential business information within the meaning of § 201.6(a) of this chapter, a copy of the agreement with such information deleted shall accompany the petition. On motion for good cause shown, the administrative law judge or the Commission may limit the service of the agreements to the settling parties and the Commission investigative attorney.
* * * * *
■ 65. Revise appendix A to part 210 to read as follows:

APPENDIX A TO PART 210—ADJUDICATION AND ENFORCEMENT

Initial determination concerning:	Petitions for review due:	Response to petitions due:	Commission deadline for determining whether to review the initial determination:
1. Violation § 210.42(a)(1)	12 days from service of the initial determination.	8 days from service of any petition	60 days from service of the initial determination (on private parties).
2. Summary initial determination that would terminate the investigation if it became the Commission's final determination § 210.42(c)(1).	10 days from service of the initial determination.	5 business days from service of any petition	45 days from service of the initial determination (on private parties).
3. Other matters § 210.42(c)(1)	5 business days from service of the initial determination.	5 business days from service of any petition	30 days from service of the initial determination (on private parties).
4. Declassify information § 210.42(a)(2).	10 days from service of the initial determination.	5 business days from service of any petition	45 days from service of the initial determination (on private parties).
5. Potentially dispositive issues § 210.42(a)(3).	5 business days from service of the initial determination.	5 business days from service of any petition	30 days from service of the initial determination (on private parties).
6. Forfeiture or return of respondents' bond § 210.50(d)(3).	10 days from service of the initial determination.	5 business days from service of any petition	45 days from service of the initial determination (on private parties).
7. Forfeiture or return of complainant's temporary relief bond § 210.70(c).	10 days from service of the initial determination.	5 business days from service of any petition	45 days from service of the initial determination (on private parties).
8. Enforcement proceedings § 210.75(a)(3).	10 days from service of the enforcement initial determination.	5 business days from service of any petition	45 days from service of the enforcement initial determination (on private parties).

By order of the Commission.
Issued: December 20, 2024.
Lisa Barton,
Secretary to the Commission.
[FR Doc. 2024–31242 Filed 1–2–25; 8:45 am]
BILLING CODE 7020–02–P

POSTAL SERVICE

39 CFR Part 20

International Return Receipt

AGENCY: Postal Service™.
ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM®), and Notice 123, *Price List*, to reflect changes to international Return Receipt as established by the

Governors of the United States Postal Service.
DATES: *Effective:* January 1, 2025.
FOR FURTHER INFORMATION CONTACT: Dale Kennedy at 202–268–6592 or Kathy Frigo at 202–268–4178.
SUPPLEMENTARY INFORMATION: On October 10, 2024, the Postal Service filed a notice in PRC Docket No. MC2025–58, which the PRC favorably reviewed on December 2, 2024, in Order No. 8179, regarding the termination of international Return Receipt as an extra service for Priority Mail International and First-Class Package International Service, effective January 1, 2025, although international Return Receipt will continue to be eligible when combined with registered letters and flats sent as First-Class Mail International.

The Postal Service hereby adopts the described changes to *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM), which is incorporated by reference in the Code of Federal Regulations.
We will publish an appropriate amendment to 39 CFR part 20 to reflect these changes.
List of Subjects in 39 CFR Part 20
Administrative practice and procedure, Postal Service.
Accordingly, the Postal Service amends *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM), incorporated by reference in the Code of Federal Regulations as follows (see 39 CFR 20.1):

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM) as follows:

1 International Mail Services

* * * * *

140 International Mail Categories**141 Definitions**

* * * * *

141.4 Priority Mail International

[Revise the last sentence of the first paragraph to read as follows (removing “and return receipt service”):]

* * * At the sender's option, extra services, such as additional merchandise insurance coverage, may be added on a country-specific basis.

* * * * *

141.6 First-Class Package International Service

[Revise the last sentence of the text to read as follows (removing “and return receipt”):]

* * * At the sender's option, extra services, such as Registered Mail, may be added on a country-specific basis.

* * * * *

2 Conditions for Mailing

* * * * *

230 Priority Mail International

* * * * *

232 Eligibility

* * * * *

232.9 Extra Services

* * * * *

[Remove 232.92 in its entirety and renumber current 232.93 as 232.92.]

* * * * *

250 First-Class Package International Service

* * * * *

252 Eligibility

* * * * *

252.5 Extra Services

* * * * *

[Remove 252.53 in its entirety and renumber current 252.54 as 252.53.]

* * * * *

3 Extra Services

* * * * *

320 Insurance

* * * * *

322 Priority Mail Express International Service

* * * * *

[Remove 322.4 in its entirety.]

* * * * *

323 Priority Mail International Insurance

* * * * *

[Remove 323.4 in its entirety and renumber current 323.5 through 323.7 as 323.4 through 323.6.]

* * * * *

330 Registered Mail

* * * * *

334 Processing Requests

* * * * *

334.5 Return Receipt

[Revise the text to read as follows:]

Return receipts can be purchased for First-Class Mail International items with international Registered Mail service to most countries. (See 330 and 340 and Individual Country Listings.)

* * * * *

340 Return Receipt**341 Description**

[Revise the first sentence of the text to read as follows:]

PS Form 2865, *Return Receipt for International Mail* (Avis de Reception), is a pink card that is attached to a First-Class Mail International item when used in conjunction with international Registered Mail service at the time of mailing and that is removed and signed at the point of delivery and returned to the sender.* * *

342 Availability

[Revise the text to read as follows:]

Return receipt service can be purchased only at the time of mailing and is available only for a First-Class Mail International item when used in conjunction with international Registered Mail service. Some countries do not admit return receipts. See Individual Country Listings.

* * * * *

344 Processing Requests**344.1 Form**

* * * * *

344.12 Accepting Clerk's Responsibility

The accepting clerk must:

[Revise item a. to read as follows (removing “insured or”):]

a. Record the return receipt fee on the registered mailing receipt.

* * * * *

7 Treatment of Inbound Mail

* * * * *

750 Extra Services

* * * * *

753 Return Receipt**753.1 Completion of Return Receipt Form**

[Revise the first sentence of the text to read as follows (removing “or insured”):]

Inbound registered mail for which the sender requests advice or confirmation of delivery will be endorsed with the words “AVIS DE RECEPTION” or with the letters “A.R.,” and be accompanied by a light red or pink card similar to PS Form 2865, *Return Receipt for International Mail*. * * *

* * * * *

Individual Country Listings

* * * * *

Extra Services

* * * * *

Return Receipt (340)

[For every country that permits return receipt service (which is every country except Denmark, Iraq, and North Korea, which indicate that return receipt service is “NOT Available,” and also Montenegro, which as shown below is being revised to read “NOT Available”), revise the text to read as follows:]

Fee: Refer to Notice 123, *Price List*, for the applicable price. Available for First-Class Mail International Registered Mail only.

* * * * *

Montenegro

* * * * *

Extra Services

* * * * *

Return Receipt (340)

NOT Available

* * * * *

Colleen Hibbert-Kapler,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2024–31517 Filed 12–31–24; 4:15 pm]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. NHTSA–2024–0093]

RIN 2127–AM13

Anthropomorphic Test Devices, HIII 5TH Percentile Female Test Dummy; Incorporation by Reference

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document revises the chest jacket and spine box specifications for the Hybrid III 5th Percentile Female Test Dummy (HIII–5F). The jacket revisions resolve discrepancies between the jacket specifications in subpart O and jackets available in the field, and ensure a sufficiently low level of variation between jackets fabricated by different manufacturers. The spine box revisions eliminate a source of signal noise caused by fasteners within the box that may become loose during sled or vehicle crash tests. This rulemaking responds to a petition for rulemaking from the Alliance of Automobile Manufacturers.

DATES: *Effective date:* This rule is effective on February 18, 2025.

IBR date: The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register as of February 18, 2025.

Petitions for reconsideration: Petitions for reconsideration for this final rule must be received no later than February 18, 2025.

ADDRESSES: You may submit comments identified by the docket number in the heading of this document or by any of the following methods:

- Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Note that all petitions received will be posted without change to www.regulations.gov, including any personal information provided.

- *Confidential Business Information:* If you wish to submit any information under a claim of confidentiality, you should submit your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR**

FURTHER INFORMATION CONTACT. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a submission containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512). Please see further information in the Regulatory Notices and Analyses section of this preamble.

- *Privacy Act:* The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit www.transportation.gov/individuals/privacy/privacy-act-system-records-notice. In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.transportation.gov/privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

- *Docket:* For access to the docket to read background documents or comments received, go to www.regulations.gov at any time or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Mr. Garry Brock, Office of Crashworthiness Standards; phone: (202) 366–6198. For legal issues, you may contact Ms. K. Helena Sung, Office of Chief Counsel; phone: (202) 366–2992. The mailing address of these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

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I. Executive Summary

This final rule finalizes changes to the Hybrid III 5th percentile adult female (HIII–5F) anthropomorphic test device (ATD or crash test dummy or dummy). The HIII–5F is used in frontal compliance crash tests and air bag static deployment tests, certification to which is required for certain vehicles by Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant crash protection*. The dummy is described in 49 CFR part 572, subpart O.

Among other things, subpart O incorporates by reference several documents that specify the physical make-up of the dummy. This document finalizes changes to the chest jacket and spine box specifications to address issues with the fit and availability of the jacket and a noise artifact from the spine box. Today's rulemaking responds to the Alliance of Automobile Manufacturer's (the Alliance) 2014 petition for rulemaking.¹

Chest Jacket

The chest jacket is a sleeveless foam-filled vinyl zippered jacket that represents human flesh, including female breasts. The chest jacket may need to be replaced because it can shrink or otherwise fall out of specification or wear out with age. Since the introduction of the HIII–5F into part 572 in 2000, none of the jackets that were manufactured met the jacket specifications specified in part 572. Since around 2006, NHTSA, in its own compliance tests, has used the brand of dummy and jacket (either First Technology Safety Systems (FTSS) or Denton ATD (Denton)) used by the

¹ Letter from Scott Schmidt, Alliance, to NHTSA (February 21, 2014). The Alliance consisted of: BMW Group; Chrysler Group LLC; Ford Motor Company; General Motors Company; Jaguar Land Rover; Mazda; Mercedes-Benz USA; Mitsubishi Motors; Porsche; Toyota; Volkswagen Group of America; and Volvo Cars.

vehicle manufacturer to certify the vehicle. However, these FTSS and Denton jackets are no longer being manufactured; manufacturers (or test laboratories) and NHTSA have, or will soon, run out of these jackets. In 2013, SAE² published an information report for the HIII–5F chest jacket, SAE J2921 JAN2013, *H–III5F Chest Jacket Harmonization*, describing a new jacket compatible with FTSS and Denton dummies.

The NPRM proposed to adopt the jacket specifications described in SAE J2921, as well as a few additional specifications. We believed that chest jackets that have been and are being manufactured to the SAE J2921 design would also conform to the proposed specifications. NHTSA also believed that additional specifications were necessary to ensure a sufficient level of uniformity between jackets produced by different manufacturers when other manufacturers enter the market, and to prevent the variances in jacket designs that were problematic in the past from reoccurring. Based on NHTSA's testing, the agency concluded that dummies fitted with chest jackets that satisfy the proposed specifications would perform equivalently to dummies fitted with the FTSS or Denton jackets that were previously used. A benefit of standardized jacket specifications would be that the agency would no longer have to maintain chest jackets of different designs and take steps to match the compliance test jacket with that specified by the vehicle manufacturer, thereby providing more objective test results.

Spine Box

The spine box is the dummy's steel backbone. It is located in the dummy's thorax, which consists of six bands that simulate human ribs. Since the mid-2000s, industry and NHTSA have been aware of a signal noise artifact in the signals from the accelerometers in the thorax during sled and crash tests originating in the spine box. The source of the noise is fasteners that become loose during normal use. In 2011 SAE published an information report for a spine box modification (SAE J2915 AUG2011, *H–III5F Spine Box Update to Eliminate Noise*).

We proposed to adopt the SAE J2915 modification. The proposed revisions would add plates to the side of the spine box, with bolts countersunk into the plate to remove any play from the assembly. The modification would not

affect or change the dummy's performance in any way (other than eliminate the potential for noise). The improved spine box would address a shortcoming in the ATD's design that had to be addressed by end users disassembling the dummy, re-torquing the relevant fasteners by hand before each test, and re-qualifying the dummy as needed. The improved spine box would increase the quality of data and reduce maintenance and testing time.

Summary of Final Rule

NHTSA received comments from Humanetics Innovative Solutions, Inc. (HIS), the Alliance for Automotive Innovation (the Alliance), and Ms. Sial (an individual commenter). All commenters were generally supportive of the NPRM, with a few measurement specification recommendations.

The final rule adopts most of the NPRM's proposed specifications, with minor changes to ensure a sufficiently low level of variation among jackets based on analysis of post-NPRM measurement data and commenters' data. For the jacket, the agency updates the values of some dimensions to reflect more closely the larger pool of measurement data acquired since the NPRM. We also increase the dimensional tolerances in several places because the proposed tolerances were unnecessarily small. Additionally, a limited number of dimensions are revised to become "reference only" dimensions (which are useful during inspections) because the larger pool of data revealed that there were not consistent reference measurement points associated with them. For the spine box, the final rule adjusts the mass specification slightly to reflect a small increase in mass due to the material that is added.

Furthermore, the rule's effective date is 45 days after the final rule's publication date. The final rule change is not intended to impose new requirements on vehicle manufacturers. We believe currently manufactured chest jackets meet the SAE J2921 specifications and meet the finalized specifications. We also believe that the parts to implement the spine box fix are available, as are newly manufactured replacement spine boxes that incorporate the fix. Manufacturers wishing to test with the finalized jacket and spine box should have no difficulty obtaining the necessary parts.

The costs associated with this rulemaking are limited to those associated with acquiring new dummy parts. We conclude that the finalized changes would not necessitate the purchasing of any parts that would not

have been purchased in the normal course of business in the absence of the finalized changes. This final rule is not significant and was not reviewed by the Office of Management and Budget under E.O.12866.

II. Background

a. Rulemaking History

In 2014, the Alliance petitioned NHTSA to incorporate the new SAE jacket into part 572 per SAE Information Report J2921 and revise the spine box as described in SAE Information Report J2915.³ NHTSA subsequently sent a letter to the Alliance asking for clarification on several points. The Alliance responded to NHTSA's request with a supplemental letter dated May 11, 2015.⁴ NHTSA granted this petition.

On December 26, 2019, NHTSA published a NPRM (84 FR 70916) to revise the chest jacket and spine box specifications for the Hybrid III 5th Percentile Female Test Dummy (HIII–5F) set forth in Part 572—

Anthropomorphic Test Devices. NHTSA proposed to adopt the jacket specifications described in SAE J2921, as well as several additional specifications for the jacket's contour that are not contained in SAE J2921.

The NPRM comment period closed on February 24, 2020. HIS requested a ninety-day extension to the NPRM comment period to collect data regarding the proposed additional chest jacket specifications while also ensuring a sufficient sample size.⁵ On June 2, 2020, the agency extended the comment period until August 3, 2020 (85 FR 33617). NHTSA also published a set of instructions on how to record jacket measurements in the rulemaking docket.⁶ The instructions were written for lab technicians to record the jacket measurements. They were the same jacket measurements as those proposed in the NPRM but conveyed in more comprehensible format than in the NPRM. After the extended comment period in August 2020, HIS and the Alliance submitted additional measurement data and recommendations to the NPRM.

After issuing the NPRM, NHTSA continued to collect measurement data on newly purchased jackets to check whether the dimensions and tolerances proposed were being met by SAE jackets already in the field. For the final rule, the agency also examined all

³ Letter from Scott Schmidt, Alliance, to NHTSA (February 21, 2014).

⁴ Letter from Scott Schmidt, Alliance, to NHTSA (May 11, 2015).

⁵ NHTSA–2019–0023–004.

⁶ NHTSA–2019–0023–007.

² The Society of Automotive Engineers (now SAE International). SAE is an organization that develops technical standards based on best practices.

measurement data provided by the commenters.

b. Chest Jacket

The HIII-5F chest jacket is a sleeveless foam-filled vinyl zippered jacket that represents human flesh, including female breasts. The chest jacket is zipped onto the underlying dummy and covers the entire thorax, including the shoulder assembly. The HIII-5F was added to part 572 in 2000.⁷ The HIII-5F is used in frontal compliance crash tests and air bag static deployment tests, certification to which is required for certain vehicles by FMVSS No. 208, *Occupant crash protection*.

The HIII-5F dummy is described in 49 CFR part 572, subpart O. This subpart contains regulatory text describing the qualification procedures and requirements for the dummy. Subpart O also incorporates several other documents by reference. Those documents describe the physical make-up of the dummy, and include a parts list, a set of engineering drawings, and a document entitled, *Procedures for Assembly, Disassembly, and Inspection* (PADI).⁸

The NPRM proposed changes to the chest jacket specifications to address known issues with the shape and availability of the jacket.

Existing Jackets Do Not Meet the Current Part 572 Specifications

The chest jacket, along with the HIII-5F, was developed under the auspices of SAE. When subpart O was created in 2000, jackets for the HIII-5F were being produced solely by FTSS. Soon thereafter, Applied Safety Technologies Corporation, which later became Denton, began to manufacture HIII-5F dummies and jackets.

The jackets FTSS and Denton produced did not conform to all aspects of the part 572 specifications; in addition, jackets produced by each manufacturer differed from those produced by the other.⁹ The differences between the FTSS and Denton jackets, and between those jackets and the part 572 specifications, are the result of a variety of factors. For one, the subpart O jacket drawing, which consists of two sheets, contains errors and ambiguities. The dimensions for the breast locations

are not consistent between the two sheets, and the overall shape is not consistent, either. These inconsistencies and ambiguities contributed to dimensional differences between the FTSS and Denton jackets.

In 2003, FTSS submitted a petition for rulemaking to revise the jacket dimensions to correspond to the dimensions of the jackets then being produced by FTSS.¹⁰ NHTSA denied this petition.¹¹ The agency stated that while dummies with the FTSS and Denton jackets performed somewhat differently from dummies with jackets that conformed with the part 572 specifications, the dimensional differences did not have a significant effect on dummy performance as long as the seat belt was properly positioned.¹²

However, studies of the jacket by Transport Canada and the Alliance in the mid-2000s found that FTSS and Denton dummies performed differently in the types of testing specified in FMVSS No. 208.¹³ FMVSS No. 208 specifies a variety of different dynamic (crash) and static (out-of-position) requirements using the HIII-5F.¹⁴

Development of the SAE J2921 Jacket Specifications (SAE Jacket)

These differences between the FTSS and Denton jackets led SAE, in 2006, to establish a task force to develop a harmonized jacket compatible with both companies' versions of the HIII-5F jacket (for ease of reference, referred to in this document as the "SAE jacket").

In 2010, FTSS and Denton merged to form HIS. The merger meant that HIS became the only significant dummy manufacturer and what had begun as an effort to specify the design of a "harmonized" jacket became an effort for HIS to simply design and produce a jacket that could fit existing Denton and FTSS dummies as well as newly manufactured HIS dummies.

¹⁰ Letter from FTSS to NHTSA (dated December 30, 2003).

¹¹ 71 FR 45427 (August 9, 2006).

¹² *Id.* See also letter from FTSS to NHTSA (August 28, 2006).

¹³ Transport Canada's research found that the FTSS and Denton dummies performed differently with respect to chest deflection in both full-scale rigid barrier crash tests and in out-of-position testing. Suzanne Tylko et al., 2006, *The Effect of Breast Anthropometry on the Hybrid III 5th Female Chest Response*, Stapp Car Crash Journal, Vol. 50 (November 2006), p. 390. The Alliance similarly reported research by vehicle manufacturers. Letter from the Alliance (January 31, 2006), p. 1, 8–9. In 2005 the Alliance presented these issues to NHTSA and documented them in a 2006 letter. See also Tylko et al., 2006, *A Comparison of Hybrid III 5th Female Dummy Chest Responses in Controlled Sled Trials*, SAE Technical Paper Series, 2006-01-0455.

¹⁴ See, e.g., FMVSS No. 208 S15 (rigid barrier test requirements); S25 (out-of-position requirements).

SAE published an information report for the harmonized jacket in 2013 (SAE J2921 JAN2013 *supra*). An update to this information report was published in March 2023 (SAE J2921 MAR2023). This update does not alter any of the technical specifications. The J2921 jacket is currently offered for sale by HIS and JASTI-USA, Inc., the U.S. affiliate of JASTI Co., LLC, a manufacturer of dummies and test equipment headquartered in Japan.

NHTSA Enforcement Policy To Address Chest Jacket Issues

The discrepancies among the available jackets brands (principally from FTSS and Denton) can lead to different compliance test results with different jackets. In 2006, the Alliance requested that NHTSA, in its compliance testing program, use the same dummy brand (Denton or FTSS) the vehicle manufacturer used in its certification of a particular make/model. NHTSA adopted this requested practice.

Recent events render this approach of maintaining both FTSS and Denton jackets obsolete and necessitate further action by NHTSA. After the merger of FTSS and Denton, HIS indicated that it would maintain production of the FTSS and Denton brand versions of the jackets so that they could be used as spare parts on the existing FTSS and Denton dummies.¹⁵ However, in 2015 HIS discontinued production of the original FTSS and Denton chest jacket designs and now sells only the SAE jacket, identified as part number 880105–355–H.¹⁶

Over the past few years, NHTSA has received requests from several vehicle manufacturers for NHTSA to conduct its compliance tests using the SAE jacket. NHTSA has asked manufacturers to identify the jacket (Denton, FTSS or SAE) for NHTSA to use in its compliance testing. However, because chest jackets shrink or otherwise fall out of specification or wear out with age, NHTSA's stock of FTSS and Denton jackets is running out, and NHTSA has only a limited supply. The Alliance has informed NHTSA that its members are facing the same issue. Thus, the issues of jacket availability and which jacket designs are acceptable for use in compliance tests have become more urgent.

¹⁵ The Brand Harmonization of the Hybrid III 5th Small Female Crash Test Dummy 880105–000, The ATD Harmonization Task Group, Humanetics Innovative Solutions, Inc., July 2012.

¹⁶ Identified as part number 880105–355–H. This is the part number of the engineering drawing of the jacket that appears in SAE J2921. Hybrid-III 5th Small Female Dummy, 880105–000–H Brand Harmonized Parts Catalog, Humanetics Innovative Solutions, Inc., August 2018.

⁷ 65 FR 10968 (March 1, 2000).

⁸ These documents can be found in Docket NHTSA–2000–6940 (available at www.regulations.gov).

⁹ Both Transport Canada and the Alliance found dimensional differences between the two brands of jackets. The 2019 NPRM (84 FR 70916) provides more details on the specific differences and manufacturing design choices contributing to the discrepancies.

Testing of the SAE Jacket¹⁷

The development of the SAE jacket included was a preliminary jacket in 2011 and then a final version in 2013. NHTSA and others tested both versions of the SAE jackets to assess ATD performance with the new components.

The studies compared the dimensions of the jackets and evaluated the performance of dummies fitted with the jackets in different tests (sled tests, out-of-position tests, and some of the subpart O qualification tests). The studies found that dummies fitted with SAE-designed jackets (both the 2011 and 2013 versions) performed essentially the same as dummies fitted with pre-existing FTSS and Denton (non-SAE) jackets with respect to dummy injury metrics and other responses (with one exception). While some common refurbishment may be needed when fitting the jacket onto an older dummy, the tests demonstrated that once an older dummy was retrofitted with a new J2921 jacket, all parts on the dummy conformed dimensionally to the proposed subpart O engineering drawings.

Proposed Modifications

In the NPRM, NHTSA proposed to amend the chest jacket specifications in subpart O's regulatory text to incorporate by reference new versions of the drawing package, parts list and PADI. The proposed changes reflect the J2921 jacket design in which the breast contours are blended more gradually into the torso, compared to the current subpart O design where the breast contours are more sharply defined.

NHTSA proposed to adopt the specifications in SAE J2921 (Figures 4–6 in SAE J2921, which are engineering drawings of the SAE jacket design). However, we also proposed adding additional specifications for the jacket's contour that are not contained in SAE J2921. Our proposed additional specifications for the jacket's contour adds breadth, depth, and circumference dimensions at different section levels of the jacket on the main assembly drawing of the dummy (880105–000, Rev. N, Sheet 5). Dimensions are specified for a jacket fitted/worn on a dummy, *i.e.*, measurements would be recorded on the jacket as fitted/worn on a dummy positioned on the same flat-back bench as what is currently shown on 880105–000, Rev. N, Sheet 5. The additional dimensional specifications were intended to define the outer shape of the thorax and to preclude belt

routing discrepancies. The information included additional views of the chest jacket at various cross sections.

In the NPRM, NHTSA tentatively concluded that the proposed jacket specification would ensure uniformity in the form, fit, and function of the HIII–5F. We also tentatively concluded that the proposed jacket specifications would encompass existing jackets that have been built to the SAE J2921 specifications; the proposed specifications were developed in light of such existing jackets.

c. Spine Box

The spine box of the HIII–5F is the dummy's steel backbone. It is located in the dummy's thorax, which consists of six bands that simulate human ribs. The bands are made of spring steel, and a thick layer of graphite is bonded to each band to provide damping when the bands are deflected, thus giving them humanlike properties. On the posterior aspect of the thorax, the bands are affixed to the spine box. The spine box is currently specified in the parts and drawings document in drawings 880105–1000, and SA572–S28 with call-outs in 880105–300 and the PADI (p. 21).

In the mid-2000s, the SAE Task Force began an effort—in parallel with its efforts on the chest jacket—to find and eliminate a source of signal noise that sometimes emanated from the HIII–5F spine box. Alliance members determined that the noise was caused by loosening of six socket head cap screws attaching the spine box to the lower spine. Due to a design shortcoming, repeated crash testing loosened the screws so that they rattled against the inner walls of the through holes. This rattling led to artifacts in the signals of the accelerometers in the thorax during sled and crash tests. The problem affected FTSS and Denton units alike. Testing laboratories have been addressing this problem by disassembling the dummy and inspecting and tightening the screws routinely.

As a long-term solution, SAE developed an alteration to improve the spine box. Specifically, it recommended adding plates to the side of the spine box, with bolts countersunk into the plate to remove any play from the assembly. The alteration prevents the screws from loosening and eliminates the signal noise. NHTSA and others tested the new spine box fix as it was being developed. In 2011 SAE published an information report for the spine box modification (SAE J2915 AUG2011). This information report was revised in May 2022 (SAE J2915

MAY2022). The updated information report does not contain any technical changes to the design and focuses on minor formatting and typographical changes.

Spine Box Testing

NHTSA's 2011 study and the SAE task force¹⁸ showed that the spine modification had completely eliminated the noise emanating from the chest without affecting the response of the dummy in any other way. The study found that the spine boxes manufactured by different manufacturers were identical, suggesting that the spine box alterations are sufficiently specified. The study also concluded that the spine box was durable (did not loosen over repeated testing).

Proposed Modifications

In the NPRM, NHTSA proposed to change the spine box specifications to permanently fix the signal noise problem. The new versions of the drawing package, parts list, and PADI proposed for incorporation by reference include the SAE J2915 (Jan 2011)¹⁹ specifications for the improved spine box. The proposed revisions would add plates to the side of the spine box, with bolts countersunk into the plate to remove any play from the assembly. The modification would increase the quality of data and reduce maintenance and testing time. The modification would not affect or change the dummy's performance in any way (other than eliminate the potential for noise).²⁰

III. Summary of the Final Rule

After analysis of post-NPRM measurement data and commenters' data, this final rule adopts most of the NPRM's proposed specification with minor changes to ensure a sufficiently

¹⁸ Reported in SAE J2915.

¹⁹ At the time of the NPRM, the most current SAE J2915 was the January 2011 version. Since the NPRM publication, this information report was revised in May 2022 (SAE J2915 MAY2022). The updated information report does not contain any technical changes to the design, and focuses on minor formatting and typographical changes.

²⁰ We note that the current subpart O ATD can be a valid test dummy without installing the new spine box, *i.e.*, users can address the signal noise problem by disassembling the dummy and inspecting and tightening the screws by hand on a routine basis. However, NHTSA believes that these efforts must be taken regularly to ensure that the ATD's thoracic data are not affected by the spine box signal noise, and that test evaluators should carefully review test data for signs of artifacts in the signals of the thorax accelerometers. As an alternative to checking bolt tightness on existing units or replacing the entire spine box, end-users, at their discretion, may opt to modify (rather than replace) their dummy's spine box as prescribed by SAE J2915. However, NHTSA's proposal does not include specifications for the modification.

¹⁷ See 2019 NPRM Section IV (84 FR 70921–70922) for a more detailed summary of NHTSA and industry evaluation of the chest jacket.

low level of variation between jackets fabricated by different manufacturers. The final rule revises the chest jacket and spine box specifications in subpart O that correct previous errors and ambiguities. A summary of the engineering changes is outlined in section VI and a full discussion of the engineering changes to the HIII–5F dummy, as discussed in this final rule, is found in a separate document docketed.²¹

For the jacket, the agency updates the values of some jacket dimensions to reflect more closely the larger pool of measurement data acquired since the NPRM. We also increase the dimensional tolerances in several places because the proposed tolerances were unnecessarily small. Additionally, a limited number of dimensions are revised to become “reference only” dimensions (which are useful during inspections) because the larger pool of data revealed that there were not consistent reference measurement points associated with them. Such “reference only” measurements are not required to be met by a compliant dummy. The additions and changes to the NPRM specifications will ensure uniformity in the form, fit, and function of the HIII–5F.²²

For the spine box, NHTSA adjusts the mass specification slightly to reflect additional material that is added. No other changes are made for the spine box outside of the modification of the mass specification.²³

Consistent with the NPRM, NHTSA has decided not to incorporate the mandrel²⁴ or the fit check procedure outlined in J2921. This final rule’s updates to subpart O provide the necessary dimensions for the jacket. If there is a concern regarding shrinking of the jacket, measurements can be taken to confirm dimensionality. It would be up to the individual measurement taker whether to utilize the mandrel as part of

the jacket fit check. In the Alliance’s supplemental submission to NHTSA, the Alliance clarified that it was not requesting that the agency specify use of the mandrel. In the NPRM, the agency tentatively decided not to incorporate the mandrel or the fit check procedure outlined in J2921 and asked for comments on the mandrel. Commenters recommended using the mandrel when taking measurements of the jacket dimensions. NHTSA disagrees with the need to include a mandrel. Both the NPRM and post-NPRM analyses have been shown to meet the dimensional requirements by recording measurements on unworn jackets that were set up in the specified configuration without use of the mandrel. We recognize that when the proposed jacket is used on an existing dummy, the dummy may require some amount of re-tuning or refurbishment to pass the part 572 subpart O qualifications tests, but this need is common when worn parts are replaced. As SAE mentioned, the mandrel was intended to be used only to test the fit of the jacket as the jacket ages. As such, the mandrel can be used as an optional inspection device.

Overall measurement data confirms that the proposed and final rule jacket specifications encompass existing jackets that have been built to the SAE J2921 specifications. Therefore, the final rule effectively remains the same as the proposed rule.

IV. Post-NPRM Measurement and Analysis

After the NPRM publication, NHTSA continued to collect measurement data on newly purchased jackets to check whether the dimensions and tolerances proposed (including those derived from J2921 drawings and the new section dimensions added by NHTSA) were being met by SAE jackets already in the field. We also examined all measurement data provided by the commenters. Here, we provide a summary of the measurement and final rule changes. A full discussion of the process and the data collected can be found in a separate document being placed in the docket for this rulemaking.²⁵

In defining the jacket in the NPRM, we proposed “unworn” dimensional requirements and “worn” dimensional requirements. The “unworn” dimensional measurements are taken on the jacket as a standalone component on the benchtop, while the “worn”

measurements are taken on the underlying dummy. Additional measurements were included to our pool of “worn” and “unworn” data.²⁶ From this body of data, the final rule largely adopted the proposal with adjusted dimensions and tolerances to ensure that jackets in the field achieve an acceptable degree of conformity while still assuring a high level of uniformity.

For the “unworn” requirements, we are replacing the old, 2002 part 572 subpart O engineering drawings of the jacket with new drawings based on the drawings contained within SAE J2921. For the “worn” requirements, we specify additional dimensional requirements for the jacket’s contours that are not contained in SAE J2921. They include dimensions for the jacket’s breadth, depth, and circumference at different section levels. Detailed specification changes are described in the January 2023 Engineering Changes document.²⁷

“Unworn” Measurements

The drawings containing the “unworn” measurements have several updates to account for a larger set of data.²⁸ Updates have also been made to create reference dimensions for some measures. Review of the data provided in comments to the NPRM revealed that HIS had not reported all of the dimensional measurements of the jacket. Of the “unworn” dimensional data that HIS reported, HIS data were shown to be within the tolerances specified closely with the final rule.²⁹ In other words, the additional NHTSA measurements and the October HIS data, when viewed independently, both confirm each other.

The shape and configuration of the jacket defined in the final rule is identical to that of the engineering drawing contained within SAE J2921. As noted previously, NHTSA’s engineering drawing incorporates several additional “unworn” dimensions that are needed to fully specify the jacket and preclude variations between future jackets fabricated by different manufacturers. NHTSA’s additional dimensional requirements include arm hole

²¹ Engineering Changes, Revision K, Hybrid III 5th Percentile Female Test Dummy, Part 572, Subpart O, Changes to: Parts List, Engineering Drawing Package, Procedure for the Assembly, Disassembly, and Inspection (PADI), Subpart O Regulatory Text, National Highway Traffic Safety Administration, January 2023.

²² A full discussion of the data collected and updates made to the jacket dimensions and tolerances is described in a separate document docketed, Post-NPRM Analysis, HIII 5th Percentile Female Test Dummy Final Rule, Appendix B, Chest Jacket Analysis.

²³ A full discussion of the data collected, and updates made to the thorax weight, can be found in separate docketed document in Post-NPRM Analysis, HIII 5th Percentile Female Test Dummy Final Rule Appendix A, Spine Box Analysis.

²⁴ SAE J2921 describes a mandrel to assess the fit of the jacket. Because jackets tend to shrink over time, the mandrel was developed to assess jacket fit as it ages.

²⁵ Post NPRM Analysis, HIII 5th Percentile Female Test Dummy Final Rule, Appendix B—Chest Jacket Analysis.

²⁶ *Id.* at 25.

²⁷ *Id.* at 21. Engineering Changes, Revision K, Hybrid III 5th Percentile Female Test Dummy, Part 572, Subpart O, Changes to: Parts List, Engineering Drawing Package, Procedure for the Assembly, Disassembly, and Inspection (PADI), National Highway Traffic Safety Administration, January 2023.

²⁸ *Id.* at 25.

²⁹ *Id.* at 25.

specifications and reference (ref) dimensions for the breast location.

“Worn” Measurement

The “worn” dimensional requirements have four section levels specified for the jacket when fitted on the underlying HIII–5F dummy positioned on the same flat-back bench as what is currently shown on 880105–000, Rev. J, Sheet 5. The dimensional specifications define the outer shape of the thorax to preclude belt routing discrepancies that were the source of the thorax deflection differences described above. The requirements are also needed to ensure a sufficiently low level of variation between future jackets fabricated by different manufacturers.

The final rule updates the tolerances for the breadth and circumference measurements. With a few exceptions, all existing new SAE jackets were demonstrated to be within the dimensional requirements in the final rule. The final rule demonstrates that current SAE jackets now in the field conform to the new subpart O dimensional requirements. However, the final rule does not guarantee that all new jackets will fit properly on all underlying HIII–5F units. Similar to all other device measurements, diligence is needed to select a jacket for a particular dummy to ensure that all jacket-on-dummy requirements are met. NHTSA reviewed the provided data from HIS regarding the “worn” measurements and noted some recurring inconsistencies with NHTSA’s own data.³⁰

V. Response to Comments

In the NPRM, we sought comment on the proposed specifications, including the dimensions not specified in the SAE J291 report. We sought information and data on whether existing jackets built to SAE J2921 on existing dummies will meet the proposed specifications. NHTSA also sought comment on what (if any) additional information, such as tolerance specifications, is needed to fully specify the jacket to ensure that jackets produced by different manufacturers perform equivalently. We also sought comment on the proposed approach of specifying dimensions for the jacket as fitted on a dummy, including whether additional subpart O qualification tests are necessary.

Section IV addresses the specific dimensional specifications based on post-NPRM measurement data analysis.

This section will focus on the commenters’ specific approach of specifying jacket dimensions. Further discussion of the comments can be found in a separately docketed document.³¹

a. Dimensional Targets and the Use of Mandrel

The mandrel was developed and described in the SAE information report (SAE J2921) describing the harmonized jacket. In the SAE report, it was noted that the jackets tend to shrink over time. The mandrel was developed to assess jacket fit as it ages. There are reference marks on the back, bottom, and top of the mandrel that serve as indicators that the jacket has shrunk to the point where a replacement is recommended.

In the NPRM, NHTSA considered the need for the mandrel and tentatively decided not to incorporate the mandrel in the fit check procedure outlined in SAE J2921, but did request comment.

Comment

In response to the NPRM, comments recommended a new use of the mandrel, outside of the initial design. Both HIS and the Alliance commented that the mandrel should be incorporated and used for taking dimensional measurements of the jacket. Concerns were raised regarding some of the measurements to be taken when the jacket is zipped onto the underlying dummy (worn) and difficulty in reliably obtaining those measurements. These concerns were based on the need to measure the jacket and obtain dimensional measurements within the tolerances. Commenters recommended the use of the mandrel as a tool to constrain the torso and take all measurements on/with the mandrel. The commenters noted that the mandrel would provide a repeatable means to set up the jacket for dimensional measurement. Commenters cited a need to have the mandrel to ensure jacket measurement consistency and cited poor Gage repeatability and reproducibility when the mandrel was not used.

Response

The use of the mandrel for taking dimensional measurements of the jacket represents a new use for the mandrel and was not part of the petition for rulemaking. The Alliance’s supplemental submission to NHTSA clarified that it was not requesting that the agency specify the use of the

mandrel.³² The NPRM sought comments on the mandrel’s use in SAE J2921. The SAE J2921 design used the mandrel for a fit check when the jacket has shrunk. The comments received proposed using the mandrel in a new way: to take dimensional measurements of the jacket in lieu of placing the jacket on the underlying dummy.

There are several technical reasons why the mandrel is not adopted in the final rule. Overall, NHTSA disagrees with the need for a mandrel to meet the final jacket measurement specifications but agrees it can be used as an optional inspection device. When the jacket is being prepared for testing, entities subject to FMVSS testing are free to use the mandrel as an inspection device for shrinking of the jacket or when configuring the unworn jacket before taking certain measurements. However, NHTSA will not include the mandrel in subpart O nor will it specify use of the mandrel.

Based on NHTSA’s overall assessment of the data provided, the agency believes that the “worn” and “unworn” dimensions specified in the final rule remain sufficient for a determination of acceptable jacket size, without the need for a mandrel. NHTSA was able to record all the measurements in both a “worn” and “unworn” state for the dummy within tolerances, except for a few instances.

The purpose of an engineering drawing is to record and convey the dummy’s requirements which is to be used in FMVSS testing. The drawings must include sufficient information to enable production planning, manufacture, assembly, testing, and inspection of individual parts and assemblies. The entire jacket-on-dummy assembly is specified by part 572, not just the individual parts. The jacket itself is made of a flexible material that is placed over the underlying dummy. The contour locations of the jacket relative to a vehicle shoulder belt are affected by the underlying structure of the dummy. Thus, those dimensions are specified on the assembly drawing of the dummy, known as “worn” dimensions when the jacket is fitted/zipped on the underlying dummy structure. It is important for the drawings to include the underlying dummy, to ensure that the external dimensions of the assembled dummy are consistent and within tolerance. Checking dimensional measures when the jacket is off the underlying dummy,

³⁰ A further discussion and analysis of the provided data is shown in Appendices B and C of the Post-NPRM Analysis, HIII 5th Percentile Female Test Dummy Final Rule, a separately docketed document.

³¹ Post-NPRM Analysis, HIII 5th Percentile Female Test Dummy Final Rule, Appendix C—Response and Analysis of Comments Received.

³² See Letter from Scott Schmidt, Alliance, to NHTSA (Feb. 21, 2014); Letter from Scott Schmidt, Alliance, to NHTSA (May 11, 2015).

even with the use of the mandrel, is not sufficient.

In addition to exterior dimensions of the full dummy assembly, individual parts are also specified on separate engineering drawings. The part drawings specify the construction and material of the jacket. They also specify jacket dimensions that do not depend on the underlying dummy. These dimensions are referred to as the “unworn” dimensions. For the jacket, the “unworn” dimensions, together with the “worn” assembly dimensions, are needed to ensure uniformity of the dummy as a whole. A separate jacket drawing is needed, just as separate drawings for other parts are needed. Thus, it is appropriate to have dimensions for the jacket on separate jacket-only drawings in the “unworn” condition.

NHTSA analyzed both our own data and the commenters’ data. Both datasets have shown that the finalized specifications were achieved consistently within the tolerance ranges. Thus, the specifications ensure that current and future chest jackets will have sufficient uniformity. Notably, NHTSA’s own measurements were recorded without the aid of a mandrel and still met the final rule specifications. This result confirms the validity of NHTSA’s specifications without the use of mandrel. NHTSA’s analysis of its post-NPRM data and commenters’ measurement data is further detailed in section IV.

The use of the mandrel, if implemented in subpart O, would require new drawings with dimensions and tolerances to properly and repeatably specify the mandrel. This need would likely create new discrepancies. While J2921 depicts a drawing of the mandrel, it does not provide details or dimensions on the shape of the mandrel. Also, neither J2921 nor the commenters provided an objective fit criterion for a mandrel or mandrel-specific test procedure. Without the exact specification of the mandrel, contrary to the commenters’ suggestion, the introduction of a new device here would create more variation for the jacket.

NHTSA also disagrees with the commenters’ use of Gage repeatability and reproducibility (Gage R&R) analysis as further support that a mandrel is needed. A gage is a device used to obtain measurement. Here, a mandrel is described by SAE as a fit check device, not a measurement device. The purpose of a Gage R&R analysis is to assess the quality of the measurement system if there is reason to believe the measurement discrepancy is due to the

measurement device itself. Because NHTSA’s proposed and final specification of dummy parts and assemblies does not introduce a new measurement device, NHTSA did not perform a Gage R&R. Analysis of Gage R&R is further discussed under the agency’s response to comment section on the use of another measurement device.

It is important to note that just because a measurement is not within tolerances, it does not necessarily mean that the jacket is out of specification or cannot be used. For the “worn” dimensions in particular, the dimensions are affected by how the jacket is placed over the underlying dummy structure. If the specified dimensions are not met initially, the jacket can be adjusted and the measurements taken again. Note 7 on drawing 880105–000, Complete Assembly, confirms this possibility: “If the z-coordinates of the A-Pts are not within 5 mm of the target height of 10.23 in. (265 mm), re-seat the jacket by rolling it fore/aft against the shoulder to move the z-coordinate closer to the target height while maintaining the position of the H-point. The re-seated jacket shall rest in contact with the underlying shoulder pads with no gap between the pads and the jacket or between the pads and the clavicle castings.”

b. Certification

The Alliance recommended the use of the mandrel as part of the jacket production process. Specifically, the Alliance noted that the jacket should be certified by its manufacturer on the mandrel and using a 3D measurement device such as a Faro arm.

Response

Dummy jacket certification requirement is not within NHTSA’s authority and role. NHTSA does not certify the ATDs specified in part 572, nor does NHTSA certify any of the components used in the ATDs. NHTSA specifies the ATDs in part 572 used for FMVSS testing. Part 572 specifications lay out the technical aspects of the ATD. ATD manufacturers produce the ATD and can choose to make a dummy meeting those specification. Then, under the self-certification process, motor vehicle original equipment manufacturers (OEMs) self-certify compliance with applicable FMVSS—in this case, FMVSS No. 208.³³ OEMs could choose to incorporate a mandrel as part of their certification process.

³³ See 49 CFR part 567.

c. Annual Inspection Specification

HIS and the Alliance recommended an annual check of jackets by users with a measurement of eight critical dimensions on the mandrel. These eight critical measurements would check for shrinkage that could occur over time as a jacket ages.

Response

While the final rule is not including the mandrel as part of the fit check procedures to the HIII–5F jacket specification, OEMs and testing labs are not prohibited from using the mandrel as an optional device part of their routine inspection process.

Part 572 specifies the parts used on the dummy, but it does not specify any maintenance schedule or discuss any states of disrepair. Generally, other than the specifications in PADIs, there are no annual inspection criteria included. NHTSA will not be including additional inspection parameters as part of the PADI.

d. Other Measurement Device

HIS and the Alliance recommended that NHTSA stipulate that all measurements should be recorded using a digital Faro arm, or equivalent Coordinate Measuring Machine (CMM) system. HIS reasoned that measurements taken by standard gages are not sufficiently definitive, as evidenced by poor Gage repeatability and reproducibility results.

Response

Specification of a specific measurement technique, such as the use of a CMM system, is not included in part 572. Part 572 defines the dimensions of the dummy and provides the PADI and qualification procedures to ensure it is responding as expected. Part 572 does not dictate the equipment used to take those measurements. Nonetheless, NHTSA carried out an assessment by comparing operator measurements of multiple jackets using basic levels and calipers vs. the more sophisticated Faro arm.³⁴ A Faro arm is a digital device that records precise three-dimensional coordinates. It is a brand name for a type of CMM.³⁵ The digital measurement device often provides a more precise means to record measurement but such a device may not always be available.

³⁴ Post-NPRM Analysis, HIII 5th Percentile Female Test Dummy Final Rule, Appendix C—Response and Analysis of Comments Received.

³⁵ Compared to conventional devices (measuring tables, calipers, dial gauges) a CMM device provides a convenient and oftentimes more precise means to record measurements.

NHTSA's assessment had two objectives. The first was to determine whether both the digital device and the conventional device,³⁶ in this case a caliper here, could achieve the proposed jacket specification within the tolerance. The second objective was to determine whether there is a significant difference/deviation between the measurements taken by the two gages that the final rule requires gage-specific information.

NHTSA's gage device analysis showed that both types of measuring devices met the finalized nominal target value. In other words, both devices can properly measure the finalized jacket specifications. Although the Faro arm did have slightly more consistency than using the calipers, there is no significant difference in the use of Faro versus the conventional gage.

Instead, NHTSA found that the jacket setup, rather than the measuring device itself, had an impact on the measurements taken. To remedy this inconsistency, the final rule contains a new stipulation on the assembly drawing to reposition the jacket (880105-000, Complete Assembly, Hybrid HIII-5F).

For the final rule, NHTSA is not requiring a specific gage to use for jacket measurements. It is not uncommon for different labs to use different techniques. Even with different measurement techniques, NHTSA's analysis has demonstrated it is possible to successfully measure the dimensions of the jackets. General care when placing the jacket onto the dummy can ensure it is consistently placed for measurement. Measurement with a CMM or calipers has been shown to yield consistent results that meet the final rule jacket specifications.

e. Spine Box

HIS supported NHTSA's proposed adoption of the SAE spine box to eliminate the mechanical noise from the chest accelerometers while preserving the dynamic response. However, based on HIS's review of fourteen ATDs, HIS requested NHTSA update the mass specification from one of the drawing documents (880105-000(-H) Sheet 6) to account for the additional mass from the bolt plates added to the spine box.

Response

NHTSA evaluated the ATDs that had the old spine box replaced (the original FTSS and Denton units) and newer HIII-5F units that incorporated the proposed SAE spine box design. After evaluation of weight measurements

from existing and new ATDs,³⁷ NHTSA is adopting the mass specification change, specifically the upper torso assembly segment weight specification. It was noted that the plates added a small additional weight to the torso of the dummy and could cause the specifications to fall outside of the tolerance. While the final rule also adopts the SAE chest jacket design, the jacket's mass is not different from the prior FTSS and Denton versions. Consequently, the torso mass difference is due to the added bolt plates. The increase in torso mass specification is adopted in two places in the assembly engineering drawing in 880105-000(-H) Sheet 6.

f. Sample Size

Ms. Sial, an individual commenter, supported NHTSA's jacket specification update. However, to obtain a measurement that more accurately reflects the average U.S. women, Ms. Sial recommended basing the new proposed chest jacket dimension on a larger sample size, such as the mean body measurement data from the Centers for Disease Control and Prevention (CDC).

Response

When NHTSA develops a new crash test dummy, the agency updates the dummy anthropometry to consider human anthropometry measurements, such as those maintained by the CDC (among other factors). However, this rulemaking is not a revision to the anthropometry of the dummy for a new crash test dummy; therefore, a revision to the basic anthropometry of the dummy is outside of the scope of the final rule. Rather, the NPRM and now final rule resolves discrepancies between the jacket specifications in subpart O and jackets available in the field. The jacket specifications are developed from SAE J2921 to update the current crash test dummy's engineering components. These changes ensure a sufficiently low level of variation between jackets fabricated by different manufacturers.

Ideally, dummy jackets should have identical dimensions. However, there are measurement variabilities due to differences in manufacturing, set up, and measurement processes. Thus, jacket specifications include tolerances to account for measurement variability. For the NPRM, NHTSA conducted its own measurements and testing for the proposal. Following the NPRM and

reviewing of comments received that included jacket measurement data, the agency continued to collect additional measurements to check whether the dimensions and tolerances proposed (including those derived from J2921 drawings and the new section dimensions added by NHTSA) were being met by SAE jackets already in the field for the final rule. Continuing to obtain jacket measurements allowed the agency to establish an average measurement and tolerance of the dimensions for finalized drawings and ensure that the finalized tolerances and dimensions achieve an acceptable degree of consistency, conformity, and uniformity.

VI. Changes to the Drawing Package and PADI

NHTSA proposed to amend the subpart O regulatory text to incorporate by reference new versions of the drawing package, parts list and PADI. The final rulemaking closely reflects the revisions in the NPRM. Some new revisions have been added in the final rule. Below is a summary of the changes. All revisions are fully described in more detail in a separate document being placed into the docket for this rulemaking.³⁸

Chest Jacket Drawing

For the final rule, NHTSA's new drawings, the Chest Flesh Assembly (880105-355-H, Sheets 1 and 2) and the Sternum Pad (880105-356-H), include some dimensional changes to reflect a larger pool of data. New reference dimensions are also added for the jacket. NHTSA also revises drawing 880105-000, Complete Assembly, 5th Female, Rev J, Sheet 5 to add jacket dimensions at various cross sections and revise the call-out to the jacket in drawing 880105-300 to reference the new drawing. We are also making some corresponding changes to the PADI.

To summarize the changes to the new drawing package, the drawings in which the chest jacket is currently specified (880105-355-E, 880105-356, 880105-423, and 880105-424) are replaced with:

- 880105-355-H, Rev B, Chest Flesh Assembly, Sheet 1
- 880105-355-H, Rev B, Chest Flesh Assembly, Sheet 2
- 880105-356-H, Rev C, Sternum Pad

³⁸ Engineering Changes, Revision K, Hybrid III 5th Percentile Female Test Dummy, Part 572, Subpart O, Changes to: Parts List, Engineering Drawing Package, Procedure for the Assembly, Disassembly, and Inspection (PADI), National Highway Traffic Safety Administration, January 2023.

³⁶ Examples of conventional devices include measuring tables, calipers, and dial gauges.

³⁷ Post-NPRM Analysis, HIII 5th Percentile Female Test Dummy Final Rule, Appendix A—Spine Box Analysis.

880105–000, Complete Assembly, Hybrid III 5th Female

In the final rule, sheet 5 is redrawn to reflect the NPRM and final rule note changes. The dimensions remain the same as in the NPRM. Changes from the NPRM include that in note 5, the tolerances are updated on the section dimensions based on post-NPRM data to achieve an acceptable degree of conformity while still ensuring a high level of uniformity. For note 6, metric dimensions are given to aid in clarity. For note 7, a description is added for how to properly adjust the jacket fit on the dummy to aid in setup.

880105–000, Complete Assembly, Hybrid III 5th Female, Sheet 6, Assembly Weights Table

Upper torso assembly with jacket (see Table 1 for parts included).

Was: 26.50 ± 0.30 lbs (12.02 ± 0.14 kg)
Now: 26.90 ± 0.30 lbs (12.20 ± 0.14 kg)

Total dummy weight.

Was: 108.03 ± 2.00 lbs (49.05 kg ± 0.91 kg)
Now: 108.43 ± 2.00 lbs (49.18 kg ± 0.91 kg)

Spine box torso mass specification is updated following further comment analysis. Specifically, the nominal value is shifted from to 26.90 ± .30 lbs. from 26.50 ± .30lbs. This change will allow the corridor to shift upwards of 0.40 lbs and the total dummy weight from 108.03 ± 2.50 lbs to 108.43 ± 2.50 lbs. The final rule's weight specification would not affect or change the dummy's performance in any way (other than eliminate the potential for noise).

The final rule also corrects an old metric conversion error between pounds and kilograms. Specifically, the old metric conversion for 108.03 lbs. was incorrectly listed at 49.05 kg. It should have been 49.00 kg. The changes to the affected drawings are described in more detail in a separate document being placed into the docket for this rulemaking.³⁹

Jacket PADI

The PADI provides specifications on how to assemble the dummy above and beyond the engineering drawings. Given the dummy is frequently disassembled, the PADI includes a check on the exterior dimension to ensure that all assemblies and fitted parts are properly installed on the reassembled dummy.

This exterior dimension corresponds to the specification changes to Drawing No. 880105–000, Complete assembly, 5th female, Rev. N, Sheet 5. In addition, the mass tables are removed from the PADI as they are already present within the drawing package. Detailed changes are further specified in the separate document being docketed.⁴⁰

Spine Box

The new versions of the drawing package, parts list, and PADI incorporated by reference include the SAE J2915 specifications for the improved spine box. The final rule revisions add plates to the side of the spine box, with bolts countersunk into the plate to remove any play from the assembly. NHTSA's new engineering part and assembly drawings include the revised spine box to replace the current spine box drawings with the following:

- 880105–1045, Rev C, Hybrid III 5th Female Thoracic Spine Upgrade, Sheets 1–3
- 880105–1047, HIII–5F Plate, Thoracic Spine Upgrade
- SID–070–6, Rev B, DOT–SID, Modified 5/16–18 x 5/8" SHCS

VII. Housekeeping Amendments

In the final rule, NHTSA adopts all of the proposed housekeeping and other amendments to subpart O below.

1. NHTSA amends the title of subpart O to add the word "adult" between "5th percentile" and "female" for clarity.

2. The agency removes the words "Alpha Version" from the title of subpart O. During adoption of some of the subparts of part 572 NHTSA had decided that referring to the alpha, beta, etc., "versions" of the test dummies would better distinguish a current version of an ATD from a previous version. The agency later decided this naming convention was not helpful and has not followed it. Accordingly, for the final rule, NHTSA removes "Alpha Version" from the title of subpart O since the naming convention is no longer used.

3. This final rule revises subpart O's references to SAE J211 parts 1 and 2 and to SAE J1733 to refer to updated versions of the standards. SAE J211 is revised with improved diagrams for defining the dummy coordinate system, and corrections to minor mistakes in print. New information and recommendations for data system grounding, sensor cable shielding, and minimizing the effects of transducer resonance are included. Clarifications on data processing are also included. J1733 is revised with improved

diagrams for defining the dummy coordinate system (for the HIII–5F, the system itself is unchanged).

VIII. Lead Time

In the NPRM, NHTSA proposed to make subpart O—the specifications for the chest jacket and spine box—effective 45 days after the publication of the final rule.

The Alliance commented that the 45-day lead time is not sufficient time for the adoption of the new proposed chest jacket and spine box specification. The commenter noted that NHTSA did not account for the time needed for compliance testing. Instead of a 45-day effective date, the Alliance suggested a lead time of five years,⁴¹ and that until the effective date, the new specification be optional.

Response

After consideration of the comment and post-NPRM analysis of the proposed and final specification, NHTSA believes the 45-day lead time remains sufficient because the agency does not believe that testing under FMVSS No. 208 would be significantly affected by the final rule.

FMVSS No. 208 specifies that NHTSA is to use the subpart O dummy in its compliance tests. As discussed previously, if manufacturers are not using the final rule's jacket for certification, NHTSA will ask manufacturers to identify an FTSS or Denton jacket for NHTSA to use in its compliance testing. This rulemaking does not change any existing process for vehicle certification with the manufacturer-identified jackets. This rulemaking solely adds the new jacket specifications to part 572 and in turn for FMVSS No. 208 testing. This final rule does not impose any new requirements on anyone.

Some vehicle manufacturers already use the SAE jackets on the ATD. Moreover, because none of the dummy jackets that are currently in use correspond to the existing subpart O specifications, there should be no issue with taking an existing dummy out of conformity with the implementation of this rule. Post-NPRM measurement included new SAE jackets that are currently used in the field and conformed to the final rule specifications. The improved spine box is not expected to affect dummy performance because the revision only acts to remove the unwanted artifact of loose bolts rattling.

⁴¹ In its February 21, 2014 petition, the Alliance recommended that compliance with the new specifications should be optional for a period of five years.

³⁹ Engineering Changes, Revision K, Hybrid III 5th Percentile Female Test Dummy, Part 572, Subpart O, Changes to: Parts List, Engineering Drawing Package, Procedure for the Assembly, Disassembly, and Inspection (PADI), National Highway Traffic Safety Administration, January 2023.

⁴⁰ *Id.*

Manufacturers wishing to test with the final rule's jacket and spine box should have no difficulty obtaining the necessary parts. In the Alliance's supplemental petition letter, the Alliance indicated that all parts associated with the proposed jacket and spine box changes are available, and there should not be any difficulties meeting anticipated demand. NHTSA believes that the introduction of the new parts is part of the normal maintenance of jackets as it ages and it would not create any significant increases in the workload necessary to maintain the dummies.

Lastly, a shortened lead time is desirable because the changes are beneficial for testing laboratories. We believe that the final rule's jacket and spine box changes will likely lead to diminished laboratory technician workload. A common jacket design will eliminate the need to deal with multiple jacket versions. The new spine box will also lighten laboratory workload by eliminating the need to re-torque the bolts between tests. With respect to levels of effort and technician training needed to modify and maintain the new jacket and spine box, the Alliance indicated in its supplemental letter that both modifications are well within the technical competency of existing laboratory technicians.

IX. Regulatory Analyses and Notices

Executive Order 12866, Executive Order 14904, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the potential impact of this final rule under Executive Order 12866, Executive Order 14904, Executive Order 13563, DOT Order 2100.6A, and the Department of Transportation's regulatory policies and procedures. This final rule is not considered to be significant under the Department of Transportation's regulatory policies and procedures (44 FR 11034, February 26, 1979).

As stated in 49 CFR 572.3, *Application*, part 572 does not in itself impose duties or liabilities on any person. It only serves to describe the test tools that measure the performance of occupant protection systems. Thus, this part 572 final rule itself does not impose any requirements on anyone. Businesses are affected only if they choose to manufacture or test with the dummy. Because the economic impacts of this rule are minimal, no further regulatory evaluation is necessary.

This final rule finalizes changes to the specifications of the HIII-5F chest jacket and spine box. For entities testing with the dummy, the finalized revisions are

intended to resolve issues with the fit and availability of the jacket and a noise artifact from the spine box. Neither change would impose new requirements on vehicle manufacturers.

With respect to benefits, the dummy would not change in any way other than to improve its usability and objectivity. This rulemaking benefits the public by specifying a more objective test tool, which lessens the burden of dummy end-users in performing tests and interpreting test results. It also benefits vehicle manufacturers by providing certainty about which test jacket and spine box NHTSA will use in compliance tests with the HIII 5th percentile adult female ATD, and assurance about the continued availability of the jacket. This rulemaking benefits NHTSA as the agency would no longer have to maintain test jackets of different designs and take steps to match the compliance test jacket with that specified by the vehicle manufacturers. Specifying the new test jacket and spine box ensures the long-term availability of a test jacket for compliance tests.

The costs associated with this rulemaking are limited to those associated with acquiring new dummy parts. We conclude that the finalized changes would not necessitate the purchasing of any parts that would not have been purchased in the normal course of business in the absence of the finalized changes.

We do not believe the finalized chest jacket changes will impose any additional costs compared to what would have been expended if we did not adopt the proposed changes. Because a chest jacket eventually wears out, it must be replaced. Dummy refurbishments and part replacements are a routine part of ATD testing. The agency understands that industry has essentially run out of its supply of the older FTSS and Denton jackets. We further understand that industry has been replacing worn-out FTSS and Denton jackets with new jackets built to the SAE J2921 specifications. While the FTSS and Denton jackets are not consistent with the finalized specifications, we believe that chest jackets built to the SAE J2921 specifications would meet the finalized specifications. Because industry and testing labs need to replace the chest jacket in the regular course of business—regardless of whether the proposed changes are adopted—and the only available replacement chest jackets conform to the finalized specifications, we believe the finalized chest jacket

specifications would not impose any additional costs on industry.⁴²

The revised spine box, which is not typically replaced during routine maintenance, costs about \$3,000.⁴³ End users do not have to purchase a revised spine box. They can compensate for the design shortcoming of the current spine box by disassembling the dummy and re-torquing the relevant fasteners by hand before each test.

Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides that the regulatory approaches taken by foreign governments may differ from those taken by the United States to address similar issues, and that in some cases the differences between them might not be necessary and might impair the ability of American businesses to export and compete internationally. It further recognizes that in meeting shared challenges involving health, safety, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation and can reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

The finalized revisions are intended to resolve issues with the fit and availability of the jacket and a noise artifact from the spine box. Neither change would impose new requirements on vehicle manufacturers. NHTSA does not believe the final rule would lead to any reduction in harmonization.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria,

⁴² For the HIII-5F, a new jacket costs about \$1,300. This is an updated estimate from the NPRM's approximate cost of \$850. If a new jacket is installed on an existing dummy, additional refurbishments or tuning of that dummy may be needed for it to pass the subpart O qualification tests. Depending on the condition and age of the dummy, several other parts may need to be replaced at a cost of up to \$10,000. However, dummy refurbishments and part replacements are an inherent part of testing and many of the additional parts are often replaced on a regular schedule. In other words, some of the parts would eventually be replaced, and the costs of the replacement parts can be amortized over a number of tests.

⁴³ This cost was originally estimated to be approximately \$600 during the NPRM stage. This estimation has been updated for the final rule.

we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This final rule is not subject to the Executive order because it is not economically significant as defined in E.O. 12866.

Incorporation by Reference

Under regulations issued by the Office of the Federal Register (1 CFR part 51), an agency, as part of a proposed rule that includes material incorporated by reference, must summarize material that is proposed to be incorporated by reference and must discuss the ways the material proposed to be incorporated by reference is reasonably available to interested parties or how the agency worked to make materials available to interested parties. At the final rule stage, regulations require that the agency seek formal approval, summarize the material that it incorporates by reference in the preamble of the final rule, discuss the ways that the materials is reasonably available to interested parties, and provide other specific information to the Office of the Federal Register.

In this rule, NHTSA incorporates by reference updated versions of a parts list, a set of drawings, and a manual into 49 CFR part 572, subpart O. After seeking comments and the agency's measurement analysis, we believe the updated versions contain additional specifications and illustrations that are helpful for end users who are attempting to qualify the ATD. This material is published by NHTSA. The contents of the documents are summarized in section VI above, and the documents incorporated by reference are placed in the docket for this rulemaking for interested parties to review. The following updated parts list, drawings, and a manual appear in the amendatory text of this document and earlier versions were previously approved for the locations in which these updated versions appear now: *Parts and Drawings List, Part 572 Subpart O, Hybrid III Fifth Percentile Small Adult Female Crash Test Dummy (HIII-5F)*, revised December 2022; *Engineering Drawings, Part 572 Subpart O, Hybrid III Fifth Percentile Small Adult Female Test Dummy (HIII-5F)*, revised December 2022; *Procedures for the Assembly, Disassembly, and Inspection (PADI), Hybrid III Fifth Percentile Adult Female Test Dummy (HIII-05F)*, revised June 2022.

This final rule also incorporates updated versions of SAE Recommended Practice J211/1 parts 1 and 2 and SAE

J1733. Older versions of these documents were previously incorporated by reference into subpart O. The changes in the updated versions are summarized in section VII above and under the National Technology Transfer and Advancement Act rulemaking analysis below. The versions previously incorporated by reference are available in SAE International's online reading room.⁴⁴ The updated versions incorporated by reference in this final rule are available for review at NHTSA and are available for purchase from SAE International at <https://www.sae.org>.

NHTSA has placed a copy of the parts list, set of drawings, and manual in the docket for this final rule. Interested persons can obtain a copy of the material or view the material online by accessing www.regulations.gov; phone: (877) 378-5457; or by contacting NHTSA's Chief Counsel's Office at the phone number and address in the **FOR FURTHER INFORMATION CONTACT** section of this document. The material is also available for inspection at the Department of Transportation, Docket Operations, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC; phone: (202) 366-9826.

Executive Order 13132 (Federalism)

NHTSA has examined this rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C.

30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance. The express preemption provision described above is subject to a savings clause under which compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law. 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved.

NHTSA rules can also preempt State law if complying with the FMVSS would render the motor vehicle manufacturers liable under State tort law. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. If and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Orders 13132 and 12988, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation. To this end, the agency has examined the nature (*i.e.*, the language and structure of the regulatory text) and objectives of this rule and finds that this rule, like many NHTSA rules, would prescribe only a minimum safety standard. As such, NHTSA does not intend this rule to preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers. Establishment of a higher standard by means of State tort law will not conflict with the minimum standard adopted here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

Severability

The issue of severability of FMVSSs is addressed in 49 CFR 571.9. It provides that if any FMVSS or its application to any person or circumstance is held invalid, the remainder of the part and

⁴⁴ www.sae.org/standards/reading-room.

the application of that standard to other persons or circumstances is unaffected.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small Government jurisdictions. The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)).

The Act requires agencies to prepare and make available an initial and final regulatory flexibility analysis (RFA) describing the impact of proposed and final rules on small entities. An RFA is not required if the head of the agency certifies that the proposed or final rule will not have a significant impact on a substantial number of small entities. The head of the agency has made such a certification with regard to this final rule.

The factual basis for the certification (5 U.S.C. 605(b)) is set forth below. Although the agency is not required to issue an initial regulatory flexibility analysis, this section discusses many of the issues that an initial regulatory flexibility analysis would address.

Section 603(b) of the Act specifies the content of an RFA. Each RFA must contain:

1. A description of the reasons why action by the agency is being considered;
2. A succinct statement of the objectives of, and legal basis for a final rule;
3. A description of and, where feasible, an estimate of the number of small entities to which the final rule will apply;
4. A description of the projected reporting, recording keeping and other compliance requirements of a final rule including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the final rule;
6. Each final regulatory flexibility analysis shall also contain a description of any significant alternatives to the final rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the final rule on small entities.

A description of the reason why action by the agency is being considered

and the objectives of, and legal basis for, the final rule are discussed at length earlier in this document.

NHTSA has considered the effects of this rulemaking under the Regulatory Flexibility Act. I hereby certify that this rulemaking action will not have a significant economic impact on a substantial number of small entities. This action will not have a significant economic impact on a substantial number of small entities because the revisions to the test dummy will not impose any requirements on anyone. NHTSA will use the revised ATD in agency testing but will not require anyone to manufacture the dummy or to test motor vehicles or motor vehicle equipment with it. Further, small vehicle manufacturers that choose to test with the 5th percentile adult female dummy will not be significantly impacted by this rulemaking. The final rule will simply replace the chest jacket and spine box now used with the test dummy with more up-to-date equipment. Since chest jackets must periodically be replaced on the test dummy because they wear out, this amendment will not significantly affect end users of the ATD (they will continue to do what they already do). Similarly, the change to the new spine box will not significantly affect small vehicle manufacturers. It entails a simple one-time replacement where the old part would be switched out with the new.

National Environmental Policy Act

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. In accordance with 49 CFR 1.81, 42 U.S.C. 4336, and DOT NEPA Order 5610.1C, NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4) (planning and administrative activities, such as promulgation of rules, that do not involve or lead directly to construction). This rulemaking, which finalizes changes to the Hybrid III 5th percentile adult female (HIII-5F) anthropomorphic test device (ATD or crash test dummy), is not anticipated to result in any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Civil Justice Reform

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the

preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this order, NHTSA notes as follows: The issue of preemption is discussed above in connection with E.O. 13132. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. This rulemaking does not establish any information collection requirements as defined by the OMB in 5 CFR part 1320.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments."⁴⁵ However, if the use of such technical standards would be "inconsistent with applicable law or otherwise impractical, a Federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies."⁴⁶ Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies such as SAE. The NTTAA directs the agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. Circular A-119

⁴⁵ National Technology Transfer and Advancement Act of 1995, Public Law 104-113, 110 Stat. 775 (1996), at section 12(d)(1).

⁴⁶ *Id.* at section 12(d)(3).

directs that evaluating whether to use a voluntary consensus standard should be done on a case-by-case basis.⁴⁷ An agency should consider, where applicable, factors such as the nature of the agency's statutory mandate and the consistency of the standard with that mandate.⁴⁸

SAE has published information reports on the HIII 5th percentile adult female's chest jacket and spine box which today's rule incorporates by reference in full. The foregoing sections of this document discuss in detail SAE's work in these areas: SAE J2921 (Chest Jacket) and SAE J2915 (Spine Box). This rule includes a few specifications beyond SAE J2921; the preamble explains NHTSA's belief that they are necessary to ensure a sufficient level of uniformity between jackets produced by different manufacturers going forward, and to prevent discrepancies in jacket designs from reoccurring in the future.

In addition, the following voluntary consensus standards have been used in developing this final rule:

- SAE Recommended Practice J211/1_202208 (August 2022), *Electronic Instrumentation*;
- SAE Recommended Practice J211/2_202204 (April 2022), *Photographic Instrumentation*; and
- SAE J1733_201811 (November 2018), *Sign Convention for Vehicle Crash Testing*.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by States, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation with base year of 1995) in any one year. Adjusting this amount by the implicit gross domestic product price deflator for 2022 results in \$177 million ($111.416/75.324 = 1.48$). The assessment may be included in conjunction with other assessments, as it is here.

This rule will not impose any unfunded mandates under the UMRA. This rule does not meet the definition of a Federal mandate because it does not impose requirements on anyone. It amends 49 CFR part 572 by adding specifications for a new test jacket and

spine box for the 5th percentile adult female dummy that NHTSA uses in agency compliance tests. This rule will affect only those businesses that choose to manufacture or test with the dummy. This rule would not result in expenditures by State, local, or tribal governments of more than \$177 million annually.

UMRA requires the agency to select the “least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.” As discussed above, the agency considered alternatives to the final rule and has concluded that the requirements are the most cost-effective alternatives that achieve the objectives of the rule.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the criteria in 5 U.S.C. 804(2) to be considered a major rule. The rule will be effective forty-five days after the date of publication in the **Federal Register**.

Regulation Identifier Number

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Rulemaking Summary, 5 U.S.C. 553(b)(4)

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found in the Abstract section of the Department's Unified Agenda entry for this rulemaking at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202404&RIN=2127-AM13>.

Privacy Act

Anyone can search the electronic form of all documents received into any of our dockets by the name of the

individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit www.dot.gov/privacy.html.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please write to us with your views.

NHTSA has considered these questions and attempted to use plain language in promulgating this final rule. Please inform the agency if you can suggest how NHTSA can improve its use of plain language.

Submission of Confidential Information

You should submit a redacted “public version” of your comment (including redacted versions of any additional documents or attachments). This “public version” of your comment should contain only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted. See below for further instructions on how to do this.

You also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by 49 CFR part 512. Your request must set forth the information specified in part 512. This information includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to § 512.8; and a certificate, pursuant to § 512.4(b) and part 512, appendix A.

You are required to submit to the Office of Chief Counsel one unredacted

⁴⁷ Office of Management and Budget, Circular No. A–119, ¶ 5(a)(i), Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities (Jan. 26, 2016).

⁴⁸ *Id.*

“confidential version” of the information for which you are seeking confidential treatment. Pursuant to § 512.6, the words “ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION” or “CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS” (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: “[].”

You are also required to submit to the Office of Chief Counsel one redacted “public version” of the information for which you are seeking confidential treatment. Pursuant to § 512.5(a)(2), the redacted “public version” should include redactions of any information for which you are seeking confidential treatment (*i.e.*, the only information that should be unredacted is information for which you are not seeking confidential treatment).

NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA’s headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the request to Helena Sung at Helena.Sung@dot.gov.

List of Subjects in 49 CFR Part 572

Motor vehicle safety, Incorporation by reference.

In consideration of the foregoing, NHTSA amends 49 CFR part 572 as follows:

PART 572—ANTHROPOMORPHIC TEST DEVICES

■ 1. The authority citation for part 572 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

Subpart O—Hybrid III 5th Percentile Adult Female Test Dummy

■ 2. Revise the heading of subpart O to read as set forth above.

■ 3. Revise § 572.130 to read as follows:

§ 572.130 Incorporation by reference.

Certain material is incorporated by reference (IBR) into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the National Highway Traffic Safety Administration (NHTSA) must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at NHTSA and at the National Archives and Records Administration (NARA). Contact NHTSA at: 1200 New Jersey Avenue SE, Washington, DC 20590; phone: (202) 366–2588; website: www.nhtsa.gov/about-nhtsa/electronic-reading-room. 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. The material may be obtained from the following sources:

(a) NHTSA Technical Information Services, 1200 New Jersey Ave. SE, Washington, DC 20590; phone: 202–366–2588; website: <https://www.nhtsa.gov>.

(1) Engineering Drawings, Part 572 Subpart O Hybrid III 5th Percentile Small Adult Female Test Dummy, December 2022 (the Engineering Drawings); IBR approved for §§ 572.131, 572.132, 572.133, 572.134, 572.135, 572.136, and 572.137.

(2) Parts/Drawing List, Part 572 Subpart O, Hybrid III 5th Percentile Small Adult Female Crash Test Dummy, December 2022 (the Parts/Drawings List); IBR approved for § 572.131.

(3) Procedures for the Assembly, Disassembly, and Inspection (PADI) of the Hybrid III 5th Percentile Adult Female Crash Test Dummy (HIII–05F), June 2022 (the PADI); IBR approved for § 572.131.

(b) SAE International, 400 Commonwealth Drive, Warrendale, PA 15096; phone: 1–877–606–7323; website: <https://www.sae.org>.

(1) SAE Recommended Practice J211–1, Instrumentation for Impact Test; Part 1—Electronic Instrumentation, August 2022 (SAE J211–1); IBR approved for § 572.137.

(2) SAE Recommended Practice J211–2, Instrumentation for Impact Tests—Part 2: Photographic Instrumentation, April 2022 (SAE J211–2); IBR approved for § 572.137.

(3) SAE J1733, Sign Convention for Vehicle Crash Testing, November 2018; IBR approved for § 572.137.

■ 4. Amend § 572.131 by:

■ a. Revising paragraphs (a)(1) and (2);

■ b. Adding paragraph (a)(3); and

■ c. Redesignating table A as “Table 1 to § 572.131(a)—Drawings List for Engineering Drawings, Part 572 Subpart O Hybrid III 5th Percentile Small Adult Female Test Dummy”.

The revisions and addition read as follows:

§ 572.131 General description.

(a) * * *

(1) The Engineering Drawings (incorporated by reference, see § 572.130), including the drawings listed in table 1 to § 572.131(a);

(2) The Parts/Drawings List (incorporated by reference, see § 572.130); and

(3) The PADI (incorporated by reference, see § 572.130).

* * * * *

■ 5. Amend § 572.132 by adding introductory text, revising paragraph (a), and removing the heading to paragraph (c). The addition and revision read as follows:

§ 572.132 Head assembly and test procedure.

All assemblies and drawings referenced in this section are contained in the Engineering Drawings (incorporated by reference, see § 572.130).

(a) The head assembly for this test consists of the complete head (drawing 880105–100X), a six-axis neck transducer (drawing SA572–S11) or its structural replacement (drawing 78051–383X), and 3 accelerometers (drawing SA572–S4).

* * * * *

■ 6. Amend § 572.133 by:

■ a. Adding introductory text;

■ b. Revising paragraph (a), the first sentence of paragraph (b)(1)(i), and the first sentence of paragraph (b)(2)(i);

■ c. Removing the heading to paragraph (c);

■ d. Revising paragraphs (c)(3) and (c)(4)(ii); and

■ e. Redesignating Table B—Pendulum Pulse as “Table 2 to § 572.133—Pendulum Pulse”.

The revisions and addition read as follows:

§ 572.133 Neck assembly and test procedure.

All assemblies and drawings referenced in this section are contained in the Engineering Drawings (incorporated by reference, see § 572.130).

(a) The neck assembly for the purposes of this test consists of the assembly of components shown in drawing 880105–250.

* * * * *

(b) * * *

(1) * * *

(i) Plane D, referenced in figure O1 to this subpart O, shall rotate in the direction of preimpact flight with respect to the pendulum's longitudinal centerline between 77 degrees and 91 degrees. * * *

* * * * *

(2) * * *

(i) Plane D, referenced in figure O2 to this subpart O, shall rotate in the direction of preimpact flight with respect to the pendulum's longitudinal centerline between 99 degrees and 114 degrees. * * *

* * * * *

(c) * * *

(3) Mount the head-neck assembly, defined in paragraph (b) of this section, on the pendulum described in figure 22 in 49 CFR part 572 so that the midsagittal plane of the head is vertical and coincides with the plane of motion of the pendulum as shown in figure O1 to this subpart O for flexion tests and figure O2 to this subpart O for extension tests.

(4) * * *

(ii) Stop the pendulum from the initial velocity with an acceleration vs. time pulse which meets the velocity change as specified in table 2 to § 572.133. Integrate the pendulum acceleration data channel to obtain the velocity vs. time curve.

* * * * *

■ 7. Amend § 572.134 by adding introductory text, revising paragraph (a), removing the heading to paragraph (c), and revising paragraph (c)(3). The addition and revisions read as follows:

§ 572.134 Thorax assembly and test procedure.

All assemblies and drawings referenced in this section are contained in the Engineering Drawings (incorporated by reference, see § 572.130).

(a) The thorax (upper torso) assembly consists of the part of the torso assembly shown in drawing 880105–300.

* * * * *

(c) * * *

(3) Seat and orient the dummy on a seating surface without back support as shown in figure O3 of this subpart O, with the limbs extended horizontally and forward, parallel to the midsagittal plane, the midsagittal plane vertical within ± 1 degree and the ribs level in the anterior-posterior and lateral directions within ± 0.5 degrees.

* * * * *

■ 8. Revise and republish § 572.135 to read as follows:

§ 572.135 Upper and lower torso assemblies and torso flexion test procedure.

All assemblies and drawings referenced in this section are contained in the Engineering Drawings (incorporated by reference, see § 572.130).

(a) The test objective is to determine the stiffness effects of the lumbar spine (drawing 880105–1096), and abdominal insert (drawing 880105–434), on resistance to articulation between the upper torso assembly (drawing 880105–300) and the lower torso assembly (drawing 880105–450).

(b)(1) When the upper torso assembly of a seated dummy is subjected to a force continuously applied at the head to neck pivot pin level through a rigidly attached adaptor bracket as shown in figure O4 of this subpart O according to the test procedure set out in paragraph (c) of this section, the lumbar spine-abdomen assembly shall flex by an amount that permits the upper torso assembly to translate in angular motion relative to the vertical transverse plane 45 ± 0.5 degrees at which time the force applied must be not less than 320 N (71.5 lbf) and not more than 390 N (87.4 lbf), and

(2) Upon removal of the force, the torso assembly must return to within 8 degrees of its initial position.

(c) The test procedure for the upper/lower torso assembly is as follows:

(1) Soak the dummy in a controlled environment at any temperature between 18.9 and 25.6 °C (66 and 78 °F) and a relative humidity between 10 and 70 percent for at least four hours prior to a test.

(2) Assemble the complete dummy (with or without the legs below the femurs) and attach to the fixture in a seated posture as shown in figure O4 of this subpart O.

(3) Secure the pelvis to the fixture at the pelvis instrument cavity rear face by threading four $\frac{1}{4}$ inch cap screws into the available threaded attachment holes. Tighten the mountings so that the test material is rigidly affixed to the test fixture and the pelvic-lumbar joining surface is horizontal.

(4) Attach the loading adapter bracket to the spine of the dummy as shown in figure O4 of this subpart O.

(5) Inspect and adjust, if necessary, the seating of the abdominal insert within the pelvis cavity and with respect to the torso flesh, assuring that the torso flesh provides uniform fit and overlap with respect to the outside surface of the pelvis flesh.

(6) Flex the dummy's upper torso three times between the vertical and until the torso reference plane, as shown

in figure O4 of this subpart O, reaches 30 degrees from the vertical transverse plane. Bring the torso to vertical orientation and wait for 30 minutes before conducting the test. During the 30-minute waiting period, the dummy's upper torso shall be externally supported at or near its vertical orientation to prevent it from drooping.

(7) Remove all external support and wait two minutes. Measure the initial orientation angle of the torso reference plane of the seated, unsupported dummy as shown in figure O4 of this subpart O. The initial orientation angle may not exceed 20 degrees.

(8) Attach the pull cable and the load cell as shown in figure O4 of this subpart O.

(9) Apply a tension force in the midsagittal plane to the pull cable as shown in figure O4 of this subpart O at any upper torso deflection rate between 0.5 and 1.5 degrees per second, until the angle reference plane is at 45 ± 0.5 degrees of flexion relative to the vertical transverse plane.

(10) Continue to apply a force sufficient to maintain 45 ± 0.5 degrees of flexion for 10 seconds, and record the highest applied force during the 10-second period.

(11) Release all force at the attachment bracket as rapidly as possible, and measure the return angle with respect to the initial angle reference plane as defined in paragraph (c)(6) of this section 3 minutes after the release.

■ 9. Amend § 572.136 by adding introductory text, revising paragraph (a), removing the heading to paragraph (c), and revising paragraph (c)(2). The addition and revisions read as follows:

§ 572.136 Knees and knee impact test procedure.

All assemblies and drawings referenced in this section are contained in the Engineering Drawings (incorporated by reference, see § 572.130).

(a) The knee assembly for the purpose of this test is the part of the leg assembly shown in drawing 880105–560.

* * * * *

(c) * * *

(2) Mount the test material and secure it to a rigid test fixture as shown in figure O5 of this subpart O. No part of the foot or tibia may contact any exterior surface.

* * * * *

■ 10. Amend § 572.137 by adding introductory text and revising the paragraph (m) introductory text and paragraph (n) to read as follows:

§ 572.137 Test conditions and instrumentation.

All assemblies and drawings referenced in this section are contained in the Engineering Drawings (incorporated by reference, see § 572.130).

* * * * *

(m) The outputs of acceleration and force-sensing devices installed in the

dummy and in the test apparatus specified by this part shall be recorded in individual data channels that conform to SAE J211–1 and SAE J211–2 (both incorporated by reference, see § 572.130), except as noted, with channel classes as follows:

* * * * *

(n) Coordinate signs for instrumentation polarity shall conform

to SAE J1733 (incorporated by reference, see § 572.130).

* * * * *

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.

Adam Raviv,
Chief Counsel.

[FR Doc. 2024–30985 Filed 1–2–25; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register

Vol. 90, No. 2

Friday, January 3, 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 AGRICULTURE

Food and Nutrition Service

7 CFR Part 275

[FNS–2024–0030]

RIN 0584–AF05

Supplemental Nutrition Assistance Program Quality Control Review Handbook Incorporation by Reference

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

ACTION: Notice of proposed rulemaking, incorporation by reference.

SUMMARY: The U.S. Department of Agriculture (the Department) is issuing this proposed rule to formally incorporate by reference the FNS Handbook 310 into SNAP regulations. By doing so, the Department is ensuring that the public receives a notice and comment period prior to implementation of revisions to the Handbook, which is the standard operating procedure manual for conducting quality control (QC) reviews of SNAP cases. The Department also proposes to remove reference to FNS Handbook 311 until it can be incorporated by reference. The Department requests comment on these proposed provisions.

DATES: Written comments must be received on or before March 4, 2024 to ensure their consideration.

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

- Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail:* Send comments to John McCleskey, Branch Chief, Quality Control Branch, Program Administration and Nutrition Division; Food and Nutrition Service;

1320 Braddock Place, 5th Floor; Alexandria, Virginia 22314.

- Email:* Send comments to SM.FN.SNAPHQ-WEB@usda.gov. Include “SNAP QC Review Handbook Incorporation by Reference” in the subject line of the message.
- All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via <http://www.regulations.gov>.
- FNS Handbook 310, Supplemental Nutrition Assistance Program Quality Control Review Handbook, can be viewed online at <https://www.fns.usda.gov/snap/qc>.

FOR FURTHER INFORMATION CONTACT: John McCleskey, 703–457–7747, Food and Nutrition Service, 1320 Braddock Place, 5th Floor; Alexandria, Virginia 22314, SM.FN.SNAPHQ-WEB@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

SNAP QC—In General

The Supplemental Nutrition Assistance Program (SNAP) is the nation’s largest domestic food assistance program for Americans, reaching about 42 million people per month during fiscal year 2023.¹

Although the Federal government funds SNAP benefits per 7 U.S.C. 2020(a)(1), State agencies are responsible for general program administration of SNAP within their States, including determining the eligibility of individuals and households to receive SNAP benefits and issuing monthly allotments of benefits.

Pursuant to Section 16 of the Food and Nutrition Act of 2008 (FNA), as amended, each State agency is responsible for monitoring and improving its administration of SNAP. The Quality Control (QC) system is necessary to help ensure State agencies measure improper payments and improve their administration of SNAP. SNAP QC reviews have four goals,

identified at 7 CFR 275.10(b), which are to provide: (1) a systematic method of measuring the validity of the SNAP eligibility caseload; (2) a basis for determining all SNAP error rates; (3) a timely, continuous flow of information on which to base corrective action at all levels of administration; and (4) a basis for establishing State agency liability for payment errors that exceed the National performance measure pursuant to Section 16(c)(1)(C) of the FNA.

To comply with Section 16 of the FNA, State agencies conduct monthly reviews of a statistically representative sample of both participating SNAP households (active cases) and households for whom participation was denied, terminated, or suspended (negative cases). Once the State’s review is complete, the case is submitted to FNS for possible Federal re-review. The role of the Federal reviewer is to validate the State reviews were done accurately and in accordance with Federal SNAP policies and procedures.

QC reviews measure the accuracy of SNAP eligibility and allotment determinations and ultimately serve as the basis for the SNAP payment error rate (PER) and case and procedural error rate (CAPER).² The results of these reviews provide feedback on State-by-State and national administration of the Program, including how State agencies’ chosen policy options, waivers, and business processes affect the accuracy of their eligibility determinations. In short, the QC system allows FNS and the States to assess the integrity of SNAP and ensure effective stewardship of taxpayer dollars by determining the extent to which the program is operating as required by statute and regulations.

Background Information on FNS Handbook 310

The FNS Handbook 310, the “SNAP QC Review Handbook”, is the standard operating procedure manual for conducting QC reviews of SNAP cases.³ The FNS Handbook 310 provides both State and Federal QC reviewers with procedures for the QC review process for active and negative cases. This procedural manual aligns with SNAP’s statutory and Federal regulatory program rules to ensure its process for

² FNS refers to the negative case error rate as the case and procedural error rate, or CAPER.

³ https://fns-prod.azureedge.net/sites/default/files/snap/FNS_310_Handbook.pdf.

¹ <https://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap>.

evaluating SNAP eligibility and allotments delivers accurate results.

The FNS Handbook 310 was first introduced into regulation in the July 29, 1983, proposed rule titled, *Food Stamp Program; Technical Amendments to the Quality Control Review Process*.⁴ Following publication of the proposed rule, the Department received comments indicating State agencies needed a consistent, complete, national handbook for conducting QC reviews of SNAP cases that would also be continually updated as SNAP policies are updated and changed. The handbook provisions were implemented with the February 17, 1984, final rule titled, *Food Stamp Program, Quality Control Reviews*.⁵ The provisions in the final rule require State agencies to use FNS-designed handbooks, worksheets, and coding forms in the QC review process to ensure consistency of reviews nationwide.

Incorporation by Reference

The Department proposes, at 7 CFR 275.14(b), to incorporate by reference the FNS Handbook 310, “SNAP QC Review Handbook”, dated October 2024, and add a centralized IBR paragraph at 7 CFR 275.14(f). In the 1984 final rule, the Department included the FNS Handbook 310 in the code of Federal regulations but did not specifically undertake the incorporation by reference (IBR) process. This rule addresses that oversight.

The FNS Handbook 310 is readily available to all interested parties. The FNS Handbook 310 is publicly available as listed in the **ADDRESSES** section of this proposed rule. Additionally, the FNS Handbook 310 has been consistently available on the FNS public website since 2003 and on the USDA Partner Web since 2008. The Partner Web is a web-based SharePoint site accessible with Federal e-authentication.

The FNS Handbook 310 does not detract from the legal or practical attributes of the **Federal Register** since it does not introduce new program requirements, but rather details operational procedures for the QC review process to evaluate compliance with existing SNAP laws and regulations. Publishing the entire FNS Handbook 310 in the **Federal Register** is impractical due not only due to its extensive 300-page length, but also for readability. The **Federal Register** is limited to strict formatting capabilities and a procedural manual requires

examples using bullets, indentions, text boxes, side by side comparisons, as well as flow charts, etc. and many times on the same pages as one another, which is why incorporation by reference is most appropriate.

The Department also proposes to remove reference to the FNS Handbook 311 until it can be incorporated by reference. The Department proposes to reserve new paragraphs (e) and (f)(2) in anticipation of incorporating FNS Handbook 311 in the future.

Procedural Matters

Executive Order 12866, 13563, and 14094

Executive Orders 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Under Executive Order 12866, as amended, OMB’s Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to OMB review. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14094 focuses on modernizing regulatory review and updates the definition of a significant regulation.

This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

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

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. The entities impacted by this rule are State SNAP agencies that conduct QC reviews, which are not considered small entities for purposes of this analysis.

Pursuant to our review, the Department certifies that this rule will not have a significant impact on a substantial number of small entities.

Congressional Review Act

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

Unfunded Mandates Reform Act

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

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

Executive Order 12372

SNAP is listed in the sam.gov Assistance Listings under Number 10.551. For the reasons set forth in the Final Rule codified in 7 CFR part 3015, subpart V and the related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency’s considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

The Department has considered the impact of this proposed rule, with comment, on State and local governments and has determined that this rule does not have federalism implications. Therefore, under Section

⁴ <https://www.govinfo.gov/content/pkg/FR-1983-07-29/pdf/FR-1983-07-29.pdf>.

⁵ https://archives.federalregister.gov/issue_slice/1984/2/17/6278-6313.pdf.

6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

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

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with the Department Regulation 4300–004, “Civil Rights Impact Analysis,” to identify and address any major civil rights impacts that the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule’s intent and provisions, FNS has determined that this rule has no likely impact on any of the protected classes. These changes primarily affect the QC review process and not individuals’ eligibility for or participation in SNAP.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. After a careful review of the rule’s intent, FNS has determined that this rule has no intended impact on Tribal implications.

Paperwork Reduction Act

Reporting and recordkeeping requirements associated with the use of the FNS Handbook 310 are already permitted by the Office of Management and Budget (OMB) under four separate, approved information collections under the Paperwork Reduction Act of 1995. Those collections are: 0584–0074, FNS–380, Worksheet for the Supplemental Nutrition Assistance Program Quality

Control Reviews (expires 7/31/2025); 0584–0299, FNS–380–1 Supplemental Nutrition Assistance Program’s Quality Control Review Schedule (expires 9/30/2026); 0584–0034, FNS–245: SNAP Negative Case Action Review Schedule (expires 12/31/2024); and 0584–0303, Supplemental Nutrition Assistance Program Regulations, Part 275—Quality Control (expires 7/31/2025).

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 275

Grant programs—social programs, Incorporation by reference, Reporting and recordkeeping requirements.

Accordingly, the Food and Nutrition Service proposes to amend 7 CFR part 275 as follows:

PART 275—PERFORMANCE REPORTING SYSTEM

■ 1. The authority citation for part 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 2. In § 275.14:

- a. Revise paragraphs (a) and (b);
- b. Amend paragraph (c) introductory text by removing the word “the” at the beginning of the text and adding in its place “OMB 0584–0074,”;
- c. Amend paragraph (d) introductory text by adding at the end of the sentence the phrase “, OMB 0584–0299”, adding at the end of the second sentence the phrase “, OMB 0584–0074”, and in the last sentence remove the phrase “Negative Quality Control Review Schedule, Form FNS–245” and adding in its place the phrase “OMB 0584–0034, Form FNS–245: SNAP Negative Case Action Review Schedule”;
- d. Reserve paragraph (e); and
- e. Add paragraph (f).

The revisions and additions read as follows:

§ 275.14 Review Processing.

(a) *General.* Each State agency shall use FNS handbooks, OMB approved quality control information collection forms, and SNAP QC policy memos in the quality control review process. QC reviews are consistent with SNAP’s statutory and regulatory requirements.

(b) *Review Handbook.* The reviewer shall follow the procedures outlined in the Quality Control Review Handbook,

the FNS Handbook 310, to conduct quality control reviews.

* * * * *

(e) [Reserved]

(f) *Incorporation by Reference.* The material listed in this paragraph (f) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Food and Nutrition Service (FNS) and at the National Archives and Records Administration (NARA). Contact the FNS at: 1320 Braddock Place, 5th Floor; Alexandria, Virginia 22314; email: SM.FN.SNAPHQ-WEB@usda.gov, website: <https://www.fns.usda.gov/snap/qc>. 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.

(1) FNS Handbook 310, SNAP QC Review Handbook, dated October 2024, through PM 25–01. (Available at: <https://www.fns.usda.gov/snap/qc> under the “Policy and Guidance Documents” section.)

(2) Reserved.

Tameka Owens,

Acting Administrator and Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2024–30578 Filed 1–2–25; 8:45 am]

BILLING CODE 3410–30–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2024–0180]

RIN 3150–AL21

List of Approved Spent Fuel Storage Casks: NAC International, Inc. MAGNASTOR® Storage System, Certificate of Compliance No. 1031, Amendment No. 14 and Revisions to Amendment Nos. 0 Through 13

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel regulations by revising the NAC International, Inc. MAGNASTOR® Storage System listing within the “List of approved spent fuel storage casks” to include Amendment No. 14 and revisions to Amendment Nos. 0 through 13 to Certificate of Compliance No. 1031. Amendment No. 14 and revisions to Amendment Nos. 0

through 13 revise the certificate of compliance to add a revised method of evaluation for the non-mechanistic tipover accident, clarify in the technical specifications that damaged missing grid spacers only apply to pressurized-water reactor fuel assemblies, clarify inlet and outlet vent blockage and surveillance requirements in limiting condition for operation 3.1.2 in Appendix A to the certificate of compliance and associated technical specification bases, and remove the reference to Type II Portland cement in the description of the certificate of compliance. The NRC is also correcting typographical errors in Revision 1 to Amendment Nos. 11 to 13 and Amendment No. 14 to Certificate of Compliance No. 1031.

DATES: Submit comments by February 3, 2025. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2024–0180, at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

You can read a plain language description of this proposed rule at <https://www.regulations.gov/docket/NRC-2024-0180>. For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Irene Wu, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1951, email: Irene.Wu@nrc.gov, and Nishka Devaser, telephone: 301–415–5196, email: Nishka.Devaser@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Obtaining Information and Submitting Comments
- II. Rulemaking Procedure
- III. Background
- IV. Plain Writing
- V. Availability of Documents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2024–0180 when contacting the NRC about the availability of information for this

action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC–2024–0180. Address questions about NRC dockets to Helen Chang, telephone: 301–415–3228, email: Helen.Chang@nrc.gov. For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

- **NRC’s PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2024–0180 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment

submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on March 19, 2025. However, if the NRC receives any significant adverse comment by February 3, 2025, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule. In general, absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For a more detailed discussion of the proposed rule changes and associated analyses, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that “[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation

with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.” Section 133 of the Nuclear Waste Policy Act states, in part, that “[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.”

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved

casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled “General License for Storage of Spent Fuel at Power Reactor Sites” (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled “Approval of Spent Fuel Storage Casks,” which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on November 21, 2008 (73 FR 70587), that approved the NAC International, Inc. MAGNASTOR® Storage System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1031.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31885). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS accession No./ web link/ Federal Register Citation
Proposed Certificate of Compliance and Proposed Technical Specifications	
Proposed Certificate of Compliance No. 1031, Amendment No. 14	ML24211A240
Proposed Certificate of Compliance No. 1031, Amendment No. 14, Appendix A: Technical Specifications and Design Features	ML24211A241
Proposed Certificate of Compliance No. 1031, Amendment No. 14, Appendix B: Approved Contents	ML24211A242
Proposed Certificate of Compliance No. 1031, Amendment No. 0, Revision 3	ML24211A244
Proposed Certificate of Compliance No. 1031, Amendment No. 0, Revision 3, Appendix A: Technical Specifications and Design Features	ML24211A245
Proposed Certificate of Compliance No. 1031, Amendment No. 0, Revision 3, Appendix B: Approved Contents	ML24211A246
Proposed Certificate of Compliance No. 1031, Amendment No. 1, Revision 3	ML24211A247
Proposed Certificate of Compliance No. 1031, Amendment No. 1, Revision 3, Appendix A: Technical Specifications and Design Features	ML24211A248
Proposed Certificate of Compliance No. 1031, Amendment No. 1, Revision 3, Appendix B: Approved Contents	ML24211A249
Proposed Certificate of Compliance No. 1031, Amendment No. 2, Revision 3	ML24211A250
Proposed Certificate of Compliance No. 1031, Amendment No. 2, Revision 3, Appendix A: Technical Specifications and Design Features	ML24211A251
Proposed Certificate of Compliance No. 1031, Amendment No. 2, Revision 3, Appendix B: Approved Contents	ML24211A252
Proposed Certificate of Compliance No. 1031, Amendment No. 3, Revision 3	ML24211A253
Proposed Certificate of Compliance No. 1031, Amendment No. 3, Revision 3, Appendix A: Technical Specifications and Design Features	ML24211A254
Proposed Certificate of Compliance No. 1031, Amendment No. 3, Revision 3, Appendix B: Approved Contents	ML24211A255
Proposed Certificate of Compliance No. 1031, Amendment No. 4, Revision 2	ML24211A256
Proposed Certificate of Compliance No. 1031, Amendment No. 4, Revision 2, Appendix A: Technical Specifications and Design Features	ML24211A257
Proposed Certificate of Compliance No. 1031, Amendment No. 4, Revision 2, Appendix B: Approved Contents	ML24211A258
Proposed Certificate of Compliance No. 1031, Amendment No. 5, Revision 2	ML24211A259
Proposed Certificate of Compliance No. 1031, Amendment No. 5, Revision 2, Appendix A: Technical Specifications and Design Features	ML24211A260
Proposed Certificate of Compliance No. 1031, Amendment No. 5, Revision 2, Appendix B: Approved Contents	ML24211A261
Proposed Certificate of Compliance No. 1031, Amendment No. 6, Revision 2	ML24211A262
Proposed Certificate of Compliance No. 1031, Amendment No. 6, Revision 2, Appendix A: Technical Specifications and Design Features	ML24211A263
Proposed Certificate of Compliance No. 1031, Amendment No. 6, Revision 2, Appendix B: Approved Contents	ML24211A264
Proposed Certificate of Compliance No. 1031, Amendment No. 7, Revision 2	ML24211A265
Proposed Certificate of Compliance No. 1031, Amendment No. 7, Revision 2, Appendix A: Technical Specifications and Design Features	ML24211A266
Proposed Certificate of Compliance No. 1031, Amendment No. 7, Revision 2, Appendix B: Approved Contents	ML24211A267
Proposed Certificate of Compliance No. 1031, Amendment No. 8, Revision 2	ML24211A268
Proposed Certificate of Compliance No. 1031, Amendment No. 8, Revision 2, Appendix A: Technical Specifications and Design Features	ML24211A269
Proposed Certificate of Compliance No. 1031, Amendment No. 8, Revision 2, Appendix B: Approved Contents	ML24211A270
Proposed Certificate of Compliance No. 1031, Amendment No. 9, Revision 2	ML24211A271
Proposed Certificate of Compliance No. 1031, Amendment No. 9, Revision 2, Appendix A: Technical Specifications and Design Features	ML24211A272
Proposed Certificate of Compliance No. 1031, Amendment No. 9, Revision 2, Appendix B: Approved Contents	ML24211A273
Proposed Certificate of Compliance No. 1031, Amendment No. 10, Revision 1	ML24211A274

Document	ADAMS accession No./ web link/ Federal Register Citation
Proposed Certificate of Compliance No. 1031, Amendment No. 10, Revision 1, Appendix A: Technical Specifications and Design Features	ML24211A275
Proposed Certificate of Compliance No. 1031, Amendment No. 10, Revision 1, Appendix B: Approved Contents	ML24211A276
Proposed Certificate of Compliance No. 1031, Amendment No. 11, Revision 1	ML24211A277
Proposed Certificate of Compliance No. 1031, Amendment No. 11, Revision 1, Appendix A: Technical Specifications and Design Features	ML24211A278
Proposed Certificate of Compliance No. 1031, Amendment No. 11, Revision 1, Appendix B: Approved Contents	ML24211A279
Proposed Certificate of Compliance No. 1031, Amendment No. 12, Revision 1	ML24211A280
Proposed Certificate of Compliance No. 1031, Amendment No. 12, Revision 1, Appendix A: Technical Specifications and Design Features	ML24211A281
Proposed Certificate of Compliance No. 1031, Amendment No. 12, Revision 1, Appendix B: Approved Contents	ML24211A282
Proposed Certificate of Compliance No. 1031, Amendment No. 13, Revision 1	ML24211A283
Proposed Certificate of Compliance No. 1031, Amendment No. 13, Revision 1, Appendix A: Technical Specifications and Design Features	ML24211A284
Proposed Certificate of Compliance No. 1031, Amendment No. 13, Revision 1, Appendix B: Approved Contents	ML24211A285
Preliminary Safety Evaluation Report, Certificate of Compliance No. 1031, Amendment No. 14 and Revision to Amendment Nos. 0 through 13	ML24211A243
NAC International, Inc. MAGNASTOR® Storage System Amendment No. 14 and Revisions to Amendment Nos. 0 through 13 Request Documents	
NAC International, Inc., Submission of an Amendment Request for the MAGNASTOR® Cask System, Amendment No. 14, dated July 24, 2023	ML23205A238
NAC International, Inc., Submission of Data Files to Support the NRC Review of MAGNASTOR® Amendment No. 14, dated July 24, 2023	ML23208A062
NAC International, Inc., Submission of Responses to the NRC Request for Additional Information for MAGNASTOR® Cask System, Amendment No. 14, dated June 26, 2024	ML24179A071 (package)
NAC International, Inc., Supplement to the Amendment Request No. 14 for the MAGNASTOR® Cask System, dated October 18, 2023	ML23291A167
NAC International, Inc., Supplement to the Amendment Request No. 14 for the MAGNASTOR® Cask System, dated August 6, 2024	ML24219A227
NAC International, Inc., MAGNASTOR® Cask System Users Certificate of Compliance No. 1031 Amendment Nos. 0 through 9 Intent to Adopt Letters, dated August 4, 2022	ML22216A110
Other Documents	
Rulemaking Memorandum for Amendment No. 14 and Revision to Amendment Nos. 0 through 13 for the MAGNASTOR® Storage System, dated September 20, 2024	ML24211A239
Final Rule, "Storage of Spent Fuel in NRC-Approved Storage Casks at Power Reactor Sites," published July 18, 1990	55 FR 29181
Final Rule, "List of Approved Spent Fuel Storage Casks: MAGNASTOR Addition," published November 21, 2008	73 FR 70587
Revision to Policy Statement, "Agreement State Program Policy Statement; Correction," published October 18, 2017	82 FR 48535
Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998	63 FR 31885
Regulatory Issue Summary 2017–05, "Administration of 10 CFR Part 72 Certificate of Compliance Corrections and Revisions"	ML17165A183

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at <https://www.regulations.gov> under Docket ID NRC–2024–0180. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2024–0180); (2) click the "Subscribe" link; and (3) enter an email address and click on the "Subscribe" link.

Dated: December 20, 2024.

For the Nuclear Regulatory Commission.

Mirela Gavrilas,

Executive Director for Operations.

[FR Doc. 2024–31096 Filed 1–2–25; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 791

[Docket No. 241213–0327]

RIN 0694–AJ72

Securing the Information and Communications Technology and Services Supply Chain: Unmanned Aircraft Systems

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In this advance notice of proposed rulemaking (ANPRM), the Department of Commerce's Bureau of

Industry and Security (BIS) seeks public comment on issues related to transactions involving information and communications technology and services (ICTS) that are designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries, pursuant to Executive Order (E.O.) 13873, "Securing the Information and Communications Technology and Services Supply Chain," and that are integral to unmanned aircraft systems (UAS). This ANPRM will assist BIS in determining the technologies and market participants that may be appropriate for regulation in order to address undue or unacceptable risks to U.S. national security, including U.S. ICTS supply chains and critical infrastructure, or/and

to the security and safety of U.S. persons.

DATES: Comments must be received on or before March 4, 2025.

ADDRESSES: All comments must be submitted by one of the following methods:

- *The Federal eRulemaking Portal:* <https://www.regulations.gov> at docket number BIS–2024–0058.

- *Email directly to:* UnmannedAircraftSystems@bis.doc.gov. Include “RIN 0694–AJ72” in the subject line.

- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. For those seeking to submit business confidential information (BCI), please clearly mark such submissions as BCI and submit by email, as instructed above. Each BCI submission must also contain a summary of the BCI, clearly marked as public, in sufficient detail to permit a reasonable understanding of the substance of the information for public consumption. Such summary information will be posted on [regulations.gov](https://www.regulations.gov). Comments that contain profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

FOR FURTHER INFORMATION CONTACT:

Marc Coldiron, U.S. Department of Commerce, telephone: 202–482–3678. *For media inquiries:* Katherine Schneider, Office of Congressional and Public Affairs, Bureau of Industry and Security, U.S. Department of Commerce: OCPA@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In E.O. 13873, “Securing the Information and Communications Technology and Services Supply Chain,” (84 FR 22689 (May 17, 2019)) the President delegated to the Secretary of Commerce (Secretary) the authority granted under the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701, *et seq.*), to the extent necessary, “to deal with any unusual and extraordinary” foreign threat to the national security, foreign policy, or economy of the United States in connection with the national emergency declared by the President with respect to such threat (50 U.S.C. 1701(a)). In E.O. 13873, the President declared a national emergency with respect to the “unusual and extraordinary” foreign threat posed to the ICTS supply chain and has, in accordance with the National Emergencies Act (NEA), extended the declaration of this national emergency

each year since E.O. 13873’s publication (see 85 FR 29321 (May 14, 2020); 86 FR 26339 (May 13, 2021); 87 FR 29645 (May 13, 2022); 88 FR 30635 (May 11, 2023); and 89 FR 40353 (May 9, 2024)).

Specifically, the President identified the “unrestricted acquisition or use in the United States of [ICTS] designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries” as “an unusual and extraordinary” threat to the national security, foreign policy, and economy of the United States that “exists both in the case of individual acquisitions or uses of such technology or services, and when acquisitions or uses of such technologies are considered as a class” (E.O. 13873; see also 50 U.S.C. 1701(a)–(b)).

Once the President declares a national emergency, IEEPA empowers the President to, among other acts, investigate, regulate, prevent, or prohibit any “acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States” (50 U.S.C. 1702(a)(1)(B)).

To address identified risks to U.S. national security from ICTS transactions, the President in E.O. 13873 imposed a prohibition on transactions determined by the Secretary, in consultation with relevant agency heads, to involve foreign adversary ICTS and to pose certain risks to U.S. national security, including U.S. ICTS supply chains and critical infrastructure, and to the security and safety of U.S. persons. Specifically, to fall within the scope of the prohibition, the Secretary must determine that the ICTS transaction: (1) involves ICTS designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary, defined in E.O. 13873 section 3(b) as “any foreign government or foreign non-government person engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons”; and (2):

- A. “poses an undue risk of sabotage to or subversion of the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of information and communications

technology or services in the United States;”

- B. “poses an undue risk of catastrophic effects on the security or resiliency of United States critical infrastructure or the digital economy of the United States;” or

- C. “otherwise poses an unacceptable risk to the national security of the United States or the security and safety of United States persons” (E.O. 13873 1(a)).

These factors are collectively referred to as “undue or unacceptable risks.” Further, E.O. 13873 grants the Secretary the authority to design or negotiate mitigation measures that would allow an otherwise prohibited transaction to proceed (E.O. 13873 1(b)). The President also delegated to the Secretary the ability to promulgate regulations that, among other things, establish when transactions involving particular technologies may be categorically prohibited (E.O. 13873 2(a)–(b); see also 3 U.S.C. 301–302). Specifically, the Secretary may issue rules establishing criteria, consistent with section 1 of E.O. 13873, by which particular technologies or market participants may be categorically included in or categorically excluded from prohibitions established pursuant to E.O. 13873 (see E.O. 13873 2(b)). Any regulated transactions under E.O. 13873 must have a sufficient nexus to a foreign adversary, which, according to E.O. 13873’s implementing regulations at 15 CFR 791.4, currently includes, China, People’s Republic of (China), including the Hong Kong Special Administrative Region; Republic of Cuba (Cuba); Islamic Republic of Iran (Iran); Democratic People’s Republic of Korea (North Korea); Russian Federation (Russia); and Venezuelan politician Nicolás Maduro (Maduro Regime).

II. Introduction

Pursuant to the authority delegated to the Secretary under E.O. 13873, BIS is considering proposing a rule to address the undue or unacceptable risks posed by certain transactions involving ICTS integral to unmanned aircraft system (UAS) when the ICTS are designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries (foreign adversary ICTS). BIS is also considering whether there are mitigation measures that, if adopted, would allow UAS market participants to engage in transactions that would otherwise pose undue or unacceptable risks. The purpose of this ANPRM is to gather information to support BIS’s potential development of a rule regarding foreign adversary ICTS

integral to UAS. For the purposes of this rulemaking, unless terms are otherwise defined herein, this ANPRM will apply the definitions listed in 15 CFR 791.2.

III. Request for Comments

BIS is concerned that the involvement of foreign adversaries, notably China and Russia, in the design, development, manufacture, or supply of ICTS integral to UAS poses undue or unacceptable risk to U.S. national security, including U.S. ICTS supply chains and critical infrastructure, and to the security and safety of U.S. persons. As described in more detail below, these countries can leverage their political and legal frameworks to co-opt private entities for national interests, and those private entities maintain dominant market positions in the global commercial UAS sector. This dominance, particularly by China, provides ample exploitation opportunities. Further, both countries have shown a willingness to compromise U.S. infrastructure and security through cyber espionage. The potential for these countries to direct the actions of private entities for the purpose of exploiting ICTS supply chains heightens concerns about their participation in the U.S. UAS supply chain.

BIS seeks public input on several topics, including, but not limited to, certain definitions and BIS's assessment of how a class of transactions involving foreign adversary ICTS integral to UAS could present undue or unacceptable risks to U.S. national security and to the security and safety of U.S. persons. These risks relate to threats from foreign adversary-linked entities, the capabilities of UAS that may increase the likelihood of vulnerabilities, and the consequences to U.S. national security, including U.S. ICTS supply chains and critical infrastructure, and to the security and safety of U.S. persons if these vulnerabilities are exploited or intentionally inserted by foreign adversary linked entities. BIS recognizes the benefits of UAS technologies and does not imply through this ANPRM that any particular UAS components, such as data transmission or connectivity devices, should not be used. These technologies benefit the United States by increasing efficiency in various critical infrastructure sectors such as agriculture, construction, transportation, and energy, leading to economic growth and improved public safety. However, in E.O. 13873, the President focused on addressing risks that ICTS transactions involving foreign adversaries might present to U.S. national security and to the security and safety of U.S. persons. Therefore, this

ANPRM, which is being issued pursuant to the authorities granted to the Secretary under E.O. 13873, seeks public comment on potential ways to address undue or unacceptable risks to U.S. national security, including U.S. ICTS supply chains and critical infrastructure, and to the security and safety of U.S. persons that may arise from foreign adversary ICTS integral to UAS. As part of BIS's efforts to understand UAS and their critical ICTS components, BIS solicits comments on the ICTS most integral to UAS's data collection and connectivity capabilities and that are most vulnerable to compromise by an adversarial actor. Such ICTS might be included in any mitigation measures or prohibitions imposed in a potential rule, and could include, but is not limited to: (1) onboard computers responsible for processing data and controlling UAV flight; (2) communications systems including, but not limited to, flight controllers, transceiver/receiver equipment, proximity links such as Global Navigation Satellite Systems (GNSS) sensors, and flight termination equipment; (3) flight control systems responsible for takeoff, landing, and navigation, including, but not limited to, exteroceptive and proprioceptive sensors; (4) ground control stations (GCS) or systems including, but not limited to, handheld flight controllers; (5) operating software including, but not limited to, network management software; (6) mission planning software; (7) intelligent battery power systems; (8) local and external data storage devices and services; and (9) artificial intelligence (AI) software or applications. BIS also solicits input on mechanisms to mitigate the risks posed by foreign adversary ICTS integral to UAS, such as potential design requirements, machine learning controls, implementation standards and protocols, cybersecurity firmware and/or software inputs, manufacturing integrity (*i.e.*, the security of the manufacturing process to ensure no foreign adversary manipulation) protection systems and procedures, or prohibitions.

Additionally, BIS seeks comment on whether it would be beneficial to create a process for the public to request specific authorization to engage in certain transactions involving foreign adversary ICTS integral to UAS by demonstrating that the parties to a particular transaction have implemented measures to adequately mitigate the risk to U.S. national security or to the security and safety of U.S. persons. BIS encourages public

feedback to help inform the rulemaking process, particularly regarding the impact on U.S. ICTS supply chains and critical infrastructure of any prohibition or mitigation measures applicable to foreign adversary ICTS integral to UAS. BIS additionally encourages the submission of any public comments germane to the issues as described in this ANPRM.

a. Definitions

BIS requests comments on a definition of "unmanned aircraft systems" or UAS to use in a potential rule. BIS could define UAS as the International Trade Administration (ITA) does to mean "air vehicles and associated equipment that do not carry a human operator, but instead are remotely piloted or fly autonomously" (International Trade Administration, *Unmanned Aircraft Systems Overview* (accessed October 15, 2024), <https://www.trade.gov/unmanned-aircraft-systems/>). UAS, more colloquially known as "drones," is a generic term that can include, but is not exclusive to, remotely piloted aircraft systems or unmanned aerial vehicles. ITA's definition also states "[a] UAS generally consists of (1) an aircraft with no pilot on board, (2) a remote pilot station, (3) a [command-and-control] link, and (4) a payload specific to the intended application [or] operation, which often includes specialized cameras or other sensors that collect data for near term analysis" (International Trade Administration, *Unmanned Aircraft Systems Overview* (accessed October 15, 2024), <https://www.trade.gov/unmanned-aircraft-systems/>).

BIS is also contemplating the use of other definitions of UAS from the U.S. government, including the definition used by the Federal Aviation Administration (FAA), which defines UAS as "an unmanned aircraft and associated elements (including communication links and the components that control the unmanned aircraft) that are required for the operator to operate safely and efficiently in the national airspace system" (49 U.S.C. 44801(12)). The FAA defines an "unmanned aircraft" to mean "an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft" (49 U.S.C. 44801(11)).

BIS also considered the definition of unmanned aerial vehicle (UAV) as used within BIS's Export Administration Regulations (EAR), which defines UAV as "[a]ny 'aircraft' capable of initiating flight and sustaining controlled flight and navigation without any human presence on board" (15 CFR 772.1). The

EAR defines “aircraft” as “[a] fixed wing, swivel wing, rotary wing (helicopter), tilt rotor or tilt-wing airborne vehicle” (15 CFR 772.1). BIS considered the use of UAV versus UAS and believes UAV is too narrowly focused for future rulemaking purposes, as it only refers to the air vehicle itself and excludes other system elements, such as the ground control stations, communication links, and other associated components necessary for operation.

BIS is inclined to determine that ITA’s definition may be more appropriate for purposes of potential regulation because, unlike the FAA and EAR definitions, it identifies specific components and systems that are integral to UAS. Such a definition may include UAS and UAS subsystems, such as control stations; data communications and navigation links or, more precisely, command and control and Non-Payload Communications (CNPC) links; payloads; flight termination systems; electronic launch and recovery equipment; recording capabilities for receiving live imagery; software or AI software and applications necessary for the operation of airborne systems; and the capability of remote software or firmware updates. Additionally, ITA’s definition would incorporate some UAS known as actively tethered UAS, which use a load-rated tether that is physically attached to a ground station to provide continuous power and which may transmit data to and from the UAS, which allows the UAS to remain in the air for an extended period of time. Please note that any definition determined by BIS to be appropriate for BIS rulemaking regarding UAS would not supersede any other legal definition of UAS used in other contexts.

Given the various definitions that could be utilized, this ANPRM seeks comment on the definitions to use in a potential rule regarding transactions involving ICTS integral to UAS, and specifically, but not limited to:

1. In what ways, if any, should BIS elaborate on or amend the potential definition(s) of UAS as stated above? If amended, how will the revised definition enable BIS to better address national security risks arising from classes of transactions involving ICTS integral to UAS?

2. Is the term UAS broad enough to include the aircraft systems that may combine flight controllers, global navigation satellite systems (GNSS) modules, cameras, communication devices, surveillance modules, navigation devices, sensors with control systems, and/or software with onboard

and offboard data storage capabilities? Does a better term exist to include such aircraft systems within the definition’s scope?

3. Are there other commonly used definitions for UAS that BIS should consider when defining a class of transactions involving ICTS integral to UAS, including definitions from industry, civil society, or international standards organizations? If so, why might those definitions be more appropriate for the purposes of a rule?

4. What is the appropriate focus of any BIS regulations in this sector, including, but not limited to, UAS platforms and subcomponent technology, UAS capabilities, or UAS end-user sectors, including entities providing services performed by UAS?

5. Are there commonly used definitions and standard capabilities for each of the following ICTS components, which BIS has preliminarily identified as integral to the UAS platform: (1) onboard computers responsible for processing data and controlling UAV flight; (2) communications systems including, but not limited to, flight controllers, transceiver/receiver equipment, proximity links such as GNSS sensors, and flight termination equipment; (3) flight control systems responsible for takeoff, landing, and navigation, including, but not limited to, exteroceptive and proprioceptive sensors; (4) GCS or systems including, but not limited to, handheld flight controllers; (5) operating software including, but not limited to, network management software; (6) mission planning software; (7) intelligent battery power systems; (8) local and external data storage devices and services; (9) AI software or applications? Are there additional components that BIS should identify as integral to the UAS platform and, if so, are there commonly used definitions and standard capabilities for each component, such as the American Security Drones Act?

b. Risks Associated With UAS

BIS is soliciting comment on the risks associated with foreign adversary ICTS integral to UAS, the rapidly advancing technological functionalities of UAS, and the increasing integration of UAS with U.S. critical infrastructure. Exponential advancements in UAS functionality have allowed for the rapid expansion of the UAS industry in recent years. Remote and autonomous control systems have been developed to support operational, safety, and environmental applications, minimizing physical strain and risks to operators in various fields. Advancements in this sector have reduced production and end user costs

and increased the accessibility of UAS technology. In addition, UAS have become integral to various sectors of the economy, including: (1) agriculture, where they are used for crop monitoring and precision spraying; (2) the chemical industry, where they assist in pipeline inspections and hazardous material handling; (3) physical infrastructure and transportation, where they are employed for surveying, bridge inspections, and construction site management; (4) emergency response; (5) health care administration; (6) energy; and (7) media and entertainment.

Over the last decade, UAS have evolved to more sophisticated models with improved functionalities, including enhanced connected technologies such as advanced flight controllers, multi-GNSS and GNSS modules, cameras, receivers, and AI software and applications, which have enabled greater autonomy, precision in navigation, enhanced surveillance capabilities, and seamless integration with various applications across industry. These new technologies require signal and communication software to collect vast amounts of data, and in turn may increase attack vectors for malicious actors to exploit.

Commercial UAS have been increasingly adopted in critical infrastructure sectors, as defined in National Security Memorandum-22 of April 2024 (see Grand View Research, *Drone Market Size, Share & Trends Analysis Report by Component (Hardware, Software, Services), By Product, By Technology, By Payload Capacity, By Power Source, By End-use, By Region, and Segment Forecasts, 2024–2030* (accessed October 15, 2024), <https://www.grandviewresearch.com/industry-analysis/drone-market-report>; see also The White House, *National Security Memorandum on Critical Infrastructure Security and Resilience* (April 30, 2024), <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/04/30/national-security-memorandum-on-critical-infrastructure-security-and-resilience/>). UAS used in these sectors often rely on the same aircraft used by recreational drone enthusiasts, but in many cases the UAS used to support critical infrastructure have longer flight times, can lift heavier and more complex payloads, can fly beyond visual line of sight, and have the durability to fly through rough weather conditions. UAS capable of lifting and carrying payloads for extended periods of time pose a specific and aggravated risk of both data collection and manipulation, as well as remote access that could be misused for destructive

purposes. As critical infrastructure becomes more reliant on commercial UAS, their remote incapacitation by a foreign adversary creates increased risk to U.S. national security and to the security and safety of U.S. persons.

Malign remote access to UAS could be used to harm or damage physical infrastructure via intentional collisions, the delivery of kinetic payload, or could result in altered sensitive readings on critical infrastructure data. These risks can be exacerbated if the ICTS integral to UAS is designed, developed, manufactured, or supplied, by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary. Accordingly, BIS requests public comment on the undue or unacceptable risks posed by transactions involving foreign adversary ICTS integral to UAS technology. BIS seeks comments on the following topics but encourages the submission of any comments germane to the issues discussed in this ANPRM:

6. BIS identified data exfiltration and remote access control as the two primary areas of risk associated with transactions involving foreign adversary ICTS integral to UAS technology. Are there other risks or factors contributing to the risk that BIS has not considered in the above analysis?

7. Which specific sectors or elements of critical infrastructure operated by private organizations, specifically within the commercial market, are most at risk if UAS technology is compromised?

c. Threat Posed by Foreign Adversaries

Foreign adversaries like China and Russia have established certain legal and regulatory frameworks through which they could compel entities under their jurisdiction to comply with requests for information regarding U.S. persons or access to systems in the U.S. ICTS supply chain. China has implemented a series of laws (e.g., the National Intelligence Law of 2017, the Cybersecurity Law of 2017, the Personal Information Protection Law (PIPL) of 2021, the National Security Law of 2015) that mandate cooperation with China's cybersecurity efforts, intelligence operations, and the protection of national security interests by individuals and entities subject to the jurisdiction of China. These laws require network operators and technology companies to assist public security agencies in safeguarding cybersecurity and providing access to data stored within China's borders (see Department of Homeland Security, *Data Security Business Advisory* (July 11, 2022), <https://www.dhs.gov/sites/>

[default/files/publications/20_1222_data-security-business-advisory.pdf](https://www.dhs.gov/sites/default/files/publications/20_1222_data-security-business-advisory.pdf)). Specifically, the National Security Law of 2015 imposes obligations that require organizations and individuals to cooperate with Chinese authorities on undefined 'matters of national security,' potentially requiring technology companies to expose the personal information of U.S. citizens or companies (see CNA, *China's National Security Laws: Implications Beyond Borders* (December 2023), <https://www.cna.org/quick-looks/2023/China-national-security-laws-implications-beyond-borders.pdf>).

Similarly, Russian legislation (e.g., Federal Law No. 40–FZ, "On the Federal Security Service"; Federal Law No. 144–FZ, "Open-Investigative Activity"; Federal Law No. 97–FZ, "On Amendments to the Law") grants the Russian government direct access to Russian corporations' activities and facilities. Using this authority, the Russian government could access companies' data and consumer information and mandate that companies cooperate with the Federal Security Services (FSB) to assist with counterintelligence actions, which can include installing government equipment on companies' infrastructure for data collection. These laws compel Russia-based telecommunications providers, internet service companies, and other entities to assist Russian security agencies in investigations and surveillance, ensuring compliance with national security imperatives (see Federal Law No. 374–FZ, "On Amending Federal Law 'On Combating Terrorism' And Certain Legislative Acts of the Russian Federation Regarding the Establishment of Additional Counter-Terrorism Measures and Public Security").

Within the United States, products developed by China-based entities make up at least 75 percent of the UAS consumer market (see Lukas Schroth, *Drone Market Shares in the USA After China-US Disputes*, Drone Industry Insights (March 2, 2021), <https://droneii.com/drone-market-shares-usa-after-china-usa-disputes>; see also David Kitron, *Game of Drones: Chinese Giant DJI Hit by U.S. Tensions*, Staff Defections, Reuters (March 8, 2021), <https://www.reuters.com/article/us-usa-china-tech-dji-insight/game-of-drones-chinese-giant-dji-hit-by-u-s-tensions-staff-defections-idUSKBN2AZ0PV/>). The large market share of China-based entities allows China to exercise control over the supply chain and deny access to UAS technology. With the added element of China's ability to exercise jurisdiction over the primary producers

of UAS products and components globally, China is unmatched in its control over crucial UAS elements used for commercial needs. The preeminence of China-based entities in the U.S. market provides China, through its established legal framework and control over persons subject to its jurisdiction, a significant opportunity to collect U.S. persons' data and potentially deny services to the United States and its allies in response to unfavorable policies or conflicts.

Russia, in comparison to China, comprises a relatively small portion of the global UAS market share, but has announced its intention to heavily invest in developing Russia's UAS domestic market over the next few years to be less reliant on external manufacturers (see, e.g., *Russia plans to produce 18,000 drones annually by late 2026—first deputy premier*, TASS (April 27, 2023), <https://tass.com/economy/1610899>). As of 2023, Russia reportedly produced only 6,000 UAS and aims to boost domestic drone production for various industry sectors (see Martin Forusek, *Russian official: Russia aims to produce over 32,000 civilian drones annually by 2030*, Kyiv Independent (January 6, 2024), <https://kyivindependent.com/russian-official-russia-aims-to-produce-32-000-drones-annually-by-2030/>). While the nascent state of Russia's UAS market may not currently pose risks to U.S. national security, including U.S. ICTS supply chains and critical infrastructure, and to the security and safety of U.S. persons in the commercial space, the projected growth of Russia's domestic market suggests national security risks will emerge if left unchecked. The strategic investments being made in Russia mirror the same efforts made by China in its own markets and may position Russia as a high-volume supplier in the UAS space in the near future.

Despite their different current UAS market shares, China and Russia have demonstrated that they are capable of engaging in cyber activities that seek to harm U.S. critical infrastructure and national security for strategic advantage. According to the Office of the Director of National Intelligence, China's cyber espionage pursuits and the export of surveillance, information, and communications technologies by China-based industries increase the threats of aggressive cyber operations against the United States and the suppression of the free flow of information in cyberspace (see Office of the Director of National Intelligence, *Annual Threat Assessment* (2024), <https://www.dni.gov/files/ODNI/documents/assessments/ATA-2024-Unclassified-Report.pdf>). Additionally,

Russia has long exploited vulnerabilities targeting critical infrastructure in the United States as well as in allied and partner countries (see Cybersecurity and Infrastructure Security Agency, *Hunting Russian Intelligence “Snake” Malware* (May 9, 2023), <https://www.cisa.gov/news-events/cybersecurity-advisories/aa23-129a>). Whether through pre-positioning attacks or exploiting software vulnerabilities, China and Russia have exhibited their intent and capability to compromise U.S. national security, including U.S. ICTS supply chains and critical infrastructure, and the security and safety of U.S. persons.

Further, foreign adversaries, such as China or Russia, could direct UAS companies subject to their jurisdiction to engineer vulnerabilities into their products, exploit existing vulnerabilities, or push malicious updates, compromising these products without the UAS owner’s knowledge. In the past, for example, China-based UAS companies have pushed firmware updates to implement no-fly restrictions that would disable their UAS in conflict zones defined by the company (see, e.g., Haye Kesteloo, *Autel Robotics Implements No-Fly Zones in Conflict Areas to Prevent Drone Misuse*, DroneXL (December 24, 2023), <https://dronexl.co/2023/12/24/autel-robotics-drone-no-fly-zones-conflict/>; Gareth Corfield, *Drone maker DJI quietly made large chunks of Iraq, Syria no-fly zones*, The Register (April 26, 2017), https://www.theregister.com/2017/04/26/dji_drone_geofencing_iraq_syria/). These UAS no-fly zones can also be altered through non-commercial methods by disabling UAS safety features (see, e.g., Support, *No-Fly Zones (NFZ) Explained*, Drone-Hacks Wiki (last edited June 18, 2024), <https://wiki.drone-hacks.com/en/nfz-explained>). As of 2024, these alterations can be implemented across several China-based UAS models (see, e.g., Drone-Hacks, *Available Hacks* (accessed October 15, 2024), <https://drone-hacks.com/available-hacks/> (an illustrative example of a website that allows users to download software to modify a drone’s operating system to operate outside of specified no fly zones)). Pushing forced updates that disable UAS in predefined zones and circumventing safety features demonstrate two vectors through which a foreign adversary could abuse its access and influence over a company intentionally to target UAS products owned by U.S. persons or operated in the United States, disrupt their operation, and in turn severely impact U.S. national security, including the U.S. ICTS supply chain and critical

infrastructure, and the security and safety of U.S. persons.

This ANPRM seeks comments on the role of persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary in the U.S. supply chain for ICTS components integral to UAS. For clarity, this ANPRM uses the term “UAS companies” to refer to the manufacturers or distributors of a finished UAS product, like a drone, while the term “UAS Original Equipment Manufacturers” (OEMs) refers to the producers of the UAS components, including the tier 1, tier 2, and tier 3 suppliers. The term “UAS service providers” refers to entities responsible for desktop and mobile applications supporting UAS. A single company, depending on its products, could be a UAS company, OEM, and service provider all at once. BIS seeks comments on the below topics but encourages the submission of any comments germane to the issues discussed in this ANPRM:

8. In this section, BIS identified threats posed by transactions involving ICTS integral to UAS with a nexus to China or Russia. Has BIS fully captured and articulated the threat posed by transactions involving such ICTS? If not, what additional threats should BIS consider?

9. Do other foreign adversaries identified in 15 CFR 791.4, such as Iran, North Korea, Cuba, and the Maduro Regime of Venezuela, pose similar risks to the UAS ICTS supply chain that BIS should consider? Are there specific persons or entities with a nexus to these foreign adversaries that BIS should consider?

10. Which ICTS components integral to UAS are designed, developed, manufactured, or supplied predominantly or exclusively by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary?

a. Are UAS companies capable of tracking and reporting the sources of these ICTS components?

b. Are there specific ICTS components that UAS companies focus on when evaluating their supply chains for involvement with foreign adversary linked entities?

11. What are the potential tradeoffs of a rule prohibiting the resale or rental in the United States of UAS or UAS components that are designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary?

12. What are the software applications, whether freeware or requiring an account or purchase, that

companies within the UAS supply chain generally develop or distribute in support of UAS, and/or sell or resell within the United States or to U.S. persons?

a. What is the provenance of all source code for such software applications? What do the distribution channels for such software applications look like (e.g., direct, follow components, aftermarket)?

b. Please identify any significant third parties that develop source code for UAS OEM’s software product lines.

13. Please describe the ICTS supply chain for UAS that are used or sold in the United States. Particularly useful responses may include information regarding:

a. Market leaders for each distinct phase of the supply chain for ICTS integral to UAS (e.g., design, development, manufacturing, or supply) including, but not limited to: (1) UAS companies; (2) OEMs, including tier one, tier two, and tier three suppliers; and (3) service providers.

b. Geographic locations where software (e.g., product operating systems or waypoint software), hardware (e.g., light detection and ranging (LiDAR) sensors), or other ICTS integral to UAS in use in the United States, are designed, developed, manufactured, or supplied.

c. The length of time it typically takes to conduct due diligence on UAS vendors, how long the design phase is for UAS, and how quickly UAS companies can make changes to the supply chain.

14. Which ICTS components integral to UAS, including but not limited to those identified in this ANPRM, pose the greatest risk to U.S. national security, including U.S. ICTS supply chains and critical infrastructure, or to the security and safety of U.S. persons if they are foreign adversary ICTS?

d. *Capabilities of UAS That May Increase the Likelihood of Vulnerabilities That Foreign Adversary Linked Entities Could Exploit*

Data Collection

UAS incorporate numerous ICTS components including sensors to gather environmental information, actuators to enable remote or autonomous movements, telecommunications equipment to receive signals necessary for flight, and software with intelligent algorithms to execute actions based on the gathered data. UAS for commercial or military purposes may incorporate additional equipment to collect more complex data, including multispectral sensors, thermal cameras, infrared

sensors, and radar. These sensors may collect and transmit a wide variety of sensitive data (e.g., critical infrastructure facility layouts which could be used to plot potential avenues for sabotage of such facilities). In general, data collected by UAS can be stored in multiple locations depending on the specifications of the UAS and user decisions, including on an internet-connected device such as a mobile phone or a computer, on a radio control device, on a hard drive or personal server, or on a cloud platform provided by UAS companies. In some instances, UAS companies state in their privacy policies that data may be stored in data centers located outside of the user's home country, to include where the UAS company is headquartered.

BIS seeks to better understand the data collection capabilities including intelligent machine learning algorithms of UAS and the ICTS components therein. In particular, BIS seeks further comment on the following topics but encourages the submission of any comments germane to the issues discussed in this ANPRM:

15. What are the general data collection capabilities of UAS? What is the level of aggregation and scale of data that UAS can collect on U.S. persons, entities, geography, and infrastructure?

a. Who besides the operator of the UAS generally has authorized access to, or control of, data collected by UAS?

b. How is the data collected by UAS sold or integrated into data markets?

16. What are the UAS industry standard policies or procedures, if any, governing how data generated by, owned by, or otherwise associated with U.S. persons is stored, managed, processed, gathered, or protected in or on data-related services equipment located outside of the United States? BIS defines "data-related services equipment" as hardware used to receive, store, process or transmit data in support of data-related services, including routers, firewalls, gateways, switches, servers, load-balancers, intrusion detection systems, domain name systems, and storage area networks.

17. Are there standards or best practices for data retention and/or data disposition policies or procedures, involving data-related services equipment located outside the United States following the termination of any UAS account services by U.S. persons?

18. What are the standard policies or procedures related to UAS companies' and UAS OEMs' review of or access to data generated by, owned by, or otherwise associated with U.S. persons?

19. Are there industry standard policies or procedures establishing how UAS companies must or should protect the privacy of data generated by, owned by, or otherwise associated with U.S. persons?

20. What cybersecurity measures, authentication, or controls do UAS service providers and other companies supporting the UAS supply chain use to mitigate risks surrounding data collection, access, storage, processing, and exfiltration?

21. Is it standard for UAS companies to have data-related services equipment located outside of the United States that, at any time, UAS companies use to store, collect, process, analyze, share, distribute, or manage data generated by, owned by, or otherwise associated with U.S. persons?

22. How are UAS integrated in critical infrastructure sectors? Which of these integrated UAS services, if any, are particularly unique or of a sensitive nature such that a disruption to the UAS supply chain would create a gap for the sector?

23. Which sensors in or on UAS that are typically used in critical industries (e.g., agricultural, chemical, construction, energy, telecommunication) are able to collect or transmit data or have connection capabilities?

a. Are there official aftermarket modification or customization options available for these types of sensors?

b. Are there any standard requirements for these sensors?

24. What is the standard practice for data sharing relationships between UAS companies and individuals or entities within the United States?

a. Are there agreements between UAS companies and cloud computing service providers that require the exclusive or prioritized use of that cloud service's network infrastructure? If so, please provide examples of how those agreements operate.

b. In industries in the United States where UAS are used to collect data, do companies share the data they collect with other companies? For what purpose (if not for the primary purpose of data collection)?

25. Are there any standard assessments, audits, or evaluations, internal or by an external party, of UAS companies' data privacy policies related to any data generated by, owned by, or otherwise associated with U.S. persons?

26. What role do specific remote sensing ICTS components serve for data collection by UAS? Particularly useful responses will describe the data collection role of the following components:

a. Imagery (RGB and Multi-spectral), 3-Dimensional, or Acoustic Sensors;

b. Particle Sensors (regardless of wavelength);

c. Radio Frequency Sensors;

d. Proximity and Navigation Sensors;

e. Electro-Magnetic Sensors; and/or

f. Other Sensors (including inertial).

27. How often are software applications related to the operation of UAS installed on a UAS user's phone? What policies govern the application's access to other information on the user's phone?

28. What systems, sensors, or equipment do UAS and their affiliated UAS operators use when not navigating or storing data over mobile networks?

29. How do UAS operators secure data that is transmitted, received, or stored during the normal operation of a UAS without connecting to the internet?

Remote Access and Control

Connectivity features in UAS have raised significant concerns regarding illicit remote access and security vulnerabilities (see, e.g., Department of the Army, *Discontinue Use of Da Jiang Innovation (DJI) Corporation Unmanned Aircraft Systems* (August 2017), <https://www.suasnews.com/2017/08/us-army-calls-units-discontinue-use-dji-equipment/>). As UAS become increasingly sophisticated and equipped with advanced communication technologies such as Wi-Fi, Bluetooth, cellular connections, or other cellular communications technologies, the risk of unauthorized access to and control over UAS by malicious actors may grow. The integration of advanced communication technologies may allow malicious actors to intercept or hijack communication signals between a UAS and its controller, potentially leading to unauthorized access to sensitive data or control over the UAS itself.

Malicious actors could gain illicit access to cloud platforms used by UAS to store data or authorize remote control access and use that access to determine the location of a UAS and pilot (see Andy Greenberg, *This Hacker Tool Can Pinpoint a DJI Drone Operator's Exact Location*, *Wired* (March 2, 2023), <https://www.wired.com/story/dji-droneid-operator-location-hacker-tool/>). Once malicious actors gain such access, they can obfuscate their identities to obtain U.S. persons' sensitive information and data related to critical infrastructure. For example, researchers studying this issue have been successful in reverse engineering the radio frequency that controls a UAS and have been able to pinpoint the position of the UAS, the UAS home point, and the remote pilot's location (see Nico

Schiller, *et al.*, *Drone Security and the Mystery Case of DJI's DroneID* (March 2023), https://www.ndss-symposium.org/wp-content/uploads/2023/02/ndss2023_f217_paper.pdf). Further, unauthorized UAS access may provide avenues for malicious actors to infiltrate drone operations within critical infrastructure companies, compromising their functionality and security. The potential consequences of compromised UAS systems are significant. Malicious actors' access to UAS could lead to the exfiltration of sensitive data, including real-time video feeds and geolocation information, which can be used to gather intelligence and conduct surveillance to threaten U.S. national security, including U.S. ICTS supply chains and critical infrastructure, or the security and safety of U.S. persons.

To understand the vulnerabilities inherent in UAS, BIS requests comments regarding specific ICTS components that enable UAS connectivity, such as network connectivity chips, operating software, AI software and machine learning applications, and data transmission devices. These components, which facilitate UAS communication with external networks, are susceptible to various forms of potential UAS cyber vulnerabilities if not properly secured. Supply chain security for these components may be essential. Compromised network connectivity chips, for example, may introduce backdoors or other malicious functionalities during the manufacturing process, which may be triggered when the UAS is activated. UAS could also be compromised through the corruption and injection of artificial intelligent code during the supply chain process in order to introduce vulnerabilities or functionalities affecting data access and UAS control, for example. The supply chain may be manipulated by foreign adversaries who seek to exploit vulnerabilities at various stages of production and distribution. Understanding and mitigating these risks by implementing comprehensive security assessments and standards may be vital for ensuring the integrity and security of UAS communication capabilities. Enhanced scrutiny of the UAS supply chain, especially regarding foreign adversary ICTS components, may be necessary to safeguard against potential threats from foreign adversaries. As such, BIS seeks to understand the following topics in greater detail but welcomes any other

comments germane to the issues discussed in this ANPRM:

30. What is the physical range of connectivity for UAS systems for commercial use?

31. Where is data stored on the physical UAS if any? Where is data that a UAS captures during routine operations stored off the physical UAS?

a. How long is data stored on and off the UAS platform?

32. What, if any, industry standard policies or procedures govern how UAS communicate, what kinds of information UAS can communicate, with what they can communicate, and which components enable, store, or analyze these communications?

33. What controls or procedures govern or should govern the use of AI in UAS?

34. What types of remote access or control do OEMs have over their UAS? Please also describe under what circumstances an OEM would require remote access or control.

35. To what extent can individual sensors and components communicate independently from the UAS Operating System (OS)?

36. What cybersecurity standards and best practices exist for the UAS supply chain? How do UAS OEMs supplement existing cybersecurity standards and best practices at each step of the UAS supply chain, including design, manufacturing, and maintenance?

37. How do UAS OEMs or UAS operators integrate payloads and related components from third parties into their software, OS, and AI software and applications?

38. Who are the third parties that commonly provide payloads and component parts (*e.g.*, sensors, payloads, cameras) for integration into UAS production?

a. Which, if any, of these third parties are owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary? Which, if any, of these third parties are owned by entities that operate under the laws of a foreign adversary? Where are these third parties incorporated and physically located? Please provide factual support where possible.

39. What ICTS components, other than payloads and related components, are made by non-U.S. third parties (*i.e.*, not the U.S. UAS OEM) for incorporation into UAS? Where are these component parts made? Where are the UAS assembled, and what entity (*e.g.*, OEM, third party servicer, or user/operator) would typically incorporate or integrate these additional components into a UAS?

40. Who provides and is responsible for cybersecurity updates to software, firmware, and AI software and applications for component parts integrated into UAS (*e.g.*, sensors, camera, payload)?

e. Consequences of Foreign Adversary Involvement in ICTS Integral to UAS

The ability of a foreign adversary to direct or control private companies through applicable legal frameworks, combined with the possible exploitation of vulnerabilities in the increasingly capable ICTS components integral to UAS, poses a significant threat of data exfiltration and malicious remote access. This could lead to severe, and in some instances catastrophic, consequences for U.S. national security, including U.S. ICTS supply chains and critical infrastructure, and for the security and safety of U.S. persons.

Through foreign adversary ICTS integral to UAS, the intelligence agencies of foreign adversaries could exfiltrate, collect, and aggregate a wide range of sensitive data on U.S. persons and critical infrastructure held by companies in the UAS ICTS supply chain. The data collected by UAS or by a connected device could include locations, for example, of military installations or critical infrastructure including water infrastructure or energy generation or storage facilities, flight paths, audio and video recordings, as well as information about operators' identities, finances, contacts, operator base locations, and operating sector, including critical infrastructure, which can be collected by UAS or by a connected device.

In addition, denial of service through backdoors embedded in a UAS's software could enable a foreign adversary linked entity under certain conditions to obtain control over various UAS functions, including the ability to disable the UAS completely. To illustrate using an example noted generally above, in December 2023, a China-based UAS manufacturer rolled out a firmware update to their UAS that disabled any UAS located in "conflict zones" defined by the company to include Gaza, West Bank, Israel, Russia, Ukraine, and Taiwan, among others. Once the UAS entered one of the conflict zones with the downloaded update, it would cease functionality. Users would only be able to continue operation by refusing to download the update to the detriment of the long-term functionality of the UAS, as it would effectively bar the users from receiving future updates (see Haye Kesteloo, *Autel Robotics Implements No-Fly Zones in Conflict Areas to Prevent Drone Misuse*,

DroneXL (December 24, 2023), <https://dronexl.co/2023/12/24/autel-robotics-drone-no-fly-zones-conflict/>). If abused by a malicious actor, pushed updates like this could open users up to the risk of newly defined and restricted “zones” that could affect the use and control of their UAS. A foreign adversary could exploit firmware updates of this type by exercising influence or control over a UAS service provider and instructing them to push a certain update.

BIS seeks to better understand how UAS OEMs may impact UAS functionality through their incorporated ICTS components. In particular, the ANPRM seeks further comment on the following topics but encourages the submission of any comments that are germane to the issues discussed in this ANPRM:

41. In what instances, and how, would OEMs be able to terminate functionality of a UAS (*i.e.*, denial of service)?

a. What are the standards and best practices governing the ability of OEMs to terminate functionality of a UAS?

b. Are there instances in which a third party or a subcomponent maker (*e.g.*, a maker of sensors) could remotely deny service to and fully or partially terminate functionality of a UAS or its respective sensor or component independently of the OEM?

c. Once service is denied or functionality is terminated, what are the standards and best practices for reinstating full operability?

d. Are there instances in which a UAS and its subcomponents can use any inherent connectivity they possess to connect to other devices, the cloud, or connected software applications online but be insulated against denial-of-service updates or patches by the OEM?

f. Mitigations and Authorizations

In addition to the topics discussed above, this ANPRM seeks comment on processes and mechanisms that BIS could implement in a potential rule to authorize otherwise prohibited ICTS transactions if the parties to such transactions adopt certain mitigation measures or otherwise mitigate the undue and unacceptable risks to U.S. national security, including U.S. ICTS supply chains and critical infrastructure, or to the safety and security of U.S. persons. In particular, the ANPRM seeks further comment on the following topics but encourages the submission of any comments that are germane to the issues discussed in this ANPRM:

42. Are there instances in which granting a temporary authorization to engage in otherwise prohibited UAS

ICTS transactions would be necessary to avoid supply chain disruptions or other unintended consequences and in the interest of the United States?

43. Which, if any, categories or classifications of end users should BIS consider excluding from any prohibitions on transactions involving foreign adversary ICTS integral to UAS because transactions involving such end users would not pose an undue or unacceptable risk?

44. For what categories of ICTS transactions relating to UAS should BIS require a specific authorization before the transaction is permitted in the United States?

45. Please comment on potential requirements for authorizations and certifications for industry participants (*e.g.*, assemblers, manufacturers, dealers, sellers) filed electronically with BIS.

46. What certification or validation process should be implemented in order to validate mitigation actions taken? Should third-party testing and evaluation occur, and at what stage in the process should this testing and evaluation occur in order to validate mitigation actions?

g. Economic Impact

BIS is mindful that any regulation of transactions involving foreign adversary ICTS integral to UAS could have significant economic impacts on sectors that have incorporated this technology into their processes and may rely on UAS. For example, BIS recognizes regulations on these transactions could pose supply chain obstacles that could affect UAS and UAS component prices. BIS is concerned, however, about the short-term and long-term consequences of UAS and UAS supply chain abuse by foreign adversaries. Accordingly, this ANPRM seeks further comment on the following topics but encourages the submission of any comments that are germane to the issues discussed in this ANPRM:

47. What, if any, anticompetitive effects may result from regulation of transactions involving foreign adversary ICTS integral to UAS as contemplated by this ANPRM? And what, if anything, can be done to mitigate the anticompetitive effects?

48. What data privacy and protection impacts to U.S. businesses or the public, if any, might be associated with the regulation of transactions involving foreign adversary ICTS integral to UAS contemplated in this ANPRM? What are the benefits and costs, if any, of these impacts?

49. What additional economic impacts to U.S. businesses or the public,

if any, might be associated with the regulation of transactions involving foreign adversary ICTS integral to UAS contemplated by this ANPRM?

a. If responding from outside the United States, what economic impacts to local businesses and the public, if any, might be associated with regulations of transactions involving foreign adversary ICTS integral to UAS in the United States?

50. What actions can BIS take, or provisions could it add to any proposed regulations, to minimize potential costs borne by U.S. businesses or the public?

a. If responding from outside the United States, what actions can BIS take, or what provisions could it add to any proposed regulations, to minimize potential costs borne by local businesses or the public?

Elizabeth L.D. Cannon,

Executive Director, Office of Information and Communications Technology and Services.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AS23

Exempting Whole Health Well-Being Services From Copayment

AGENCY: Department of Veterans Affairs

ACTION: Proposed rule

SUMMARY: The Department of Veterans Affairs (VA) proposes to revise its medical regulations to exempt Whole Health well-being services from the copayment requirements for inpatient hospital care and outpatient medical care. These Whole Health well-being services, which consist of Whole Health education and skill-building programs and complementary and integrative health well-being services, are provided to Veterans within the VA Whole Health System of Care to improve Veterans’ overall health and well-being.

DATES: Comments must be received on or before March 4, 2025.

ADDRESSES: Comments may be submitted through www.regulations.gov. Except as provided herein, 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 public comments on Regulations.gov 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 proposed rule is available at www.regulations.gov, under RIN 2900-AS23.

FOR FURTHER INFORMATION CONTACT:

Kavitha Reddy, Associate Director, Employee Whole Health, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 314-312-8126. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Authority

Section 1710 of title 38 United States Code (U.S.C.) requires VA to furnish hospital care and medical services that VA determines to be needed for eligible Veterans. Section 1701(6) defines medical services as examination, treatment, and rehabilitative services, as well as other specifically listed services. VA implemented the statutory requirements through 38 Code of Federal Regulations (CFR) 17.38, frequently referred to as the Medical Benefits Package. Under section 1710(g)(1), VA may not furnish medical services to certain Veterans unless the Veteran agrees to pay “the applicable amount or amounts established by the Secretary [of VA] by regulation.” VA has interpreted section 1710(g)(1) to mean that VA may establish in regulation the amount of a copayment, even if that amount is zero, meaning that VA effectively has the authority to exempt certain care from copayment requirements. VA has set forth copayment requirements for inpatient hospital care, outpatient medical care, and urgent care in 38 CFR 17.108.

Generally, 38 CFR 17.108 sets forth requirements regarding copayments for inpatient hospital care and outpatient medical care provided to Veterans by VA. 38 CFR 17.108(b) and (c). Services not subject to copayments are listed in 38 CFR 17.108(e). VA has long

acknowledged that copayments can deter Veterans from obtaining certain services and be a barrier to participation in a program promoted by VA. Therefore, to encourage Veterans to become more actively involved in their medical care, thereby improving health care outcomes and, in turn, lowering overall health care costs, VA has exempted certain services from the copayment requirements. There are currently multiple copayment exemptions listed in § 17.108(e) such as weight management counseling and publicly announced VA public health initiatives (for example, health fairs) or outpatient visits solely consisting of preventative screening and immunizations to encourage such behavior. In this rulemaking, VA proposes to add an additional copayment exemption for Whole Health well-being services to encourage Veterans to be more actively involved in their health care and further use these important services.

Whole Health Well-Being Services and the Whole Health System of Care

Whole Health well-being services, which are services that focus on the overall well-being of the Veteran independent of treatment for a specific medical condition or diagnosis, are an important aspect of the Whole Health System of Care. The Whole Health System of Care is care that supports the Veteran's health and well-being in line with what matters most to the Veteran. The Whole Health System of Care engages and empowers Veterans to prioritize a healthy lifestyle—including mental, emotional, functional, spiritual, social, and community aspects—equipping them to take charge of their health and well-being by addressing lifestyle and environmental root causes of chronic disease. This approach has improved Veterans' perceptions of health care, increased their engagement in health care and self-care, and improved their life's meaning and purpose.

One component of the Whole Health System of Care focuses on the overall well-being of the Veteran that is independent of treatment of a specific medical condition or diagnosis to equip each Veteran to better manage their own health. The well-being component includes various services that are centered around what matters most to the Veteran and their health and well-being goals. Whole Health well-being services are provided to Veterans alongside conventional health care to promote, preserve, and restore health. All Whole Health well-being services provided by VA are in line with

accepted standards of medical practice, serve to increase Veterans' access to care, and currently are authorized and provided to Veterans as part of the medical benefits package under 38 CFR 17.38. Whole Health well-being services include Whole Health education and skill-building programs and complementary and integrative health well-being services, both of which are discussed in further detail herein.

VA determined it is necessary to exempt these Whole Health well-being services from copayment to remove a barrier that may discourage Veterans from proactively engaging in the Whole Health System of Care and to further encourage Veterans to better manage their health and improve their overall well-being. Whole Health well-being services do not generally require the expertise of a licensed clinical provider or specialty care provider as these approaches are not used for treatment of a specific condition or diagnosis but rather to support health and overall well-being. A Veteran's participation in Whole Health well-being services can initiate a cascade of health benefits that result from a Veteran's conscious, committed participation in promoting, restoring, and preserving the Veteran's own health. Exempting Whole Health well-being services would encourage Veterans to proactively take advantage of well-being services to improve their overall well-being.

Copayment Exemption for Whole Health Well-Being Services

In this rulemaking, we propose to amend 38 CFR 17.108 by adding new paragraph (e)(20) to exempt Whole Health well-being services from copayment requirements. New paragraph (e)(20) of section 17.108 would provide that “the following Whole Health well-being services” would be exempt from copayment requirements. As mentioned previously, Whole Health well-being services consist of Whole Health education and skill-building programs as well as complementary and integrative health well-being services. Proposed paragraphs (e)(20)(i) and (ii) would then describe these two categories of well-being services that would be exempt from copayment.

In addition, we would make two minor technical edits to maintain proper punctuation throughout the list of copayment exempt services in § 17.108(e). We would remove “and” at the end of current paragraph (17); we would remove the period at the end of paragraph (18) and in its place insert a semicolon; and we would remove the period at the end of paragraph (19) and

in its place insert a semicolon followed by “and.” These changes would ensure that new paragraph (20) would properly complete the list of currently exempt services in § 17.108(e).

Whole Health Education and Skill-Building Programs

Proposed § 17.108(e)(20)(i) would describe “Whole Health education and skill-building programs.” Whole Health education and skill-building programs would be defined as the services that educate, instruct, and empower Veterans to understand and implement the principles and practices of Whole Health. VA would use this definition for Whole Health education and skill-building programs because it would succinctly describe this category of Whole Health-focused programs and would be consistent with how Whole Health education and skill-building programs are provided to Veterans within VA. Whole Health education and skill-building programs have a Whole Health-focused curriculum, contribute to the overall well-being of the Veteran, and may be offered individually or in a group setting. Whole Health education and skill-building programs generally address Whole Health principles, promote well-being approaches, and focus on helping a Veteran meet their health and well-being goals. Such programs are developed in partnership with the Veterans Health Administration Office of Patient Centered Care and Cultural Transformation.

The following sentence would then provide a non-exhaustive list of the categories of programs that would be included as Whole Health education and skill-building programs. The list would include Whole Health coaching, Whole Health partner sessions, and Whole Health education and skill-building courses. The list of these categories of programs would be consistent with how Whole Health education and skill-building programs currently are provided to Veterans within VA. VA believes that a non-exhaustive list would be most beneficial because these categories would adequately capture any approved Whole Health education and skill-building programs available within the Whole Health System of Care. However, as the VA Whole Health System of Care becomes more firmly established as the model for how VA provides health care, VA is developing, improving, and expanding Whole Health education and skill-building programs continuously with an openness to innovation and iterative improvement based on Veteran feedback and evidence. Therefore, a

non-exhaustive list would provide VA with the flexibility it needs to continue to provide Whole Health education and skill-building programs that meet the needs of Veterans and improve Veterans’ overall well-being.

Whole Health coaching is a Veteran-centered process that facilitates and empowers Veterans to develop and achieve their self-determined health and well-being goals. In Whole Health coaching, the coach supports Veterans in mobilizing their internal strengths and external resources to develop strategies for making sustainable, healthy lifestyle behavior changes that support improved health and well-being. Whole Health coaching includes connecting health and well-being goals to what matters most to the Veteran and following up on actions needed to achieve these values-based goals. Whole Health coaches work in close collaboration with interdisciplinary staff and teams throughout VA medical facilities to enhance well-being and assist with management of chronic disease. This type of interprofessional, team-based care is important for high quality, Veteran-centered Whole Health care.

In Whole Health partnering, a Whole Health partner facilitates individual and group sessions where Veterans learn about the Whole Health approach and identify their meaning and purpose. They work in collaboration with staff and teams, further supporting interprofessional, team-based delivery of health care. Veterans then can reflect on their personal well-being and create health and well-being goals centered around what matters most to them for their quality of life. Whole Health partners welcome Veterans into the Whole Health System of Care, have knowledge of internal and external Whole Health System of Care resources, help Veterans navigate the Whole Health System of Care, and connect Veterans to the best options to support their overall health and well-being. Whole Health partners’ often conduct introductory sessions to orient Veterans to Whole Health and assist them in filling out elements of their personal health plan.

Whole Health education and skill-building courses are courses that generally address Whole Health principles, promote well-being approaches, and focus on helping the Veteran meet health and well-being goals. Current offerings within VA provide education on the concept of Whole Health, Whole Health coaching, Whole Health partnering, and how Veterans can take charge of their life and health.

Complementary and Integrative Health Well-Being Services

Proposed § 17.108(e)(20)(ii) would describe the complementary and integrative health well-being services that would be exempt from copayment requirements. Like proposed paragraph (i), proposed paragraph (ii) would first define complementary and integrative health well-being services. Complementary and integrative health well-being services would be defined as the services that promote health, well-being, and self-care independent of treatment of a specific medical condition or diagnosis. In general, complementary and integrative health services are a group of diverse services and practices not broadly considered to be part of conventional health care, but often used in conjunction with conventional health care. Complementary and integrative health services are used in the Whole Health System of Care as they place importance on the relationship between the practitioner and patient and focus on the whole person.

The following sentence then would provide a non-exhaustive list of the types of services that would be included as complementary and integrative health well-being services. The services would be guided imagery, meditation, Tai Chi/Qigong, and yoga for well-being, which would be consistent with how complementary and integrative health well-being services currently are provided within VA. We believe listing these types of services in regulation would adequately capture the current complementary and integrative health well-being services available within the Whole Health System of Care. Like Whole Health education and skill-building programs in proposed paragraph (i), we would use a non-exhaustive list to provide flexibility to VA to continue to evaluate the efficacy of additional complementary and integrative health well-being approaches that would meet the needs of Veterans and improve Veterans’ overall well-being.

Guided imagery is the practice of using a series of multi-sensory images designed to trigger specific changes in an individual’s physiology, emotions, or mental state for the purpose of increasing an individual’s healing response or causing unconscious change. Guided imagery may be performed by a complementary and integrative health provider in an individual or group clinical setting.

Meditation is the defined practice or technique (often arising from a contemplative tradition) that primarily

focuses on training an individual's attention regulation processes with the intent of cultivating general mental well-being and/or specific capacities such as concentration, compassion, or insight. The focus of meditation is on training attentional processes rather than specifically targeting a change in mental content.

Tai Chi is the mind-body exercise rooted in the Asian traditions of martial arts, Chinese medicine, and philosophy that combines slow-flowing intentional movements with breathing, awareness, and visualization. Tai Chi enhances relaxation, vitality, focus, posture, balance, strength, flexibility, and mood.

Qigong is the ancient Chinese healing art (like Tai Chi) with a focus on cultivating the body's vital energy or "qi." Qigong involves the coordination of breath, posture, awareness, visualization, and focused movements and may be practiced as a stationary or moving meditation.

Yoga is the mind-body practice rooted in ancient Indian philosophy that typically combines physical postures, breathing techniques, meditation or relaxation, and discussion on applications to daily life. There are many different yoga styles ranging from gentle to physically demanding practices. Yoga for well-being is the practice of yoga to advance an individual's general sense of well-being. Yoga for well-being is often practiced in a group setting and focuses on general health, stress reduction, fitness, and/or community.

Executive Orders 12866, 13563, and 14094

Executive Order 12866 (Regulatory Planning and Review; September 30, 1993) 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; January 18, 2011) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Modernizing Regulatory Review; April 6, 2023) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 and Executive Order 13563. The Office of Information and Regulatory Affairs has determined that this

rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This proposed rule would exempt certain health care services from copayment. This proposed rule would not cause a significant economic impact on small entities because it is limited to copayments that would be received by VA directly from Veterans. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

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

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Drug abuse, Government contracts, Health care, Health facilities, Health professions, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, signed and approved this document on December 18, 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.

Consuela Benjamin,

Regulations Development Coordinator, 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 proposes to amend 38 CFR part 17 as set forth below:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

* * * * *

■ 2. Amend § 17.108 by revising paragraphs (e)(17) through (19) and adding paragraph (e)(20) to read as follows:

§ 17.108 Copayments for inpatient hospital care and outpatient medical care.

* * * * *

(e) * * *

(17) Mental health peer support services;

(18) An outpatient care visit solely for education on the use of opioid antagonists to reverse the effects of overdoses of specific medications or substances;

(19) Emergent suicide care as authorized under 38 CFR 17.1200–17.1230; and

(20) The following Whole Health well-being services:

(i) *Whole Health education and skill-building programs.* The programs that educate, instruct, and empower Veterans to understand and implement the principles and practices of Whole Health. Whole Health education and skill-building programs may include, but are not limited to, Whole Health coaching, Whole Health partner sessions, and Whole Health education and skill-building courses.

(ii) *Complementary and integrative health well-being services.* The services that promote health, well-being, and self-care independent of treatment of a specific medical condition or diagnosis. Complementary and integrative health well-being services may include, but are not limited to, guided imagery, meditation, Tai Chi/Qigong, and yoga for well-being.

* * * * *

[FR Doc. 2024–31494 Filed 1–2–25; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R05–OAR–2022–0983; FRL–11757–01–R5]

Air Plan Approval; Ohio; Moderate Attainment Plan Elements for the Cleveland Area for the 2015 Ozone Standard**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the following portions of Ohio's State Implementation Plan (SIP) submission for the Cleveland 2015 ozone national ambient air quality standard (NAAQS or standard) Moderate nonattainment area: the base year emissions inventory, the reasonable further progress (RFP) demonstration, the motor vehicle inspection and maintenance (I/M) program, and the nonattainment new source review (NNSR) program. EPA is proposing to approve these portions of the State's submission as a SIP revision pursuant to section 110 and part D of the CAA and EPA's regulations. EPA is also initiating the adequacy process and proposing approval of the 2023 motor vehicle emissions budgets (budgets) associated with the Cleveland Moderate ozone nonattainment RFP demonstration.

DATES: Comments must be received on or before February 3, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2022–0983 at <https://www.regulations.gov>, or via email to arra.sarah@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing

system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Kathleen D'Agostino, Air and Radiation Division (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, dagostino.kathleen@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. Background
- II. Evaluation of Ohio's Submittal
 - A. 2017 Base Year Emissions Inventory
 - B. 15% RFP Plan
 - C. Motor Vehicle Emission Budgets
 - D. Motor Vehicle Inspection and Maintenance (I/M) Program
 - E. NNSR Review
- III. Environmental Justice Considerations
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

I. Background

On December 28, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm).¹ Promulgation of a revised NAAQS triggers a requirement for EPA to designate all areas of the country as nonattainment, attainment, or unclassifiable for the NAAQS. For the ozone NAAQS, this also involves classifying any nonattainment areas at the time of designation.² Ozone nonattainment areas are classified based on the severity of their ozone levels as determined based on the area's “design value,” which represents air quality in the area for the most recent 3 years. The classifications for ozone nonattainment areas are Marginal, Moderate, Serious, Severe, and Extreme.³

Areas that EPA designates nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and the ozone-specific planning requirements of CAA section

182. Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. In EPA's December 6, 2018, rule, “Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements,” known as the “SIP Requirements Rule,” EPA set forth nonattainment area requirements for the 2015 ozone NAAQS.⁴ These requirements are codified at 40 CFR part 51 subpart CC. For Marginal areas, a State is required to submit a baseline emissions inventory, adopt provisions into the SIP requiring emissions statements from stationary sources, and implement a NNSR program for the relevant ozone NAAQS.⁵ For Moderate areas, a State needs to comply with the Marginal area requirements, plus additional Moderate area requirements, including the requirement to submit a modeled demonstration that the area will attain the NAAQS as expeditiously as practicable but no later than 6 years after designation, the requirement to submit an RFP plan, the requirement to adopt and implement certain emissions controls, such as Reasonably Available Control Technology (RACT) and I/M, and the requirement for greater emissions offsets for new or modified major stationary sources under the State's NNSR program.⁶

Effective August 3, 2018, EPA designated the Cleveland area as a Marginal nonattainment area for the 2015 ozone NAAQS.⁷ The Cleveland area includes Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit Counties. On October 7, 2022, pursuant to section 181(b)(2) of the CAA, EPA determined that the Cleveland area failed to attain the 2015 ozone NAAQS by the August 3, 2021, Marginal area attainment deadline and thus reclassified the area from Marginal to Moderate nonattainment.⁸ In that action, EPA established January 1, 2023, as the due date for the State to submit all Moderate area nonattainment plan SIP requirements applicable to newly reclassified areas.

II. Evaluation of Ohio's Submittal

Ohio submitted a SIP revision on December 21, 2022, to address Moderate area requirements for the Cleveland area under the 2015 ozone NAAQS. The

⁴ 83 FR 62998, December 6, 2018.

⁵ CAA section 182(a).

⁶ CAA section 182(b).

⁷ 83 FR 25776, June 4, 2018.

⁸ 87 FR 60897, October 7, 2022.

¹ 80 FR 65292, October 26, 2015, codified at 40 CFR 50.19.

² CAA sections 107(d)(1) and 181(a)(1).

³ CAA section 181(a)(1).

submittal contained a number of nonattainment plan elements, including a 2017 base year emissions inventory for volatile organic compounds (VOC) and oxides of nitrogen (NO_x), a 15% RFP plan with 2023 VOC and NO_x motor vehicle emissions budgets, an I/M program certification, and a NNSR certification, and each of these is covered in further detail below. The submission also included an attainment demonstration, a reasonably available control measures demonstration, and contingency measures, which will be addressed in a separate action. Ohio's SIP submission and associated supporting documents are available in the docket for this action, at <https://www.regulations.gov>, Docket ID No. EPA-R05-OAR-2022-0983.

A. 2017 Base Year Emissions Inventory

1. Background

CAA sections 172(c)(3) and 182(a)(1), 42 U.S.C. 7502(c)(3) and 7511a(a)(1), require States to develop and submit, as SIP revisions, comprehensive, accurate, and complete emissions inventories for all areas designated as nonattainment for the ozone NAAQS. This requirement is codified at 40 CFR 51.1315, and the term "base year inventory" is defined at 51.1300(p). For ozone, the base year inventory is an estimation of actual emissions of VOC and NO_x from all sources within the boundaries of the nonattainment area.

The regulation at 40 CFR 51.1315(a) requires that the selected inventory year be consistent with the baseline year for the RFP plan as required by 40 CFR 51.1310(b), which states that the baseline emissions inventory shall be the emissions inventory for the most recent calendar year for which a complete triennial inventory is required to be submitted to EPA under the provisions of subpart A of 40 CFR part 51, Air Emissions Reporting Requirements, 40 CFR 51.1 through 50. For areas designated as nonattainment in 2018, the most recent triennial inventory year conducted for the National Emissions Inventory (NEI) pursuant to the Air Emissions Reporting Requirements (AERR) rule is 2017.⁹

Further, 40 CFR 51.1315(c) requires emissions values included in the base year inventory to be actual ozone season day emissions as defined by 40 CFR 51.1300(q), which states: "*Ozone season day emissions* means an average day's emissions for a typical ozone season work weekday. The State shall select, subject to EPA approval, the particular month(s) in the ozone season and the

day(s) in the work week to be represented, considering the conditions assumed in the development of RFP plans and/or emissions budgets for transportation conformity."

On July 24, 2020, Ohio submitted a SIP revision addressing the emissions inventory requirement of CAA section 182(a)(1). At that time, the Cleveland nonattainment area was designated Marginal nonattainment and RFP was not required. Therefore, Ohio initially selected 2014 as the base year because it was one of the years used to designate the area as nonattainment for the 2015 ozone NAAQS and it was the most current comprehensive, accurate, and quality assured triennial emissions inventory in the NEI database available at the time the State began preparing the emissions inventory submittal for the Cleveland area. EPA approved Ohio's 2014 base year emissions inventory for the Cleveland area on March 3, 2021, 86 FR 12270.

The Cleveland area has since been reclassified to Moderate nonattainment, and RFP is now required. Therefore, consistent with the requirements set forth in the SIP requirements Rule, Ohio submitted a 2017 base year inventory to supersede the previously approved 2014 base year inventory.

2. Ohio's Emission Inventory Submittal

Ohio's 2017 base year emissions inventory submittal includes VOC and NO_x emissions estimates for the following source categories: point sources, nonpoint sources, onroad mobile sources, nonroad mobile sources, and biogenic sources. Onroad emissions estimates were developed using EPA's Motor Vehicle Emissions Simulator model (MOVES3), which was the latest model version at the time the inventory was developed. Ohio used annual emissions data contained from EPA's 2017gb emissions modeling platform, which is based on the 2017 NEI, to generate emissions estimates for the point, nonpoint, nonroad and biogenic source categories.¹⁰ The emissions collected from the 2017gb inventory were presented in terms of monthly or annual emissions.

Where monthly data were available, Ohio derived ozone season day emissions by dividing July emissions by the number of days in July. Where only annual data were available, Ohio

derived ozone season day emissions by applying a conversion factor, by source type and pollutant, to the annual emissions. Ohio derived the conversion factors from EPA's 2017gb Air Emissions Modeling Platform.¹¹ Ohio selected July as representative of the ozone season as it is typically the warmest month and had the highest monthly emissions of NO_x and VOC combined in the 2017gb modeling platform.

Ozone season day emissions as derived above include weekend days. Ohio determined that this is appropriate because ozone values measured on weekend days have a significant impact on the monitor design values in the Cleveland nonattainment area. Monitoring data from 2017 through 2022 show the Cleveland nonattainment area had between 5 and 7 days with one or more monitors recording values over the 2015 ozone standard each year, with up to 3 of those days in a year falling on a weekend. In addition, for each year from 2017 to 2022, between 5 and 18 of the 1st through 4th high values that contributed to the design value for a monitor occurred on a weekend day. As such, Ohio determined that it was appropriate to include weekend emissions in the calculation of ozone season day emissions.

Point Sources

The point source sector includes large, stationary sources whose emissions are usually well characterized, are generally discharged through stacks and which are required to possess an Ohio EPA issued permit. The point source inventory collected from the 2017gb emissions inventory platform was initially developed from Ohio EPA's online reporting database, STARS2, where facilities submit annual emissions reports. Ohio EPA requires annual emission reports for title V and synthetic minor facilities. After review and approval by Ohio EPA staff, the facility emissions were then formatted, through an EPA provided Microsoft Access tool, for annual submission to the Emission Inventory System (EIS) Gateway to fulfill required reporting for the annual EIS. Initially, the point source inventory was submitted to the EIS Gateway in draft form to begin the Quality Assurance (QA) process.

The EIS Gateway QA environment performed a variety of checks on the point source inventory, including facility site geographic coordinates,

¹⁰ Supporting documentation for the NEI is available on EPA's website at <https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data?adlt=strict>. Supporting documentation for the 2017gb emissions modeling platform is available at <https://www.epa.gov/air-emissions-modeling/2017-emissions-modeling-platform>.

¹¹ "2017gb_hapcap_county_monthly_report_CAPs_PEC_POC_09apr2021" file available at <https://www.epa.gov/air-emissions-modeling/2017-emissions-modeling-platform> (select 2017 Data Files and Summaries, then reports, then the specific file).

⁹ 83 FR 62998 at 63005, December 6, 2018.

duplicate facilities, release point diameter, and others. After the QA checks were performed, the EIS Gateway provided a feedback file with any errors that were encountered. These errors were addressed on a case-by-case basis, depending on the error. Some errors required collaboration with EPA such as correcting duplicate facilities. Once all critical errors were corrected, the emissions were submitted to the EIS Gateway in final form.

The final point source inventory is divided into two categories: electric generating units (EGUs) and non-EGUs. Ohio collected both EGU and non-EGU emissions from the 2017gb emissions modeling platform. These files provided annual data which Ohio converted to tons per ozone season day (tpd) using the conversion factors identified above.

Nonpoint Sources

Nonpoint sources, also referred to as “area” sources, are sources that fall below point source reporting levels or are too small or too numerous to be identified individually. The nonpoint inventory collected from the 2017gb emissions inventory platform was initially developed from a variety of State data supplied to estimate emissions based on procedures and guidance supplied by EPA. State specific data was only used when Ohio was able to provide data that was considered to more accurately describe activity or emissions in Ohio compared to the default data. Where Ohio was unable to provide State specific data, EPA default data was used. EPA default data for nonpoint sources was developed by EPA with the help of the Nonpoint Method Advisory (NOMAD) committee. NOMAD is a group of inventory developers from a variety of State and local agencies that collaborate on the development of methodologies to aid EPA in the development of default data for the NEI. In order to provide the most accurate and complete nonpoint inventory possible, Ohio implemented quality control and quality assurance measures throughout the development of this inventory. Additionally, Ohio followed inventory preparation procedures in guidance documents provided by EPA and NOMAD. The quality control and quality assurance of nonpoint data was primarily an ad-hoc process led by EPA. This process included comparing 2017 estimates to previous NEI cycles, gap-filling for missing pollutants, and evaluating outliers.

Ohio estimated the oil and gas nonpoint category using well counts for conventional and unconventional wells, production data, and well site configuration data obtained from the Ohio Department of Natural Resources Division of Oil and Gas Resource Management. Ohio processed the data through a Microsoft Access tool provided by EPA to estimate emissions. The tool was used only to estimate emissions from upstream activities since mid and downstream operations are accounted for in Ohio’s point inventory. Since operating conditions were different for conventional and unconventional wells, the tool was run twice; once for conventional wells using EPA default data, and then run again with adjustments for well configuration in the tool for unconventional wells.

For industrial, commercial, and institutional (ICI) fuel combustion, solvents, gas distribution, and publicly owned treatment works (POTW), Ohio used point source subtraction. This means either nonpoint activity data or emissions were adjusted to account for activity data or emissions that had already been reported in the point source inventory. This process was guided by the Point to Nonpoint Crosswalk which was provided by EPA. This crosswalk describes the similarities between point SCCs and nonpoint SCCs to help avoid double counting. Once the nonpoint activity data or emissions were identified, Ohio imported the data into EPA tools for the specific sectors and a file was generated to be uploaded into the EIS Gateway’s QA environment in draft form. Ohio quality assured the file in EPA’s QA environment and corrections were made to satisfy EPA’s QA checks. Once all errors were corrected, Ohio submitted emissions in final form.

For remaining nonpoint categories, other than the Ohio activity submissions (oil and gas, ICI, solvents, POTW, and gas distribution), Ohio used EPA default activity data. In cases where Ohio provided State specific activity data, that data was collected from a variety of State organizations. For example, POTW data including annual discharge fees to estimate average flows and totals was provided by the Division of Surface Water in Ohio EPA.

Throughout the process of the nonpoint inventory development, Ohio took part in monthly NOMAD calls along with calls for NOMAD sub-committees. Through the regular conference calls, States were able to

provide input throughout the development process of the 2017 NEI. Also, the calls provided information and guidance which helped develop a consistent and accurate inventory. Ohio collected nonpoint 2017 emissions from the 2017gb emissions modeling platform. The files provided annual data which Ohio converted to tpd using the conversion factors identified above.

Nonroad Mobile Sources

Nonroad mobile sources are mobile sources that are not certified for highway use and include equipment that can either move under their own power or can be moved from site to site. Ohio collected nonroad 2017 emissions data from the 2017gb emissions modeling platform, which was initially developed in the 2017 NEI. This file provided monthly data which were converted to tpd by dividing July emissions by the number of days in July. During the development of the 2017 NEI, EPA used MOVES2014b to generate nonroad emissions. Ohio EPA did not provide State specific data for the development of nonroad emissions. Since Ohio did not provide State specific data, data from default databases in MOVES were used to generate emissions.

Onroad Mobile Sources

Onroad mobile sources are motor vehicles traveling on local highways and roads. Onroad emissions data were developed by the Northeast Ohio Areawide Coordinating Agency (NOACA), the Akron Metropolitan Area Transportation Study (AMATS), and the Ohio Department of Transportation (ODOT), in consultation with Ohio EPA and EPA, using emission factors produced by MOVES3 and data produced by the region’s updated travel-demand model.

Biogenic Sources

Biogenic emissions come from natural sources including vegetation and soils. 2017 biogenic emissions were collected from the 2017gb emissions modeling platform. This file provided monthly data which was converted to tpd by dividing July emissions by the number of days in July.

Summary of the Emissions Inventory

2017 ozone season day emissions in tpd of NO_x and VOCs for each county by sector are shown in tables 1 and 2, below.

TABLE 1—CLEVELAND NO_x EMISSIONS FOR 2017 BASE YEAR
[tpd]

County	EGU	Non-EGU	Nonpoint	Onroad	Nonroad	Total Anthropogenic	Biogenic	Total
Cuyahoga	0.00	7.38	6.12	21.06	9.95	44.51	0.59	45.10
Geauga	0.00	0.02	0.16	2.04	1.43	3.65	0.59	4.24
Lake	0.05	1.70	2.51	4.34	3.57	12.17	0.34	12.51
Lorain	3.05	0.99	2.95	5.30	3.42	15.71	1.10	16.81
Medina	0.00	0.18	0.87	4.72	1.60	7.37	1.01	8.38
Portage	0.00	0.29	1.80	2.98	1.97	7.04	0.97	8.01
Summit	0.00	0.72	2.08	9.78	3.35	15.93	0.72	16.65
Total	3.10	11.29	16.48	50.22	25.29	106.38	5.32	111.70

TABLE 2—CLEVELAND VOC EMISSIONS FOR 2017 BASE YEAR
[tpd]

County	EGU	Non-EGU	Nonpoint	Onroad	Nonroad	Total Anthropogenic	Biogenic	Total
Cuyahoga	0.00	3.20	53.46	12.49	12.65	81.80	22.33	104.13
Geauga	0.00	0.08	3.99	2.46	1.20	7.73	22.50	30.23
Lake	0.00	0.77	10.83	3.62	2.58	17.80	14.50	32.30
Lorain	0.13	0.81	10.26	3.96	3.23	18.39	14.16	32.55
Medina	0.00	0.35	9.87	1.92	2.65	14.79	13.16	27.95
Portage	0.00	1.31	7.29	4.39	1.87	14.86	23.41	38.27
Summit	0.00	1.26	20.90	4.97	5.75	32.88	21.62	54.50
Total	0.13	7.79	116.60	29.93	33.82	188.27	131.68	319.95

3. Evaluation of Ohio's 2017 Base Year Emission Inventory

EPA has reviewed Ohio's 2017 base year emissions inventory for consistency with sections 172(c)(3) and 182(a)(1) of the CAA and EPA's emission inventory requirements. The selection of 2017 as the base year comports with the RFP baseline year requirements set forth in the SIP Requirements Rule and codified at 40 CFR 51.1310(b).

EPA has reviewed the techniques used by Ohio to derive and quality assure the emission estimates. Ohio documented the procedures used to estimate the emissions for each of the major source types. The documentation of the emission estimation procedures is thorough and adequate to determine that Ohio followed acceptable procedures to estimate the emissions.

Ohio developed a QA plan and followed this plan during various phases of the emissions estimation and documentation process to quality assure the emissions for completeness and accuracy. These QA procedures were summarized in the documentation describing how the emissions estimates were developed. Because it meets the applicable requirements, EPA is proposing to approve Ohio's 2017 base year emissions inventory for the Cleveland area for the 2015 ozone NAAQS.

B. 15% RFP Plan

1. Background

The CAA requires that States with areas designated as nonattainment for ozone achieve RFP toward attainment of the ozone NAAQS. CAA section 172(c)(2) contains a general requirement that nonattainment plans must provide for emissions reductions that meet RFP. For areas classified Moderate and above, section 182(b)(1) imposes a more specific RFP requirement that a State was required to meet through a 15% reduction in VOC emissions from the baseline anthropogenic emissions within 6 years after November 15, 1990.

The SIP Requirements Rule addressed, among other things, RFP requirements as they apply to areas designated nonattainment and classified as Moderate for the 2015 ozone NAAQS.¹² RFP requirements under the 2015 ozone NAAQS are codified at 40 CFR 51.1310. EPA interprets the 15% VOC emission reduction requirement in CAA section 182(b)(1) such that a State that has already met the 15% requirement for VOC for an area under either the 1-hour ozone NAAQS or a prior 8-hour ozone NAAQS would not have to fulfill that requirement through reductions of VOC again. Instead, EPA interprets CAA section 172(c)(2) to require States with such areas to obtain 15% ozone precursor emission reductions from VOC and/or NO_x over the first 6 years after the baseline year

for the 2015 ozone NAAQS. Ohio previously met the 15% VOC reduction requirement of CAA section 182(b)(1) for the Cleveland area under the 1-hour ozone NAAQS.¹³ Therefore, the State may rely upon both VOC and NO_x emissions reductions to meet the RFP requirement for the 2008 ozone NAAQS.

The SIP Requirements Rule specifies that the baseline emissions inventory for RFP plans shall be the most recent calendar year prior to designation for which a complete triennial inventory is required to be submitted to EPA under the provisions of subpart A of 40 CFR part 51, Air Emissions Reporting Requirements, 40 CFR 51.1 through 50. For areas designated as nonattainment in 2018, the most recent triennial inventory year conducted for the NEI pursuant to the AERR rule is 2017. The rule also allows the use of an alternative RFP baseline year that corresponds with the year of the effective date of an area's designation, *i.e.*, 2018 for areas designated nonattainment in 2018.¹⁴

States may not take credit for VOC or NO_x reductions occurring from sources outside the nonattainment area for purposes of meeting the 15% RFP requirements of CAA sections 172(c)(2), 182(b)(1), and 182(c)(2)(B).¹⁵

Except as specifically provided in CAA section 182(b)(1)(C) and (D) and CAA section 182(c)(2)(B), all emission

¹³ 74 FR 47414, September 15, 2009.

¹⁴ 83 FR 62998 at 63005, December 6, 2018, codified at 40 CFR 51.1310(b).

¹⁵ 40 CFR 51.1310(a)(6).

¹² 83 FR 62998 at 63004, December 6, 2018.

reductions from SIP-approved or Federally promulgated measures that occur after the baseline emissions inventory year are creditable for purposes of the RFP requirements in this section, provided the reductions meet the requirements for creditability, including the need to be enforceable, permanent, quantifiable, and surplus.¹⁶ Further, the Administrator has determined that the four categories of control measures listed in CAA section 182(b)(1)(D) are no longer required to be calculated for exclusion in RFP analyses because due to the passage of time the effect of these exclusions would be *de minimis*.¹⁷

2. Ohio's 15% RFP Plan

Emission Inventories

To demonstrate that the Cleveland area has achieved 15% RFP over the 6-year attainment planning period, Ohio is using a 2017 base year inventory and a 2023 RFP inventory. The procedures Ohio used to develop the 2017 base year inventory are discussed in section I.A., above. When developing the 2023 RFP inventory, Ohio estimated onroad emissions using EPA's MOVES3 model. For the point, nonpoint, and nonroad source categories, Ohio projected 2023 emissions from the 2017 base year inventory as described below.

As with the 2017 base year inventory, point source emissions were divided into two categories, EGU and non-EGU. Ohio derived 2023 projected EGU emissions from the 2017 inventory by evaluating each facility individually. Ohio considered 2017 to 2021 historical emissions along with Eastern Region Technical Advisory Committee (ERTAC) 2023 projections, where available for larger sources, and selected the most reasonable, conservative projection for 2023. Ohio also searched for any new EGUs with reported emissions after 2017 and reviewed recent permitting actions for any title V or synthetic minor facilities that have been permitted but have not yet begun reporting emissions. Ohio determined that 2023 emissions were unchanged from 2017 emissions with the following exceptions:

- *Eastlake Substation*: Ohio set 2023 emissions at zero, as B006 was permanently shut down in February 2020 and the only operating units remaining at the facility produce de minimis emissions.
- *Avon Lake Power Plant*: Ohio set 2023 emissions at zero as the only coal-fired boiler (B012) was permanently shut down in April 2022.

- *Lorain County LFG Power Station*: Ohio set 2023 emissions to the most recent available (2021) as two units (P004 and P001) permanently shut down in 2020.

- *Oberlin Municipal Light & Power System*: Ohio set 2023 emissions to the highest recent available (2020) to be conservative.

- *West Lorain Plant*: Ohio set 2023 emissions to the highest recent available (2021) to be conservative.

- *OMEGA JV2—Seville*: The facility reported zero emissions in 2017. Ohio set 2023 emissions to the most recent available (2021).

- *CF1 (Cuyahoga Falls 1)*: The facility did not report emissions from 2013 to 2017. Ohio set 2023 emissions to the most recent available (2021).

- *CF2 (Cuyahoga Falls 2)*: This is a new facility which began operation after 2017. Ohio set 2023 emissions to the most recent available (2021).

Ohio also considered the potential impact that the proposed Transport Federal Implementation Plan (FIP)¹⁸ would have on EGUs in 2023. Ohio determined that the only operating EGU in the Cleveland nonattainment area that would be subject to the FIP is the West Lorain Plant (Facility ID 0247080487). Ohio's assessment of West Lorain's recent operations is that minimal changes in NO_x emissions are anticipated as a result of the FIP. Finally, Ohio considered the impact of recent revisions to the NO_x RACT rules in the Cleveland nonattainment area, which removed the exemption for EGUs. Ohio has determined that the RACT revisions will have little to no impact on EGU emissions in the Cleveland area.

Ohio projected 2023 emissions for non-EGUs by determining the annual rate of rate of change from the 2016v2 platform between 2016 and 2023 (by facility) and applying that annual rate of change to the 2017 emissions. Ohio reviewed the 2016v2 platform Technical Support Document to evaluate the methodology used to project 2023 from 2016 and determined it is still appropriate for projections from 2017. Ohio further evaluated the specific projection factors for each of the NAICS categories that comprise 80% of the 2023 projected NO_x and VOC emissions in the nonattainment area, along with the resultant emission projections for each facility in those NAICS categories. Ohio does not have any information to suggest that the 2016v2 projection methodology is not appropriate for these sources in Ohio except where the

emissions were adjusted as described below. Ohio also searched for any new non-EGUs with reported emissions after 2017 and reviewed recent permitting actions for any Title V or synthetic minor facilities that have been permitted but have not yet begun reporting emissions.

Ohio made the following adjustments to the non-EGU inventory.

- Ohio set 2023 emissions for several sources to zero due to the permanent shut down of the facility or individual units after 2017.

- Ohio added new facilities which began operation after 2017 to the inventory and set 2023 projected emissions to the most recently available emissions (2021).

- An annual rate of change from the 2016v2 platform was not available for two sources, so Ohio used the most recently available emissions estimates (2021).

- Facilities which did not report emissions or reported zero emissions in 2017 but reported emissions since 2017 were added to the inventory. In some cases, the facility may have been idled and later resumed operation. In other cases, the facility may have been operating but was not required to report detailed emissions (including smaller sources such as those without a title V permit). In those cases, the exact base year (2017) emissions are unknown, and Ohio assumed them to be zero for conservatism. Ohio set 2023 projected emissions to most recently available emissions (2021).

- Emissions for two additional facilities were adjusted. For the Medical Center Company (Facility ID 1318003059), coal-fired boilers B003 and B004 were permanently shut down in 2017. Therefore, the 2016v2 projection factors which are based on coal use are not appropriate for projection from 2017. Ohio conducted a review of recent emissions and set 2023 emissions to most recently available emissions (2021). For Automated Packaging Systems (Facility ID 1667080055), VOC controls were updated in 2019. Ohio conducted a review of recent emissions and set 2023 emissions to most recently available emissions (2021).

Ohio considered the impact of recent revisions to the NO_x RACT rules in the Cleveland nonattainment area. Because NO_x RACT has been in place in the Cleveland nonattainment area for many years and the recent rule revisions are expected to yield only minor emissions reductions, Ohio is not adjusting 2023 emissions to account for the recent rule revisions. As any changes would be a decrease in emissions, not quantifying

¹⁶ 40 CFR 51.1310(a)(5).

¹⁷ 40 CFR 51.1310(a)(7).

¹⁸ 87 FR 20036, April 6, 2022. EPA finalized the transport FIP on June 5, 2023, 88 FR 36654.

them in this inventory results in a conservative estimate of future year emissions.

Ohio collected 2023 projected emissions for nonpoint sources from the 2023fj projection of the 2016v2 emissions modeling platform. These files provided annual data which Ohio converted to ozone season day emissions using the conversion factors described in section II.A.2. of this preamble. Ohio determined it is appropriate to use the 2023 projections from the 2016v2 emissions modeling platform for the nonpoint sector because emissions for most portions of the nonpoint sector started with 2017 NEI emissions and were adjusted (backcasted) to better represent the year 2016. Therefore, the foundation of the 2023 projections in the 2016v2 inventory is 2017 data and it is

appropriate for use in this inventory. There are two exceptions to the 2017 foundation for the nonpoint sector of the 2016v2 platform: solvents and rail. As discussed in Ohio's submittal, Ohio has examined the base year emissions and projections for these categories and determined that using the 2016v2-based 2023 projections is reasonable and conservative.

Ohio calculated 2023 projected emissions for nonroad sources by determining the annual rate of change from the 2016v2 platform between 2016 and 2023 and applying that annual rate of change to the 2017 emissions. Ohio determined it was appropriate to apply the annual rate of change determined from the 2016v2 platform because the nonroad emissions in the Cleveland nonattainment area in the 2016v2 and 2017gb inventories are very similar and

the methodology used to project 2023 from 2016 would still be appropriate for projections from 2017.

2023 onroad emissions were developed by the NOACA, AMATS, and ODOT, in consultation with Ohio EPA and EPA, from emission factors produced by MOVES3 and data produced by the region's updated travel-demand model.

Biogenic emissions are not included in the RFP inventory in accordance with EPA's "May 2017 Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations."

2023 ozone season day emissions of NO_x and VOCs for each county by sector are shown in tables 3 and 4, below.

TABLE 3—CLEVELAND NO_x EMISSIONS FOR 2023

[tpd]

County	EGU	Non-EGU	Nonpoint	Onroad	Nonroad	Total
Cuyahoga	0.00	7.03	6.80	13.96	8.58	36.37
Geauga	0.00	0.02	0.27	1.25	1.24	2.78
Lake	0.05	1.94	2.59	2.54	3.08	10.20
Lorain	0.62	1.03	2.64	3.12	2.94	10.35
Medina	0.01	0.24	0.90	2.47	1.38	5.00
Portage	0.00	0.30	1.73	1.80	1.70	5.53
Summit	0.02	0.71	2.53	5.92	2.89	12.07
Total	0.69	11.26	17.47	31.06	21.81	82.29

TABLE 4—CLEVELAND VOC EMISSIONS FOR 2023

[tpd]

County	EGU	Non-EGU	Nonpoint	Onroad	Nonroad	Total
Cuyahoga	0.00	3.30	41.11	8.12	10.13	62.66
Geauga	0.00	0.12	3.75	0.73	1.99	6.59
Lake	0.00	0.97	8.49	1.60	2.94	14.00
Lorain	0.11	0.82	8.89	2.01	3.21	15.04
Medina	0.00	0.43	7.48	1.54	1.56	11.01
Portage	0.00	1.29	7.02	1.39	3.56	13.26
Summit	0.03	0.89	18.37	4.28	4.03	27.60
Total	0.14	7.81	95.12	19.67	27.42	150.16

15% RFP Demonstration

Ohio demonstrated that the Cleveland area has achieved 15% RFP over the 6-year attainment planning period entirely through NO_x and/or VOC emissions reductions in the onroad sector attributable to EPA's existing Federal regulations for onroad mobile sources. EPA mobile source regulations currently being implemented across the country include: passenger vehicle, SUV, and light duty truck emissions and fuel standards; light-duty truck and medium-

duty passenger vehicle evaporative standards; heavy-duty highway compression engine standards; heavy-duty spark ignition engine standards; motorcycle emission standards; Mobile Source Air Toxics fuel formulation standards, passenger vehicle emission standards, and portable container emission standards.¹⁹ The emission reductions due to implementation of these Federal rules within the Cleveland Moderate nonattainment area are reflected in future emission projections

with EPA's MOVES3 model. Ohio projected mobile source activity to the RFP forecast year 2023. This analysis demonstrated a decrease in ozone precursor emissions from 2017 to 2023. The estimated emissions reductions are therefore not due to reductions in source activity, but to the implementation of control measures. These Federal control measures are permanent and enforceable and are implemented in the nonattainment area.

¹⁹ 40 CFR parts 59, 80, 85, 86, and 600.

Table 5 shows the calculations Ohio used to determine that onroad mobile

source emissions reductions meet the 15% RFP requirement.

TABLE 5—15% RFP CALCULATIONS
[tpd]

Description	Formula	VOC	NO _x
A. 2017 base year inventory		188.27	106.38.
B. RFP reductions totaling 15% (VOC% + NO _x % = 15)		3%	12%.
C. RFP emissions reductions required between 2017 & 2023	A*B	5.65	12.77.
D. RFP Target Level for 2023	A-C	182.62	93.61.
E. Reductions between 2017 and 2023 Federal onroad regulations		10.26	19.16.
F. Adjustments to reductions Safety margin (Allocated to mobile source budget)		2.95	4.66.
G. Creditable reduction	E-F	7.31	14.50.
H. Compare creditable reductions to RFP reduction requirements to determine if at least 15% reduction is achieved.	G>C	Yes	Yes.
I. 2023 Projected Emissions		150.16	82.29.
N. Compare RFP target with 2017 projected emissions to determine if RFP requirements are met.	I>D?	Yes	Yes.

Ohio has documented other measures that could have been used in the RFP plan but is relying exclusively on emissions reductions in the onroad sector attributable to Federal onroad programs to demonstrate 15% RFP. While Ohio is not relying on the following emission reductions to demonstrate RFP, they add to the weight of evidence confirming that the RFP requirement has been met.

- Emission reductions of 6.39 tpd of VOC and 3.48 tpd NO_x were calculated in the nonroad sector. While reductions in the nonroad sector are likely due to Federal control programs, they cannot be readily linked to specific control measures due to the methodology used to develop the 2023 projections.

- Emission reductions of 0.53 tpd of VOC and 3.12 tpd of NO_x can be attributed to the permanent shutdown of various point sources. Ohio has not included these source shutdowns in the RFP demonstration to reserve these emissions reductions for future use as offsets or for other needs.

- A reduction of up to 2.72 tpd of VOC emissions in the Cleveland area is estimated to result from strengthening the Consumer Products rules in OAC Chapter 3745–112. This rule was approved into the SIP effective August 9, 2023.²⁰ Ohio did not rely on these reductions for the RFP demonstration as they are difficult to accurately quantify.

3. Evaluation of Ohio's 15% RFP Plan

EPA has reviewed Ohio's 15% RFP plan for consistency with sections 172(c)(2) and 182(b)(1) of the CAA and 40 CFR 51.1310. The selection of 2017 as the base year comports with the RFP baseline year requirements set forth in the SIP Requirements Rule and codified at 40 CFR 51.1310(b). EPA has reviewed

the techniques used by Ohio to derive and quality assure the 2017 and 2023 emission estimates. Ohio documented the procedures used to estimate the emissions for each of the major source types. The documentation of the emission estimation procedures is thorough and adequate to determine that Ohio followed acceptable procedures to estimate the emissions. Ohio has demonstrated that emission reductions attributable to Federal onroad regulations are permanent and enforceable and will result in at least 15% RFP in the Cleveland area over the 6-year attainment planning period beginning with the 2017 base year. Thus, EPA is proposing to approve Ohio's 15% RFP plan for the Cleveland area for the 2015 ozone NAAQS.

C. Motor Vehicle Emission Budgets

1. Background

Under section 176(c) of the CAA, transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must “conform” to (*i.e.*, be consistent with) the SIP before they receive Federal funding or approval. Conformity to the SIP means that transportation activities will not cause or contribute to any new air quality violations, increase the frequency or severity of any existing air quality problems, or delay timely attainment or any required interim emissions reductions or any other milestones. Regulations at 40 CFR part 93 subpart A set forth EPA policy, criteria, and procedures for demonstrating and ensuring conformity of transportation activities to a SIP.

Transportation conformity is a requirement for nonattainment and maintenance areas, as defined in 40 CFR 93.101. The budget in a State's SIP

serves as a ceiling on emissions from an area's planned transportation system (see definition of “motor vehicle emissions budget” in 40 CFR 93.101 and how the term is used in 40 CFR 93.109 and 93.118).

When reviewing submitted SIPs containing budgets, EPA reviews the budgets for adequacy. Once EPA affirmatively finds the submitted budget is adequate for transportation conformity purposes, that budget must be used by State and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a budget are set out in 40 CFR 93.118(e)(4). The process for determining adequacy is found in 40 CFR 93.118(f) and consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. The regulations that allow EPA to begin an adequacy review through an NPRM in the **Federal Register** are found in 40 CFR 93.118(f)(2). This proposal notifies the public that EPA has received a SIP submission with budgets that EPA will review for adequacy and begins the public comment period. Comments must be submitted to the docket for this proposal by the close of the comment period on this proposal.

2. VOC and NO_x Budgets for the Cleveland Area

The RFP plan includes VOC and NO_x budgets for the Cleveland area for 2023, the milestone year for RFP. EPA invites the public to comment on the adequacy of these budgets as well as on its proposed approval of the budgets and on other actions EPA is proposing in this action.

²⁰ 88 FR 43440, July 10, 2023.

As discussed in sections II.A.2. and II.B.2. of this preamble, NOACA, AMATS and ODOT, in consultation with Ohio EPA and EPA, prepared motor vehicle emissions inventories for 2017 and 2023 for the purpose of setting

budgets for the year 2023. These inventories were developed using up-to-date assumptions about vehicles mile traveled (VMT), socioeconomic variables, fuels used, weather inputs, other planning assumptions, and the

latest approved motor vehicle emissions model at the time Ohio began to prepare the SIP submission, which was MOVES3. Total onroad emissions in the Cleveland area are shown in table 7.

TABLE 7—TOTAL ONROAD EMISSIONS IN THE CLEVELAND AREA

	2017	2023
NO _x (tpd)	50.22	31.06
VOC (tpd)	29.93	19.67
VMT (miles/year)	24,189,140,727	25,427,478,685

Table 8 identifies Ohio's 2023 budgets. The budgets, agreed upon as part of the interagency consultation process, include the emission estimates

calculated for 2023 with an additional 15% safety margin allocated to those estimates to accommodate future variations in travel demand models and

VMT forecast. A State can add a safety margin to a budget based on the transportation conformity regulation at 40 CFR 93.124(a).

TABLE 8—BUDGETS FOR THE CLEVELAND OH 2015 OZONE NONATTAINMENT AREA

[tpd]

	2023 estimated emissions	2023 mobile safety margin allocation	2023 total mobile budget
NO _x (tpd)	31.06	4.66	35.71
VOC (tpd)	19.67	2.95	22.62

3. Evaluation of the VOC and NO_x Budgets for the Cleveland Area

The VOC and NO_x budgets for the Cleveland area were developed as part of an interagency consultation process which includes Federal, State, and local agencies. The budgets were clearly identified and precisely quantified. Ohio has demonstrated that the Cleveland area can meet the 15% RFP requirement with mobile source emissions of 35.71 tpd of NO_x and 22.62 tpd of VOC in 2023 because, as shown in Table 6, despite partial allocation of the RFP plan surplus reductions, emissions will remain under 2023 RFP target levels. EPA is thus proposing to approve the 2023 VOC and NO_x budgets for use in determining transportation conformity in the Cleveland area under the 2015 ozone NAAQS.

D. Motor Vehicle Inspection and Maintenance (I/M) Program

1. Background

CAA section 182(b)(4) requires States with ozone nonattainment areas classified as Moderate to implement a Basic motor vehicle I/M program. The goal of I/M programs is to identify and repair high-emitting vehicles to improve air quality in areas that are not attaining the NAAQS.²¹ The CAA generally

requires I/M programs for areas across the country that meet certain criteria, such as air quality status, population, and/or geographic location. The CAA also directed EPA to establish minimum performance standards for Basic and Enhanced I/M programs. States have flexibility to design their own programs if they can show that their program is as effective as the model program used in the respective performance standard. EPA's requirements for Basic and Enhanced I/M programs are found in 40 CFR part 51, subpart S.

The Cleveland area was required to adopt a Basic I/M program under the 1-hour ozone NAAQS. EPA fully approved Ohio's I/M program on April 4, 1995, 60 FR 16989, and approved revisions to the program on January 6, 1997, 62 FR 646.

2. Ohio's I/M Certification

Consistent with the I/M regulations, a State with an existing I/M program would need to conduct and submit a performance standard modeling analysis as well as make any necessary program revisions as part of their Moderate area SIP submission to ensure that their I/M program is operating at or above the Basic I/M performance standard level for the 2015 ozone NAAQS. When certifying that an existing I/M program meets applicable I/M requirements for a

new NAAQS, it is necessary that the State ensures that an I/M program reflects the I/M rule's required elements for a Basic or Enhanced I/M program and the applicable classification for the new ozone NAAQS. If an I/M program for a previous NAAQS contains the required elements for a new NAAQS (e.g., such as onroad mobile source testing for an Enhanced I/M program), then the State may determine through the performance standard modeling analysis that an existing SIP-approved program would meet the applicable performance standard for purposes of the 2015 ozone NAAQS without modification.

Ohio EPA is certifying that the existing SIP-approved I/M program meets the Basic I/M program requirements of CAA section 182(b)(4) for the Cleveland Moderate nonattainment area under the 2015 ozone NAAQS. The requirements for Ohio's I/M program are found in Ohio Administrative Code 3745–26 I/M Program Rules and Regulations. Ohio's I/M program requires on-board diagnostic testing of gasoline-fueled and diesel-fueled motor vehicles up to 10,000 pounds gross vehicle weight rating (GVWR) that are between four and 25 model years (MY) old. The I/M program also implements an emissions control device inspection through visual inspection for the presence of catalytic

²¹ For more information, see *Overview of Vehicle Inspection and Maintenance (I/M) Programs* (EPA–420–F–21–067, October 2021) at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P1013CC0.pdf>.

converter(s) and other major emissions control equipment.

In addition, Ohio EPA submitted an I/M performance standard modeling analysis demonstrating that Ohio's current motor vehicle I/M program exceeds the level of EPA's Enhanced performance standard for areas designated and classified under the 8-hour ozone standard, as specified in 40 CFR 51.351(i). Ohio conducted the modeling analysis using EPA's mobile source emissions model, MOVES3.0.2, which was the latest model version at the time the analysis was started. This modeling was conducted for analysis year 2023 in accordance with EPA's technical guidance: "Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model", EPA-420-B-22-034, October 2022,²² (October 2022 Performance Standard Modeling Guidance). The performance standard modeling analysis

involves a comparison of emission reductions from EPA's model program specified in 40 CFR 51.351(i) and Ohio's actual program in the seven counties of Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit. In all cases, the analysis shows that the emission reductions from Ohio's actual I/M program exceed the emission reductions modeled for the benchmark program of both the Basic and Enhanced I/M performance standards.

3. Evaluation of Ohio's I/M Certification

As a Moderate area for the 2015 ozone NAAQS, Cleveland is only required to implement a Basic I/M program. However, the Cleveland area continues to implement the Enhanced I/M program adopted into the area's SIP under the 1-hour ozone NAAQS. EPA's October 2022 Performance Modeling Guidance addresses the situation where a State may need to demonstrate that an area's current Enhanced I/M program satisfies the Basic I/M SIP requirement. "[I]t is reasonable to presume that if an

I/M program meets the Enhanced performance standard, then it would also meet the Basic performance standard so long as the analysis years are appropriate for the two 8-hour ozone standards in question."²³ The guidance goes on to identify the attainment date as the appropriate analysis year for areas that have been reclassified.²⁴

Cleveland's Moderate attainment date is August 3, 2024. However, because that date falls in the middle of the ozone season, 2023 is the year that will be used to determine whether the area achieves attainment by the attainment date. Therefore, Ohio appropriately chose 2023 as the analysis year to be consistent with the year in which attainment would be determined.

To demonstrate that an I/M program meets the Enhanced performance standard, the actual I/M program must achieve the same or lower emissions levels of NO_x and VOCs as the Federal model Enhanced program to within 0.02 gpm.

TABLE 9—SUMMARY OF I/M PERFORMANCE STANDARD EVALUATION FOR THE CLEVELAND 2015 OZONE NONATTAINMENT AREA

Pollutant	OH I/M program VOC emission rate	I/M VOC performance standard benchmark	I/M VOC performance standard benchmark plus buffer	Does existing program meet I/M performance standard?
VOC	0.2442	0.2444	0.2644	Yes.
NO _x	0.1502	0.1504	0.1704	Yes.

As shown in table 9, the emission reductions from Ohio's actual I/M program shows Ohio's program performs better than the Enhanced performance standard of 40 CFR 51.351(i). Ohio conducted the performance modeling analysis using the most recent version of EPA's mobile source emissions model, MOVES3.0.2, in accordance with EPA's October 2022 Performance Modeling Guidance. Therefore, since Ohio's current I/M program meets the applicable I/M performance requirements in all areas in which the program is implemented and also meets the Basic I/M requirements of CAA section 182(b)(4), we are proposing to approve Ohio's I/M program SIP element for the Cleveland Moderate nonattainment area under the 2015 ozone NAAQS.

E. NNSR Review

1. Background

NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources within a nonattainment area and is required under CAA sections 172(c)(5) and 173. NNSR permit program requirements were adopted for the 2015 ozone NAAQS at 40 CFR 51.1314 as part of the 2015 SIP Requirements Rule. The minimum SIP requirements for NNSR permitting programs for the 2015 ozone NAAQS are contained in 40 CFR 51.165. The SIP for each ozone nonattainment area must contain NNSR provisions that: (1) set major source thresholds for NO_x and VOC pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2); (2) classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); (3) consider any significant net emissions increase of

NO_x as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); (4) consider any increase of VOC emissions in Extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); (5) set significant emissions rates for VOC and NO_x as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)–(C) and (E); (6) contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1)–(2); (7) provide that the requirements applicable to VOC also apply to NO_x pursuant to 40 CFR 51.165(a)(8); (8) set offset ratios for VOC and NO_x pursuant to 40 CFR 51.165(a)(9)(ii)–(iv); and (9) require public participation procedures compliant with 40 CFR 51.165(i).

2. Ohio's NNSR Certification

Ohio EPA is certifying that the existing NNSR program meets the NNSR requirements of CAA section

²² <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1015S5C.pdf>

²³ October 2022 Performance Standard Modeling Guidance, p. 10.

²⁴ Ibid.

182(a)(2)(C) and (b)(5) for the Cleveland area under the 2015 ozone NAAQS. Ohio has a longstanding and fully implemented NNSR program. This is addressed in OAC Chapter 3745–31. The Chapter includes provisions for the Prevention of Significant Deterioration (PSD) permitting program in OAC rules 3745–31–01 to 3745–31–20 and NNSR program in rules 3745–31–21 to 3745–31–27. Ohio's PSD program was conditionally approved on October 10, 2001, 66 FR 51570, and received final approval on January 22, 2003, 68 FR 2909. Ohio's NNSR program was granted limited approval on September 8, 1993, 58 FR 47211, and received final

approval on January 10, 2003, 68 FR 1366. On February 25, 2010, 75 FR 8496, EPA approved revisions to Ohio's PSD and NNSR rules which were adopted to implement revisions to the Federal PSD and NNSR regulations in 40 CFR parts 51 and 52, which became effective on March 3, 2003,²⁵ commonly referred to as "NSR Reform" regulations.

Additionally, Ohio is certifying that the emission offset ratios established in OAC rule 3745–31–26 are consistent with the emission offset ratio requirements established in the CAA based on ozone nonattainment classifications. Specifically, Ohio rule

3745–31–26 establishes an offset ratio of 1.15 to 1 for moderate areas, as required by CAA section 182(b)(5).

3. Evaluation of Ohio's NNSR Certification

Table 10 below provides the sections of Ohio's NNSR rule corresponding to the relevant requirements at 40 CFR 51.165. Each requirement identified in Ohio's certification has not been revised since EPA last approved it. Table 9 lists the specific provisions of Ohio's NNSR rules that address the required elements of the Federal NNSR rules:

TABLE 10—NNSR SIP RULES COMPARISON

Federal rule	Ohio rule
40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv)	R. 3745–31–01(M)(5)(a)(i), (ii), (iii), (iv).
40 CFR 51.165(a)(1)(iv)(A)(2)(i)–(vi)	3745–31–01(M)(5)(a) and (c).
40 CFR 51.165(a)(1)(iv)(A)(3)	R. 3745–31–01(M)(5)(e).
40 CFR 51.165 (a)(1)(iv)(B)	R. 3745–31–01(M)(5)(c).
40 CFR 51.165(a)(1)(v)(B)	R. 3745–31–01(M)(3)(b).
40 CFR 51.165 (a)(1)(v)(E)	R. 3745–31–01(M)(3)(b).
40 CFR 51.165(a)(1)(v)(F)	N/A.
40 CFR 51.165(a)(1)(x)(A)	R. 3745–31–01(S)(5).
40 CFR 51.165(a)(1)(x)(B)	N/A (<i>applicable to areas classified as Serious or Severe</i>).
40 CFR 51.165(a)(1)(x)(C)	R. 3745–31–01(S)(5) (<i>only for 40 tpy threshold, which addresses areas classified as moderate</i>).
40 CFR 51.165(a)(1)(x)(E)	N/A (<i>applicable to areas classified as extreme</i>).
40 CFR 51.165 (a)(1)(xxvii)(C)(1)	R. 3745–31–01(R)(5)(a)(iii)(a).
40 CFR 51.165(a)(3)(ii)(C)(1)(i)–(ii)	R. 3745–31–24(F)(1)(a), (b).
40 CFR 51.165(a)(3)(ii)(C)(2)(i)–(ii)	R. 3745–31–24(F)(2).
40 CFR 51.165(a)(8) ²⁶	R. 3745–31–01(M)(5)(a), (c)
	R. 3745–31–01(S)(5).
40 CFR 51.165(a)(9)(ii)(A)–(E)	R. 3745–31–26(C)(2), (3), (4), (5), (6).
40 CFR 51.165(a)(9)(iii)	N/A.
40 CFR 51.165(a)(9)(iv)	R. 3745–31–26(C)(1).
40 CFR 51.165(a)(12)	N/A (<i>Ohio has no nonattainment areas for the 2008 ozone NAAQS</i>).

EPA has reviewed Ohio's approved NNSR rules and is proposing to approve Ohio's certification submittal because we find that the current SIP-approved NNSR program satisfies all the NNSR program requirements currently applicable to the Cleveland area for the 2015 ozone NAAQS.

III. Environmental Justice Considerations

Ohio used EPA's environmental justice (EJ) screening and mapping tool, EJScreen, to identify areas in the Cleveland nonattainment area with potentially overburdened communities and assess whether the Cleveland attainment plan would exacerbate existing pollution exposure or burdens for those communities. Because ozone is a regional pollutant, Ohio EPA screened the Cleveland area at two levels. Ohio

EPA first screened each of the seven counties in the nonattainment area to identify potentially overburdened communities. Then Ohio screened and reviewed data for a 5-kilometer radius around the two violating ozone monitors, Eastlake monitor (39–085–003) in Lake County and District 6 monitor (39–035–0034) in Cuyahoga County.

Consistent with EPA's September 2019 EJScreen Technical Documentation,²⁷ Ohio EPA is using the criterion of one or more EJ indexes at or above the 80th percentile nationally to screen for potentially overburdened communities. The countywide screenings showed no EJ indexes above the 80th percentile in Geauga, Medina, and Lake Counties; one EJ index above the 80th percentile in Loraine, Portage, and Summit Counties (EJ Index for

Wastewater Discharge), and two EJ indexes above the 80th percentile in Cuyahoga County (EJ Indexes for Wastewater Discharge and Hazardous Waste Proximity). The results of the evaluation of the areas in a 5-kilometer radius around the two violating monitors helped to identify a potentially overburdened community on a more local scale. While the radius around the Eastlake monitor did not show any indicators of being in a potentially overburdened area, the area around the second monitor, District 6, did. The EJ screening of the area around District 6 showed the area to be in the 71st or higher percentile in every EJ index category, with seven EJ indexes above the 80th percentile. The area also ranks above the national average in every socioeconomic indicator.

²⁵ 67 FR 80186 (December 31, 2002).

²⁶ Ohio's rule does not fully address the NO_x waiver provision; however, it is not applicable to

this action as the Cleveland area does not have a NO_x waiver.

²⁷ https://www.epa.gov/sites/default/files/2017-09/documents/2017_ejscreen_technical_document.pdf.

While Ohio's screening process identified potentially overburdened communities in the Cleveland nonattainment area, ozone is a regional pollutant. Elevated levels of ambient ozone are the result of secondary urban scale atmospheric formation involving emissions from ubiquitous sources of ozone precursors (VOC and NO_x) including motor vehicles, large and small industrial processes, and consumer products which result in more regional scale impacts further down wind. Therefore, Ohio has worked to develop ozone-related control strategies that most effectively reduce emissions that contribute to elevated ozone levels. Reducing ozone levels will protect all segments of the general population, including the health of the identified potentially overburdened communities. Ohio identified one attainment plan element that may be of additional benefit locally: Ohio's recently strengthened NO_x RACT rules (which will be addressed in a separate rulemaking action). Several emission sources upwind of the potentially overburdened community around the District 6 monitor will be subject to these rules and be required to comply with more stringent NO_x limits or to submit a study to establish a RACT level of controls at the facility. In addition, Ohio EPA has worked to identify and reach out to community organizations in potentially overburdened communities in the Cleveland nonattainment area.

As explained in the "EJ Legal Tools to Advance Environmental Justice" 2022 document, the CAA provides States with the discretion to consider EJ in developing rules and measures related to ozone attainment planning. In this instance, Ohio EPA exercised this discretion, as is described above in summary. In reviewing Ohio EPA's analysis, EPA defers to the Ohio EPA's reasonable exercise of its discretion in considering EJ in this way. EPA is taking proposed action to approve the SIP revision because we find that it meets the applicable requirements pursuant to the CAA and relevant implementing regulations. EPA also finds that Ohio EPA's consideration of EJ analyses in this context is reasonable. EPA encourages air agencies generally to evaluate EJ considerations of their actions and carefully consider impacts to communities. The EJ analyses submitted by the air agency were considered but were not the basis for EPA's decision making and the SIP met the minimum applicable requirements, as explained above.

IV. Proposed Action

EPA is proposing to approve revisions to Ohio's SIP pursuant to section 110 and part D of the CAA and EPA's regulations, because Ohio's December 21, 2022, attainment plan submission satisfies the base year emissions inventory, the RFP demonstration including associated motor vehicle emissions budgets, I/M, and NNSR requirements of the CAA for the Cleveland area for the 2015 ozone NAAQS. EPA is also initiating the adequacy process for the 2023 motor vehicle emissions budgets for the Cleveland area included in this SIP submission.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because

application of those requirements would be inconsistent with the CAA.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on communities with EJ concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

The Ohio EPA evaluated EJ considerations as part of its SIP submittal given that the CAA and applicable implementing regulations neither prohibit nor require an evaluation. EPA's evaluation of the Ohio EPA's EJ considerations is described in section III of this preamble titled, "Environmental Justice Considerations." The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. EPA is taking action under the CAA on bases independent of the Ohio EPA's evaluation of EJ. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based that is inconsistent with the stated goal of E.O. 12898/14096 of achieving EJ for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

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

Dated: December 19, 2024.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2024–30717 Filed 1–2–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R04–OAR–2022–0789; FRL–10888–03–R4]

Air Quality Designations; KY; Redesignation of the Kentucky Portion of the Louisville, KY-IN 2015 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is withdrawing its proposed approval of the request to redesignate the Kentucky portion of the Louisville, Kentucky-Indiana, 2015 8-hour ozone nonattainment area (hereinafter referred to as the “Louisville, KY-IN Area” or “Area”) to attainment for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards). EPA is withdrawing its April 18, 2023, proposed approval and is now proposing to deny Kentucky’s request to redesignate the Kentucky portion of the Area from nonattainment to attainment, based on the Area’s violation of the NAAQS. EPA is taking no action at this time on Kentucky’s maintenance plan, including the regional motor vehicle emission budgets for nitrogen oxides (NO_x) and volatile organic compounds (VOC) for the years of 2019 and 2035, submitted with Kentucky’s redesignation request for the Louisville, KY-IN Area. The redesignation request and maintenance plan state implementation plan (SIP) revision were submitted by the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet (Cabinet), Division of Air Quality (DAQ), on September 6, 2022.

DATES: Comments must be received on or before February 3, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2022–0789 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically any information you

consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Sarah LaRocca, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8994. Ms. Sarah LaRocca can also be reached via electronic mail at larocca.sarah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 6, 2022, Kentucky submitted a request to redesignate the Kentucky portion of the Louisville, KY-IN 2015 8-hour ozone nonattainment area from nonattainment to attainment. Accompanying Kentucky’s request for redesignation under Clean Air Act (CAA or Act) section 107(d)(3)(D) was a SIP revision containing a maintenance plan for the Area, as is required by CAA sections 107(d)(3)(E)(iv) and 175A in order for EPA to redesignate an area from nonattainment to attainment. On April 18, 2023, EPA proposed to take the following separate but related actions addressing the September 6, 2022, submittal: (1) to approve Kentucky’s plan for maintaining the 2015 ozone NAAQS (maintenance plan), including the associated motor vehicle emissions budgets (budgets) for the Louisville, KY-IN Area, and incorporate the plan into the SIP, and (2) to redesignate the Kentucky portion of the Area to attainment for the 2015 8-hour ozone NAAQS. EPA also notified the public of the status of EPA’s adequacy determination for the budgets for the Area. The Louisville, KY-IN Area is composed of Bullitt, Jefferson, and Oldham Counties in Kentucky, and Clark and Floyd Counties in Indiana. These proposed actions are summarized below and described in greater detail in the notice of proposed rulemaking

(NPRM) published on April 18, 2023. See 88 FR 23598.

II. Criteria for Redesignation

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA prohibits the redesignation of such an area unless: (1) the EPA Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.¹

¹ EPA provided guidance on redesignations in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 on April 16, 1992 (*see* 57 FR 13498) and supplemented that guidance on April 28, 1992 (*see* 57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents: 1. “Ozone and Carbon Monoxide Design Value Calculations,” Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990; 2. “Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992; 3. “Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992; 4. “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereinafter referred to as the “Calcagni Memorandum”); 5. “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,” Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; 6. “Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993; 7. “State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,” Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993 (hereinafter referred to as the “Shapiro Memorandum”); 8. “Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,” Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993; 9. “Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation

Regarding the first criterion's requirement that the area "has attained" the relevant NAAQS, since the passage of the 1990 Amendments to the CAA, EPA has consistently read that provision to require continued attainment until EPA's action redesignating the area, and to prohibit redesignation where an area violates the standard during the pendency of the Agency's review of the state's request. *See* Calcagni Memorandum at 5 ("Regions should advise States of the practical planning consequences if EPA disapproves the redesignation request or if the request is invalidated because of violations recorded during the EPA's review.") (emphasis added). The Agency's interpretation of that provision is supported by the Act's definition of attainment and nonattainment areas in CAA section 107(d)(1)(A), which defines a nonattainment area as "any area that does not meet" the NAAQS (CAA section 107(d)(1)(A)(i)) and an attainment area as "any area that meets" the NAAQS. The use of the present tense in CAA section 107(d)(1)(A) is consistent with the use of the present perfect tense in CAA section 107(d)(3)(E)(i), which tasks EPA with determining that an area "has attained" the NAAQS, as opposed to attaining at some previous time (e.g., "had attained") with subsequent violations. *See* 62 FR 49154 (September 19, 1997) (laying out statutory analysis supporting EPA's interpretation of CAA section 107(d)(3)(E)(i) in denial of the Birmingham, AL 1-hour ozone redesignation request). EPA has applied this interpretation of the first attainment redesignation criterion in numerous redesignation actions.²

Courts have confirmed EPA's interpretation of the first criterion in cases with factually similar circumstances to those present here. In *Southwestern Pennsylvania Growth Alliance v. Browner*, although denying

the petitioner's challenge based on their failure to preserve an issue for litigation, the Third Circuit laid out its agreement with EPA's reading of the provisions. *See* 121 F.3d 106 (3d Cir. 1997). Petitioners there argued that EPA was not permitted to consider violations that occurred after the submission of its redesignation request (and in that case, violations that occurred after EPA's 18-month statutory window to act on the state's request, per CAA section 107(d)(3)(D)). *See id.* at 111. The Court, in an opinion authored by then Judge Alito, wrote, "[e]ven if we were to reach the merits of petitioner's argument, we would hold that 42 U.S.C. 7407(d)(3)(D) did not preclude the EPA from considering the summer 1995 exceedance data. The language of the provision that enumerates the redesignation criteria tends to support this result. Under 42 U.S.C. 7407(d)(3)(E)(i), the EPA Administrator 'may not' promulgate a redesignation of a nonattainment area unless, among other things, 'the Administrator determines that the area has attained the [NAAQS]. The use of the term 'has attained' instead of 'attained' may be interpreted as suggesting that the attainment must continue until the date of the redesignation." *Id.* at 113. The Court further stated that it did not agree with petitioners that the mandatory window established by the Act for EPA to approve or deny a state's redesignation request "conclusively indicate[s] that Congress intended to prohibit the EPA from taking action after the expiration of the statutorily specified time period." *Id.* And finally, the Court signaled its agreement with the Agency that continued fulfillment of the first redesignation criterion is paramount to approving a state's request: "Since 42 U.S.C. 7407(d)(3)(E)(i) prohibits the EPA from redesignating an area that is not in attainment of the NAAQS, the EPA correctly denied Pennsylvania's request for redesignation. . . . An area's failure to attain a NAAQS is the most fundamental criterion in its designation as a nonattainment area." *Id.* at 118 n.5.

Similarly, the Sixth Circuit has interpreted the first redesignation criterion consistent with the Third Circuit and with EPA. In *Commonwealth of Kentucky v. EPA*, Kentucky argued that EPA should not have denied its request to redesignate its portion of the Cincinnati-Northern Kentucky OH-KY nonattainment area to attainment based on a "single violation in July 1995" when the area had measured clean data in "the period specified in the redesignation request,

i.e., 1992–1994." No. 96–4274, 1998 U.S. App. LEXIS 21686, at 5–6 (6th Cir. Sept. 2, 1998). Similar to the Petitioner's arguments in the Third Circuit case discussed above, Kentucky asserted that "Congress could have been more clear if it had used the simple present tense ('attains') or the progressive present tense ('is attaining') to explicitly require continuing compliance." *Id.* at 9. But the Court, agreeing with EPA, held that "Congress also could have been more clear if it had used the simple past tense ('attained') to require a noncontinuing compliance. Congress declined both of these options and simply used the present perfect tense ('has attained')." According to standard usage, the present perfect tense denotes past action with an abiding effect or continuing relevance. . . . Thus, the phrase 'has attained,' as the Third Circuit concluded, requires 'that the attainment must continue until the date of redesignation.'" *Id.* (citation to Third Circuit decision omitted). The Sixth Circuit bolstered its reading of the first redesignation criterion by pointing to the Act's requirements regarding maintenance. *Id.* at 10.

Significantly, in both cases where parties challenged EPA's interpretation that the first redesignation criterion requires continued attainment of the NAAQS through the Agency's final action redesignating the area, the reviewing courts, "after applying all relevant interpretive tools, conclude[d]" that EPA's reading was "best." *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2266 (2024). The Third Circuit and the Sixth Circuit opinions interpreting CAA section 107(d)(3)(E)(i) only cited *Chevron* deference to the Agency as a backstop to their own examination of the text of the provision and conclusion about the best reading of the Act's first redesignation criterion. *See SPGA v. Browner*, 121 F.3d at 113; *Kentucky v. EPA*, 1998 U.S. App. LEXIS 21686, at 11. Those courts' findings that the CAA redesignation provision "requires that the attainment must continue until the date of redesignation" was made in the course of those courts "do[ing] their ordinary job of interpreting statutes," "based on the traditional tools of statutory construction." *See Loper Bright*, 144 S. Ct. at 2267–68.

III. Kentucky's Redesignation Request and SIP Revision

On April 18, 2023, EPA proposed to approve Kentucky's September 6, 2022, redesignation request and its maintenance plan SIP revision based, in part, on complete, quality-assured, and certified 2019–2021 design values for

to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994 (hereinafter referred to as the "Nichols Memorandum"); and 10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

² *See, e.g.*, 59 FR 22757 (May 3, 1994) (denial of redesignation request for Richmond, VA); 62 FR 49154 (September 19, 1997) (denial of redesignation request for Birmingham, AL); 61 FR 19193 (May 1, 1996) (denial of redesignation request for Pittsburgh-Beaver Valley, PA); 61 FR 50718 (September 27, 1996) (denial of redesignation request for the Kentucky portion of the Cincinnati-Hamilton KY-OH area); 84 FR 16214 (April 18, 2019) (denial of redesignation request for the Wisconsin portion of the Chicago-Naperville, IL-IN-WI area).

each monitor in the Louisville, KY-IN Area.³ These design values are equal to or less than the level of the 2015 8-hour ozone NAAQS and were the most current design values at the time of proposal. See 88 FR 23598. Consistent with its longstanding interpretation of CAA section 107(d)(3)(E)(i), EPA stated in the NPRM that the Agency would not take final action to approve the redesignation of the Kentucky portion of the Louisville, KY-IN Area if the three-year design value for the Area exceeded the NAAQS prior to EPA's finalization of the redesignation. See 88 FR at 23601. Although preliminary 2022 ozone monitoring data at the time of proposal indicated an attaining 2022 design value for the Louisville, KY-IN Area,⁴ the complete, quality-assured, and certified 2021–2023 design value of 0.072 parts per million (ppm) exceeds the NAAQS as discussed below.

IV. 2023 Violation of the NAAQS for Ozone in the Louisville, KY-IN Area

For ozone, an area may be considered to be attaining the 2015 8-hour ozone NAAQS if it meets that standard, as determined in accordance with 40 CFR 50.19 and Appendix U of 40 CFR part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain the 2015 8-hour ozone NAAQS, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area must not exceed 0.070 ppm. Based on the data handling and reporting convention described in 40 CFR part 50, Appendix U, the 2015 8-hour ozone NAAQS are attained if the design value is 0.070 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS).

EPA reviewed complete, quality-assured, and certified ozone monitoring data from monitoring stations in the Louisville, KY-IN Area for the 2015 8-hour ozone NAAQS for 2021 through 2023, and the highest 3-year design value⁵ for 2021–2023 for the Louisville, KY-IN Area is 0.072 ppm, which

exceeds the standard of 0.070 ppm.⁶ Further, preliminary 2024 monitoring data indicates a 2022–2024 design value of 0.075 ppm for the Area. Therefore, the Louisville, KY-IN Area does not meet the first statutory criterion for redesignation to attainment of the 2015 8-hour ozone NAAQS found in section 107(d)(3)(E)(i) of the CAA.

V. Public Comments Received on EPA's April 18, 2023, Proposal

EPA received three sets of adverse comments on the April 18, 2023, NPRM. Commenters asserted that the Louisville, KY-IN Area did not attain the 2015 ozone NAAQS with 2020–2022 data, expressed concern regarding ambient air ozone exceedances, and stated that the reduction in emissions in the Area were not permanent and enforceable. As EPA is withdrawing its proposed approval of the redesignation request, the comments on the earlier proposal are moot.

VI. Proposed Action

EPA is withdrawing its April 18, 2023, proposed approval of Kentucky's request to redesignate the Kentucky portion of the Louisville, KY-IN 2015 8-hour ozone nonattainment area to attainment for the 2015 8-hour ozone NAAQS. For the reasons provided in this notice, EPA is proposing to deny Kentucky's September 6, 2022, redesignation request on the basis that the violations of the NAAQS experienced in the Area during the pendency of EPA's review of the request demonstrate that the Area has not met the first redesignation criterion. EPA is not proposing to take action on the Commonwealth's accompanying submissions to fulfill the other redesignation criteria, given its proposed denial of the request based on air quality data.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This proposed action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and is

therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this proposed action will not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This proposed action will not impose any requirements on small entities because it merely proposes to deny a redesignation request as not meeting Federal requirements.

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

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

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

This proposed action does not have tribal implications, as specified in Executive Order 13175, because the Area's SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this proposed action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. Therefore, this

³ EPA's full rationale for its proposed approval actions was provided in the NPRM.

⁴ On February 21, 2022, Indiana submitted a separate redesignation request and maintenance plan for its portion of the Louisville, KY-IN Area. On July 5, 2022, EPA approved the redesignation request and maintenance plan for the Indiana portion of the Louisville, KY-IN Area. See 87 FR 39750.

⁵ The design value for an area is the highest 3-year average of the annual fourth-highest daily maximum 8-hour ozone concentration recorded at any monitor in the area.

⁶ Final air quality design values for all criteria pollutants, including ozone, are available at <https://www.epa.gov/air-trends/air-quality-design-values>. These design values are calculated in accordance with 40 CFR part 50.

proposed action is not subject to Executive Order 13045 because it merely proposes to deny a redesignation request as not meeting Federal requirements. Furthermore, EPA's Policy on Children's Health does not apply to this proposed action.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This proposed action does not involve technical standards.

J. Executive Order 12898 and Executive Order 14096: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Revitalizing Our Nation's Commitment to Environmental Justice for All

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on communities with EJ concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as among other things, the "just treatment and meaningful involvement of all people regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment."

Neither the Cabinet nor the Louisville Metro Air Pollution Control District evaluated EJ considerations as part of the Cabinet's redesignation request; the CAA and applicable implementing regulations neither prohibit nor require an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Consideration of EJ is not required as part of this proposed action, and there is no information in the record upon which this decision is based that is inconsistent with the stated goal of Executive Order 12898/14096 of achieving EJ for communities with EJ concerns.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: December 23, 2024.

Jeananne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2024–31617 Filed 1–2–25; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 2, 7, 11, 12, and 39

[FAR Case 2019–014, Docket No. FAR–2019–0014, Sequence No. 1]

RIN 9000–AN97

**Federal Acquisition Regulation:
Strengthening America's
Cybersecurity Workforce**

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to incorporate a framework for describing cybersecurity workforce knowledge and skill requirements used in contracts for information technology support services and cybersecurity support services in line with an Executive Order to enhance the cybersecurity workforce.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before March 4, 2025 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2019–014 to the Federal eRulemaking portal at <https://www.regulations.gov> by searching for "FAR Case 2019–014". Select the link "Comment Now" that corresponds with "FAR Case 2019–014". Follow the instructions provided on the "Comment Now" screen. Please include your name, company name (if any), and "FAR Case 2019–014" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite "FAR Case 2019–014" in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at <https://www.regulations.gov/faq>). To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Malissa Jones, Procurement Analyst, at 571–882–4687 or by email at malissa.jones@gsa.gov. For information pertaining to status, publication schedules, or alternate instructions for submitting comments if <https://www.regulations.gov> cannot be used, contact the Regulatory Secretariat at 202–501–4755 or GSARegSec@gsa.gov. Please cite "FAR Case 2019–014."

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the FAR to incorporate the NICE Workforce Framework for Cybersecurity (NICE Framework), National Institute of Standards and Technology (NIST) Special Publication 800–181 and additional tools to implement it at <https://www.nist.gov/nice/framework>, for describing workforce knowledge and skill requirements used in contracts for information technology support services and cybersecurity support services in line with Executive Order (E.O.) 13870, America's Cybersecurity Workforce. E.O. 13870 requires agencies to incorporate the NICE Framework, NIST Special Publication 800–181 into workforce knowledge and skill requirements used in contracts for information technology and cybersecurity services. DoD, GSA, and NASA are proposing to revise the FAR to ensure that when acquiring information technology support services or cybersecurity support services, agencies describe the cybersecurity workforce tasks, knowledge, skills, and work roles to align with the NICE Framework.

The NICE Framework is a nationally focused resource that categorizes and describes cybersecurity work. The NICE Framework establishes a common language that defines and categorizes cybersecurity competency areas and work roles, including the knowledge

and skills needed to complete tasks in those roles. It is a fundamental resource in the development and support of a prepared and effective cybersecurity workforce that enables consistent organizational and sector communication for cybersecurity education, training, and workforce development. The NICE Framework is intended to be applied in the public, private, and academic sectors to grow the cybersecurity capability of the U.S. Government, increase integration of the Federal cybersecurity workforce, and strengthen the skills of Federal information technology and cybersecurity practitioners.

II. Discussion and Analysis

DoD, GSA, and NASA are proposing to amend the FAR to define terms that are referenced. As such, this rule proposes to amend FAR 2.101 by adding a definition for “cybersecurity” and a definition for the “NICE Workforce Framework for Cybersecurity (NICE Framework)”. Previously known as the “National Initiative for Cybersecurity Education,” NICE is now known only by its acronym.

For the acquisition of information technology support services (e.g., backup and recovery services and technical support) or cybersecurity support services (e.g., threat analysis, vulnerability analysis, and digital forensics), the proposed rule implements the following requirements to ensure agencies include the cybersecurity workforce tasks, knowledge, skills, and work roles to align with the NICE Framework in contracts:

- FAR 7.105 is amended to require that agency acquisition plans for the acquisition of information technology support services or cybersecurity support services describe any cybersecurity workforce tasks, knowledge, skills, and work roles to align with the NICE Framework.
- FAR 11.002 is amended to require that cybersecurity workforce tasks, knowledge, skills, and work roles described in agency requirements documents align with the NICE Framework. Agencies shall also require offers, quotes, and reporting requirements (e.g., contractor deliverables) to align with the NICE Framework.
- FAR 12.202 is amended to require, for the acquisition of commercial products and commercial services, compliance with the direction at FAR 11.002 for incorporating the NICE Framework in requirements documents.
- FAR 39.104 is amended to reference, for information technology

support services and cybersecurity support services, the direction at FAR 11.002 for incorporating the NICE Framework in requirements documents.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or for Commercial Services

This rule does not create new solicitation provisions or contract clauses or impact any existing provisions or clauses.

IV. Expected Impact of the Rule

A. Requirement

This proposed rule implements requirements for agencies procuring information technology support services and cybersecurity support services to provide—

(1) The cybersecurity workforce tasks, knowledge, skills, and work roles to align with the NICE Framework in their acquisition plans as a security consideration;

(2) A description, in the requirements documents, of the cybersecurity workforce tasks, knowledge, skills, and work roles to align with the NICE Framework; and,

(3) Requirements for offers, quotes, and reporting requirements (e.g., contract deliverables) to align with the NICE Framework.

B. Impact

Government. This rule will require agencies to become familiar with the NICE Framework provided in NIST Special Publication 800–181 and additional tools to implement it at <https://www.nist.gov/nice/framework> in order to describe the cybersecurity workforce tasks, knowledge, skills, and work roles when procuring information technology support services and cybersecurity support services. Agencies are expected to verify that offers, quotes, and reporting requirements (e.g., contract deliverables) align with the NICE Framework. It is expected that this will take place as a part of the Government’s existing acquisition process.

Public. This rule does not add any new information collection or additional requirements for contractors. This rule requires contractors to ensure contract deliverables are consistent with the NICE Framework when specified for the acquisition of information technology support services and cybersecurity support services.

Regulatory familiarization. It is expected that contractors providing

information technology support services and cybersecurity support services will be required to become familiar with the NICE Framework (NIST Special Publication 800–181 and additional tools to implement it at <https://www.nist.gov/nice/framework>) which is estimated to take 20 hours. Contractors may be required to update their policies and procedures to comply with the NICE Framework requirements for acquisitions of information technology support services and cybersecurity support services. The cost to the public associated with this rule is not expected to be significant because it is limited to the cost of regulatory familiarization and the application of its requirements to offers and quotes for information technology support services and cybersecurity support services.

Based on data from the Federal Procurement Data System (FPDS) for fiscal years (FY) 2021, 2022, and 2023, there was an average of 5,468 unique entities that were awarded contracts for information technology services, of which 64 percent (3,490) are unique small entities. Considering this information, the Government assumes that approximately 50 percent of the unique entities may be awarded a contract for information technology support services or cybersecurity support services. Therefore, it is estimated that 2,734 entities, of which 1,745 are unique small entities, would need to ensure that the contract deliverables submitted to the Government, are consistent with the NICE Framework. The Government has no way to estimate the number of entities awarded non-information technology services awards that contain some information technology support services requirements or cybersecurity support services requirements.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule, if finalized, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is as follows:

1. Reasons for the action.

The reason for this proposed rule is to revise the Federal Acquisition Regulation (FAR) to incorporate the NICE Workforce Framework for Cybersecurity (NICE Framework), National Institute of Standards and Technology (NIST) Special Publication 800–181 for describing workforce knowledge and skill requirements used in contracts for information technology support services and cybersecurity support services in line with Executive Order (E.O.) 13870, America's Cybersecurity Workforce. E.O. 13870 directs agencies to incorporate the NICE Framework lexicon and taxonomy into workforce knowledge and skill requirements used in contracts for information technology and cybersecurity services.

2. Objectives of, and legal basis for, the rule.

The objective of this rule is to strengthen the cybersecurity workforce on Federal contracts by incorporating the cybersecurity workforce tasks, knowledge, skills, and work roles into requirements to align with the NICE Framework (NIST SP 800–181 and additional tools to implement it at <https://www.nist.gov/nice/framework>).

The rule proposes to amend FAR 7.105 to add the NICE Framework to the list of security considerations analyzed during acquisition planning for information technology support services and cybersecurity support services. The proposed rule also includes amendments to FAR 11.002 to require agencies to provide workforce knowledge and skill requirements and contract deliverables that are consistent with the NICE Framework in their requirements documentation.

The legal basis for the rule is E.O. 13870, America's Cybersecurity Workforce. Promulgation of the FAR is authorized by 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

3. Description of and an estimate of the number of small entities to which the rule will apply.

Based on data from the Federal Procurement Data System (FPDS) for fiscal years (FY) 2021, 2022, and 2023, there was an average of 5,468 unique entities that were awarded contracts for information technology services, of which 64 percent (3,490) are unique small entities. Considering this information, the Government assumes that approximately 50 percent of the unique entities may be awarded a contract for information technology support services or cybersecurity support services. Therefore, it is estimated that 2,734 entities, of which 1,745 are unique small entities, would need to ensure that the contract deliverables

submitted to the Government are consistent with the NICE Framework. The Government has no way to estimate the number of entities awarded non-information technology services awards that contain some information technology support services requirements or cybersecurity support services requirements.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule.

There are no reporting, recordkeeping, or other compliance requirements in this rule.

5. Relevant Federal rules which may duplicate, overlap, or conflict with the rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

6. Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.

DoD, GSA, and NASA were unable to identify any alternatives that would reduce the burden on small entities and still meet the objectives of E.O. 13870.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2019–014), in correspondence.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 48 CFR Parts 2, 7, 11, 12, and 39

Government Procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 7, 11, 12, and 39 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 7, 11, 12, and 39 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 by adding in alphabetical order the definitions “Cybersecurity” and “NICE Workforce Framework for Cybersecurity (NICE Framework)”.

2.101 Definitions.

* * * * *

Cybersecurity means prevention of damage to, protection of, and restoration of computers, electronic communications systems, electronic communications services, wire communication, and electronic communication, including information contained therein, to ensure its availability, integrity, authentication, confidentiality, and nonrepudiation (see National Security Presidential Directive/NSPD–54, Homeland Security Presidential Directive/HSPD–23.)

* * * * *

NICE Workforce Framework for Cybersecurity (NICE Framework) means a common language for describing cybersecurity work which expresses the work as task statements and includes knowledge and skill statements that provide a foundation for learners including students, job seekers, and employees (see National Institute of Standards and Technology Special Publication 800–181 and additional tools to implement it at <https://www.nist.gov/nice/framework>).

PART 7—ACQUISITION PLANNING

■ 3. Amend section 7.105 by revising paragraph (b)(18)(ii) to read as follows.

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(18) * * *

(ii)(A) For information technology acquisitions, discuss how agency information security requirements will be met.

(B) For the acquisition of information technology support services or cybersecurity support services, describe any cybersecurity workforce tasks, knowledge, skills, and work roles to align with the NICE Workforce Framework for Cybersecurity (NICE Framework) (National Institute of Standards and Technology Special Publication 800–181 and additional tools to implement it at <https://www.nist.gov/nice/framework>) in effect at the time the solicitation is issued (see 11.002(i)).

PART 11—DESCRIBING AGENCY NEEDS

■ 4. Amend section 11.002 by adding paragraph (i) to read as follows:

11.002 Policy.

* * * * *

(i) Agencies shall procure information technology support services and cybersecurity support services in accordance with section 39.104. Agencies shall—

(1) Ensure any cybersecurity workforce tasks, knowledge, skills, and work roles described in the requirements documents are aligned with the NICE Workforce Framework for Cybersecurity (NICE Framework) (National Institute of Standards and Technology Special Publication 800–181 and additional tools to implement it at <https://www.nist.gov/nice/framework>) in effect at the time the solicitation is issued; and

(2) Require any offers, quotes, and reporting requirements (e.g., contract deliverables) to align with the NICE Framework in effect at the time of the solicitation.

PART 12—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 5. Amend section 12.202 by adding paragraph (f) to read as follows:

12.202 Market research and description of agency need.

* * * * *

(f) When acquiring information technology support services or cybersecurity support services, requirements documents shall describe any cybersecurity workforce tasks, knowledge, skills, and work roles to align with the NICE Workforce Framework for Cybersecurity (NICE Framework) (see NIST Special Publication 800–181 and additional tools to implement it at <https://www.nist.gov/nice/framework>) in effect at the time the solicitation is issued (see 11.002(i) and 39.104(b)).

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 6. Revise section 39.104 to read as follows:

39.104 Information technology services.

(a) When acquiring information technology services, solicitations must not describe any minimum experience or educational requirement for proposed

contractor personnel unless the contracting officer determines that the needs of the agency—

(1) Cannot be met without that requirement; or

(2) Require the use of other than a performance-based acquisition (see subpart 37.6).

(b) When acquiring information technology support services (e.g., backup and recovery services, technical support) or cybersecurity support services (e.g., threat analysis, vulnerability analysis, digital forensics), which are a subset of information technology services, agencies must—

(1) Ensure any cybersecurity workforce tasks, knowledge, skills, and work role requirements align with the NICE Workforce Framework for Cybersecurity (NICE Framework) (National Institute of Standards and Technology Special Publication 800–181 and additional tools to implement it at <https://www.nist.gov/nice/framework>) in effect at the time the solicitation is issued (see 11.002(i)); and

(2) Ensure any cybersecurity workforce tasks, knowledge, skills, and work role requirements comply with paragraph (a) of this section.

[FR Doc. 2024–30504 Filed 1–2–25; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register

Vol. 90, No. 2

Friday, January 3, 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 AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0055]

Notice of Availability of a Draft Programmatic Environmental Impact Statement for Outbreak Response Activities for Highly Pathogenic Avian Influenza Outbreaks in Poultry in the United States and U.S. Territories

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability; reopening of comment period.

SUMMARY: We are reopening the comment period for our notice advising the public that a draft programmatic environmental impact statement (EIS) has been prepared by the Animal and Plant Health Inspection Service relative to our response activities to highly pathogenic avian influenza (HPAI) outbreaks in commercial and backyard poultry operations located throughout the United States, including the U.S. territories. The draft EIS analyzes and compares the potential environmental effects of using three action alternatives during an HPAI outbreak. This action will allow interested persons additional time to prepare and submit comments.

DATES: The comment period for the notice published on August 16, 2024 (89 FR 66668) is reopened. We will consider all comments that we receive on or before January 17, 2025.

ADDRESSES: You may submit comments by either of the following methods:

- **Federal eRulemaking Portal:** Go to www.regulations.gov. Enter APHIS–2022–0055 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.

- **Postal Mail/Commercial Delivery:** Send your comment to Docket No. APHIS–2022–0055, Regulatory Analysis and Development, PPD, APHIS, Station 2C–10.16, 4700 River Road, Unit 25, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at Regulations.gov or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Chelsea Bare, Chief of Staff, Veterinary Services, APHIS, U.S. Department of Agriculture, 1400 Independence Avenue SW, Whitten Building Room, 318–E, Washington, DC 20250; chelsea.j.bare@usda.gov; (515) 337–6128.

SUPPLEMENTARY INFORMATION:

On August 16, 2024, we published in the **Federal Register** (89 FR 66668–66669, Docket No. APHIS–2022–0055) ¹ a notice advising the public that a draft programmatic environmental impact statement (EIS) has been prepared by the Animal and Plant Health Inspection Service relative to our response activities to highly pathogenic avian influenza outbreaks in commercial and backyard poultry operations located throughout the United States, including the U.S. territories.

Comments on the draft EIS were required to be received on or before September 30, 2024. We are reopening the comment period on Docket No. APHIS–2022–0055 for an additional 14 days. This action will allow interested persons additional time to prepare and

submit comments. We will also consider all comments received between October 1, 2024 (the day after the close of the original comment period) and the date of this notice.

Done in Washington, DC, this 23rd day of December 2024.

Donna Lalli,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2024–31322 Filed 1–2–25; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for February 2025

Pursuant to section 751(c) of the Act, the following sunset reviews are scheduled for initiation in February 2025 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews*.

	Department contact
Antidumping duty proceedings	
Refined Brown Aluminum Oxide from China, A–570–882 (4th Review)	Thomas Martin, (202) 482–3936.
Steel Threaded Rod from China, A–570–932 (3rd Review)	Thomas Martin, (202) 482–3936.

¹ To view the notice, go to www.regulations.gov and enter APHIS–2022–0055 in the Search field.

Countervailing Duty Proceedings

No sunset review of countervailing duty orders is scheduled for initiation in February 2025.

Suspended Investigations

No sunset review of suspended investigations is scheduled for initiation in February 2025.

Commerce's procedures for the conduct of sunset review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in sunset review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the sunset review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹ An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day on which it is due.

In prior proceedings we have encouraged interested parties to provide an executive summary of their comments, including footnotes. In these sunset reviews, we request that interested parties provide at the beginning of their comments, an executive summary for each issue raised in their comments. Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the decision memorandum that will accompany the notice to be published in the **Federal Register**. Finally, we request that interested parties include footnotes

for relevant citations in the public executive summary of each issue.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 30, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for
Antidumping and Countervailing Duty
Operations.

[FR Doc. 2024–31590 Filed 1–2–25; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–914]

Certain Superabsorbent Polymers From the Republic of Korea: Notice of Court Decision Not in Harmony With the Final Determination of Antidumping Duty Investigation; Notice of Amended Final Determination; Notice of Amended Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 17, 2024, the U.S. Court of International Trade (CIT) issued its final judgment in *Ad Hoc Coalition of American SAP Producers v. United States*, Court No. 23–00010, sustaining the U.S. Department of Commerce's (Commerce) final remand redetermination pertaining to the less-than-fair-value (LTFV) investigation of certain superabsorbent polymers (SAP) from the Republic of Korea (Korea) covering the period of investigation October 1, 2020, through September 30, 2021. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final determination in that investigation, and that Commerce is amending the final determination and the resulting antidumping duty (AD) order with respect to the dumping margins assigned to LG Chem, Ltd. (LGC) and all other producers and exporters of subject merchandise.

DATES: Applicable December 27, 2024.

FOR FURTHER INFORMATION CONTACT: Charles DeFilippo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3797.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 2022, Commerce published its *Final Determination* in the LTFV investigation of SAP from Korea.¹ In its *Final Determination*, Commerce revised the model match hierarchy of the physical characteristics of the subject merchandise to use LGC's proposed centrifugal retention capacity (CRC) characteristic reporting of 4 g/g increments, and to include LGC's proposed two additional characteristics (absorbency under pressure (AUP) and permeability (PERM)) based on its finding that the alternative CRC increments and inclusion of AUP and PERM were commercially significant.² Commerce subsequently published the AD order on SAP from Korea.³

The Ad Hoc Coalition of American SAP Producers (Coalition) appealed Commerce's *Final Determination*. On March 1, 2024, the CIT remanded the *Final Determination* to Commerce to: (1) reconsider or further explain the commercial significance of the characteristics adopted into Commerce's model match hierarchy when compared to those adopted in the preliminary determination, in particular narrower 4 g/g ranges for CRC, as well as AUP and PERM, which the CIT held to be unsupported by substantial evidence in the final determination; (2) further explain whether and to what extent Commerce verified the alternative sales and cost information upon which it relied in the final determination; and (3) address the Coalition's concern that LGC's defined characteristics created a possibility of manipulation, which could result in a distorted dumping margin.⁴

In its final remand redetermination, issued in June 2024, Commerce determined that there is no additional information on the record that would support the finding that narrower 4 g/g ranges for CRC and the inclusion of AUP and PERM are commercially significant and should be included in the model match hierarchy.⁵ As a result, Commerce revised the model match

¹ See *Certain Superabsorbent Polymers From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 87 FR 65035 (October 27, 2022) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

² See *Final Determination* IDM at 3–14.

³ See *Certain Superabsorbent Polymers from the Republic of Korea: Antidumping Duty Order*, 87 FR 77794 (December 20, 2022).

⁴ See *Ad Hoc Coalition of American SAP Producers v. United States*, Court No. 23–00010, Slip Op. 24–26 (CIT March 1, 2024).

⁵ See *Final Results of Redetermination Pursuant to Court Remand, The Ad Hoc Coalition of American SAP Producers v. United States*, Court No. 23–00010, Slip Op. 24–00026 (CIT March 1, 2024), dated June 14, 2024.

¹ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings: Final Rule*, 88 FR 67069 (September 29, 2023).

hierarchy to only include CRC in 6 g/g increments. Further, because Commerce revised the model match hierarchy, it did not address the CIT's concerns regarding whether Commerce sufficiently verified the alternative cost and sales data upon which it relied in its final determination or further consider the issue of potential manipulation using the model match hierarchy put forth by LGC (*i.e.*, including AUP, PERM, and CRC at 4 g/g increments).⁶ The CIT sustained Commerce's final redetermination.⁷

Timken Notice

In its decision in *Timken*,⁸ as clarified by *Diamond Sawblades*,⁹ the U.S. Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's December 17, 2024, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Determination*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Determination

Because there is now a final court judgment, Commerce is amending its *Final Determination* with respect to LGC and all other producers and exporters as follows:

Exporter/producer	Weighted-average dumping margin (percent)
LG Chem, Ltd	26.05
All Others	26.05

Amended AD Order

Pursuant to section 735(c)(2) of the Act, Commerce shall "issue an antidumping duty order under section 736" of the Act when the final determination is affirmative. As a result of this amended final determination, Commerce is hereby amending the *Order* to revise the weighted-average dumping margins assigned to LGC and all-other producers and exporters of subject merchandise, as noted above.

⁶ *Id.*

⁷ See *Ad Hoc Coalition of American SAP Producers v. United States*, Court No. 23-00010, Slip Op. 24-141 (CIT December 17, 2024).

⁸ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

⁹ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Cash Deposit Requirements

Because LGC does not have a superseding cash deposit rate, *i.e.*, there have been no final results published in a subsequent administrative review, and because of the change to the rate assigned to all other producers and exporters of subject merchandise, Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: December 27, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024-31591 Filed 1-2-25; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-857]

Welded Large Diameter Line Pipe From Japan: Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on welded large diameter line pipe (line pipe) from Japan would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Sunset Review" section of this notice.

DATES: Applicable January 3, 2025.

FOR FURTHER INFORMATION CONTACT: Janaé Martin, 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) 482-0238.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 2001, Commerce published the AD order on line pipe from Japan.¹ On September 3, 2024, Commerce published the notice of initiation of the fourth sunset review of the *Order*, pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended

¹ See *Antidumping Duty Order: Welded Large Diameter Line Pipe from Japan*, 66 FR 63368 (December 6, 2001) (*Order*).

(the Act).² On September 18, 2024, Commerce received a notice of intent to participate in this review from American Cast Iron Pipe Company, Berg Pipe Panama City Corp./Berg Pipe Mobile Corp., Dura-Bond Industries, Stupp Corporation, and Welspun Tubular LLC, individually and as members of the American Line Pipe Producers Association (ALPPA) (collectively, domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i).³ The domestic interested parties claimed interested party status under sections 771(9)(C) and (F) of the Act, as manufacturers of a domestic like product in the United States, and as an association of such manufacturers.⁴ On September 25, 2024, Commerce notified the U.S. International Trade Commission (ITC) that it received a notice of intent to participate from the domestic interested parties, and that the sunset review would continue.⁵

On October 3, 2024, we received a complete substantive response for this review from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁶ We received no substantive responses from any other interested parties, nor was a hearing requested. On October 31, 2024, Commerce notified the ITC that it did not receive an adequate substantive response from any respondent interested parties.⁷ As a result Commerce conducted an expedited (120-day) sunset review of the *Order*, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)((C)(2).

Scope of the Order

The merchandise covered by this *Order* is line pipe. For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.⁸

² See *Initiation of Five-Year (Sunset) Reviews*, 89 FR 71252 (September 3, 2024).

³ See Domestic Interested Parties' Letter, "Notice of Intent to Participate," dated September 18, 2024.

⁴ *Id.*

⁵ See Commerce's Letter, "Sunset Reviews Initiated on September 3, 2024," dated September 25, 2024.

⁶ See Domestic Interested Parties' Letter, "Substantive Response to the Notice of Initiation of Sunset Review," dated October 3, 2024.

⁷ See Commerce's Letter, "Sunset Reviews Initiated on September 3, 2024," dated October 31, 2024.

⁸ See Memorandum, "Issues and Decision Memorandum for the Expedited Fourth Sunset Review of the Antidumping Duty Order on Welded Large Diameter Line Pipe from Japan," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of dumping and the magnitude of the margin of dumping likely to prevail if the *Order* were to be revoked, is provided in the accompanying Issues and Decision Memorandum.⁹ A list of topics discussed in the Issues and Decision Memorandum is included as 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 <http://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>.

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would likely to lead to continuation or recurrence of dumping, and that the magnitude of the margin of dumping likely to prevail would be up to 30.80 percent.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a), 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

Commerce is issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2) and 19 CFR 351.221(c)(5)(ii).

Dated: December 27, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. History of the *Order*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping
 2. Magnitude of the Margin of Dumping Likely to Prevail
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2024–31593 Filed 1–2–25; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–935]

Certain Circular Welded Carbon-Quality Steel Line Pipe From the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited third sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on certain circular welded carbon-quality steel line pipe (line pipe) from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping at the level indicated in the "Final Results of Expedited Sunset Review" section of this notice.

DATES: Applicable January 3, 2025.

FOR FURTHER INFORMATION CONTACT: Howard Smith, 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) 482–5193.

SUPPLEMENTARY INFORMATION:

Background

On May 13, 2009, Commerce published in the **Federal Register** the AD order on line pipe from China.¹ On September 1, 2024, Commerce

published the notice of initiation of the third sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² After Commerce initiated this sunset review of the *Order*, the American Line Pipe Producers Association Welded Line Pipe Committee³ (ALPPA), a domestic interested party, timely submitted a complete notice of intent to participate in,⁴ and an adequate substantive response regarding, the sunset review.⁵ ALPPA claimed interested party status under section 771(9)(F) of the Act and 19 CFR 351.102(b)(29)(viii) because its members are producers of the domestic like product and claimed that its members are domestic interested parties under section 771(9)(C) of the Act (a manufacturer, producer, or wholesaler in the United States of a domestic like product) and 19 CFR 351.102(b)(29)(v).⁶ Commerce did not receive a substantive response from any respondent interested party, nor was a hearing requested. Consequently, on October 31, 2024, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from any respondent interested parties.⁷ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order*.

Scope of the Order

The merchandise covered by the *Order* is line pipe from China. For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.⁸

Analysis of Comments Received

All issues raised in this sunset review are addressed in the accompanying Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is included as

² See *Initiation of Five-Year (Sunset) Reviews*, 89 FR 71252 (September 3, 2024).

³ The members of ALPPA are the American Cast Iron Pipe Company, Axis Pipe & Tube, Dura-Bond Industries, and Welspun Tubular LLC.

⁴ See ALPPA's Letter, "Notice of Intent to Participate in Sunset Review," dated September 17, 2024 (Intent to Participate).

⁵ See ALPPA's Letter, "Substantive Response to Notice of Initiation," dated October 3, 2024.

⁶ See Intent to Participate at 2.

⁷ See Commerce's Letter, "Sunset Reviews Initiated on September 3, 2024," dated October 31, 2024; see also 19 CFR 351.218(3)(ii)(C)(1).

⁸ See Memorandum, "Issue and Decision Memorandum for the Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order on Certain Circular Welded Carbon-Quality Steel Line Pipe from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

¹ See *Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Antidumping Duty Order*, 74 FR 22515 (May 13, 2009) (*Order*).

⁹ *Id.*

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 <http://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>.

Final Results of Expedited Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would likely lead to the continuation or recurrence of dumping and that the magnitude of the margins likely to prevail if the *Order* was revoked is up to 101.10 percent.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a). Timely notification of the return or destruction of APO materials or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing, and publishing notice of, the results of this sunset review in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2) and 19 CFR 351.221(c)(5)(ii).

Dated: December 27, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. History of the *Order*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping
 2. Magnitude of the Margin of Dumping Likely to Prevail
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2024–31592 Filed 1–2–25; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–848]

Forged Steel Fluid End Blocks From Germany: Notice of Court Decision Not in Harmony With the Final Determination of Countervailing Duty Investigation; Notice of Amended Final Determination and Amended Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 26, 2024, the U.S. Court of International Trade (CIT) issued its final judgment in *BGH Edelstahl Siegen GmbH v. United States*, Court No. 21–00080, Slip Op. 24–148 (CIT December 26, 2024), sustaining the U.S. Department of Commerce's (Commerce) fourth remand redetermination pertaining to the countervailing duty (CVD) investigation of Forged Steel Fluid End Blocks (FEBs) from the Germany covering the period of investigation, January 1, 2018, through December 31, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final determination in that investigation, and that Commerce is amending the final determination and resulting CVD order with respect to the countervailable subsidy rates assigned to BGH Edelstahl Siegen GmbH (BGH Siegen), Schmiedewerke Gröditz GmbH (SWG), voestalpine Bohler Group (voestalpine Bohler), and all others.

DATES: Applicable January 3, 2025.

FOR FURTHER INFORMATION CONTACT: Robert Palmer or Shane Subler, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–9068 or (202) 482–6241, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 2020, Commerce published its final determination in the CVD investigation of FEBs from Germany.¹ Commerce calculated countervailable subsidy rates of 5.86 percent for BGH Siegen, 6.71 percent for SWG, 14.81 percent for voestalpine Bohler, and 6.29 percent for all other

producers/exporters of FEBs in Germany.² Commerce subsequently published the CVD order on FEBs from Germany.³

BGH Siegen appealed Commerce's *Final Determination*. On October 12, 2022, the CIT remanded the *Final Determination* to Commerce, directing Commerce to: (1) consider in the first instance whether to account for the compliance costs in its calculation of the CVD rates for subsidy programs under the Electricity Tax Act and Energy Tax Act; and (2) explain or reconsider its determination that the Konzessionsabgabenverordnung (KAV) Program is a specific subsidy.⁴

In the *First Remand Results*, issued in January 2023, Commerce explained its determination not to account for compliance costs in its calculation of the CVD rates for programs under the Electricity Tax Act and Energy Tax Act.⁵ Commerce also further explained its determination that the KAV Program is specific.⁶ However, Commerce made no changes to the final subsidy rates calculated during the investigation.⁷

In its *Second Remand Order*, the CIT sustained Commerce's *First Remand Results* with respect to the Electricity Tax Act and Energy Tax Act.⁸ However, with respect to the KAV Program, the CIT held that Commerce's *First Remand Results* failed to explain: (1) how the amount of electricity consumed or the electricity prices paid by companies are not economic in nature; and (2) how criteria based solely on electricity consumption and pricing are not horizontal in application.⁹ Regarding the latter, the CIT explained that for the KAV Program's criteria to be vertical in application, the criteria would need to expressly limit the program's application to specifically named enterprises or industries or a group of

² *Id.*, 85 FR at 80012.

³ See *Forged Steel Fluid End Blocks from the People's Republic of China, the Federal Republic of Germany, India, and Italy: Countervailing Duty Orders, and Amended Final Affirmative Countervailing Duty Determination for the People's Republic of China*, 86 FR 7535 (January 29, 2021) (*Order*).

⁴ See *BGH Edelstahl Siegen GmbH v. United States*, 600 F.Supp.3d 1241 (CIT 2022) (*First Remand Order*).

⁵ See *Final Results of Redetermination Pursuant to the First Remand Order, BGH Edelstahl Siegen GmbH v. United States*, Consol. Court No. 21–00080; Slip. Op. 22–117 (CIT October 12, 2022), dated January 9, 2023 (*First Remand Results*) at 18, available at <https://access.trade.gov/public/FinalRemandRedetermination.aspx>.

⁶ *Id.*

⁷ *Id.*

⁸ See *BGH Edelstahl Siegen GmbH v. United States*, 639 F.Supp.3d 1237, 1242 (CIT 2023) (*Second Remand Order*).

⁹ *Id.*, 639 F.Supp.3d at 1243–44.

enterprises or industries.¹⁰ The CIT elaborated that the Government of Germany's (GOG) eligibility criteria for the KAV Program did not expressly limit the program's application to specific enterprises or industries or groups of enterprises or industries.¹¹ Accordingly, the CIT, again, remanded for Commerce to further explain or reconsider its determination.¹²

In the *Second Remand Results*, Commerce found that the GOG's eligibility criteria for the KAV Program were not horizontal in application, and thus, not neutral, pursuant to section 771(5A)(D)(ii) of the Act.¹³ Commerce explained that "where an authority, by law, limits eligibility to a group of enterprises or industries (e.g., those that operate specific types of 'stationary equipment'), it *cannot* {emphasis added} do so uniformly."¹⁴ Further, Commerce explained that "by expressly limiting eligibility to certain groups that the authority, itself, defines, the authority has, in effect, established criteria that are vertical in nature."¹⁵ On this basis, Commerce found the eligibility criteria for the KAV Program to be vertical in application.¹⁶

In its *Third Remand Order*, the CIT held that Commerce's position that a subsidy is *de jure* specific where "implementing legislation expressly limit[s] access to the 'group' that the legislation itself created" was contrary to law.¹⁷ The CIT elaborated that "{t}he statute allows a subsidy to be limited to fewer than all enterprises or industries in an economy, so long as that criteria creating that legislation is objective."¹⁸ On this basis, the CIT remanded for Commerce to further explain or reconsider its determination that the KAV Program is *de jure* specific.¹⁹

In the *Third Remand Results*, Commerce reconsidered its determination that the KAV Program is *de jure* specific.²⁰ Commerce found, under respectful protest, that the KAV Program is not *de jure* specific pursuant to section 771(5A)(D)(i) of the Act.²¹ Consequently, Commerce determined that the KAV Program did not constitute a countervailable subsidy.²² Commerce removed the KAV Program from the overall subsidy rates for BGH Siegen, SWG, and voestalpine Bohler, and recalculated the all-others rate.²³

In the *Fourth Remand Order*, the CIT remanded for Commerce to further explain or reconsider its determination in the *Third Remand Results*.²⁴ Specifically, the CIT held that Commerce "failed to conduct a *de facto* specificity analysis despite there being reasons to believe the KAV Program is specific as a matter of fact."²⁵

In the *Fourth Remand Results*, Commerce further explained its determination that the KAV Program does not constitute a countervailable subsidy because it is neither *de jure* nor *de facto* specific.²⁶ Commerce continued to find, based on facts otherwise available in accordance with 776(a)(1) of the Act, that the KAV Program does not constitute a countervailable subsidy.²⁷ Commerce made no changes to the final subsidy rates calculated in the *Third Remand Results*.²⁸

On December 26, 2024, the CIT sustained Commerce's *Fourth Remand Results*.²⁹

²⁰ See *Final Results of Redetermination Pursuant to the Third Remand Order*, BGH Edelstahl Siegen GmbH v. United States, 663 F. Supp. 3d 1378 (CIT 2023), dated February 12, 2024 (*Third Remand Results*) at 9, available at <https://access.trade.gov/public/FinalRemandRedetermination.aspx>.

²¹ *Id.*; see also *Viraj Grp., Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

²² See *Third Remand Results* at 9.

²³ *Id.* at 9–10; see also Memorandum, "Calculation of the Non-Selected Rate," dated January 16, 2024 (All-Others Rate Memorandum).

²⁴ See BGH Edelstahl Siegen GmbH v. United States, 704 F.Supp.3d 1372 (CIT 2024) (*Fourth Remand Order*).

²⁵ *Id.*, 704 F. Supp.3d at 1380.

²⁶ See *Final Results of Redetermination Pursuant to the Fourth Remand Order*, BGH Edelstahl Siegen GmbH v. United States, 704 F. Supp. 3d 1372 (CIT 2024), dated September 16, 2024 (*Fourth Remand Results*), available at <https://access.trade.gov/public/FinalRemandRedetermination.aspx>.

²⁷ *Id.* at 13.

²⁸ *Id.* at 19.

²⁹ See BGH Edelstahl Siegen GmbH v. United States, Consol. Court No. 21–00080, Slip Op. 24–148 (CIT December 26, 2024).

Timken Notice

In its decision in *Timken*,³⁰ as clarified by *Diamond Sawblades*,³¹ the U.S. Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Act, Commerce must publish a notice of court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's December 26, 2024, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Determination*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Determination

Because there is now a final court judgment, Commerce is amending its *Final Determination* with respect BGH Siegen, SWG, and voestalpine Bohler, and all others as follows:

Company	Subsidy rate (percent <i>ad valorem</i>)
BGH Edelstahl Siegen GmbH	5.81
Schmiedewerke Gröditz GmbH	6.64
voestalpine Bohler Group	14.74
All Others	6.18

Amended CVD Order

Because there is now a final court decision, Commerce is amending its *Final Determination and Order*. As a result of this amended final determination, Commerce is hereby revising the subsidy rates for BGH Siegen, SWG, and voestalpine Bohler. Additionally, because the all-others rate was based on BGH Siegen's and SWG's rates, Commerce is also revising the all-others rate.³²

Cash Deposit Requirements

Because BGH Siegen has a superseding cash deposit rate, this notice will not affect the current cash deposit rate for BGH Siegen.³³ For all companies that do not have a superseding cash deposit rate, Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection.

³⁰ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

³¹ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

³² See All-Others Rate Memorandum.

³³ See *Forged Steel Fluid End Blocks from Germany: Final Results of the Countervailing Duty Administrative Review*; 2022, 89 FR 64875 (August 8, 2024).

¹⁰ *Id.*, 639 F.Supp.3d at 1244 (citing section 771(5A)(D)(i) the Tariff Act of 1930, as amended (the Act)).

¹¹ *Id.*

¹² *Id.*

¹³ See *Final Results of Redetermination Pursuant to the Second Remand Order*, BGH Edelstahl Siegen GmbH v. United States, Consol. Court No. 21–00080; Slip. Op. 23–71 (CIT May 9, 2023), dated August 7, 2023 (*Second Remand Results*) at 11, available at <https://access.trade.gov/public/FinalRemandRedetermination.aspx>.

¹⁴ *Id.* (citing *Certain Softwood Lumber Products from Canada: Final Results and Final Rescission, in Part, of the Countervailing Duty Administrative Review*, 2020, 87 FR 48455 (August 9, 2022), and accompanying IDM at Comment 103).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See BGH Edelstahl Siegen GmbH v. United States, 663 F.Supp.3d 1378, 1384 (CIT 2023) (*Third Remand Order*).

¹⁸ *Id.* (citing Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, Vol. 1 (1994), at 4242).

¹⁹ *Id.*

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: December 30, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–31587 Filed 12–30–24; 4:15 pm]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XE570]

North Pacific Albacore United States Stakeholder Meeting; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a U.S. stakeholder meeting to discuss North Pacific albacore (NPALB) management. This meeting is intended to prepare for potential discussions at the 2025 annual meetings of the Inter-American Tropical Tuna Commission (IATTC) and Western and Central Pacific Fisheries Commission Northern Committee (WCPFC NC) related to the results of the Management Strategy Evaluation (MSE) for NPALB fisheries. The meeting topics are described under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The virtual meeting will be held on February 20, 2025, from 1 p.m. to 4 p.m. PST (11 a.m.–2 p.m. HST). You must complete the registration process by February 13, 2025, if you plan to attend the meeting (see **ADDRESSES**).

ADDRESSES: If you plan to attend the meeting, which will be held by webinar, please register at <https://forms.gle/7hDuYGSctJbnHedS9>. Instructions for attending the meeting will be emailed to meeting participants before the meeting occurs.

FOR FURTHER INFORMATION CONTACT: Emily Reynolds, Pacific Islands Regional Office, tel. 808–725–5039 or emily.reynolds@noaa.gov or Tyler Lawson, West Coast Region Office, tel. 503–230–5421 at tyler.lawson@noaa.gov.

SUPPLEMENTARY INFORMATION: In 2024, the WCPFC NC and IATTC requested the International Scientific Committee on Tuna and Tuna-like Species in the North Pacific Ocean (ISC) provide

recommendations to relate fishing intensity to catch and/or effort. Additionally, the ISC's Albacore Working Group developed criteria for identifying exceptional circumstances for the NPALB MSE. This stakeholder meeting is intended to discuss these items as well as to prepare for anticipated discussions at the IATTC and WCPFC NC in 2025. For more information on fishing intensity recommendations and identifying exceptional circumstances, please see the ISC24 Plenary Report: https://isc.fra.go.jp/pdf/ISC24/ISC24_Plenary_Report_r1.pdf.

NPALB U.S. Stakeholder Meeting Topics

The meeting agenda will be distributed to participants in advance of the meeting. The meeting agenda will include a discussion on translating fishing intensity into catch and/or effort limits for NPALB, identifying exceptional circumstances for the NPALB MSE, and logbook updates.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be indicated when registering for the meeting (see **ADDRESSES**) by February 13, 2025.

Authority: 16 U.S.C. 951 *et seq.*, 16 U.S.C. 1801 *et seq.*, and 16 U.S.C. 6901 *et seq.*

Dated: December 30, 2024.

Kelly Denit,

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

[FR Doc. 2024–31557 Filed 1–2–25; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XE576]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public webinar of its Joint Herring Committee and Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will

be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Thursday, January 23, 2025, at 9:30 a.m.

ADDRESSES: Webinar registration URL information: <https://nefmc-org.zoom.us/j/9tK9gZkz5BehDTaWU->

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:**Agenda**

The Atlantic Herring Committee and Advisory Panel will meet to discuss Amendment 10 and the timeline for the action and an update from the Plan Development Team (PDT) on draft analysis to date. They also plan to discuss Specifications for 2025—a summary of fishing year 2024 preliminary catch information and updated catch projections from the PDT, and recommendations for next steps, make recommendation to the Committee/Council as appropriate. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: December 30, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–31572 Filed 1–2–25; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes product(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date to be deleted from the Procurement List:* February 2, 2025.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 489-1322, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Deletions

On November 29, 2024 (89 FR 94715), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

8405-01-540-2346—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, X Small, X Short
 8405-01-540-2349—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, X Small, Short
 8405-01-540-2354—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, X Small, Regular
 8405-01-540-2359—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, X Small, Long
 8405-01-540-2363—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Small, XX Short
 8405-01-540-2365—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Small, X Short
 8405-01-540-2369—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Small, Short
 8405-01-540-2374—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Small, Regular
 8405-01-540-2376—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Small, Long
 8405-01-540-2379—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Small, X Long
 8405-01-540-2381—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Medium, XX Short
 8405-01-540-2389—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Medium, X Short
 8405-01-540-2419—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Medium, Short
 8405-01-540-2423—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Medium, Regular
 8405-01-540-2436—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Medium, Long
 8405-01-540-2438—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Medium, X Long
 8405-01-540-2441—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Medium, XX Long
 8405-01-540-2442—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Large, X Short
 8405-01-540-2446—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Large, Short
 8405-01-540-2447—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Large, Regular
 8405-01-540-2449—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Large, Long
 8405-01-540-2452—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Large, X Long
 8405-01-540-2453—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, Large, XX Long

8405-01-540-2456—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, X Large, Short
 8405-01-540-2458—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, X Large, Regular
 8405-01-540-2463—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, X Large, Long
 8405-01-540-2467—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, X Large, X Long
 8405-01-540-2468—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, X Large, XX Long
 8405-01-540-2470—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, XX Large, Regular
 8405-01-540-2472—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, XX Large, Long
 8405-01-540-2475—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, XX Large, X Long
 8405-01-540-2478—Blouse, Working, NWU, Navy, Men's, Digital Camouflage, XX Large, XX Long
 8405-01-540-2455—Blouse, Working, NWU, Navy, Women's, Digital Camouflage, 42 Short
 8405-01-540-2482—Blouse, Working, NWU, Navy, Women's, Digital Camouflage, 32 X Short
 8405-01-540-2484—Blouse, Working, NWU, Navy, Women's, Digital Camouflage, 32 Short
 8405-01-540-2486—Blouse, Working, NWU, Navy, Women's, Digital Camouflage, 35 X Short
 8405-01-540-2590—Blouse, Working, NWU, Navy, Women's, Digital Camouflage, 35 Short
 8405-01-540-2714—Blouse, Working, NWU, Navy, Women's, Digital Camouflage, 35 Regular
 8405-01-540-2716—Blouse, Working, NWU, Navy, Women's, Digital Camouflage, 39 X Short
 8405-01-540-2718—Blouse, Working, NWU, Navy, Women's, Digital Camouflage, 39 Short
 8405-01-540-2719—Blouse, Working, NWU, Navy, Women's, Digital Camouflage, 32 Regular
 8405-01-540-3015—Blouse, Working, NWU, Navy, Women's, Digital Camouflage, 43 Regular

Authorized Source of Supply: Blind Industries & Services of Maryland, Baltimore, MD

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):

8465-01-521-7815—Load Lifter Attachment Strap, MOLLE Components, Woodland Camouflage

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):

8470-01-599-0789—Retention Assembly, X-Back (D-ring), Foliage Green, XSM
 8470-01-599-0791—Retention Assembly, X-Back (D-ring), Foliage Green, SM/MED
 8470-01-599-0793—Retention Assembly, X-Back (D-ring), Foliage Green, LG/XLG
 8470-01-599-0794—Retention Assembly, X-Back (D-ring), Foliage Green, XXL

Authorized Source of Supply: San Antonio Lighthouse for the Blind, San Antonio, TX

Contracting Activity: W6QK ACC-APG NATICK, NATICK, MA

Ramon Barreto,

Business Management Specialist, Business Operations.

[FR Doc. 2024-31548 Filed 1-2-25; 8:45 am]

BILLING CODE 6353-01-P

CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No: CFPB-2024-0058]

Privacy Act of 1974; System of Records

AGENCY: Consumer Financial Protection Bureau.

ACTION: Rescindment of a system of records notice.

SUMMARY: Pursuant to the Privacy Act of 1974, and Office of Management and Budget (OMB) Circular No. A-108, the Consumer Financial Protection Bureau (CFPB) proposes to rescind existing system of records “CFPB.003 Non-Depository Institution Supervision Database.” Records maintained under this system of records have been consolidated into the modified “CFPB.002 Supervision and Examination Records.”

DATES: Comments must be received no later than February 3, 2025. The rescindment of the system of records will be effective February 12, 2025 unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by the title and docket number (see above Docket No. CFPB-2024-0058), by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* privacy@cfpb.gov. Include Docket No. CFPB-2024-0058 in the subject line of the email.

- *Mail/Hand Delivery/Courier:* Kathryn Fong, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at CFPB is subject to delay, commenters are encouraged to submit comments electronically.

All submissions must include the agency name and docket number for this notice. In general, all comments received will be posted without change to <https://www.regulations.gov>. All comments, including attachments and

other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT:

Kathryn Fong, Chief Privacy Officer, (202) 435-7058. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: The CFPB rescinds its Privacy Act SORN “CFPB.003 Non-Depository Institution Supervision Database” as the records are maintained as part of a modified system of records. In the course of its supervisory work, the CFPB collects, uses, and maintains information on covered individuals associated with both depository institutions (e.g., banks, savings associations, credit unions) and non-depository institutions, and their affiliates and service providers subject to the authority of the CFPB. The CFPB previously had two systems of records to address supervision related to depository and non-depository institutions, respectively. In order to have a single system of records that addresses all supervisory information, the records maintained under this system of records have been consolidated into the modified “CFPB.002 Supervision and Examination Records.” Rescindment of this SORN will promote the overall streamlining and management of Privacy Act record systems for the CFPB.

SYSTEM NAME AND NUMBER:

CFPB.003-Non-Depository Institution Supervision Database.

HISTORY:

76 FR 45761 (Aug. 1, 2011); 83 FR 23435 (May 21, 2018); 85 FR 3659 (Jan. 22, 2020).

Kathryn Fong,

Chief Privacy Officer, Consumer Financial Protection Bureau.

[FR Doc. 2024-31558 Filed 1-2-25; 8:45 am]

BILLING CODE 4810-AM-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: AC25-42-000.

Applicants: Arrowhead Gulf Coast Pipeline, LLC.

Description: Arrowhead Gulf Coast Pipeline, LLC submits request for approval of proposed accounting journal entry for acquisition of VP North Pipeline System from Phillips 66 Pipeline LLC.

Filed Date: 12/26/24.

Accession Number: 20241226-0008.

Comment Date: 5 p.m. ET 1/16/25.

Docket Numbers: RP25-306-000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Sempra Jan 2025) to be effective 1/1/2025.

Filed Date: 12/26/24.

Accession Number: 20241226-5353.

Comment Date: 5 p.m. ET 1/7/25.

Docket Numbers: RP25-307-000.

Applicants: Millennium Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement—Shell Energy 309614 to be effective 1/1/2025.

Filed Date: 12/27/24.

Accession Number: 20241227-5071.

Comment Date: 5 p.m. ET 1/8/25.

Docket Numbers: RP25-308-000.

Applicants: Guardian Pipeline, L.L.C.

Description: § 4(d) Rate Filing: Administrative Filing and Update Removing Negotiated Rate PAL to be effective 2/3/2025.

Filed Date: 12/27/24.

Accession Number: 20241227-5093.

Comment Date: 5 p.m. ET 1/8/25.

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.

Filings in Existing Proceedings

Docket Numbers: RP24-287-005.

Applicants: Northern Border Pipeline Company.

Description: Compliance filing: Tariff Record Implementation—RP24-287 Settlement to be effective 12/26/2024.

Filed Date: 12/26/24.

Accession Number: 20241226-5352.

Comment Date: 5 p.m. ET 1/7/25.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR

385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <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 27, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024-31563 Filed 1-2-25; 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 accounting Request filings:

Docket Numbers: AC25-33-000.

Applicants: Michigan Electric Transmission Company LLC.

Description: Michigan Electric Transmission Company, LLC submits proposed journal entries for its acquisition of electric plant conveyed by Consumers Energy Company consummated on or about 09/20/2024.

Filed Date: 12/10/24.

Accession Number: 20241210-5046.

Comment Date: 5 p.m. ET 1/10/25.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC25-33-000.

Applicants: Pome BESS LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Pome BESS LLC.

Filed Date: 12/23/24.

Accession Number: 20241223-5462.

Comment Date: 5 p.m. ET 1/13/25.

Docket Numbers: EC25-34-000.

Applicants: Hill Top Energy Center LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Hill Top Energy Center LLC.

Filed Date: 12/26/24.

Accession Number: 20241226-5387.

Comment Date: 5 p.m. ET 1/16/25.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL25-45-000.

Applicants: SRI International Cogeneration Project.

Description: Petition for Declaratory Order of SRI International Cogeneration Project.

Filed Date: 12/23/24.

Accession Number: 20241223-5431.

Comment Date: 5 p.m. ET 1/13/25.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-2357-012;

ER10-2361-013; ER10-2368-011;

ER10-2369-011; ER10-2382-012;

ER10-2385-014; ER12-1238-011;

ER12-1239-011; ER17-1217-006;

ER19-1200-012.

Applicants: Clearway Power Marketing LLC, Total Gas & Power North America, Inc., Crofton Bluffs Wind, LLC, Broken Bow Wind, LLC, Elkhorn Ridge Wind, LLC, San Juan Mesa Wind Project, LLC, Taloga Wind, LLC, Laredo Ridge Wind, LLC, Wildorado Wind, LLC, Sleeping Bear, LLC.

Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of Sleeping Bear, LLC, et al.

Filed Date: 12/26/24.

Accession Number: 20241226-5389.

Comment Date: 5 p.m. ET 2/24/25.

Docket Numbers: ER10-2437-023.

Applicants: Arizona Public Service Company.

Description: Triennial Market Power Analysis Southwest Region of Arizona Public Service Company.

Filed Date: 12/26/24.

Accession Number: 20241226-5384.

Comment Date: 5 p.m. ET 2/24/25.

Docket Numbers: ER10-2595-006; ER10-276-007; ER10-1790-025; ER11-2041-020; ER12-1400-009; ER23-688-002; ER13-33-010; ER23-689-002.

Applicants: BP Energy Retail Company LLC, Collegiate Clean Energy, LLC, BP Energy Retail Company California LLC, Flat Ridge 2 Wind Energy LLC, Innovative Energy Systems, LLC, BP Energy Company, Rolling

Thunder I Power Partners, LLC, Flat Ridge Wind Energy, LLC.

Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of BP Energy Company, et al.

Filed Date: 12/20/24.

Accession Number: 20241220-5526.

Comment Date: 5 p.m. ET 2/18/25.

Docket Numbers: ER12-2037-015;

ER12-2314-011; ER15-2129-008;

ER16-2360-010; ER20-1515-003.

Applicants: Milligan 1 Wind LLC, Great Western Wind Energy, LLC, Slate Creek Wind Project, LLC, Spinning Spur Wind LLC, Spearville 3, LLC.

Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of Spearville 3, LLC, et al.

Filed Date: 12/23/24.

Accession Number: 20241223-5455.

Comment Date: 5 p.m. ET 2/21/25.

Docket Numbers: ER14-1193-006.

Applicants: West Deptford Energy, LLC.

Description: Compliance filing: Informational Filing Regarding Transfer of Ownership to be effective N/A.

Filed Date: 12/27/24.

Accession Number: 20241227-5207.

Comment Date: 5 p.m. ET 1/17/25.

Docket Numbers: ER15-1905-019.

Applicants: Amazon Energy LLC.

Description: Triennial Market Power Analysis for Southwest Power, Pool Inc. Region of Amazon Energy LLC.

Filed Date: 12/23/24.

Accession Number: 20241223-5458.

Comment Date: 5 p.m. ET 2/21/25.

Docket Numbers: ER16-2271-012; ER20-539-006; ER16-581-013; ER19-828-006; ER20-1338-005; ER20-2505-004; ER21-2204-006; ER21-2279-003; ER17-1370-012; ER21-1254-006; ER22-1103-003.

Applicants: BRP Capital & Trade LLC, Genbright LLC, ENGIE Energy Marketing NA, Inc., Iron Star Wind Project, LLC, ENGIE Power & Gas LLC, Triple H Wind Project, LLC, King Plains Wind Project, LLC, Solomon Forks Wind Project, LLC, ENGIE Portfolio Management, LLC, East Fork Wind Project, LLC, ENGIE Resources LLC.

Description: Supplement to 01/31/2024, Notice of Change in Status of ENGIE Energy Marketing NA, Inc. et al.

Filed Date: 11/13/24.

Accession Number: 20241113-5147.

Comment Date: 5 p.m. ET 1/17/25.

Docket Numbers: ER25-479-001.

Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.

Description: Tariff Amendment: American Transmission Company LLC submits tariff filing per 35.17(b): 2024-12-27 SA 4397 ATC-WEPCo Substitute Original E&P (Oak Creek) to be effective 1/19/2025.

Filed Date: 12/27/24.
Accession Number: 20241227–5137.
Comment Date: 5 p.m. ET 1/17/25.
Docket Numbers: ER25–815–000.
Applicants: American Electric Power Service Corporation.
Description: § 205(d) Rate Filing: AEPSC submits OPCo and AMPT Coordination Agreement SA# 7450 to be effective 1/1/2025.
Filed Date: 12/27/24.
Accession Number: 20241227–5016.
Comment Date: 5 p.m. ET 1/17/25.
Docket Numbers: ER25–816–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, SA No. 7449; Queue No. W3–003/AD2–026/AE1–156 to be effective 2/26/2025.
Filed Date: 12/27/24.
Accession Number: 20241227–5034.
Comment Date: 5 p.m. ET 1/17/25.
Docket Numbers: ER25–817–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: GIA, No. 7446; A18/AA1–043/AD2–035/AF2–030 & Cancellation of No. 4807; AD2–035 to be effective 12/2/2024.
Filed Date: 12/27/24.
Accession Number: 20241227–5050.
Comment Date: 5 p.m. ET 1/17/25.
Docket Numbers: ER25–818–000.
Applicants: Ameren Transmission Company of Illinois.
Description: § 205(d) Rate Filing: 2024–12–27 SA 4423 ATXI–MJMEUC–Sikeston TIA to be effective 2/26/2025.
Filed Date: 12/27/24.
Accession Number: 20241227–5117.
Comment Date: 5 p.m. ET 1/17/25.
Docket Numbers: ER25–819–000.
Applicants: Woodward Energy Storage, LLC.
Description: § 205(d) Rate Filing: Application for Market-Based Rate Authorization to be effective 2/26/2025.
Filed Date: 12/27/24.
Accession Number: 20241227–5155.
Comment Date: 5 p.m. ET 1/17/25.
Docket Numbers: ER25–820–000.
Applicants: Indianapolis Power & Light Co, AES Pike County Energy Storage, LLC.
Description: Request for Authorization to Undertake Affiliate Sales of AES Pike County Energy Storage, LLC, et al.
Filed Date: 12/23/24.
Accession Number: 20241223–5464.
Comment Date: 5 p.m. ET 1/13/25.
Docket Numbers: ER25–821–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: GIA, SA No. 7453; AF2–150/AG1–039 &

Cancellation of ISA, SA 6963; Queue AF2–150 to be effective 12/4/2024.

Filed Date: 12/27/24.
Accession Number: 20241227–5171.
Comment Date: 5 p.m. ET 1/17/25.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH25–2–000.
Applicants: KKR & Co. Inc.
Description: KKR & Co. Inc. submits FERC 65–B Waiver Notification.
Filed Date: 12/23/24.
Accession Number: 20241223–5457.
Comment Date: 5 p.m. ET 1/13/25.

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: <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 27, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–31564 Filed 1–2–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. IC25–2–000]

Commission Information Collection Activities (FERC–517); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–517 (Safety of Waterpower Projects and Project Works) represented by OMB Control No. 1902–0319. There are no changes to the information collection.

DATES: Comments on the collection of information are due March 4, 2025.

ADDRESSES: You may submit copies of your comments (identified by Docket No. IC25–2–000) by one of the following methods:

Electronic filing through <https://www.ferc.gov>, is preferred.

- **Electronic Filing:** Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be filed by USPS mail or by other delivery methods:

- **Mail via U.S. Postal Service Only:** Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

- **All other delivery services:** Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <https://www.ferc.gov>. For user assistance, contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <https://www.ferc.gov>.

FOR FURTHER INFORMATION CONTACT: Kayla Williams may be reached by email at DataClearance@FERC.gov, telephone at (202) 502–6468.

SUPPLEMENTARY INFORMATION:

Title: FERC–517 (Safety of Waterpower Projects and Project Works).

OMB Control No.: 1902–0319.

Type of Request: Three-year extension of the FERC–517 information collection requirements with no changes to the current reporting requirements.

Abstract: This information collection will assist in the assessment of the safety of waterpower projects and project works licensed by the Commission. The Commission will use the information collection activities to evaluate project-specific dam and public safety assessments, determine whether those assessments are sufficient for the protection of life, health, and property, and to ensure that project works are being maintained in an adequate condition of repair.

The information is necessary in order to determine the urgency, priority, and scope of potential safety improvements or risk reduction measures that might be needed for the protection of life, health, and property.

The following reports are required and are a part of FERC–517:

18 CFR Part 12, Subpart B (Reports and Records)

The regulations at 18 CFR 12.10(a) and (b) require applicants and licensees to report promptly to the Regional Engineer¹ any incident resulting in death or serious injury that occurs at the relevant project. Section 12.10(a) requires an oral report to the Regional Engineer by telephone of any condition affecting the safety of a project or projects works, “as soon as practicable after that condition is discovered.” Section 12.10(b) requires a written report that includes a description of the cause and location of the accident, which must be submitted within the time specified by the Regional Engineer.

The regulation at 18 CFR 12.10(b) requires a written report of any death, serious injury, or rescue. Such reports must describe any remedial actions taken or proposed to avoid or reduce the chance of similar occurrences in the future and must be verified in accordance with section 12.13.²

Section 12.10(b)(3), section 12.10(b)(2)(ii) provides that deaths that are not project-related may be reported by providing a copy of a clipping from a newspaper article, if available. Section 12.10(b)(2)(iii) provides that serious injuries and rescues that are not project-related do not require a written report.

¹ The Regional Engineer is a member of the Commission’s staff.

² Section 12.13 specifies how to verify the authenticity of a document submitted in accordance with 18 CFR part 12.

The initial report must be made by email or telephone as soon as practicable after the condition is discovered, “preferably within 72 hours.”

18 CFR Part 12, Subpart D (Review, Inspection, and Assessment by Independent Consultant)

Overview of Subpart D

Regulations at 18 CFR part 12 subpart D pertain to project safety inspections by independent consultants. These inspections sometimes are colloquially called “Part 12D inspections.” These inspections are licensee-facilitated and are in addition to the project safety inspections conducted regularly by Commission staff.

Subpart D requires two tiers of independent consultant inspections for licensed project developments that meet the criteria shown at section 12.30.

Subpart D adopted a two-tier structure that includes two types of inspections: a comprehensive assessment (CA) and a periodic inspection (PI). Each comprehensive assessment will be performed at a ten-year interval, with the periodic inspection occurring midway between comprehensive assessments. A periodic inspection will focus on a project’s performance over the previous five years, and will include a field inspection, a review of project operations, an in-depth review of monitoring data trends and behavior, and an evaluation of whether any potential failure modes are occurring. A comprehensive assessment will build on a periodic inspection with a deep dive into every aspect of a project, including a detailed review of the design basis, analyses of record, and construction history; an evaluation of spillway adequacy; a Potential Failure Mode Analysis; and a Risk Analysis.

Engineering Guidelines—Chapters 15 & 16

Chapter 15 of the Engineering Guidelines provides guidance on a Supporting Technical Information Document (STID). A STID serves as a compendium of knowledge and information about a project and greatly facilitates the review and evaluation of the safety and performance of project works by licensees, consultants, and Commission staff. The STID consists of a hard copy and a digital reference. It is required for all projects subject to 18 CFR 12D and is used for assessing the completeness and appropriateness of technical information.

The STID summarizes the project elements and details that, except in the event of detailed studies or

construction, do not change significantly over time. The digital reference (e.g., a CD, DVD, or other form of electronic media) includes a compilation of all available source material and additional supporting information, formatted so that the licensee, commission staff, or consultants can identify and retrieve the information they need. A searchable electronic version of the hard copy material must be included on the digital reference. The licensee is responsible for compiling the information for the STID and for creating and maintaining the document for use by themselves, the Part 12D independent consultants, and Commission staff.

Chapter 16 of the Engineering Guidelines requires licensees to submit a detailed Part 12D Inspection Plan prior to conducting either type of inspection (*i.e.*, a periodic inspection or comprehensive assessment) that describes the scope of the inspection, proposes an Independent Consultant Team, and establishes the proposed schedule. Section 16–3.3.1 of chapter 16 of the Engineering Guidelines provides that the Part 12D Inspection Plan must include the following information:

- Project name, FERC number, and state(s) where the project is located;
- Type of Part 12D Inspection (Comprehensive Assessment or Periodic Inspection), and a reminder that a Risk Analysis must be completed for a Comprehensive Assessment;
- A brief description of the project features;
- A proposed team of Independent Consultants, including the identification and assessment of technical disciplines to be represented on the team of Independent Consultants; the names and resumes for the Independent Consultants; a list of supporting team member roles and their intended areas of expertise; and the names and resumes of facilitators for any Potential Failure Mode Analysis or Risk Analysis as needed; and
- A schedule for Part 12D Inspection-related activities.

Under chapter 16, members of the Independent Consultant Team are required to prepare a Pre-Inspection Preparation Report to document their initial findings from their review of project documentation, instrumentation data, and other information prior to the field inspection. Chapter 16 provides an outline for this PRA activity.

Chapter 16 also provides outlines for, and describes the scope of, the periodic inspections and comprehensive assessments that are required in 18 CFR part 12 subpart D.

Chapters 17 and 18 provide additional details and licensee guidance for conducting a Potential Failure Mode Analysis and a Level 2 Risk Analysis, which are required components of a comprehensive assessment.

Independent Consultant Team Proposals and Reports

The regulations at 18 CFR 12.31(a) and 12.31(b), respectively, list specific qualifications that are required of independent consultants and independent consultant teams. The regulation at 18 CFR 12.34(a) requires that the licensee obtain written approval of the independent consultant team from the Director of the Division of Dam Safety and Inspections (D2SI) prior to performing a periodic inspection or comprehensive assessment.

The regulation at 18 CFR 12.34(b) requires that the licensee submit a detailed independent consultant team proposal to the Director of D2SI at least 180 days prior to performing a periodic inspection or comprehensive assessment. As part of this, the licensee must submit documentation of the experience and qualifications for all members of the independent consultant team, including one or more independent consultants and additional contributing members, as needed. This enables the Commission staff to evaluate the breadth and depth of the team's experience and ensure that it is commensurate with the scale, complexity, and technical disciplines of the project and type of review being performed. The Commission intends for a comprehensive assessment to require a higher level of experience and expertise than a periodic inspection, due to the broader scope of the comprehensive assessment.

The regulation at 18 CFR 12.34(c) authorizes the Director of D2SI to disapprove an independent consultant team member, regardless of demonstrated experience and qualifications, for good cause, such as having a report rejected by the Commission within the preceding five years. This provision allows the Commission to ensure that independent consultants' inspections are performed by qualified parties.

18 CFR Part 12, Subpart F (Owner's Dam Safety Program)

Overview of Subpart F

The regulation at 18 CFR 12.60 provides that subpart F applies to all licensees with dams or other project works with a high or significant hazard potential. The terms "High hazard potential" and "Significant hazard potential" and "Low hazard potential" are defined at section 12.3(b)(13).

Owner's Dam Safety Program (ODSP) Document

Section 12.62 provides that any ODSP Document that includes one or more dams or project features with a high hazard potential must designate a Chief Dam Safety Engineer.³ Other ODSPs may designate either a Chief Dam Safety Engineer or Chief Dam Safety Coordinator.⁴ Section 12.62 also requires that the ODSP must be signed by the Owner and, as applicable, the Chief Dam Safety Engineer or the Chief Dam Safety Coordinator.

The regulation at 18 CFR 12.63 requires the following additional contents of an ODSP document:

- (a) Dam safety policy, objectives, and expectations;
- (b) Responsibilities for dam safety;
- (c) Dam safety training program;
- (d) Communication, coordination, reporting, and reports;
- (e) Record keeping and databases; and
- (f) Continuous improvement;

The regulation at 18 CFR 12.64 requires any ODSP to be reviewed by the licensee's dam safety staff and discussed with senior management on an annual basis. In addition, section 12.64 requires that any findings, analysis, corrective measures, or revisions be submitted to the D2SI Regional Engineer for possible revision. This requirement applies to any licensee with a dam or other project feature with a high or significant hazard potential.

ODSP Qualification Statement for External Audit or Peer Review

The regulation at 18 CFR 12.65 applies to licensees of one or more dams or other project features classified as having a high hazard potential. Section 12.65(a) requires an independent external audit or peer review of the ODSP and its implementation. The audit or peer review is required to be

performed at an interval not to exceed five years.

Before the audit or peer review, 18 CFR 12.65(b) requires the licensee to submit to the Regional Engineer a statement of qualifications of the prospective auditor(s) or peer review team. The licensee must receive written acceptance of the statement of qualifications before performing the audit or peer review.

ODSP External Audit or Peer Review Report

The regulation at 18 CFR 12.65(c) requires the auditor(s) or peer review team to document their findings in a report. The report must be reviewed by:

- The project's owner,
- The Chief Dam Safety Engineer or Chief Dam Safety Coordinator, and
- Management having responsibility in the area(s) audited or reviewed.

Subsequently, the report on the audit or peer review must be submitted to the Regional Engineer.

ODSP Request for Extension of Time

Typically, the Commission's letters to licensees pertaining to ODSPs and ODSP audits require submittal of a plan and schedule or report within a set period of time (e.g., provide a plan and schedule within 30 days from the date of this letter). Although neither the ODSP regulations nor any of the existing ODSP guidance documents expressly contemplate extension of time requests, there are times when a licensee cannot meet that schedule and therefore files a letter with Commission staff requesting an extension of time to complete ODSP-related tasks.

*Estimate of Annual Burden:*⁵ The Commission estimates the burden and cost⁶ for this information collection as follows:

In the tables below, the burden estimates for team proposals and reports involving PIs and CAs, define a single response as the consolidated filings during the typical ten-year cycle for Independent Consultant's Safety Inspections (one PI and one CA each during the ten-year period). Therefore, the estimated average number of annual responses for the consolidated filings is averaged over the ten-year period and represented as 0.1 responses on average per year.

³ Section 12.61(a) provides that a Chief Dam Safety Engineer is the designated individual, who is a licensed engineer, who oversees the implementation of the ODSP and has primary responsibility for ensuring the safety of the licensee's dam(s) and other project features.

⁴ Section 12.61(b) provides that a Chief Dam Safety Coordinator is not required to be a licensed

engineer but has the same responsibilities as a Chief Dam Safety Engineer.

⁵ Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR part 1320.

⁶ The Commission staff believes that industry is similarly situated to the Commission in terms of cost for wages and benefits. Based on FERC's current annual average cost of \$207,786 (for salary plus benefits) for a full-time equivalent, the average hourly cost is \$100/hour. Therefore, the hourly cost used in the burden calculation is \$100.

FERC-517—DIRECT AND INDIRECT ANNUAL BURDEN AND COST CHANGES

A. Type of response	B. Number of respondents	C. Avg. number of annual responses per respondent	D. Avg. annual burden hrs. and cost per response	E. Total number of annual responses (col. B × col. C)	F. Total annual burden hrs. and cost (col. D × col. E)
Applicant's or Licensee's Report of Project-Related Deaths, Serious Injuries, or Rescues.	65	2.14	2 hrs.; \$200	139.10	278.20 hrs.; \$27,820.
Ind. Cons. Team Proposals and Reports on Pls and CAs—Simple Facility ⁷ .	375	0.1	12 hrs.; \$1,200	37.50	450 hrs.; \$45,000.
Ind. Cons. Team Proposals and Reports on Pls and CAs—Complex Facility ⁸ .	375	0.1	32.6 hrs.; \$3,260	37.50	1,222.50 hrs.; \$122,250.
Licensee's Request for Exemption	10	1	2 hrs.; \$200	10	20 hrs.; \$2,000.
ODSP Document—Small Program ⁹	180	0.2	60 hrs.; \$6,000	36	2,160 hrs.; \$216,000.
ODSP Document—Large Program ¹⁰	45	0.2	120 hrs.; \$12,000	9	1,080 hrs.; \$108,000.
ODSP Document Revision	225	1	6 hrs.; \$600	225	1,350 hrs.; \$135,000.
ODSP Qualification Statement for External Audit or Peer Review.	225	0.2	8 hrs.; \$800	45	360 hrs.; \$36,000.
ODSP External Audit or Peer Review Report—Small Program ¹¹ .	180	0.2	62 hrs.; \$6,200	36	2,232 hrs.; \$223,200.
ODSP External Audit or Peer Review Report—Large Program ¹² .	45	0.2	242 hrs.; \$24,200	9	2,178 hrs.; \$217,800.
ODSP Request for Extension of Time	5	1	4 hrs.; \$400	5	20 hrs.; \$2,000.
Total Hours and Costs	1,730			589	11,350.5 hrs.; \$1,135,050.

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

⁷ Includes direct and contracting burden and cost.

⁸ Includes direct and contracting burden and cost.

⁹ This information collection activity applies to each licensee with dams or other project features with a high or significant hazard potential, but with fewer than three such dams or other project features.

¹⁰ This information collection activity applies to each licensee with three or more dams or project features with a high or significant hazard potential.

¹¹ This information collection activity applies to each licensee with dams or other project features with a high hazard potential, but with fewer than three such dams or project features. The burden estimates for this activity include direct and contracting burdens and costs.

¹² This information collection activity applies to each licensee with three or more dams or project features with a high hazard potential. The burden estimates for this information collection activity include direct and contracting burdens and costs.

Dated: December 27, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024-31565 Filed 1-2-25; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2020-0413; FRL-12540-01-OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Toxic Substances Control Act (TSCA) Section 8(b) Reporting Requirements for TSCA Inventory Notifications (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request, Toxic Substances Control Act (TSCA) Section 8(b) Reporting Requirements for TSCA Inventory Notifications (EPA ICR Number 2565.05 and OMB Control Number 2070-0201), 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 Tuesday, April 23, 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, referencing Docket ID Number EPA-HQ-OPPT-2020-0413, to EPA online using www.regulations.gov (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

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: Katherine Sleasman, Mission Support Division (7602M), Office of Chemical

Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-1204; email address: sleasman.katherine@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 Tuesday, April 23, 2024, establishing a 60-day comment period (89 FR 30356 (FRL-11604-01-OCSP)). 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 addresses the reporting and recordkeeping requirements under TSCA section 8(b) that are associated with the TSCA Chemical Substance Inventory (TSCA Inventory), as codified in 40 CFR part 710. TSCA section 8(b) specifically requires that EPA compile and keep current a list of chemical substances manufactured or processed for commercial purposes in the United States. That mandate was amended in 2016 and TSCA section 8(b)(4) requires EPA to designate chemical substances on the TSCA Chemical Substance Inventory as either "active" or "inactive" in U.S. commerce. The first TSCA Inventory with all chemical substances designated as "active" or "inactive" published in February 2019.

Form number: EPA Form No. 9600-06; Notice of Activity Form B.

Respondents/affected entities: Entities potentially affected by this ICR include North American Industrial Classification System (NAICS) Code 325

Chemical Manufacturers, NAICS Code 324 Petroleum and Coal Products.

Respondent's obligation to respond: Mandatory.

Estimated number of potential respondents: 57.

Frequency of response: On occasion.

Total estimated burden: 144 (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated costs: \$19,956.68 (per year), includes no annualized capital investment or maintenance and operational costs.

Changes in the estimates: There is decrease of 90 hours in the total estimated respondent burden compared with that currently approved by OMB. This change, which is discussed in more detail in the ICR, reflects a burden hour reduction related to the time-limited one-time reporting activities which are now discontinued.

Courtney Kerwin,

Director, Information Engagement Division.

[FR Doc. 2024-31516 Filed 1-2-25; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2022-0223; FRL-12246-02-OCSP]

Chlorpyrifos; Final Cancellation Order To Amend Pesticide Registration To Terminate Asparagus Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) hereby announces its final cancellation order to terminate asparagus use voluntarily requested by Gharda Chemicals International, Inc. (Gharda) and accepted by the Agency, for one chlorpyrifos registration listed in Unit II, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This final cancellation order follows a notice in the **Federal Register** of September 16, 2024, to voluntarily amend this product registration. In the September 16, 2024, notice, EPA indicated that it would issue a final cancellation order implementing the request, unless the Agency received substantive comments within the comment period that would

merit further review of these requests, or the registrant withdrew its request. The Agency received two comments on the notice, which are summarized in Unit III.B. Gharda did not withdraw the request for this amendment.

Accordingly, EPA hereby grants the requested amendment to terminate asparagus as shown in this cancellation order. Any distribution, sale, or use of existing stocks of the product registration listed in Unit II is subject to the existing stocks provisions in this cancellation order and permitted only in accordance with the terms of this order.

DATES: This cancellation order is effective January 3, 2025.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2022-0223, is available at <https://www.regulations.gov>. Additional instructions on visiting the docket, along with more information about dockets generally, are available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Patricia Biggio, Pesticide Re-Evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-0700; email address: OPPChlorpyrifosInquiries@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

II. What action is the Agency taking?

This document announces the termination of the asparagus use, as requested by the registrant, through amendment of the product registered under FIFRA section 3 (7 U.S.C. 136a). This registration is listed with its registration number in Table 1 of this Unit.

TABLE 1—CHLORPYRIFOS REGISTRATION WITH SPECIFIC USE THAT IS TERMINATED

Registration No.	Product name	Company	Use that is terminated
93182-8	Pilot 15G Chlorpyrifos Agricultural Insecticide	Gharda Chemicals International, Inc	Asparagus.

TABLE 2—REGISTRANT REQUESTING VOLUNTARY TERMINATION OF USE

EPA Company No.	Company name and address
93182	Gharda Chemicals International, Inc., 4032 Crockers Lake Blvd., Suite 818, Sarasota, FL 34238.

III. Public Comments

A. Summary of Comments Received

EPA received two comments in response to the notice that published in the **Federal Register** of September 16, 2024 (89 FR 75546) (FRL–12246–01–OCSPP). The comments are in the docket for this action and are briefly summarized here.

Neither of the comments specifies the product listed in Table 1 of Unit II. One comment was submitted by a private citizen supporting the cancellation of the pesticide. The other comment stated that the proposed provisions for using existing stocks for food uses until June 30, 2025, would subject workers, bystanders, and consumers to health risks, and were not consistent with FIFRA.

B. EPA Response to Comments

This cancellation action is responsive to the registrant's request to cancel a specific use. In response to both commenters, under FIFRA section 6(f), registrants may, at any time, seek to cancel their products or seek to amend their registrations to terminate specific uses. Under that provision of the statute, EPA provides an opportunity for public comment and then acts on the request. Cancellation of other products or uses that are not requested by the registrant occurs under other provisions of FIFRA, which is beyond the scope of this action and EPA's authority in FIFRA section 6(f).

EPA has determined that the existing stocks provisions are not inconsistent with the purposes of FIFRA given the limited number of existing stocks and the limited time allowed for the use of existing stocks outlined in Unit VI. EPA has determined that neither comment merited denial of the registrant's request for use termination.

IV. The Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)(1)), EPA hereby approves the requested amendment to terminate asparagus for Pilot 15G Chlorpyrifos Agricultural Insecticide. Accordingly, the Agency hereby orders that the use on asparagus is terminated for Pilot 15G Chlorpyrifos Agricultural Insecticide.

This Order terminating the asparagus use is effective January 3, 2025. Any distribution, sale, or use of existing stocks of Pilot 15G Chlorpyrifos

Agricultural Insecticide in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI will be a violation of FIFRA.

V. What is the Agency's authority for taking these actions?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be cancelled or amended to terminate one or more registered uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register** and provide a public comment period. EPA has provided the requisite notice and public comment period. Two comments were submitted to which EPA has responded above.

VI. Provisions for Disposition of Existing Stocks

Existing stocks for the product identified in this document are those stocks of registered pesticide product that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. EPA has determined that the following existing stocks provisions are not inconsistent with the purposes of FIFRA given the limited number of existing stocks and the limited time allowed for use of the existing stocks outlined below:

- Sale and distribution of existing stocks of Pilot 15G Chlorpyrifos Agricultural Insecticide (EPA Reg. No. 93182–8) is permitted until April 30, 2025;
- Use of existing stocks of Pilot 15G Chlorpyrifos Agricultural Insecticide (EPA Reg. No. 93182–8) on food or feed must be consistent with the product labeling. Such use is permitted until June 30, 2025;
- Use of existing stocks of Pilot 15G Chlorpyrifos Agricultural Insecticide (EPA Reg. No. 93182–8) for non-food purposes is permitted until existing stocks are exhausted, as long as such use is in accordance with the labeling.

After these dates, all respective sale, distribution, and use of existing stocks is prohibited, except for sale and distribution for export consistent with FIFRA section 17 (7 U.S.C. 136o) and for

proper disposal in accordance with state regulations.

Authority: 7 U.S.C. *et seq.*

Dated: December 17, 2024.

Jean Overstreet,

*Director, Pesticide Re-Evaluation Division,
Office of Pesticide Programs.*

[FR Doc. 2024–31586 Filed 1–2–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2018–0438; FRL–11608–04–OCSPP]

Formaldehyde; Risk Evaluation Under the Toxic Substances Control Act (TSC); Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is announcing the availability of the final risk evaluation under the Toxic Substances Control Act (TSCA) for formaldehyde. The purpose of risk evaluations under TSCA is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or non-risk factors, including unreasonable risk to potentially exposed or susceptible subpopulations identified as relevant to the risk evaluation by EPA, under the conditions of use. The Agency used the best available science to prepare this final risk evaluation and has determined, based on the weight of scientific evidence, that formaldehyde presents an unreasonable risk of injury to human health. Under TSCA, EPA must initiate risk management actions to address the unreasonable risk.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0438, is available online at <https://www.regulations.gov>. Additional information about dockets generally, along with instructions for visiting the docket in-person, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

For technical information: Jeffery Putt, Existing Chemical Risk Management Division (7404M), Office of Pollution Prevention and Toxics,

Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–3703; email address: formaldehydeTSCA@epa.gov.

For general information: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action is directed to the public in general and may be of particular interest to those involved in the manufacture (defined under TSCA section 3(9) to include import), processing, distribution in commerce, use, and disposal of formaldehyde, related industry trade organizations, non-governmental organizations with an interest in human and environmental health, state and local governments, Tribal Nations, and/or those interested in the assessment of risks involving chemical substances and mixtures regulated under TSCA. As such, the Agency has not attempted to describe all the specific entities that this action might apply to. If you need help determining applicability, consult the technical contact listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

The Agency conducted this risk evaluation under TSCA section 6, 15 U.S.C. 2605, which requires that EPA conduct risk evaluations on chemical substances and identifies the minimum components EPA must include in all chemical substance risk evaluations. Each risk evaluation must be conducted consistent with the best available science, be based on the weight of the scientific evidence, and consider reasonably available information, pursuant to 15 U.S.C. 2625(h), (i), and (k). See also the implementing procedural regulations at 40 CFR part 702.

C. What action is the Agency taking?

EPA is announcing the availability of the final risk evaluation under TSCA for formaldehyde. The purpose of risk evaluations under TSCA is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or non-risk factors, including unreasonable risk to potentially exposed or susceptible subpopulations identified as relevant to the risk evaluation by EPA, under the

conditions of use. EPA has used the best available science to prepare this final risk evaluation and based on the weight of scientific evidence, determined that formaldehyde poses unreasonable risk to human health. Upon a determination of unreasonable risk, EPA must initiate risk management action as required pursuant to 15 U.S.C. 2605(a) to address the unreasonable risk.

For more information about the TSCA risk evaluation process for existing chemicals, go to <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca>.

II. Background

A. What is formaldehyde?

Formaldehyde is a colorless, flammable gas at room temperature and has a strong odor. Formaldehyde is found nearly everywhere. People and animals produce and release formaldehyde. Formaldehyde is produced when organic material including leaves, plants, and woodchips decay. Formaldehyde is also produced and released into the air from combustion activities like burning fuel (e.g., exhaust from cars, airplanes), gas/wood burning (furnaces and stoves), and forest fires, burning candles, and smoking. Finally, formaldehyde is released into the air from industrial and commercial operations when produced or used to make many products or articles including composite wood products and other building materials, plastics, pesticides, paints, adhesives, and sealants. Industry uses formaldehyde due to its ability to combine and react with many other chemical substances and make resilient structures that are widely used in manufacturing. Information from the 2016 Chemical Data Reporting (CDR) for formaldehyde indicates that the reported production volume is between 1 billion and 5 billion pounds per year (manufacture and import).

Short-term inhalation exposure to high levels of formaldehyde can cause sensory irritation such as eye and respiratory irritation. Short-term skin contact can cause sensitization. Exposure over longer periods can also cause respiratory effects and cancer. The complex toxicology and exposure profiles for formaldehyde presented unique challenges for this evaluation. As required under TSCA section 6(b)(4)(A), EPA evaluated the risks from formaldehyde under its conditions of use, including the intended, known and reasonably foreseen circumstances under which the chemical is manufactured, processed, distributed in commerce, used or disposed of. EPA did

not evaluate risk from sources of formaldehyde exposure excluded from TSCA jurisdiction.

B. Risk Evaluation of Formaldehyde

In December 2019, EPA designated formaldehyde as a High Priority Substance for risk evaluation under TSCA (Ref 1.). A draft scope of the formaldehyde risk evaluation was published in April 2020 (Ref 2.) and after receiving public comment, EPA issued the final scope of the formaldehyde risk evaluation in September 2020 (Ref 3.). In March 2024, EPA released a draft risk evaluation for public comment and scientific peer review (Ref 4.).

EPA leveraged work products and resources across the agency in its development of the draft risk evaluation under TSCA, including consideration of hazard information from EPA's Integrated Risk Information System (IRIS) Toxicological Review of Formaldehyde-Inhalation. A draft version of the IRIS document was published in April 2022 and finalized in August 2024. The draft IRIS document was the subject of external peer review by the National Academies of Sciences, Engineering, and Medicine (NASEM).

In addition, EPA leveraged multiple federal advisory committees and their reports to support the external peer review of formaldehyde during the TSCA risk evaluation process, including NASEM, the Human Studies Review Board (HSRB) and the TSCA Science Advisory Committee on Chemicals (SACC).

The final formaldehyde risk evaluation comprises a series of technical support documents. Each document contains sub-assessments that inform adjacent, “downstream” documents. These documents address comments from both the public and peer reviewers. The components of the risk evaluation, including (but not limited to) each technical support document and responses to peer review and public comments, are available in the docket.

III. Unreasonable Risk Determination

EPA has determined that formaldehyde presents an unreasonable risk of injury to human health under the conditions of use. The unreasonable risk to human health presented by formaldehyde is due to non-cancer effects in workers and consumers from acute dermal and inhalation exposures, and due to cancer effects in workers from long-term inhalation exposure.

EPA did not identify risk of injury to the environment that would contribute

to the unreasonable risk determination for formaldehyde.

Consistent with the statutory requirements of TSCA section 6(a), EPA will propose risk management regulatory actions to the extent necessary so that formaldehyde no longer presents an unreasonable risk under the conditions of use. The Agency expects to focus its risk management action on the TSCA conditions of use that significantly contribute to the unreasonable risk. However, it should be noted that, under TSCA section 6(a), EPA is not limited to regulating the specific activities found to contribute significantly to unreasonable risk and may select from among a suite of risk management approaches based on requirements in TSCA section 6(a) related to manufacture (including import), processing, distribution in commerce, commercial use, and disposal as part of its regulatory options to address the unreasonable risk. As a general example, EPA may regulate upstream activities (e.g., processing, distribution in commerce) to address downstream activities (e.g., consumer uses) contributing significantly to unreasonable risk, even if the upstream activities do not contribute significantly to the unreasonable risk.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. High-Priority Substance Designations Under the Toxic Substances Control Act (TSCA) and Initiation of Risk Evaluation on High-Priority Substances; Notice of Availability. **Federal Register**. 84 FR 71924, December 30, 2019 (FRL-10003-15).
2. EPA. Draft Scopes of the Risk Evaluations to be Conducted for Seven Chemical Substances under the Toxic Substances Control Act; Notice of Availability. **Federal Register**. 85 FR 22733, April 23, 2020 (FRL-10008-05).
3. EPA. Final Scopes of the Risk Evaluations To Be Conducted for Twenty Chemical Substances Under the Toxic Substances Control Act; Notice of Availability. **Federal Register**. 85 FR 55281, September 4, 2020 (FRL-10013-90).
4. EPA. Formaldehyde; Draft Risk Evaluation Peer Review by the Science Advisory Committee on Chemicals (SACC); Notice of Availability, Public Meetings and

Request for Comment. **Federal Register**. 89 FR 18933, March 15, 2024 (FRL-11608-03-OCSPP).

5. EPA. Formaldehyde; Draft Risk Evaluation Peer Review by the Science Advisory Committee on Chemicals (SACC); Request for Nominations of ad hoc Expert Reviewers. **Federal Register**. 88 FR 88910, December 26, 2023 (FRL-11608-01-OCSPP).

Authority: 15 U.S.C. 2601 *et seq.*

Dated: December 30, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2024-31571 Filed 1-2-25; 8:45 am]

BILLING CODE 6560-50-P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Wednesday, January 8, 2025.

PLACE: You may observe this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102-5090, or virtually. If you would like to observe, at least 24 hours in advance, visit [FCA.gov](https://fca.gov), select "Newsroom," then select "Events." From there, access the linked "Instructions for board meeting visitors" and complete the described registration process.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The following matters will be considered:

- Approval of Minutes for December 12, 2024
- Update on Farm Credit System Funding Conditions

CONTACT PERSON FOR MORE INFORMATION:

If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703-883-4009. TTY: 703-883-4056.

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2024-31629 Filed 12-31-24; 11:15 am]

BILLING CODE 6705-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank

or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue, NW, Washington DC 20551-0001, not later than January 21, 2025.

A. Federal Reserve Bank of Dallas (Karen Smith, Assistant Vice President, Mergers & Acquisitions and Enforcement) 2200 North Pearl Street, Dallas, Texas 75201-2272. Comments can also be sent electronically to Comments.applications@dal.frb.org:

1. *Stephen J. Lee, as trustee of the Bastrop Bancshares, Inc. Employee Stock Ownership Plan (With 401(k) Provisions) (Amended Effective November 12, 2024), both of Bastrop, Texas;* to retain control of voting shares of Bastrop Bancshares, Inc., Bastrop, Texas, parent of Bastrop Holdings, Inc., Wilmington, Delaware, and thereby indirectly retain control of voting shares of The First National Bank of Bastrop, Bastrop, Texas.

B. Federal Reserve Bank of San Francisco (Joseph Cuenca, Assistant Vice President, Formations & Transactions) 101 Market Street, San Francisco, California 94105-1579. Comments can also be sent electronically to sf.fisc.comments.applications@sf.frb.org:

1. *Charles Diesing, Graham, Alabama*; to acquire additional voting shares of Liberty Northwest Bancorp, Inc., and thereby indirectly acquire additional voting shares of Liberty Bank, both of Poulso, Washington.

Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2024–31576 Filed 1–2–25; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2024–17; Docket No. 2024–0002; Sequence No. 51]

Notice of Availability of the Final Environmental Impact Statement for the Proposed Modernization of the Bridge of The Americas Land Port of Entry, El Paso, Texas

AGENCY: Office of Public Buildings Service (PBS), General Services Administration (GSA).

ACTION: Notice of availability.

SUMMARY: The GSA, in cooperation with the U.S. Customs and Border Protection, the U.S. International Boundary and Water Commission and in accordance with the National Environmental Policy Act (NEPA) of 1969, announces the availability of the Final Environmental Impact Statement (EIS) for the proposed modernization of the BOTA LPOE in El Paso, Texas and by this notice is announcing the start of a 30-day waiting period.

DATES: The date of the publication by the Environmental Protection Agency (EPA) in the **Federal Register**; Friday January 3, 2025 with the end of the 30-day period being Monday February 3, 2025.

ADDRESSES: The Final EIS is available on the GSA project website at: gsa.gov/bota under Project News.

FOR FURTHER INFORMATION CONTACT: Karla R. Carmichael, NEPA Program Manager, Environmental, Fire and Safety & Health Branch, GSA/PBS, Facilities Management and Services Programs Division, Greater Southwest Region 7, 819 Taylor St, Fort Worth, TX, 76102 or via telephone at 817–822–1372. Email: bota.nepacomments@gsa.gov.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 2021, Congress passed the Bipartisan Infrastructure Law (BIL), also known as the Infrastructure

Investment and Jobs Act (IIJA). On November 15, 2021, the President signed Executive Order (E.O.) 14052 “Implementation of the Infrastructure Investment and Jobs Act.” On December 13, 2021, the President signed E.O. 14508 “Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government.” On February 25, 2022, President Biden and the GSA announced the list of major LPOE projects funded by the BIL. This included the Bridge of the Americas (BOTA) LPOE in El Paso, Texas.

The Environmental Impact Statement (EIS) has been prepared in accordance with section 102 of the National Environmental Policy Act (NEPA) of 1969 (42 United States Code [U.S.C.] 4321 to 4370d), as implemented by the regulations promulgated by the Council on Environmental Quality (CEQ) (40 Code of Federal Regulations [CFR] 1500–1508). The principal objectives of NEPA are to ensure the careful consideration of environmental aspects of proposed actions in federal decision-making processes and to make environmental information available to decision makers and the public before decisions are made and actions are taken.

Additionally, this EIS has been prepared in accordance with GSA NEPA guidelines (GSA Order ADM 1095.1F and the Public Buildings Service [PBS] NEPA Desk Guide, both dated October 1999) and serves as a mechanism for compliance with the National Historic Preservation Act (NHPA) of 1966 (as amended) and other relevant laws and/or regulations.

Purpose and Need for Action

The purpose of the proposed action is for the GSA to support the U.S. Customs and Border Protection (CBP) mission by bringing the BOTA LPOE infrastructure in line with current CBP land port design standards (*i.e.*, CBP Land Port of Entry Design Standard) and operational requirements while addressing existing deficiencies identified with the ongoing port operations. In order to bring the BOTA LPOE in line with CBP’s design standards and operational requirements, action is needed to satisfy the following overriding needs:

- Improve the capacity and functionality of the LPOE to meet future public demand, while maintaining the capability to meet border security initiatives.
- Ensure the safety and security for the employees and the travelling public.

Proposed Action and Alternatives Development

As part of project planning, the GSA developed two (2) action alternatives as potential means of implementing the proposed action. The no action alternative has also been considered in the EIS. Both action alternatives include the phased razing of all existing buildings/structures and infrastructure within the existing LPOE boundaries and construction of new buildings/structures and supporting infrastructure. Both action alternatives also include minimal land acquisition in areas immediately adjacent to the port.

Summary of Potential Impacts

The EIS has identified, describes, and analyzes the potential effects of the action alternatives developed to implement the proposed action and the no action alternative. This includes direct, indirect, and cumulative effects. GSA identified the following resources/issues for analysis of both beneficial and adverse potential impacts and the results are summarized in the Final EIS:

- Hazardous Materials, Waste, and/or Site Contamination
- Socioeconomics (including Environmental Justice)
- Public Services, Infrastructure, and Utilities
- Surface Waters, Drainage, and Floodplains
- Land Use and Zoning (including Visual and Aesthetics)
- Traffic (Vehicular and Pedestrian), Transportation, and Parking
- Air Quality (including Greenhouse Gas Emissions)
- Noise and Vibration
- Cultural and Historic Resources

The EIS documents measures that could potentially avoid, minimize, or mitigate any identified adverse impacts.

Michael Clardy,

Director, Facilities Management Division (7PM), General Services Administration–Public Building Service, Greater Southwest Region.

[FR Doc. 2024–31568 Filed 1–2–25; 8:45 am]

BILLING CODE 6820–AY–P

GENERAL SERVICES ADMINISTRATION

[Notice—MA—2025—02; Docket No. 2024—0002, Sequence No. 51]

Calendar Year (CY) 2025 Privately Owned Vehicle (POV) Mileage Reimbursement Rates; CY 2025 Standard Mileage Rate for Moving Purposes

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice.

SUMMARY: GSA is updating the mileage reimbursement rate for privately owned automobiles (POA), airplanes, and motorcycles as required by statute. This information will be available in FTR Bulletin 25–04, which can be found on GSA's website at <https://gsa.gov/ftrbulletins>.

DATES: *Applicability date:* This notice applies to travel and relocation performed on or after January 1, 2025, through December 31, 2025.

FOR FURTHER INFORMATION CONTACT: For clarification of content, please contact Mrs. Autumn King, Policy Analyst, Office of Government-wide Policy, Office of Asset and Transportation Management, at 803–944–6487, or by email at travelpolicy@gsa.gov. Please cite Notice of FTR Bulletin 25–04.

SUPPLEMENTARY INFORMATION: GSA is required by statute to set the mileage reimbursement rate for privately owned automobiles (POA) as the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS mileage rate for medical or moving purposes is used to determine the POA rate when a Government-furnished automobile is available and authorized and also represents the privately owned vehicle (POV) standard mileage reimbursement rate for official relocation.

Finally, GSA conducts independent reviews of the cost of travel and the operation of privately owned airplanes and motorcycles on an annual basis to determine their corresponding mileage reimbursement rates. These reviews evaluate various factors, such as the cost of fuel, depreciation of the original vehicle cost, maintenance and insurance, state and Federal taxes, and consumer price index data. FTR Bulletin 25–04 establishes and announces the new CY 2025 POV mileage reimbursement rates for official temporary duty and relocation travel.

This notice is the only notification to agencies of revisions to the POV mileage rates for official travel and relocation, in

addition to the changes posted on GSA's website at <https://gsa.gov/mileage>.

Mehul Parekh,

Acting Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2024–31556 Filed 1–2–25; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–209]

Agency Information Collection Activities: Proposed Collection; Comment Request

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by March 4, 2025.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–209 Laboratory Personnel Report (CLIA) and Supporting Regulations

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collections

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Laboratory Personnel Report (CLIA) and Supporting Regulations; *Use:* The information collected on this survey form is used in the administrative pursuit of the Congressionally-mandated program

with regard to regulation of laboratories participating in CLIA. The surveyor will provide the laboratory with the CMS–209 form. While the surveyor performs other aspects of the survey, the laboratory will complete the CMS–209 by recording the personnel data needed to support their compliance with the personnel requirements of CLIA. For this submission, we are making minor revisions to the collection instrument. We revised the instructions for clarity and removed the references to specific regulations. *Form Number:* CMS–209 (OMB control number 0938–0151); *Frequency:* Biennially; *Affected Public:* Private Sector—State, Local, or Tribal Governments; and Federal Government; *Number of Respondents:* 16,404; *Total Annual Responses:* 8,202; *Total Annual Hours:* 4,101. (For policy questions regarding this collection contact Penny Keller at 410–786–2035.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–31553 Filed 1–2–25; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10565 and CMS–1763]

Agency Information Collection Activities: Proposed Collection; Comment Request

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden,

ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by March 4, 2025.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for “Comment or Submission” or “More Search Options” to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10565 Medicare Advantage Model of Care Submission Requirements

CMS–1763 Request for Termination of Medicare Premium Part A, Part B, or Part B Immunosuppressive Drug Coverage (Part B–ID) and Supporting Statute and Regulations

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is

defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collections

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Advantage Model of Care Submission Requirements; *Use:* Section 1859(f)(7) of the Act and 42 CFR 422.101(f)(3) requires that all SNP MOCs be approved by NCQA. This approval is based on NCQA's evaluation of SNPs' MOC narratives using MOC scoring guidelines. Section 50311 of the BBA of 2018 modified the MOC requirements for C–SNPs in section 1859 (f)(5)(B)(i–v) of the Act, requiring them to submit on an annual basis. The BBA mandated additional changes for C–SNPs related to care management, HRAs, individualized care plans, a minimum benchmark for scoring, etc., for which CMS has applied these requirements to all SNP types.

SNPs will submit initial and renewal MOCs as well as summaries of any substantive off-cycle MOC changes to CMS through HPMS. This is the platform that CMS uses to coordinate communication and the collection of information from MAOs.

NCQA and CMS will use information collected in the SNP Application HPMS module to review and approve MOC narratives in order for an MAO to offer a new SNP in the upcoming calendar year(s). This information is used by CMS as part of the MA SNP application process. NCQA and CMS will use information collected in the Renewal Submission section of the HPMS MOC module to review and approve the MOC narrative for the SNP to receive a new approval period and operate in the upcoming calendar year(s). *Form Number:* CMS–10565 (OMB control number 0938–1296); *Frequency:* Occasionally; *Affected Public:* Private Sector, Business or other for-profits; *Number of Respondents:* 2,088; *Total Annual Responses:* 2,088; *Total Annual Hours:* 8,638. (For policy questions regarding this collection contact Daniel

Lehman at 410–786–8929 or daniel.lehman@cms.hhs.gov.)

2. *Type of Information Collection Request*: Revision of a currently approved collection; *Title of Information Collection*: Request for Termination of Medicare Premium Part A, Part B, or Part B Immunosuppressive Drug Coverage (Part B–ID) and Supporting Statute and Regulations; *Use*: Sections 1818(c)(5), 1818A(c)(2)(B) and 1838(b)(1) of the Act and corresponding regulations at 42 CFR 406.28(a) and 407.27(c) require that a Medicare enrollee wishing to voluntarily terminate Part B or premium Part A coverage file a written request with CMS or SSA. Pursuant to 1838(h) of the Act and the corresponding regulation at 42 CFR 407.62(a), individuals wishing to terminate their Part B–ID coverage must notify SSA. The statute and regulations also specify when coverage ends based upon the date the request for termination is filed.

The CMS–1763 is the form used by individuals who wish to terminate their Medicare Part A, Part B or Part B–ID. This 2024 iteration is a revision that does not propose any program changes. Per the Office of Communication’s plain language suggestion, the title has been updated to “Request for Termination of Medicare Premium Part A, Part B, or Part B Immunosuppressive Drug Coverage (Part B–ID).” The 2024 submission saw an increase in the burden due to utilization of the form and improvement in the accuracy of the data exchanges between CMS and SSA. Updated wage information for a Federal Government employee is also responsible for part of the increase. *Form Number*: CMS–1763 (OMB control number 0938–0025); *Frequency*: Biennially; *Affected Public*: Private Sector—State, Local, or Tribal Governments; and Federal Government; *Number of Respondents*: 197,518; *Total Annual Responses*: 197,518; *Total Annual Hours*: 33,578. (For policy questions regarding this collection contact Tyrissa Woods at 410–786–0286 or tyrissa.woods@cms.hhs.gov.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–31567 Filed 1–2–25; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number(s): 93.645]

Notice of Allotment Percentages to States for Child Welfare Services State Grants; Correction

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Administration for Children and Families published a document in the **Federal Register** published Wednesday, December 4, 2024, concerning notice of Allotment Percentages to States for Child Welfare Services State Grants. The formula used to calculate the allotment percentages for each state was not applied correctly. Although the percentage for the State of Alabama percentage was calculated correctly, the formula used to calculate the allotment percentages was not correctly applied to the remaining states.

FOR FURTHER INFORMATION CONTACT: Sona Cook, 214–767–2973.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of December 4, 2024, in FR Doc. 2024–28398, on page 96256, in the second and third columns, the ALLOTMENT table contained an incorrect formula for the Allotment Percentages to States for Child Welfare Services State Grants. The updated ALLOTMENT table with the correct allotment percentage for each State is as follows:

ALLOTMENT **

State	Percentage
Alabama	61.01
Alaska *	48.58
Arizona	55.49
Arkansas	58.66
California	41.38
Colorado	43.03
Connecticut	35.99
Delaware	52.51
District of Columbia ¹	30.00
Florida	51.25
Georgia	56.80
Hawaii *	52.67
Idaho	57.12
Illinois	48.26
Indiana	55.74
Iowa	54.48
Kansas	53.25
Kentucky	60.14
Louisiana	57.73
Maine	53.63

ALLOTMENT **—Continued

State	Percentage
Maryland	46.19
Massachusetts	35.02
Michigan	56.10
Minnesota	47.65
Mississippi	64.18
Missouri	55.55
Montana	53.73
Nebraska	49.64
Nevada	52.74
New Hampshire	43.28
New Jersey	41.18
New Mexico	60.32
New York	41.19
North Carolina	55.66
North Dakota	47.82
Ohio	55.81
Oklahoma	56.84
Oregon	51.55
Pennsylvania	50.59
Rhode Island	51.41
South Carolina	58.86
South Dakota	47.83
Tennessee	55.38
Texas	52.76
Utah	54.33
Vermont	52.28
Virginia	47.50
Washington	42.58
West Virginia	62.16
Wisconsin	53.26
Wyoming	42.78
America Samoa	70.00
Guam	70.00
Puerto Rico	70.00
N. Mariana Islands	70.00
Virgin Islands	70.00

Anthony Petrucci,

Senior Grants Policy Specialist, Office of Grants Policy, Office of Administration.

[FR Doc. 2024–31515 Filed 1–2–25; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–5784]

Interested Parties Meeting: Implementation of the Best Pharmaceuticals for Children Act and Pediatric Research Equity Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration’s (FDA, Agency, or we) Office of Pediatric Therapeutics, the Center for Drug Evaluation and Research, and the Center for Biologics Evaluation and Research are announcing a public meeting entitled “Interested Parties Meeting:

Implementation of the Best Pharmaceuticals for Children Act and Pediatric Research Equity Act.” The purpose of the public meeting is to seek input from interested parties, including patient/parent/caregiver groups, consumer groups, regulated industry, academia, and others. This input will enable FDA to obtain any recommendations or information relevant to the report to Congress that FDA is required to submit concerning pediatric drug and biologic development and labeling, as outlined in section 508 of the Food and Drug Administration Safety and Innovation Act (FDASIA).

DATES: The public meeting will be held on May 15, 2025, from 9 a.m. to 4:30 p.m. Eastern Time. Regardless of attendance at the public meeting, you can submit electronic or written comments to the public docket. Either electronic or written comments on this public meeting must be submitted by June 13, 2025. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held in-person at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the White Oak Great Room, Silver Spring, MD 20993–0002 and virtually using the Zoom platform. Entrance for the in-person public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to <https://www.fda.gov/about-fda/visitor-information>.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 13, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a

third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2024–N–5784 for “Interested Parties Meeting: Implementation of the Best Pharmaceuticals for Children Act and Pediatric Research Equity Act.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” 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.

FOR FURTHER INFORMATION CONTACT:

Cindy Tworek, the Office of Pediatric Therapeutics, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–9234, OPT@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 2012, the President signed into law the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144). Section 508 of FDASIA directs the Secretary of HHS to submit a report to Congress on the implementation of sections 505A and 505B of the Federal Food, Drug, and Cosmetic Act, which are commonly known as the Best Pharmaceuticals for Children Act (BPCA) and the Pediatric Research Equity Act (PREA), respectively.

The first report was required to be submitted to Congress by July 9, 2016, and subsequent reports are required every 5 years thereafter, with the next report due to be submitted in July 2026. FDASIA also requires FDA to obtain, at least 180 days prior to submission of the report, input from interested parties, including: patient groups (including pediatric patient groups), consumer groups, regulated industry, academia, and any other interested parties to obtain any recommendations or information relevant to the report including suggestions for modifications that would improve pediatric drug research and pediatric labeling of drugs and biological products. In addition, on August 18, 2017, the FDA Reauthorization Act of 2017 (Pub. L.

115–52) was signed into law, which outlined additional requirements to be included in the report.

II. Topics for Discussion at the Public Meeting

Some of the issues to be discussed at the meeting will include, but not be limited to:

- Hearing from patients/parents/caregivers and patient/parent/caregiver groups, consumer groups, industry, academia, and other interested parties about the public health impact that the pediatric legislation may have had on them or their communities, including treatment advances for children resulting from the legislation, as well as areas of continued unmet medical need.
- Understanding the effects of the requirement of pediatric studies under PREA or the incentives under BPCA on drug/biologic development plans, including issues related to the balance of incentives and requirements and progress toward international alignment on pediatric drug development to the extent practicable.
- Understanding if there are any barriers or resource issues preventing undertaking or completing studies under PREA and BPCA, including issues related to clinical trial infrastructure and enrollment and ensuring pediatric clinical trial populations reflect the diversity of children most likely to use and benefit from the therapeutic treatments.
- Understanding successes and challenges with leveraging scientific advances in product development, including, but not limited to, use of pediatric extrapolation, adaptive trial designs, biomarkers as surrogates, and real-world data to facilitate more timely evidence-generation for pediatric populations.

III. Participating in the Public Meeting

Registration: For more information and to register for the public meeting, please visit: <https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops/interested-parties-meeting-implementation-best-pharmaceuticals-children-act-and-pediatric-research>. Please provide complete contact information for each attendee, including name, email address, and affiliation. Registration is free and based on space availability for in-person attendance, with priority given to early registrants. Persons interested in attending this public meeting in-person must register by May 1, 2025, 11:59 p.m. Eastern Time. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each

organization. If time and space permit, onsite registration on the day of the public meeting will be provided beginning at 8 a.m. We will post a notice on the meeting web page if registration for in-person attendance closes before the day of the public meeting.

If you need special accommodations due to a disability, please contact OPT@fda.hhs.gov no later than May 8, 2025, 11:59 p.m. Eastern Time.

Requests for Oral Comment: During online registration you may indicate if you wish to present an oral comment during a public comment session, and which topic(s) you wish to address. We will do our best to accommodate requests to make oral comments. Individuals and organizations with common interests are urged to consolidate or coordinate their comments. All requests to make oral comments, for both virtual and in-person attendees, must be received by the close of in-person registration on May 1, 2025, 11:59 p.m. Eastern Time. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time that the oral comment session is to begin, and will notify participants making an oral comment by May 5, 2025, 11:59 p.m. Eastern Time. If making an oral comment, any presentation materials must be emailed to OPT@fda.hhs.gov (see **FOR FURTHER INFORMATION CONTACT**) no later than May 9, 2025, 11:59 p.m. Eastern Time. No commercial or promotional material will be permitted to be presented or distributed at the public meeting.

Streaming Webcast of the Public Meeting: This public meeting will also be webcast. The link to view the virtual Zoom webinar will be sent to registered participants prior to the meeting. The meeting web page link is: <https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops/interested-parties-meeting-implementation-best-pharmaceuticals-children-act-and-pediatric-research>.

Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at <https://www.regulations.gov>, <https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops/interested-parties-meeting-implementation-best-pharmaceuticals-children-act-and-pediatric-research>, or the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9

a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Notice of this meeting is given pursuant to 21 CFR 10.65.

Dated: December 20, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31312 Filed 1–2–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

FOR FURTHER INFORMATION CONTACT:

Anastasia Flanagan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); Anastasia.Flanagan@samhsa.hhs.gov (email).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) publishes a notice listing all HHS-certified laboratories and Instrumented Initial Testing Facilities (IITFs) in the **Federal Register** during the first week of each month, in accordance with Section 9.19 of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and Section 9.17 of the Mandatory Guidelines using Oral Fluid. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed

at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at <https://www.samhsa.gov/workplace/drug-testing-resources/certified-lab-list>.

HHS separately notifies Federal agencies of the laboratories and IITFs currently certified to meet the standards of the Mandatory Guidelines using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); January 23, 2017 (82 FR 7920); and on October 12, 2023 (88 FR 70768).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020, and subsequently revised in the **Federal Register** on October 12, 2023 (88 FR 70814).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for Federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid effective October 10, 2023 (88 FR 70814), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare*, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Desert Tox, LLC, 5425 E Bell Rd, Suite 125, Scottsdale, AZ, 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845,

(Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984,

(Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only

Omega Laboratories, Inc. *, 2150 Dunwin Drive, Unit 1 & 2, Mississauga, ON, Canada L5L 5M8, 289–919–3188

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

The following laboratory is voluntarily withdrawing from the National Laboratory Certification Program effective January 10, 2025:

Laboratory Corporation of America, 1225 NE 2nd Ave., Portland, OR 97323, 503–413–5295/800–950–5295, (Formerly: Legacy Laboratory Services Toxicology MetroLab)

*The Standards Council of Canada (SCC) voted to end its Laboratory

Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories continued under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory as meeting the minimum standards of the current Mandatory Guidelines published in the **Federal Register**. After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program. DOT established this process in July 1996 (61 FR 37015) to allow foreign laboratories to participate in the DOT drug testing program.

Anastasia D. Flanagan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2024–31499 Filed 1–2–25; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2024–0037]

Request for Comment on the National Cyber Incident Response Plan Update

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of availability; extension of comment period.

SUMMARY: On December 16, 2024, the Cybersecurity and Infrastructure Security Agency (CISA) published a request for comment in the **Federal Register** on a draft National Cyber Incident Response Plan (NCIRP) Update, which requests feedback on the draft update. CISA is extending the public comment period for the draft update for an additional thirty days through February 14, 2025.

DATES: The comment period for the draft update published on December 16, 2024, at 89 FR 101614 is extended. Comments and related materials must be submitted on or before February 14, 2025.

ADDRESSES: You may submit comments, identified by docket number CISA–2024–0037, by clicking on the “Submit a Public Comment” button above or by following the instructions below for submitting comments directly via the Federal public document portal, at <https://www.regulations.gov>.

Instructions: All comments received must include the agency name and docket number CISA–2024–0037. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. CISA reserves the right to publicly republish relevant and unedited comments in their entirety that are submitted to the docket. Do not include personal information such as account numbers, social security numbers, or names of other individuals. Do not submit confidential business information or otherwise sensitive or protected information.

Docket: For access to the docket to read the draft National Cyber Incident Response Plan (NCIRP) Update or comments received, go to <https://www.regulations.gov>. For convenience, CISA has also posted the draft NCIRP Update on <https://www.cisa.gov/national-cyber-incident-response-plan-ncirp>.

FOR FURTHER INFORMATION CONTACT:

Technical Content information: Mark Peters, 771–212–7125, mark.peters@cisa.dhs.gov.

Program information: Michael Fogarty, 202–412–8385, michael.fogarty@cisa.dhs.gov.

SUPPLEMENTARY INFORMATION: On December 16, 2024, CISA published a request for comment on the NCIRP Update (89 FR 101614). In the draft update, CISA addresses changes in the cyber threat and operations landscape by incorporating feedback and lessons learned from stakeholders to make the updated NCIRP more fully inclusive across non-federal stakeholders—further establishing a foundation for continued improvement of the nation's response to significant cyber incidents. The request for comment provided for a 30-day comment period, set to close January 15, 2025. CISA received multiple requests to extend the deadline given the holidays occurring during the public comment period. Therefore, the comment period is now open through February 14, 2025.

This notice is issued under the authority of 6 U.S.C. 652, 659, 660, and 665b.

Jeffrey E. Greene,

Executive Assistant Director for Cybersecurity, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2024–31514 Filed 1–2–25; 8:45 am]

BILLING CODE 9111–LF–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0068]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Registration for Classification as a Refugee

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until March 4, 2025.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0068 in the body of the letter, the agency name and Docket ID USCIS–2007–0036. Submit comments via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS–2007–0036.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here

is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and entering USCIS-2007-0036 in the search box. Comments must be submitted in English, or an English translation must be provided. All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Registration for Classification as a Refugee.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-590; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Individuals or households. The Form I-590 is the primary document in all refugee case files and becomes part of the applicant's A-file. It is the application form by which a person seeks refugee classification and resettlement in the United States. It documents an applicant's legal testimony (under oath) as to his or her identity and claim to refugee status, as well as other pertinent information including marital status, number of children, military service, organizational memberships, and violations of law. In addition to being the application form submitted by a person seeking refugee classification, Form I-590 is used to document that an applicant was interviewed by United States Citizenship and Immigration Services (USCIS) and record the decision by the USCIS Officer to approve or deny the applicant for classification as a refugee. Regardless of age, each person included in the case must have his or her own Form I-590. Refugees applying to CBP for admission must have a stamped I-590 in their travel packet in order to gain admission as a refugee. They do not have refugee status until they are admitted by CBP.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-590 is 50,000 and the estimated hour burden per response is 3.25 hours; the estimated total number of respondents for the information collection I-590 Review is 3,000 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection of DNA Evidence is 100 and the estimated hour burden per response is 2 hours; and the estimated total number of respondents for the information collection of Biometrics is 53,100 and the estimated hour burden per response is 0.33 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual

hour burden associated with this collection is 183,223 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$12,000.

Dated: December 30, 2024.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2024-31580 Filed 1-2-25; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R3-ES-2024-N059;
FX3ES1130300000-256-FF03E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews of 14 Listed Animal and Plant Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews under the Endangered Species Act, for 4 plant and 10 animal species. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information that has become available since the last review for the species. We invite comments from the public and Federal, Tribal, State, and local governments.

DATES: To ensure consideration, please send your written information by March 4, 2025. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information for each species, see table 1 in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: To request information on specific species, contact the appropriate person in table 1 in the **SUPPLEMENTARY INFORMATION** section or, for general information, contact Laura Ragan, via telephone at 612-713-5157 or via email at laura_ragan@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We are initiating 5-year status reviews under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), for 4 plant and 10 animal species. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information that has become available since the last review for the species.

Why do we conduct 5-Year reviews?

Under the ESA, we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section

4(c)(2)(A) of the ESA requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year reviews, go to <https://www.fws.gov/project/five-year-status-reviews>.

What information do we consider in our review?

A 5-year review considers the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented that benefit the species;

(D) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the ESA); and

(E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

New information will be considered in the 5-year review and ongoing recovery programs for the species.

Which species are under review?

This notice announces our active 5-year status reviews of the species in table 1.

TABLE 1—SPECIES UNDER 5-YEAR STATUS REVIEW ANIMALS

Common name	Scientific name	Taxonomic group	Listing status (see note)	Where listed	Final listing rule (Federal Register citation and publication date)	Contact person, email, phone	Contact person's U.S. mail address
Animals							
Mitchell's satyr	<i>Neonympha mitchellii mitchellii</i> .	Butterfly	E	AL, IN, MI, MS, OH, VA.	57 FR 21564; May 20, 1992.	Carrie Tansy, carrie_tansy@fws.gov , 517–580–0284.	USFWS, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823.
Hungerford's crawling water beetle.	<i>Brychius hungerfordi</i> ...	Insect	E	MI	59 FR 10580; March 7, 1994.	Michelle Kane, michelle_kane@fws.gov , 517–580–5640.	USFWS, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823.
Eastern massasauga rattlesnake.	<i>Sistrurus catenatus</i>	Reptile	T	IL, IN, IA, MI, MN, NY, OH, PA, WI.	81 FR 67193; September 30, 2016.	Carrie Tansy, carrie_tansy@fws.gov , 517–580–0284.	USFWS, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823.
Higgins eye pearlymussel.	<i>Lampsilis higginsii</i>	Mussel	E	IL, IA, MN, MO, NE, SD, WI.	41 FR 24064; June 14, 1976.	Nick Utrup, nick_utrump@fws.gov , 612–600–6122.	USFWS, 3815 American Boulevard East, Bloomington, MN 55425.
Curtis pearlymussel ..	<i>Epioblasma florentina curtisii</i> (= <i>Epioblasma curtisii</i>).	Mussel	E	AR, MO	41 FR 24062; June 14, 1976.	Andy Roberts, andy_roberts@fws.gov , 573–239–3054.	USFWS, 101 Park DeVille Drive, Suite A, Columbia, MO 65203.
Scaleshell	<i>Leptodea leptodon</i> (= <i>Potamilus leptodon</i>).	Mussel	E	AR, IL, MO, NE, OK, SD.	66 FR 51322; October 9, 2001.	Andy Roberts, andy_roberts@fws.gov , 573–239–3054.	USFWS, 101 Park DeVille Drive, Suite A, Columbia, MO 65203.
White catpaw pearlymussel.	<i>Epioblasma perobliqua</i>	Mussel	E	IN, OH	41 FR 24062; June 14, 1976.	Angela Boyer, angela_boyer@fws.gov , 614–416–8993, ext. 122.	USFWS, 4625 Morse Road, Suite 104, Columbus, OH 43230.
Sheepnose	<i>Plethobasus cyphus</i> ..	Mussel	E	AL, IL, IN, IA, KY, MN, MS, MO, OH, PA, TN, VA, WV, WI.	77 FR 14914; March 13, 2012.	Sara Schmuecker, sara_schmuecker@fws.gov , 309–757–5800, ext. 203.	USFWS, 1511 47th Avenue, Moline, IL 61265.
Eastern hellbender (MO DPS).	<i>Cryptobranchus alleganiensis alleganiensis</i> .	Amphibian ..	E	MO	86 FR 13465; March 9, 2021.	Trisha Crabill, trisha_crabill@fws.gov , 573–530–7534.	USFWS, 101 Park DeVille Drive, Suite A, Columbia, MO 65203.
Grotto sculpin	<i>Cottus specus</i>	Fish	E	MO	78 FR 58938; September 25, 2013.	Vona Kuczynska, vona_kuczynska@fws.gov , 573–540–3835.	USFWS, 101 Park DeVille Drive, Suite A, Columbia, MO 65203.

TABLE 1—SPECIES UNDER 5-YEAR STATUS REVIEW ANIMALS—Continued

Common name	Scientific name	Taxonomic group	Listing status (see note)	Where listed	Final listing rule (Federal Register citation and publication date)	Contact person, email, phone	Contact person's U.S. mail address
Plants							
Houghton's gold-enrod.	<i>Solidago houghtonii</i>	Plant	T	MI, NY	53 FR 27134; July 18, 1988.	Diana Digges, <i>diana_digges@fws.gov</i> , 517–351–5244.	USFWS, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823.
Eastern prairie fringed orchid.	<i>Platanthera leucophaea</i>	Plant	T	IL, IN, IA, ME, MI, MO, OH, VA, WI.	54 FR 39857; September 28, 1989.	Cathy Pollack, <i>cathy_pollack@fws.gov</i> , 309–757–5800.	USFWS, 1511 47th Avenue, Moline, IL 61265.
Western prairie fringed orchid.	<i>Platanthera praeclara</i> ..	Plant	T	IA, KS, MN, MO, NE, ND, SD.	54 FR 39857; September 28, 1989.	Dawn Marsh, <i>dawn_marsh@fws.gov</i> , 612–283–8054.	USFWS, 3815 American Boulevard East, Bloomington, MN 55425.
Leedy's roseroot	<i>Rhodiola integrifolia</i> ssp. <i>leedyi</i> .	Plant	T	MN, NY, SD	57 FR 14649; April 22, 1992.	Dawn Marsh, <i>dawn_marsh@fws.gov</i> , 612–283–8054.	USFWS, 3815 American Boulevard East, Bloomington, MN 55425.

Note: E= endangered; T= threatened.

Request for Information

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See “What Information Do We Consider in Our Review?” for specific criteria. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

How do I ask questions or provide information?

If you wish to provide information for any species listed above, please submit your comments and materials to the appropriate contact in table 1. You may also direct questions to those contacts.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We publish this notice under the authority of the Endangered Species Act

of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2024–31552 Filed 1–2–25; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2024–0153; FXES 11130200000–245–FF02ENEH00]

Application for an Enhancement of Survival Permit; Eagle Creek Multi-Species Conservation Benefit Agreement; Greenlee and Graham Counties, Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from Freeport Minerals, a subsidiary of Freeport-McMoRan Inc., for a 10(a)(1)(A) enhancement of survival permit supported by the proposed *Eagle Creek Multi-Species Conservation Benefit Agreement (CBA)* in Greenlee and Graham Counties, Arizona. With this notice, we announce the availability for public comment of the permit application, the proposed CBA, and the draft environmental assessment (EA). We invite comments from the public and Federal, Tribal, State, and local governments.

DATES: We must receive your written comments on or before February 3, 2025.

ADDRESSES: *Obtaining Documents:* The documents this notice announces, as well as any comments and materials that we receive, will be available for public inspection online in Docket No. FWS–R2–ES–2024–0153 at <https://www.regulations.gov>.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–R2–ES–2024–0153.
- *U.S. mail:* Public Comments Processing; Attn: Docket No. FWS–R2–ES–2024–0153; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Heather Whitlaw, Field Supervisor, U.S. Fish and Wildlife Service, Phoenix, Arizona, Ecological Services Office; telephone 602–834–7203. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), make available for public comment an application we received from Freeport Minerals Corporation (applicant) for an enhancement of survival permit (permit) under section 10(a)(1)(A) of the Endangered Species Act (ESA); 16 U.S.C. 1531 *et seq.*) supported by the CBA in Greenlee and Graham Counties, Arizona, and the associated draft EA. If

approved, the requested 50-year permit would authorize incidental take of the spinedace (*Meda fulgida*), loach minnow (*Tiaroga cobitis*), and Gila chub (*Gila intermedia*), which are federally listed as endangered under the ESA, and the narrow-headed gartersnake (*Thamnophis rufipunctatus*), which is federally listed as threatened under the ESA (hereafter collectively referred to as the Covered Species).

The incidental take would be of the Covered Species within the Plan Area of the CBA that results from ongoing and future activities on the applicant's enrolled property, as fully described in the draft CBA, during the permit term, take associated with conservation and management activities integral to meeting the CBA net conservation benefit standard, as well as take resulting from a return to baseline condition. As described in the CBA, baseline condition has been quantified for each species based on habitat miles or acreage.

During the life of the permit, the applicant's ongoing and future activities include improvement, replacement, repair, construction, operation, and maintenance of their facilities and related infrastructure on lands adjacent to Eagle Creek. The CBA would provide a net conservation benefit for the Covered Species through construction of a nonnative fish barrier that will protect 8.4 miles (13.5 kilometers) and approximately 682 acres (276 hectares) of Eagle Creek and immediately surrounding habitat from nonnative species invasion. This mileage and acreage are currently unprotected, and the CBA will increase the suitability of this area for management and recovery of the Covered Species by preventing invasion by detrimental non-native aquatic species. Applicant also proposes an exotic species removal study and native fish monitoring in the CBA that will also provide a net conservation benefit for the Covered Species.

The Service is the lead for the proposed CBA approval and permit issuance. The Bureau of Reclamation (Reclamation) is a cooperating partner and will design, partially fund, construct, and carry out necessary operations and maintenance on the proposed fish barrier. Reclamation is the lead agency for development of the EA under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). The EA analyzes both Reclamation and the Service's proposed actions. The Service is a cooperating agency for the NEPA analysis.

Background

Section 9 of the ESA and our implementing regulations at 50 CFR part 17 prohibit the "take" of fish or wildlife species listed as endangered or threatened. Take is defined under the ESA as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct" (16 U.S.C. 1538(19)). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing such take of endangered and threatened species are found at 50 CFR parts 17.21–22 and 17.31–32, respectively.

Proposed Action

The proposed action involves the issuance of a 10(a)(1)(A) permit to the applicant to authorize incidental take of the Covered Species resulting from implementation of the proposed CBA and the applicant's ongoing and future activities on their lands along Eagle Creek in Greenlee and Graham Counties, Arizona, including take resulting from barrier construction as well as ongoing management activities within the Covered Area but downstream of the proposed fish barrier, as described below.

Both spinedace and loach minnow were listed as threatened in 1986, with their listing status changing to endangered in 2012 (February 23, 2012; 77 FR 10810). Historically, spinedace was found in most rivers and streams in the Gila River Basin upstream of Phoenix, Arizona; however, much of its historic habitat has been destroyed as a result of habitat modification and by the introduction and spread of nonnative predatory and competitive species. Spinedace now remain in approximately 10 percent or less of the species' historical range. Loach minnow were once common throughout much of the Gila River Basin; however, much of its historic habitat has been destroyed through habitat modification and the introduction and spread of nonnative species. Loach minnow now remain in approximately 15 to 20 percent of the species' historical range.

Gila chub was listed as endangered in 2005 (November 2, 2005; 70 FR 66664). Historically, Gila chub were found throughout the Gila River basin in southern Arizona, southwestern New Mexico, and northeastern Sonora, Mexico. Gila chub have been reduced in numbers and distribution through the

majority of the historical range. Primary threats to Gila chub include predation and competition with nonnative species and habitat alteration.

Recently, there has been a taxonomic revision of the fish that have historically been classified as Gila chub; based on analyses of genetic and morphological data, the Gila chub is no longer recognized as a distinct taxonomic entity, but rather is actually within the roundtail chub (*Gila robusta*) species (April 7, 2017; 82 FR 16981). However, at this time, the Gila chub remains listed under the ESA.

The narrow-headed gartersnake was listed as threatened in 2014 (July 8, 2024; 79 FR 38678). Historically, narrow-headed gartersnakes occupied perennial drainages across the Mogollon Rim, from northern and eastern Arizona into southwestern New Mexico. The species remains in relatively dense populations only in the Tularosa River and Middle Fork of the Gila River in New Mexico, and in Oak Creek and West Fork Oak Creek in Arizona. Narrow-headed gartersnakes are believed to persist in other locations; however, information on other populations is less certain due to a lack of adequate survey effort and data. The most significant threat to narrow-headed gartersnake is nonnative species.

The proposed CBA is part of a management plan developed by the applicant in response to the Service's proposed critical habitat designation for spinedace and loach minnow in 2011, which included portions of Eagle Creek and the San Francisco River in Arizona (the designation has since been finalized). The applicant requested that their private lands along Eagle Creek and the San Francisco River in Arizona be excluded from the critical habitat designation because of the conservation commitments in their proposed management plan. Within the management plan, the applicant committed to native fish monitoring, a nonnative species removal study, and investigation and construction of a fish barrier on Eagle Creek, as well as completion of a safe harbor agreement (now called a conservation benefit agreement, or CBA).

The Service accepted the management plan in lieu of designation of the applicant's lands on Eagle Creek and the San Francisco River. Subsequently, costs of barrier construction exceeded those included in the management plan. To allow for project completion, Reclamation entered into a cooperative relationship with the applicant and the Service to evaluate the financial and technical feasibility of fish barrier construction. Under this partnership,

Reclamation became the project lead for the design, construction, operation, and maintenance of the barrier.

The proposed CBA was developed in coordination with the Service. The purpose of the proposed CBA is to implement population restoration activities for spikedace, loach minnow, Gila chub, and narrow-headed gartersnake through construction of a nonnative fish barrier at Eagle Creek. The upper reach of Eagle Creek is a high-value stream for native fish species because of its lack of nonnative species and its favorable hydrological conditions, including water quality and quantity. However, several nonnative species known to be detrimental to native fish communities occur in downstream reaches of Eagle Creek and the Gila River, including smallmouth bass (*Micropterus dolomieu*), channel catfish (*Ictalurus punctatus*), flathead catfish (*Pylodictis olivaris*), yellow bullhead (*Ameiurus natalis*), red shiner (*Cyprinella lutrensis*), and green sunfish (*Lepomis cyanellus*).

Under the CBA, a nonnative fish barrier would be constructed on lands belonging to the applicant to protect upper Eagle Creek against possible future incursions of nonnative aquatic species and allow for augmentation of existing populations. This area is currently not protected against nonnative species invasion. In addition, the applicant would implement conservation measures, including native species monitoring and a nonnative species removal study. Barrier construction will increase the suitability of Eagle Creek for species management and augmentation efforts, which are important to the species' survival and recovery. Invasion of occupied habitats by nonnative species is identified as a primary threat for all four of the covered species. Construction of the barrier and implementation of the proposed conservation and management measures are expected to provide a net conservation benefit to the Covered Species.

Given the current status of the Covered Species in Eagle Creek and below the fish barrier site, we anticipate incidental take is unlikely to occur. However, if the Covered Species are present, they could be incidentally taken during fish barrier construction and as a consequence of the Permittee's management actions and land and water use activities within the Covered Area. However, the Permittee has agreed to leaving the barrier in place, even should the CBA be discontinued, resulting in continued protection of the area most likely to be occupied by the Covered Species, which will provide long-term

protection for the Covered species. The likelihood of incidental take may increase if populations of the Covered Species increase above the fish barrier or if Covered Species are reintroduced and re-establish above the fish barrier in Eagle Creek or in tributaries such as East Eagle Creek. If this reintroduction or re-establishment were to occur, this would create the possibility that individuals of the Covered Species may move or be washed downstream into areas within the Covered Area where the Permittee's facilities and other infrastructure exist. In that event, individuals of the Covered Species could become entrained in the Permittee's water diversion and pumping facilities, resulting in deaths or injuries. We anticipate this type of incidental take, should it occur, will involve small number of individuals, and that the larger number of individuals occupying those portions of Eagle Creek above the barrier will result in a net conservation benefit for the species.

Alternatives

We are considering one alternative to the proposed action as part of this process, the No Action Alternative. Under No Action Alternative, the Service would not issue the permit, the CBA would not be implemented, and the applicant would continue the existing operation and maintenance activities on their properties. The applicant would continue to implement conservation actions within the management plan.

Next Steps

We will evaluate the permit application, CBA, draft EA, and comments we receive to determine whether the CBA application meets the requirements of the ESA, NEPA, and implementing regulations. If we determine that all requirements are met, we will approve the CBA and issue the permit under section 10(a)(1)(A) of the ESA to the applicant, in accordance with the terms of the CBA and specific terms and conditions of the authorizing permit. We will not make our final decision until after the 30-day comment period ends and we have fully considered all comments received during the public comment period.

Public Availability of Comments

All comments we receive become part of the public record associated with this action. If you submit a comment at <https://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the website. If you submit a comment that includes personal identifying

information, such as your address, phone number, or email address, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under the authority of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR parts 1500 through 1508 and 43 CFR part 46).

Amy Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2024–31519 Filed 1–2–25; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AZ_FRN; AZAZ106197256]

Notice of Application for Withdrawal Extension and Opportunity for Public Meeting; Diamond Rim Quartz Crystal Interpretative Area, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On behalf of the United States Department of Agriculture, the United States Forest Service (USFS) has filed an application with the Bureau of Land Management (BLM) requesting that the Secretary of the Interior extend the withdrawal created by Public Land Order (PLO) No. 7664, for an additional 20-year term. PLO No. 7664, which will currently expire on Jun 11, 2026, withdrew 990 acres of National Forest System (NFS) lands located within the Tonto National Forest from location and entry under the U.S. mining laws, subject to valid existing rights, to protect the Diamond Rim Quartz Crystal Interpretative Area, located in Gila County, Arizona, from potential adverse impacts from mining. This notice provides for the public to comment and request a public meeting for the 20-year withdrawal extension application.

DATES: Comments or requests for a public meeting must be received by April 3, 2025.

ADDRESSES: All comments or requests for a public meeting should be sent to the BLM Arizona State Office, 1 North Central Avenue, Suite 800, Phoenix, AZ 85004; faxed to (602) 417-9452; or sent by email to BLM_AZ-Withdrawal-Comments@blm.gov. The BLM will not consider comments via telephone calls.

FOR FURTHER INFORMATION CONTACT:

Michael Ouellett, Realty Specialist, BLM Arizona State Office; telephone (602) 417-9561; email at mouellett@blm.gov; or you may contact the BLM office at the address listed in the **ADDRESSES** section. 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. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The USFS has filed an application requesting the extension of the withdrawal of 990 acres established by PLO No. 7664 (71 FR 33773), incorporated herein by reference. The USFS requests the 20-year withdrawal extension to protect the Diamond Rim Quartz Crystal Interpretative Area from potential mining-related adverse impacts. The subject NFS lands are located within the Tonto National Forest. The PLO No. 7664 legal description has been revised to reflect the current BLM Cadastral Survey guidance on legal land descriptions. The following described NFS lands are the subject of the USFS's withdrawal extension application:

Gila and Salt River Meridian, Arizona

T. 11 N., R. 11 E., partly unsurveyed.
 Sec. 12, W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 13, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 14, S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, and N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$; protraction block 38, that portion formerly known as sec. 1, SW $\frac{1}{4}$.

The area described contains 990 acres. The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection of the specified lands.

No additional water rights are needed to fulfill the purpose of this withdrawal.

There are no suitable alternative sites since the withdrawal is for the protection of the natural and recreational values of the Diamond Rim Quartz Crystal Interpretative Area.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This application will be processed in accordance with the regulations at 43 CFR 2310.4.

(Authority: 43 U.S.C. 1714(f) and 43 CFR 2310.4)

Mark Morberg,

Acting State Director.

[FR Doc. 2024-31589 Filed 1-2-25; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO #4820000251]

Notice of Lease Sale and Notice of Availability of the Detailed Statement of Sale for the Coastal Plain 2025 Oil and Gas Lease Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of lease sale.

SUMMARY: The Bureau of Land Management (BLM) is changing the oil and gas lease sale bid opening date, previously published in the **Federal Register** on December 10, 2024, for 12 tracts in the Coastal Plain of the Arctic National Wildlife Refuge.

DATES: The notice published on December 10, 2024, at 89 FR 99270, provided for opening of bids for the oil and gas lease sale on January 9, 2025. However, in light of the December 30, 2024, *Executive Order Providing for the Closing of Executive Departments and Agencies of the Federal Government on January 9, 2025*, the BLM will open bids the following day, January 10, 2025, at 10 a.m. Alaska Standard Time (AKST).

Notwithstanding the change in the date for opening of bids, the BLM is not changing the deadline for all sealed bids, which the BLM must receive by 4 p.m. AKST, January 6, 2025.

ADDRESSES: Sealed bids must be received at the BLM-Alaska State Office, ATTN: Wayne Svejnoha (AK932); 222

West 7th Avenue, #13; Anchorage, AK 99513-7504. The Detailed Statement of Sale is available from the BLM Alaska website at <https://www.blm.gov/alaska>.

FOR FURTHER INFORMATION CONTACT:

Wayne Svejnoha, Supervisory Minerals and Energy Specialist, phone 907-271-4407 or email, wsvejnoh@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Svejnoha. Individuals outside the United States should use the relay services within their country to make international calls to the point-of-contact in the United States.

(Authority: Section 20001 of the Tax Cuts and Jobs Act of 2017 (Pub. L. 115-97); 43 CFR 3131.4-1)

Erika Reed,

Acting State Director, Alaska.

[FR Doc. 2024-31648 Filed 12-31-24; 4:15 pm]

BILLING CODE 4331-10-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO4820000251]

Agency Information Collection Activities; Free Use Application and Permit for Vegetative or Mineral Materials

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before March 4, 2025.

ADDRESSES: Send your written comments on this information collection request (ICR) by mail to Darrin King, Information Collection Clearance Officer, U.S. Department of the Interior, Bureau of Land Management, Attention PRA Office, 440 W 200 S #500, Salt Lake City, UT 84101; or by email to BLM_HQ_PRA_Comments@blm.gov. Please reference Office of Management and Budget (OMB) Control Number 1004-0001 in the subject line of your comments. Please note that the electronic submission of comments is recommended.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Tim Barnes, HQ320 Mineral Materials Lead. Phone number: 541-588-0853; email: tbarnes@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

- (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) How the agency could minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before

including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Free Use vegetative permits are available for mining claimants; Federal, State, or Territorial agencies; municipalities; and associations or corporations not organized for profit, provided they certify that the materials will not be used for commercial or industrial purposes. Free Use Permits for Mineral Materials are available to any Federal, State, or Territorial agency, unit, or subdivision, including municipalities, or any non-profit organization. OMB Control Number 1004-0001 authorizes the BLM to collect information to continue the use of separate permit forms for the free use of vegetative materials and mineral materials. This OMB Control Number is currently scheduled to expire on December 31, 2025. The BLM plans to request that OMB renew this OMB Control Number for an additional three (3) years.

Title of Collection: Free Use Application and Permit for Vegetative or Mineral Materials (43 CFR parts 3600, 3620, and 5510).

OMB Control Number: 1004-0001.

Form Numbers: 3604-1 a and b, Free Use Application and Permit for Mineral Materials; and 5510-1, Free Use Application and Permit for Vegetative Materials.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals seeking authorization for free use of mineral or vegetative materials.

Total Estimated Number of Annual Respondents: 146.

Total Estimated Number of Annual Responses: 146.

Estimated Completion Time per Response: 30 minutes.

Total Estimated Number of Annual Burden Hours: 73.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: \$0.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of

information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin King,

Information Collection Clearance Officer.

[FR Doc. 2024-31588 Filed 1-2-25; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO #4820000251]

Notice of Availability of the Record of Decision and Approved Resource Management Plan for the Rio Puerco Field Office in Albuquerque, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Approved Resource Management Plan (RMP) for the Rio Puerco Field Office located in central and northwestern New Mexico. The BLM Director signed the ROD on December 23, 2024, which constitutes the decision of the BLM and makes the Approved RMP effective immediately.

DATES: The BLM Director signed the ROD on December 23, 2024.

ADDRESSES: The ROD/Approved RMP is available online at <https://eplanning.blm.gov/eplanning-ui/project/64954/510>. Printed copies of the ROD/Approved RMP are available for public inspection at Rio Puerco Field Office, 100 Sun Avenue, Suite 330, Albuquerque, NM 87109, or can be provided upon request by contacting BLM Planning Coordinator Matt Caire at mcaire@blm.gov.

A copy of the Protest Resolution Report is available at: <https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports>.

FOR FURTHER INFORMATION CONTACT:

BLM Planning Coordinator Matt Caire, telephone: 505-761-8918; address: 100 Sun Avenue, Suite 330, Albuquerque, New Mexico, 87109; email: mcaire@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Caire. 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: This Approved RMP/ROD replaces the current Rio Puerco RMP (approved in 1986 and amended in 1992). The Rio Puerco Field Office administers approximately 731,600 acres of surface estate and approximately 3.6 million acres of subsurface mineral estate known as the decision area. These lands are within the Rio Puerco planning area and encompass Bernalillo, Cibola, McKinley, Sandoval, Torrance, and Valencia counties in central and northwestern New Mexico. The Rio Puerco planning area includes approximately 9.5 million acres, and within this area there are a mix of lands that are unaffected by this plan, such as national forest, national monument, Tribal land, State land, and private land. The planning area also includes valuable mineral resources and the largest population center in the State of New Mexico.

The Approved RMP balances resource use and conservation, and addresses land-tenure adjustments, land-use authorizations, recreation, areas with special designations, lands with wilderness characteristics, livestock grazing, transportation access, renewable energy, visual resources, wildland/urban interface, and mineral resources.

The Approved RMP was developed through a collaborative planning effort and describes the management actions that will be applied to meet desired resource conditions. The Proposed RMP was carried forward into the Approved RMP with minor modifications. Notably, this includes acknowledgement of the ancestral lands of all affiliated Tribal Nations within the planning area and emphasis on management direction for cultural consultation and continual coordination with Tribal Nations.

The BLM provided the Proposed RMP/Final Environmental Impact Statement (EIS) on August 9, 2024, for a 30-day protest period and received 24 protest letters. The BLM resolved all protests. Responses to protest issues are compiled and documented in a Protest Resolution Report (see **ADDRESSES**). The BLM entered into a protest resolution agreement with the Pueblo of San Felipe to address protest comments raised during the protest period. Changes made to the Approved RMP as a result of protest resolution are summarized in the Approved RMP ROD.

The BLM provided the Proposed RMP/Final EIS to the Governor of New Mexico for a 60-day Governor's

consistency review. No inconsistencies with State plans, policies, or programs were identified during the Governor's consistency review of the RMP.

(Authority: 40 CFR 1506.6; 43 CFR 1610.5–1)

Melanie G. Barnes,
New Mexico State Director.

[FR Doc. 2024–31574 Filed 1–2–25; 8:45 am]

BILLING CODE 4331–23–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Electrolyte Containing Beverages and Labeling and Packaging Thereof*, DN 3797; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of CAB Enterprises, Inc.; Sueros y Bebidas Rehidratantes, S.A. de C.V.; Brazos River Ventures LLC; and Electrolit Manufacturing USA Inc. on December

27, 2024. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electrolyte containing beverages and labeling and packaging thereof. The complainant names as respondents: Empacadora Torres Mora, S. de R.L. de C.V. of Mexico; Version Explotaciones, S.R.L. de C.V. of Mexico; Mabel Distribuciones, S.A. de C.V. of Mexico; Salfe International Trade, S. de R.L. de C.V. of Mexico; Exportadora de Abarrotes del Pacifico, S.A. de C.V. of Mexico; Centro de Distribucion de Carbon Allende, S.A. de C.V. of Mexico; Wenceslao Colunga Ruiz of Mexico; and Distribuidora de Productos Heres, S.A. de C.V. of Mexico. The complainant requests that the Commission issue a general exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number ("Docket No. 3797") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures)¹. Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at EDIS3Help@usitc.gov.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices,

and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 27, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–31518 Filed 1–2–25; 8:45 am]

BILLING CODE 7020–02–P

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; System of Records

AGENCY: U.S. Merit Systems Protection Board.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974 (Privacy Act), the U.S. Merit Systems Protection Board (MSPB) proposes to establish a modified system of records titled "MSPB—3, Reasonable Accommodations." This system of records includes information that MSPB collects, maintains, and uses on applicants for employment, MSPB employees, and participants in MSPB programs who request and/or receive reasonable accommodations from MSPB for disability, medical, pregnancy-related, or religious reasons.

DATES: Please submit comments on or before February 3, 2025. This modified system is effective upon publication in today's **Federal Register**.

ADDRESSES: You may submit written comments to the Office of the Clerk of the Board by email to privacy@mspb.gov or by mail to Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419. All

comments must reference "MSPB—3, Reasonable Accommodations SORN." Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to MSPB's website (<https://www.mspb.gov>) and will include any personal information you provide, such as your name, address, phone number, email address, or any other personally identifying information in your comment or materials. Therefore, any submissions will be made public and without change.

FOR FURTHER INFORMATION CONTACT: For general questions or privacy issues, please contact: D. Fon Muttamara, Chief Privacy Officer, Office of the Clerk of the Board, 1615 M Street NW, Washington, DC 20419 at (202) 653–7200 or privacy@mspb.gov. Please include "Reasonable Accommodations SORN" with your question(s).

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act, 5 U.S.C. 552a, the MSPB proposes to modify an existing system of records titled "MSPB—3, Reasonable Accommodations." This system of records covers MSPB's collection, maintenance, and use of records on applicants for employment, employees, and participants in MSPB programs who request or receive reasonable accommodations or other appropriate modifications from MSPB for medical or religious reasons. MSPB is modifying this system of records to include a new category of individuals covered by the system—participants in official MSPB functions (parties and/or participants in MSPB appeals, respondents to surveys, and all other individuals engaged in activity conducted by the MSPB), who seek a reasonable accommodation; MSPB is updating the categories of individuals covered and records in the system to include pregnant and recently pregnant employees; and MSPB is updating the system location and system manager to include the Office of Information Resources Management and the Accessibility Program Manager.

Title V of the Rehabilitation Act of 1973, as amended, prohibits discrimination in services and employment on the basis of disability, Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of religion; and Title VII, as amended by the Pregnancy Discrimination Act, prohibits discrimination on the basis of pregnancy.¹ The Pregnancy Workers

¹ Pregnancy includes current pregnancy; past pregnancy; potential pregnancy; medical condition(s) related to pregnancy or childbirth including breastfeeding/lactation; having or

Continued

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

Fairness Act, which went into effect on June 27, 2023, requires the agency to provide reasonable accommodations for qualified employees and job applicants with temporary physical or mental limitations due to pregnancy, childbirth, or related conditions. These statutes on discrimination and accommodations require Federal agencies to provide reasonable accommodations to individuals with disabilities, are pregnant or have been pregnant, and those with sincerely held religious beliefs; unless doing so would impose an undue hardship. In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.

Disability Accommodations. Reasonable accommodations on the basis of disability typically fall into the following categories: (1) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for a position; (2) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; and (3) modifications or adjustments that enable a qualified employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly-situated employees without disabilities; and (4) modifications to agency operating procedures to enable a qualified individual with a disability, full access to agency functions. In some instances, individuals may request modifications to their workspace, schedule, duties, or other requirements for documented medical reasons that may not qualify as a disability but may necessitate an appropriate modification to workplace policies and practices.

Pregnancy-Related Accommodations. Reasonable accommodations on the basis of pregnancy, childbirth, or related medical conditions, may include but are not limited to: providing the ability to sit or drink water; receiving parking at that is closer to the work site; having flexible hours; receiving additional break time to use the bathroom, eat, and rest; and taking leave or time off to recover from childbirth.

Religious Accommodations. Applicants and employees may obtain exceptions to rules or policies in order to follow their sincerely held religious

beliefs or practices, and employers may grant certain accommodations for religious reasons but still refuse to grant them for secular reasons. Religious Accommodations may include but are not limited to: having flexible hours to observe religious holidays; having flexible hours to observe religious practices, such as not working after sundown, or taking breaks for prayer throughout the day; and receiving an exemption from a Federal Government-mandated vaccine that conflicts with a sincerely held religious belief.

MSPB's Office of Equal Employment Opportunity is responsible for processing requests for reasonable accommodations from applicants for employment and employees who seek an accommodation due to a medical, pregnancy-related, or religious reasons, as well as processing requests based on documented medical reasons that may not qualify as a disability but that may necessitate an appropriate modification to workplace policies and practices. For participants in MSPB programs who are not applicants for employment or MSPB employees, MSPB's Accessibility Program Manager, within the Office of Information Resources Management, is responsible for processing these requests.

Pursuant to the Privacy Act, the system of records will include the following documentation: the request; any related records provided to support the request; any evaluation conducted internally, or by a third party under contract with MSPB; the decision regarding whether to grant or deny a request; and the details and conditions of the reasonable accommodation.

The Privacy Act embodies fair information practice principles in a statutory framework governing how Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a "system of records." A system of records is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of MSPB by complying with MSPB Privacy Act regulations at 5 CFR part 1205, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice. The Privacy Act requires each

agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. The modified Reasonable Accommodations System of Records Notice is published in its entirety below. In accordance with the Privacy Act, 5 U.S.C. 552a(r), and OMB Circular A-108, "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act" (Dec. 2016), MSPB has submitted a report of a modified system of records to the Office of Management and Budget and Congress.

Gina K. Grippando,

Clerk of the Board, U.S. Merit Systems Protection Board.

SYSTEM NAME AND NUMBER:

MSPB—3, Reasonable Accommodations.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained by the Office of Equal Employment Opportunity and the Office of Information Resources Management, U.S. Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419. Records may be located in locked cabinets and offices, on MSPB's local area network, or in designated U.S. data centers for cloud service providers certified by the Federal Risk and Authorization Management Program or FedRAMP.

SYSTEM MANAGER(S):

Director of the Office of Equal Employment Opportunity and Accessibility Program Manager, U.S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419, accommodation@mspb.gov.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Rehabilitation Act of 1973, 29 U.S.C. 701, 791, 794; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e; 29 CFR part 1605 (Guidelines on Discrimination Because of Religion); 29 CFR part 1614 (Federal Sector Equal Employment Opportunity); 29 CFR part 1630 (Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act); Executive Order 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation (July 26, 2000); and Executive Order 13548, Increasing Federal Employment of Individuals with Disabilities (July 26, 2010); The Pregnant Workers Fairness Act (effective June 27, 2023), Pub. L.

choosing not to have an abortion; and birth control (contraception).

117–328, 42 U.S.C. 2000gg; Providing Urgent Maternal Protections for Nursing Mothers Act (effective December 29, 2022), Pub. L. 117–328, 29 U.S.C. 218d.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to allow MSPB to collect and maintain records on applicants for employment, MSPB employees, and participants in MSPB programs who request or receive reasonable accommodations or other appropriate modifications from MSPB for medical, pregnancy, or religious reasons; to process, evaluate, and make decisions on individual requests; and to track and report the processing of such requests MSPB-wide to comply with applicable requirements in law, regulation, and policy, and to maintain the confidentiality of the information provided in support of the accommodation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for MSPB employment, former and current MSPB employees, and participants in MSPB programs who requested and/or received reasonable accommodations or other appropriate modifications from MSPB for medical, pregnancy, or religious reasons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include information concerning the requester and/or recipient as part of the request, review, and decision-making process. These records may include demographic information, information regarding the health condition or sincerely held religious belief, and other related information required to document and make a determination on the request.

RECORD SOURCE CATEGORIES:

Information is obtained from applicants for employment, MSPB employees, and participants in MSPB programs who request and/or receive a reasonable accommodation or other appropriate modification from MSPB, directly or indirectly from an individual's medical provider or another medical professional who evaluates the request, directly or indirectly from an individual's religious or spiritual advisors or institutions, and from management officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be

disclosed outside MSPB as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys; or another Federal agency conducting litigation or in actual or reasonably anticipated proceedings before any court, adjudicative, or administrative body; another party or potential party or the party's or potential party's authorized representative in litigation before a court, adjudicative, or administrative body; or to a court, adjudicative, or administrative body. Such disclosure is permitted only when it is relevant or necessary to the litigation or proceeding, and one of the following is a party to the litigation or has an interest in such litigation:

- (1) MSPB, or any component thereof;
- (2) Any employee or former employee of MSPB in his or her official capacity;
- (3) Any employee or former employee of MSPB in his or her individual capacity where DOJ or MSPB has agreed to represent the employee; or
- (4) The United States, a Federal agency, or another party in litigation before a court, adjudicative, or administrative body, upon the MSPB General Counsel's approval, pursuant to 5 CFR part 1216 or otherwise.

b. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates or is relevant to a violation or potential violation of civil or criminal law or regulation.

c. To a member of Congress or the White House from the record of an individual in response to an inquiry made at the request of the individual to whom the record pertains.

d. To the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

e. To appropriate agencies, entities, and persons when (1) MSPB suspects or has confirmed that there has been a breach of the system of records; (2) MSPB has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, MSPB (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with MSPB's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

f. To another Federal agency or Federal entity, when MSPB determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

g. To contractors, grantees, experts, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, or other assignment for MSPB when MSPB determines that it is necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to MSPB employees.

h. To another Federal agency or commission with responsibility for labor or employment relations or other issues, including equal employment opportunity and reasonable accommodation issues, when that agency or commission has authority relating to reasonable accommodation.

i. To an authorized appeal grievance examiner, formal complaints examiner, administrative judge or administrative law judge, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an individual who requested a reasonable accommodation or other appropriate modification.

j. To another Federal agency, including but not limited to the Equal Employment Opportunity Commission and the Office of Special Counsel, to obtain advice regarding statutory, regulatory, policy, and other requirements related to requests for reasonable accommodation, and to evaluate and report on the agency's performance responding to requests for reasonable accommodation.

k. To a Federal agency or entity authorized to procure assistive technologies and services in response to a request for reasonable accommodation.

l. To first aid, medical, and safety personnel if the individual's medical condition requires emergency treatment.

m. To another Federal agency or oversight body charged with evaluating MSPB's compliance with the laws,

regulations, and policies governing reasonable accommodation requests.

n. To another Federal agency pursuant to a written agreement with MSPB to provide services (such as medical evaluations), when necessary, in support of reasonable accommodation decisions.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records in this system are stored electronically on MSPB's local area network or with FedRAMP-authorized cloud service providers. Access is limited to a small number of authorized personnel at MSPB. In addition, if paper records exist, they are stored in locked file cabinets and/or access-restricted offices.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name or another unique personal identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records maintained in this system of records are subject to NARA General Records Schedule (GRS) 2.3 (Employee Relations Records), Item 20 (Reasonable accommodation case files). NARA GRS 2.3 instructs disposition three years after employee separation from the agency or all appeals are concluded, whichever is later, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in the system are protected from unauthorized access and misuse through various administrative, technical, and physical security measures, such as access controls, mandatory security and privacy training, encryption, multi-factor authentication, security guards, and locked offices.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of and access to their records in this system of records may submit a request in writing to the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419. Individuals requesting access must comply with MSPB's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 1205).

CONTESTING RECORD PROCEDURES:

Individuals may request that records about them be amended by writing to the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M

Street NW, Washington, DC 20419. Individuals requesting amendment must follow MSPB's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 1205).

NOTIFICATION PROCEDURES:

See Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

MSPB—3, Reasonable Accommodations, 86 FR 73001 (Dec. 23, 2021).

[FR Doc. 2024–31521 Filed 1–2–25; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 24–080]

National Aeronautics and Space Administration Assurance of Civil Rights Compliance

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of a renewal for 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 Hault, 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

The National Aeronautics and Space Administration (NASA) Office of

Diversity and Equal Opportunity and the Office of Procurement, in accordance with title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, requires grant awardees to submit an assurance of non-discrimination (NASA Form 1206) as part of their initial grant application package. The requirement for assurance of nondiscrimination compliance associated with federally assisted programs is long standing, derives from civil rights implementing regulations, and extends to the grant recipient's sub-grantees, contractors, successors, transferees, and assignees. Grant selectees are required to submit compliance information triennially when their award period exceeds 36 consecutive months. This information collection will also be used to enable NASA to conduct post-award civil rights compliance reviews.

II. Methods of Collection

Electronic.

III. Data

Title: NASA Assurance of Civil Rights Compliance.

OMB Number: 2700–0148.

Type of review: Extension of a previously approved information collection.

Affected Public: Business, other for-profit, or not-for-profit.

Estimated Annual Number of Activities: 250.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 250.

Estimated Time per Response: 4 hours.

Estimated Total Annual Burden Hours: 1,000 hours.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection.

They will also become a matter of public record.

Stacey Hoult,

PRA Clearance Officer, National Aeronautics and Space Administration.

[FR Doc. 2024–31551 Filed 1–2–25; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–263; NRC–2023–0031]

Northern States Power Company, a Minnesota Corporation; Monticello Nuclear Generating Plant, Unit 1; Subsequent License Renewal and Record of Decision

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Subsequent Renewed Facility Operating License No. DPR–22 to Northern States Power Company, a Minnesota corporation (NSPM, or the licensee), for Monticello Nuclear Generating Plant, Unit 1 (Monticello). In addition, the NRC has prepared a record of decision (ROD) that supports the NRC’s decision to issue Subsequent Renewed Facility Operating License No. DPR–22.

DATES: The Subsequent Renewed Facility Operating License No. DPR–22 was issued on December 30, 2024.

ADDRESSES: Please refer to Docket ID NRC–2023–0031 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2023–0031. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to

PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

- *NRC’s PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Marieliz Johnson, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5861; email: Marieliz.Johnson@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Discussion

Notice is hereby given that the NRC has issued Subsequent Renewed Facility Operating License No. DPR–22 to Northern States Power Company, a Minnesota corporation (NSPM, the licensee), for Monticello Nuclear Generating Plant, Unit 1 (Monticello). NSPM is the operator of the facility. Subsequent Renewed Facility Operating License No. DPR–22 authorizes operation of Monticello by NSPM at reactor core power levels not in excess of 2,004 megawatts thermal, in accordance with the provisions of the Monticello subsequent renewed license and technical specifications. Notice is also given that the record of decision (ROD) that supports the NRC’s decision to issue Subsequent Renewed Facility Operating License No. DPR–22 is available in the “Availability of Documents” section of this document.

As discussed in the ROD and the final site-specific environmental impact statement (EIS), published as NUREG–1437, Supplement 26, Second Renewal, “Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 26, Second Renewal, Regarding Subsequent License Renewal for Monticello Nuclear Generating Plant, Unit 1, Final Report,” dated November 2024, the final EIS documents the NRC staff’s environmental review, including the determination that the adverse environmental impacts of subsequent license renewal for Monticello are not so great that preserving the option of subsequent license renewal for energy planning decisionmakers would be unreasonable. The final EIS conclusion is based on (1) information provided in the environmental report submitted by

NSPM, as supplemented, (2) the NRC staff’s consultations with Federal, State, local, and Tribal agencies, (3) the NRC staff’s independent environmental review, (4) the NRC staff’s consideration of public comments received during the scoping process and on the 2024 draft site-specific EIS, and (5) consideration of new and modified Category 1 and Category 2 environmental issues identified in Revision 2 to NUREG–1437, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (August 2024). Monticello is a single-cycle, forced circulation, General Electric BWR–3, low power density boiling water reactor (BWR), located on a site situated on the southern bank of the Mississippi River in Monticello, Minnesota, approximately 35 miles northwest of Minneapolis, Minnesota. NSPM submitted its application for the subsequent renewed license, “Monticello Nuclear Generating Plant Unit 1 Subsequent License Renewal Application,” dated January 9, 2023, as supplemented by letters through February 29, 2024 (see Availability of Documents” section of this document). The NRC staff has determined that NSPM’s application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and NRC’s regulations. As required by the Act and NRC regulations in chapter 1 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC has made appropriate findings, which are set forth in the subsequent renewed license.

A public notice of the NRC’s acceptance for docketing of the subsequent renewed license application and an opportunity for a hearing was published in the **Federal Register** on March 3, 2023 (88 FR 13474). Further, a notice of intent to prepare a site-specific EIS and conduct environmental scoping was published on March 10, 2023 (88 FR 15103). On March 18, 2024, the NRC staff issued its Safety Evaluation Report concerning the Monticello subsequent license renewal application. In April 2024, the NRC staff issued a draft site-specific EIS for public comment, providing the preliminary results of the staff’s environmental evaluation of the Monticello SLR application. A notice of availability of the site-specific draft EIS was published in the **Federal Register** on April 24, 2024 (89 FR 31225). On November 15, 2024, the NRC staff issued a final site-specific EIS, providing its final evaluation of the environmental impacts of Monticello subsequent license renewal; a notice of issuance was

published in the **Federal Register** on November 21, 2024 (89 FR 92185).

For further details with respect to this action, see (1) NSPM's subsequent license renewal application for Monticello, dated January 9, 2023, as supplemented by letters dated through

February 29, 2024; (2) the NRC's safety evaluation report, dated March 2024; (3) the NRC's final EIS (NUREG-1437, Supplement 26, Second Renewal) for Monticello dated November 2024; and (4) the NRC's ROD, issued in December 2024.

II. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS, as indicated.

Document description	ADAMS accession No.
Record of Decision—Subsequent License Renewal Application Review—Monticello Nuclear Generating Plant, Unit 1, dated December 30, 2024.	ML24324A212.
Safety Evaluation Report—Subsequent License Renewal Application Review—Monticello Nuclear Generating Plant, Unit 1, dated March 18, 2024.	ML24077A001.
NUREG-1437, Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 26, Second Renewal, Regarding Subsequent License Renewal for Monticello Nuclear Generating Plant, Unit 1, Final Report, dated November 2024.	ML24309A221.
Monticello Nuclear Generating Plant, Unit 1—Subsequent License Renewal Application, dated January 9, 2023	ML23009A352 (Package).
Monticello Nuclear Generating Plant, Unit 1—Subsequent License Renewal Application Supplement 1, dated April 3, 2023.	ML23094A136.
Monticello Nuclear Generating Plant, Unit 1—Subsequent License Renewal Application Supplement 2, dated June 26, 2023.	ML23177A218.
NUREG-1437, Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants Supplement 26, Second Renewal Regarding Subsequent License Renewal for Monticello Nuclear Generating Plant, Unit 1, Draft Report for Comment, dated April 2024.	ML24102A276.
Monticello Nuclear Generating Plant, Unit 1—License Renewal Application Supplement 3, dated July 11, 2023	ML23193B026.
Monticello Nuclear Generating Plant, Unit 1—Subsequent License Renewal Application Supplement 4 and Responses to Request for Confirmation of Information—Set 1, dated July 18, 2023.	ML23199A154.
Monticello Nuclear Generating Plant, Unit 1—Subsequent License Renewal Application Response to Request for Additional Information Set 1, dated August 15, 2023.	ML23227A175.
Monticello Nuclear Generating Plant, Unit 1—Subsequent License Renewal Application Supplement 5, dated August 28, 2023.	ML23240A695.
NUREG-1437, Revision 2, Volumes 1, 2, and 3, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, dated August 2024.	ML24087A133 (Package).
Monticello Nuclear Generating Plant, Unit 1—Subsequent License Renewal Application Response to Request for Additional Information Set 2 and Supplement 6, dated September 5, 2023.	ML23248A474.
Monticello Nuclear Generating Plant, Unit 1—Subsequent License Renewal Application Response to Request for Additional Information Set 3, dated September 22, 2023.	ML23265A158.
Monticello Nuclear Generating Plant, Unit 1—Subsequent License Renewal Application Response to Request for Confirmation of Information Set 2, dated October 3, 2023.	ML23276B433.
Monticello Nuclear Generating Plant, Unit 1—Subsequent License Renewal Application Response to Request for Additional Information Round 2—Set 1, dated November 9, 2023.	ML23313A158.
Monticello Nuclear Generating Plant, Unit 1—Subsequent License Renewal Application Supplement 7, dated November 30, 2023.	ML23334A147.
Monticello Nuclear Generating Plant, Unit 1—Subsequent License Renewal Application Supplement 8, dated January 11, 2024.	ML24012A051.
Monticello Nuclear Generating Plant, Unit 1—Subsequent License Renewal Application Annual Update 1 and Supplement 9, dated February 29, 2024.	ML24060A269.

Dated: December 30, 2024.

For the Nuclear Regulatory Commission.

Michele Sampson,

Director, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.

[FR Doc. 2024-31579 Filed 1-2-25; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025-999 and K2025-998; MC2025-1000 and K2025-999; MC2025-1001 and K2025-1000; MC2025-1002 and K2025-1001; MC2025-1003 and K2025-1002; MC2025-1004 and K2025-1003; MC2025-1005 and K2025-1004; MC2025-1006 and K2025-1005; MC2025-1007 and K2025-1006; MC2025-1010 and K2025-1009]

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 6, 2025.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://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 (<https://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)*: MC2025–999 and K2025–998; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1201 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 26, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Katalin Clendenin; *Comments Due*: January 6, 2025.

2. *Docket No(s)*: MC2025–1000 and K2025–999; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1202 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 26, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Katalin Clendenin; *Comments Due*: January 6, 2025.

3. *Docket No(s)*: MC2025–1001 and K2025–1000; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1203 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 26, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Kenneth Moeller; *Comments Due*: January 6, 2025.

4. *Docket No(s)*: MC2025–1002 and K2025–1001; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1204 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 26, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Kenneth Moeller; *Comments Due*: January 6, 2025.

5. *Docket No(s)*: MC2025–1003 and K2025–1002; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1205 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 26, 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 6, 2025.

6. *Docket No(s)*: MC2025–1004 and K2025–1003; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1206 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 26, 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 6, 2025.

7. *Docket No(s)*: MC2025–1005 and K2025–1004; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1207 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 26, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Manon Boudreault; *Comments Due*: January 6, 2025.

8. *Docket No(s)*: MC2025–1006 and K2025–1005; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1208 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 26, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Manon Boudreault; *Comments Due*: January 6, 2025.

9. *Docket No(s)*: MC2025–1007 and K2025–1006; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1209 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 26, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: January 6, 2025.

10. *Docket No(s)*: MC2025–1010 and K2025–1009; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1212 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 26, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: January 6, 2025.

III. Summary Proceeding(s)

None. See Section II for public proceedings.

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).

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–31562 Filed 1–2–25; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102044; File No. SR–CboeBZX–2024–124]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 21.15(b) (Exchange Data Products) To Adopt Cboe Timestamping Service, which is a Market Data Service Comprised of Two Distinct Market Data Reports

December 27, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on December 13, 2024, Cboe BZX Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Item I below, which Item has been substantially prepared by the Exchange. The Exchange has designated this proposal for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b–4(f) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 21.15(b) (Exchange Data Products) to adopt Cboe Timestamping Service, which is a market data service comprised of two distinct market data reports. The Cboe Timestamping Service will provide timestamp information for orders, quotes and cancels for market participants. More specifically, the Cboe

Timestamping Service reports will provide various timestamps relating to the message lifecycle throughout the exchange system. The first report—the Missed Liquidity Report—will cover order and quote messages and the second report—Cancels Report—will cover cancel messages. The proposed reports are optional products that will be available to all Members and Members may opt to choose both reports, one report, or neither report. Corresponding fees will be assessed based on the number of reports selected.⁵ The text of the proposed rule change is provided in Exhibit 5.

The proposed rule change, including the Exchange’s statement of the purpose of, and statutory basis for, the proposed rule change, is available on the Exchange’s website at http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/, at the Exchange’s Office of the Secretary, and on the Commission’s website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-CboeBZX-2024-124.

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.⁶ Comments may be submitted electronically by using the Commission’s internet comment form (https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-CboeBZX-2024-124) or by sending an email to rule-comments@sec.gov. Please include file number SR–CboeBZX–2024–124 on the subject line. Alternatively, paper comments may be sent to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to file number SR–CboeBZX–2024–

⁵ The Exchange plans to submit a separate filing with the Commission pursuant to Section 19(b)(1) to propose fees for the Missed Liquidity Report and Cancels Report.

⁶ Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of SRO.

124. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-CboeBZX-2024-124). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2024–124 and should be submitted on or before January 24, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–31506 Filed 1–2–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102039; File No. SR–NYSENAT–2024–33]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of Proposed Change To Amend the Connectivity Fee Schedule

December 27, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on December 17, 2024, NYSE National, Inc. (“NYSE National” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule (“Fee Schedule”) to add connectivity to the New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc.

⁷ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b–4(f). At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

trading floors. The proposed change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to add connectivity to the New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc. trading floors ("Trading Floors").

A User⁴ may wish to have a connection between the Mahwah, New Jersey data center ("MDC")⁵ and a Trading Floor. A connection between the MDC and a Trading Floor may be between the User and itself or between the User and a third party. The User may use such connection for receiving and transmitting trading-related data (including pre- and post-trade data and clearing information) or providing services to individuals physically located on the floor (including access to back-office systems), as determined by the User.

The Exchange proposes to add an option for such a connection to the Fee Schedule. Specifically, the Exchange proposes to amend the Fee Schedule to add unicast connections through which a User can establish a connection between the MDC and a Trading Floor over dedicated bandwidth ("TF Connections").⁶ Presently, a TF Connection can be in the form of a virtual control circuit between the MDC and a single Trading Floor ("TF VCC"), or a virtual routing and forwarding service between the MDC and one or more Trading Floors ("TF VRF"). A TF Connection may be used for any purpose: neither FIDS nor the Exchange has any visibility into a TF Connection.

All TF Connections must be authorized by both parties to the

connection before FIDS will establish a connection. Establishing a User's TF Connection will not give FIDS or the Exchange any right to use the relevant exchange's system. A TF Connection will not provide direct access or order entry to the Exchange's execution system, and a User's TF Connection will not be through the Exchange's execution system.

TF Connections are offered at a monthly fee based on bandwidth requirements, which fee is consistent with the monthly fees charged for VCC connections and the same as those charged for connectivity to Third Party Systems.⁷ When a User requests a TF Connection, it identifies the size of bandwidth connection it requires, and the monthly charge for the TF Connection varies based on the size of the bandwidth. The calculation of the monthly fee may differ based on whether the form chosen by the User is a TF VCC or TF VRF. This is because the TF VCC connects the MDC to one Trading Floor, while the TF VRF may connect the MDC to more than one Trading Floor. Accordingly, the Exchange proposes to add a note to the Fee Schedule to clarify the difference.

To make the change, the Exchange proposes to amend the Fee Schedule as follows (all text new):

Type of service	Description (Mb)	Amount of charge (monthly charge)
Connectivity to Trading Floor*	1	\$200
	3	400
	5	500
	10	800
	25	1,200
	50	1,800
	100	2,500

* The amount of the charge for Connectivity to Trading Floor may differ based on the connectivity chosen: (a) a virtual control circuit between the Mahwah data center and a single Trading Floor ("VCC"), or (b) a virtual routing and forwarding service between the Mahwah data center and one or more Trading Floors ("VRF"). Specifically, if the User chooses VCCs or combination of a VCC and VRF for connectivity to several Trading Floors, it will be charged separately for each connection. If the User chooses one VRF for connectivity to multiple trading floors, the User will be charged for one connection.

General

The proposed rule change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users.

FIDS does not expect that the proposed rule change will result in new Users.

Use of the services proposed in this filing are completely voluntary and available to all Users on a non-discriminatory basis.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

⁴For purposes of the Exchange's colocation services, a "User" means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 at n.9 (June 6, 2018) (SR-NYSE-2018-07). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the New York Stock Exchange LLC, NYSE American

LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (together, the "Affiliate SROs"). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the change described herein. See SR-NYSE-2024-81, SR-NYSEAMER-2024-80, SR-NYSEARCA-2024-113, and SR-NYSECHX-2024-37.

⁵Through its Fixed Income and Data Services ("FIDS") business, Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE.

⁶Information flows over existing network connections in two formats: "unicast" format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange; and "multicast" format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast.

⁷See Connectivity Fee Schedule—A. Co-Location Fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁰ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable.

In considering the reasonableness of proposed services and fees, the Commission's market-based test considers "whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees."¹¹ If the Exchange meets that burden, "the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder."¹² Here, the

Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the third-party vendors are not at a competitive disadvantage created by the Exchange.

In 2013 the MDC opened two meet-me-rooms to telecommunications service providers ("Telecoms"),¹³ to enable Telecoms to offer circuits into the MDC. The TF Connections compete with circuits currently offered by the 16 third-party Telecoms that have installed their equipment in the MDC's two meet-me-rooms.

The Telecom circuits (including any circuit-based network services a Telecom may offer) are reasonable substitutes for TF Connections. The Commission has recognized that products do not need to be identical to be considered substitutable; it is sufficient that they be substantially similar.¹⁴ Because Telecoms can connect to the Trading Floors, the TF Connections and the circuits provided by the Telecoms perform the same function: connecting into and out of the MDC and the Trading Floors. The providers of the TF Connection and Telecom circuits design them to perform with particular combinations of latency, bandwidth, price, termination point, and other factors that they believe will attract Users, and Users choose from among these competing services on the basis of their business needs.

The TF Connections are sufficiently similar substitutes to the circuits offered by the 16 Telecoms even though the TF Connections all terminate on a Trading Floor while circuits from the 16 Telecoms could terminate on a Trading Floor or other locations. While neither the Exchange nor FIDS knows the end point of any particular Telecom circuit, the Exchange understands that the Telecoms can offer circuits terminating in any location, including the Trading Floors. Moreover, the Telecoms may offer smaller circuits that are the same as or similar size to the TF Connections. Ultimately, Users can choose to configure their pathway in the way that best suits their business needs.

The TF Connections do not have a distance or latency advantage over the Telecoms' circuits within the MDC. FIDS has normalized (a) the distance between the meet-me-rooms and the colocation halls and (b) the distance

between the rooms where the FIDS circuits and the TF Connections exit the MDC and the colocation halls. As a result, a User choosing whether to use the TF Connections or Telecom circuits does not face any difference in the distances or latency within the MDC. The Exchange is not aware of any differences under its control that give the Exchange a latency advantage.

The Exchange also believes that the TF Connections do not have any latency or bandwidth advantage over the Telecoms' circuits outside of the MDC. The Exchange believes that the Telecoms operating in the meet-me-rooms offer circuits with a variety of latency and bandwidth specifications, some of which may exceed the specifications of the TF Connections.¹⁵ The Exchange believes that Users consider these latency and bandwidth factors—as well as other factors, such as price and termination point—in determining which offerings will best serve their business needs.

In sum, the Exchange is not aware of anything that would make the Telecoms' circuits inadequate substitutes for the TF Connections.

Nor does the Exchange have a competitive advantage over any third-party competitors by virtue of the fact that it owns and operates the MDC's meet-me-rooms. In most cases, circuits coming out of the MDC are provided by the Telecoms.¹⁶ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level¹⁷ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEArca-2020-08, SR-NYSECHX-2020-02, SR-NYSENat-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEArca-2020-15, SR-NYSECHX-2020-05, SR-NYSENat-2020-08) ("Wireless Approval Order"), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) ("2008 ArcaBook Approval Order"). See *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

¹² Wireless Approval Order, *supra* note 11, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 11, at 74781.

¹³ Telecoms are licensed by the Federal Communications Commission and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

¹⁴ See 2008 ArcaBook Approval Order, *supra* note 11, at 74789 and note 295 (recognizing that products need not be identical to be substitutable).

¹⁵ The specifications of FIDS's competitors' circuits are not publicly known. The Exchange understands that FIDS has gleaned any information it has about its competitors through anecdotal communications, by observing customers' purchasing choices in the competitive market, and from its own experience as a purchaser of circuits from telecommunications providers to build FIDS's own networks.

¹⁶ Note that in the case of wireless connectivity, a User still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

¹⁷ See Securities Exchange Act Release No. 98002 (July 26, 2023), 88 FR 50232 (August 1, 2023) (SR-NYSENat-2023-12) ("MMR Notice").

MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.¹⁸ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis the Telecoms. They are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

If the Exchange were to set the price of the TF Connections at a level that Users found to be too high, Users would likely respond by choosing one of the many alternative options offered by the 16 Telecoms. Conversely, if the Exchange were to offer the TF Connections at prices aimed at undercutting comparable Telecom circuits, the Telecoms might reassess whether it makes financial sense for them to continue to participate in the MDC's meet-me-rooms. Their departure might negatively impact User participation in colocation and on the Exchange. As a result, the Exchange is not motivated to undercut the prices of Telecom circuits.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because the Exchange believes that a substantially similar substitute for TF Connectivity is available, and the Exchange has not

placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the TF Connectivity are reasonable.¹⁹

For these reasons, the proposed change is reasonable.

The Proposed Change Is Equitable

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between market participants. Rather, it would apply to all market participants equally.

In addition, the Exchange believes that the proposal is equitable because only Users that voluntarily select to receive TF Connectivity would be charged for it. The proposed TF Connectivity is available to all Users on an equal basis, and all Users that voluntarily choose to purchase TF Connectivity would be charged the same amount for that circuit as all other market participants purchasing that type of TF Connectivity.

The Exchange believes that it is equitable that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering these varied technological options, FIDS provides potential Users more choices from which to choose the option that would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it easier for potential purchasers of the service to assess what connectivity will best serve them.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntary and the Fee Schedule will be applied uniformly to all market participants.

In addition, the Exchange believes that the proposal is not unfairly discriminatory because only Users that voluntarily select to receive TF Connectivity would be charged for it. TF Connectivity is available to all market participants on an equal basis, and all

Users that voluntarily choose to purchase TF Connectivity are charged the same amount as all other market participants purchasing that type of TF Connectivity.

The Exchange believes that it is not unfairly discriminatory that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering these varied technological options, FIDS provides potential Users more choices from which to choose the option that would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it easier for potential purchasers of the service to assess what connectivity will best serve them.

For the reasons above, the proposed change does not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.²⁰

The proposed change would not impose a burden on competition among national securities exchanges or among members of the Exchange.

The proposed change would enhance competition in the market for circuits transmitting data into and out of colocation at the MDC to the Trading Floors, by adding TF Connectivity, in addition to the 16 Telecoms that also sell circuits to Users. TF Connectivity does not have any latency, bandwidth, or other advantage over the Telecoms' circuits. The proposal would not burden competition in the sale of such circuits, but rather, enhance it by providing Users with an additional choice for their circuit needs.

The Exchange believes that it would not be a burden on competition that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering these varied technological options, FIDS provides potential Users more choices from which to choose the option that

¹⁸ See *id.* at 50235. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

¹⁹ See Wireless Approval Order, *supra* note 11.

²⁰ 15 U.S.C. 78f(b)(8).

would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it easier for potential purchasers of the service to assess what connectivity will best serve them

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSENAT-2024-33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-NYSENAT-2024-33. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSENAT-2024-33 and should be submitted on or before January 24, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-31501 Filed 1-2-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102046; File No. SR-C2-2024-022]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Cboe Timestamping Service Which is a Market Data Service Comprised of Two Distinct Market Data Reports

December 27, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 13, 2024, Cboe C2 Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Item I below, which Item has been substantially prepared by the Exchange. The Exchange has designated this proposal for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act³ and Rule

19b-4(f) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt the Cboe Timestamping Service, which is a market data service comprised of two distinct market data reports. The Cboe Timestamping Service will provide timestamp information for orders,⁵ quotes and cancels for market participants. More specifically, the Cboe Timestamping Service reports will provide various timestamps relating to the message lifecycle throughout the exchange system. The first report—the Missed Liquidity Report—will cover order and quote messages and the second report—Cancels Report—will cover cancel messages. The proposed reports are optional products that will be available to all Members and Members may opt to choose both reports, one report, or neither report. Corresponding fees will be assessed based on the number of reports selected.⁶

The proposed rule change, including the Exchange's statement of the purpose of, and statutory basis for, the proposed rule change, is available on the Exchange's website at http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/, at the Exchange's Office of the Secretary, and on the Commission's website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-C2-2024-022.

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.⁷

⁴ 17 CFR 240.19b-4(f). At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

⁵ Orders shall include both complex and simple orders.

⁶ The Exchange plans to submit a separate filing with the Commission pursuant to Section 19(b)(1) to propose fees for the Missed Liquidity Report and Cancels Report.

⁷ Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

Comments may be submitted electronically by using the Commission's internet comment form (https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-C2-2024-022) or by sending an email to rule-comments@sec.gov. Please include file number SR-C2-2024-022 on the subject line. Alternatively, paper comments may be sent to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-C2-2024-022. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-C2-2024-022). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-C2-2024-022 and should be submitted on or before January 24, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Vanessa A. Countryman,
Secretary.

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Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of SRO.

⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102041; File No. SR-NYSEARCA-2024-113]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend the Connectivity Fee Schedule

December 27, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 17, 2024, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule ("Fee Schedule") to add connectivity to the New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca trading floors. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to add connectivity to the

New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca trading floors ("Trading Floors").

A User⁴ may wish to have a connection between the Mahwah, New Jersey data center ("MDC")⁵ and a Trading Floor. A connection between the MDC and a Trading Floor may be between the User and itself or between the User and a third party. The User may use such connection for receiving and transmitting trading-related data (including pre- and post-trade data and clearing information) or providing services to individuals physically located on the floor (including access to back-office systems), as determined by the User.

The Exchange proposes to add an option for such a connection to the Fee Schedule. Specifically, the Exchange proposes to amend the Fee Schedule to add unicast connections through which a User can establish a connection between the MDC and a Trading Floor over dedicated bandwidth ("TF Connections").⁶ Presently, a TF Connection can be in the form of a virtual control circuit between the MDC and a single Trading Floor ("TF VCC"), or a virtual routing and forwarding service between the MDC and one or more Trading Floors ("TF VRF"). A TF Connection may be used for any purpose: neither FIDS nor the Exchange has any visibility into a TF Connection.

All TF Connections must be authorized by both parties to the connection before FIDS will establish a connection. Establishing a User's TF Connection will not give FIDS or the Exchange any right to use the relevant exchange's system. A TF Connection will not provide direct access or order

⁴ For purposes of the Exchange's colocation services, a "User" means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR-NYSEARCA-2015-82). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc. and NYSE National, Inc. (together, the "Affiliate SROs"). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the change described herein. See SR-NYSE-2024-81, SR-NYSEAMER-2024-80, SR-NYSECHX-2024-37, and SR-NYSEENAT-2024-33.

⁵ Through its Fixed Income and Data Services ("FIDS") business, Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE.

⁶ Information flows over existing network connections in two formats: "unicast" format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange; and "multicast" format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

entry to the Exchange's execution system, and a User's TF Connection will not be through the Exchange's execution system.

TF Connections are offered at a monthly fee based on bandwidth requirements, which fee is consistent with the monthly fees charged for VCC connections and the same as those charged for connectivity to Third Party

Systems.⁷ When a User requests a TF Connection, it identifies the size of bandwidth connection it requires, and the monthly charge for the TF Connection varies based on the size of the bandwidth. The calculation of the monthly fee may differ based on whether the form chosen by the User is a TF VCC or TF VRF. This is because

the TF VCC connects the MDC to one Trading Floor, while the TF VRF may connect the MDC to more than one Trading Floor. Accordingly, the Exchange proposes to add a note to the Fee Schedule to clarify the difference.

To make the change, the Exchange proposes to amend the Fee Schedule as follows (all text new):

Type of service	Description	Amount of charge
Connectivity to Trading Floor *	1Mb	\$200 monthly charge.
	3Mb	\$400 monthly charge.
	5Mb	\$500 monthly charge.
	10Mb	\$800 monthly charge.
	25Mb	\$1,200 monthly charge.
	50Mb	\$1,800 monthly charge.
	100Mb	\$2,500 monthly charge.

* The amount of the charge for Connectivity to Trading Floor may differ based on the connectivity chosen: (a) a virtual control circuit between the Mahwah data center and a single Trading Floor ("VCC"), or (b) a virtual routing and forwarding service between the Mahwah data center and one or more Trading Floors ("VRF"). Specifically, if the User chooses VCCs or combination of a VCC and VRF for connectivity to several Trading Floors, it will be charged separately for each connection. If the User chooses one VRF for connectivity to multiple trading floors, the User will be charged for one connection.

General

The proposed rule change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

Use of the services proposed in this filing are completely voluntary and available to all Users on a non-discriminatory basis.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁰ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change is Reasonable

The Exchange believes that the proposed rule change is reasonable.

In considering the reasonableness of proposed services and fees, the Commission's market-based test considers "whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees."¹¹ If the Exchange meets that burden, "the Commission will find that its proposal is consistent with the Act

unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder."¹² Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the third-party vendors are not at a competitive disadvantage created by the Exchange.

In 2013 the MDC opened two meet-me-rooms to telecommunications service providers ("Telecoms"),¹³ to enable Telecoms to offer circuits into the MDC. The TF Connections compete with circuits currently offered by the 16 third-party Telecoms that have installed their equipment in the MDC's two meet-me-rooms.

The Telecom circuits (including any circuit-based network services a Telecom may offer) are reasonable substitutes for TF Connections. The Commission has recognized that products do not need to be identical to be considered substitutable; it is sufficient that they be substantially similar.¹⁴ Because Telecoms can connect to the Trading Floors, the TF Connections and the circuits provided by the Telecoms perform the same function: connecting into and out of the

⁷ See Connectivity Fee Schedule—A. Co-Location Fees.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and

Wireless Market Data Connections) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEArca-2020-08, SR-NYSECHX-2020-02, SR-NYSENAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEArca-2020-15, SR-NYSECHX-2020-05, SR-NYSENAT-2020-08) ("Wireless Approval Order"), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) ("2008 ArcaBook Approval Order"). See *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

¹² Wireless Approval Order, *supra* note 11, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 11, at 74781.

¹³ Telecoms are licensed by the Federal Communications Commission and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

¹⁴ See 2008 ArcaBook Approval Order, *supra* note 11, at 74789 and note 295 (recognizing that products need not be identical to be substitutable).

MDC and the Trading Floors. The providers of the TF Connection and Telecom circuits design them to perform with particular combinations of latency, bandwidth, price, termination point, and other factors that they believe will attract Users, and Users choose from among these competing services on the basis of their business needs.

The TF Connections are sufficiently similar substitutes to the circuits offered by the 16 Telecoms even though the TF Connections all terminate on a Trading Floor while circuits from the 16 Telecoms could terminate on a Trading Floor or other locations. While neither the Exchange nor FIDS knows the end point of any particular Telecom circuit, the Exchange understands that the Telecoms can offer circuits terminating in any location, including the Trading Floors. Moreover, the Telecoms may offer smaller circuits that are the same as or similar size to the TF Connections. Ultimately, Users can choose to configure their pathway in the way that best suits their business needs.

The TF Connections do not have a distance or latency advantage over the Telecoms' circuits within the MDC. FIDS has normalized (a) the distance between the meet-me-rooms and the colocation halls and (b) the distance between the rooms where the FIDS circuits and the TF Connections exit the MDC and the colocation halls. As a result, a User choosing whether to use the TF Connections or Telecom circuits does not face any difference in the distances or latency within the MDC. The Exchange is not aware of any differences under its control that give the Exchange a latency advantage.

The Exchange also believes that the TF Connections do not have any latency or bandwidth advantage over the Telecoms' circuits outside of the MDC. The Exchange believes that the Telecoms operating in the meet-me-rooms offer circuits with a variety of latency and bandwidth specifications, some of which may exceed the specifications of the TF Connections.¹⁵ The Exchange believes that Users consider these latency and bandwidth factors—as well as other factors, such as price and termination point—in determining which offerings will best serve their business needs.

In sum, the Exchange is not aware of anything that would make the Telecoms' circuits inadequate substitutes for the TF Connections.

Nor does the Exchange have a competitive advantage over any third-party competitors by virtue of the fact that it owns and operates the MDC's meet-me-rooms. In most cases, circuits coming out of the MDC are provided by the Telecoms.¹⁶ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level¹⁷ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.¹⁸ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis the Telecoms. They are not subject to the Commission's filing requirements, and therefore can freely

change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

If the Exchange were to set the price of the TF Connections at a level that Users found to be too high, Users would likely respond by choosing one of the many alternative options offered by the 16 Telecoms. Conversely, if the Exchange were to offer the TF Connections at prices aimed at undercutting comparable Telecom circuits, the Telecoms might reassess whether it makes financial sense for them to continue to participate in the MDC's meet-me-rooms. Their departure might negatively impact User participation in colocation and on the Exchange. As a result, the Exchange is not motivated to undercut the prices of Telecom circuits.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because the Exchange believes that a substantially similar substitute for TF Connectivity is available, and the Exchange has not placed third party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the TF Connectivity are reasonable.¹⁹

For these reasons, the proposed change is reasonable.

The Proposed Change Is Equitable

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between market participants. Rather, it would apply to all market participants equally.

In addition, the Exchange believes that the proposal is equitable because only Users that voluntarily select to receive TF Connectivity would be charged for it. The proposed TF Connectivity is available to all Users on an equal basis, and all Users that voluntarily choose to purchase TF Connectivity would be charged the same amount for that circuit as all other market participants purchasing that type of TF Connectivity.

¹⁵ The specifications of FIDS's competitors' circuits are not publicly known. The Exchange understands that FIDS has gleaned any information it has about its competitors through anecdotal communications, by observing customers' purchasing choices in the competitive market, and from its own experience as a purchaser of circuits from telecommunications providers to build FIDS's own networks.

¹⁶ Note that in the case of wireless connectivity, a User still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

¹⁷ See Securities Exchange Act Release No. 98000 (July 26, 2023), 88 FR 50244 (August 1, 2023) (SR-NYSEArca-2023-47) ("MMR Notice").

¹⁸ See *id.* at 50246. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

¹⁹ See Wireless Approval Order, *supra* note 11.

The Exchange believes that it is equitable that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering these varied technological options, FIDS provides potential Users more choices from which to choose the option that would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it easier for potential purchasers of the service to assess what connectivity will best serve them.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntary and the Fee Schedule will be applied uniformly to all market participants.

In addition, the Exchange believes that the proposal is not unfairly discriminatory because only Users that voluntarily select to receive TF Connectivity would be charged for it. TF Connectivity is available to all market participants on an equal basis, and all Users that voluntarily choose to purchase TF Connectivity are charged the same amount as all other market participants purchasing that type of TF Connectivity.

The Exchange believes that it is not unfairly discriminatory that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering these varied technological options, FIDS provides potential Users more choices from which to choose the option that would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it easier for potential purchasers of the service to assess what connectivity will best serve them.

For the reasons above, the proposed change does not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.²⁰

The proposed change would not impose a burden on competition among national securities exchanges or among members of the Exchange.

The proposed change would enhance competition in the market for circuits transmitting data into and out of colocation at the MDC to the Trading Floors, by adding TF Connectivity, in addition to the 16 Telecoms that also sell circuits to Users. TF Connectivity does not have any latency, bandwidth, or other advantage over the Telecoms' circuits. The proposal would not burden competition in the sale of such circuits, but rather, enhance it by providing Users with an additional choice for their circuit needs.

The Exchange believes that it would not be a burden on competition that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering these varied technological options, FIDS provides potential Users more choices from which to choose the option that would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it easier for potential purchasers of the service to assess what connectivity will best serve them.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-113 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEARCA-2024-113. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2024-113 and should be submitted on or before January 24, 2025.

²⁰ 15 U.S.C. 78f(b)(8).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–31503 Filed 1–2–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102043; File No. SR–NYSE–2024–81]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend the Connectivity Fee Schedule

December 27, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 1b–4 thereunder,³ notice is hereby given that on December 17, 2024, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule (“Fee Schedule”) to add connectivity to the NYSE, NYSE American LLC, and NYSE Arca, Inc. trading floors. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to add connectivity to the NYSE, NYSE American LLC, and NYSE Arca, Inc. trading floors (“Trading Floors”).

A User⁴ may wish to have a connection between the Mahwah, New Jersey data center (“MDC”)⁵ and a Trading Floor. A connection between the MDC and a Trading Floor may be between the User and itself or between the User and a third party. The User may use such connection for receiving and transmitting trading-related data (including pre- and post-trade data and clearing information) or providing services to individuals physically located on the floor (including access to back-office systems), as determined by the User.

The Exchange proposes to add an option for such a connection to the Fee Schedule. Specifically, the Exchange proposes to amend the Fee Schedule to add unicast connections through which

⁴ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the change described herein. See SR–NYSEAMER–2024–80, SR–NYSEARCA–2024–113, SR–NYSECHX–2024–37, and SR–NYSENAT–2024–33.

⁵ Through its Fixed Income and Data Services (“FIDS”) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE.

a User can establish a connection between the MDC and a Trading Floor over dedicated bandwidth (“TF Connections”).⁶ Presently, a TF Connection can be in the form of a virtual control circuit between the MDC and a single Trading Floor (“TF VCC”), or a virtual routing and forwarding service between the MDC and one or more Trading Floors (“TF VRF”). A TF Connection may be used for any purpose: neither FIDS nor the Exchange has any visibility into a TF Connection.

All TF Connections must be authorized by both parties to the connection before FIDS will establish a connection. Establishing a User’s TF Connection will not give FIDS or the Exchange any right to use the relevant exchange’s system. A TF Connection will not provide direct access or order entry to the Exchange’s execution system, and a User’s TF Connection will not be through the Exchange’s execution system.

TF Connections are offered at a monthly fee based on bandwidth requirements, which fee is consistent with the monthly fees charged for VCC connections and the same as those charged for connectivity to Third Party Systems.⁷ When a User requests a TF Connection, it identifies the size of bandwidth connection it requires, and the monthly charge for the TF Connection varies based on the size of the bandwidth. The calculation of the monthly fee may differ based on whether the form chosen by the User is a TF VCC or TF VRF. This is because the TF VCC connects the MDC to one Trading Floor, while the TF VRF may connect the MDC to more than one Trading Floor. Accordingly, the Exchange proposes to add a note to the Fee Schedule to clarify the difference.

To make the change, the Exchange proposes to amend the Fee Schedule as follows (all text new):

⁶ Information flows over existing network connections in two formats: “unicast” format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange; and “multicast” format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast.

⁷ See Connectivity Fee Schedule—A. Co-Location Fees.

²¹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.1b–4.

Type of service	Description	Amount of charge
Connectivity to Trading Floor *	1 Mb	\$200 monthly charge.
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* The amount of the charge for Connectivity to Trading Floor may differ based on the connectivity chosen: (a) a virtual control circuit between the Mahwah data center and a single Trading Floor ("VCC"), or (b) a virtual routing and forwarding service between the Mahwah data center and one or more Trading Floors ("VRF"). Specifically, if the User chooses VCCs or combination of a VCC and VRF for connectivity to several Trading Floors, it will be charged separately for each connection. If the User chooses one VRF for connectivity to multiple trading floors, the User will be charged for one connection.

General

The proposed rule change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

Use of the services proposed in this filing are completely voluntary and available to all Users on a non-discriminatory basis.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁰ because it provides for the equitable allocation of reasonable dues, fees, and other charges

among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable.

In considering the reasonableness of proposed services and fees, the Commission's market-based test considers "whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees."¹¹ If the Exchange meets that burden, "the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder."¹² Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the third-party vendors are not at a competitive disadvantage created by the Exchange.

In 2013 the MDC opened two meet-me-rooms to telecommunications service providers ("Telecoms"),¹³ to enable Telecoms to offer circuits into

the MDC. The TF Connections compete with circuits currently offered by the 16 third-party Telecoms that have installed their equipment in the MDC's two meet-me-rooms.

The Telecom circuits (including any circuit-based network services a Telecom may offer) are reasonable substitutes for TF Connections. The Commission has recognized that products do not need to be identical to be considered substitutable; it is sufficient that they be substantially similar.¹⁴ Because Telecoms can connect to the Trading Floors, the TF Connections and the circuits provided by the Telecoms perform the same function: connecting into and out of the MDC and the Trading Floors. The providers of the TF Connection and Telecom circuits design them to perform with particular combinations of latency, bandwidth, price, termination point, and other factors that they believe will attract Users, and Users choose from among these competing services on the basis of their business needs.

The TF Connections are sufficiently similar substitutes to the circuits offered by the 16 Telecoms even though the TF Connections all terminate on a Trading Floor while circuits from the 16 Telecoms could terminate on a Trading Floor or other locations. While neither the Exchange nor FIDS knows the end point of any particular Telecom circuit, the Exchange understands that the Telecoms can offer circuits terminating in any location, including the Trading Floors. Moreover, the Telecoms may offer smaller circuits that are the same as or similar size to the TF Connections. Ultimately, Users can choose to configure their pathway in the way that best suits their business needs.

The TF Connections do not have a distance or latency advantage over the Telecoms' circuits within the MDC.

¹¹ Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEArca-2020-08, SR-NYSECHX-2020-02, SR-NYSEArca-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEArca-2020-15, SR-NYSECHX-2020-05, SR-NYSEArca-2020-08) ("Wireless Approval Order"), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) ("2008 ArcaBook Approval Order"). See *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

¹² Wireless Approval Order, *supra* note 11, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 11, at 74781.

¹³ Telecoms are licensed by the Federal Communications Commission and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

¹⁴ See 2008 ArcaBook Approval Order, *supra* note 11, at 74789 and note 295 (recognizing that products need not be identical to be substitutable).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(4).

FIDS has normalized (a) the distance between the meet-me-rooms and the colocation halls and (b) the distance between the rooms where the FIDS circuits and the TF Connections exit the MDC and the colocation halls. As a result, a User choosing whether to use the TF Connections or Telecom circuits does not face any difference in the distances or latency within the MDC. The Exchange is not aware of any differences under its control that give the Exchange a latency advantage.

The Exchange also believes that the TF Connections do not have any latency or bandwidth advantage over the Telecoms' circuits outside of the MDC. The Exchange believes that the Telecoms operating in the meet-me-rooms offer circuits with a variety of latency and bandwidth specifications, some of which may exceed the specifications of the TF Connections.¹⁵ The Exchange believes that Users consider these latency and bandwidth factors—as well as other factors, such as price and termination point—in determining which offerings will best serve their business needs.

In sum, the Exchange is not aware of anything that would make the Telecoms' circuits inadequate substitutes for the TF Connections.

Nor does the Exchange have a competitive advantage over any third-party competitors by virtue of the fact that it owns and operates the MDC's meet-me-rooms. In most cases, circuits coming out of the MDC are provided by the Telecoms.¹⁶ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level¹⁷ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits

at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.¹⁸ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis the Telecoms. They are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

If the Exchange were to set the price of the TF Connections at a level that Users found to be too high, Users would likely respond by choosing one of the many alternative options offered by the 16 Telecoms. Conversely, if the Exchange were to offer the TF Connections at prices aimed at undercutting comparable Telecom circuits, the Telecoms might reassess whether it makes financial sense for them to continue to participate in the MDC's meet-me-rooms. Their departure might negatively impact User participation in colocation and on the Exchange. As a result, the Exchange is not motivated to undercut the prices of Telecom circuits.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because the

Exchange believes that a substantially similar substitute for TF Connectivity is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the TF Connectivity are reasonable.¹⁹

For these reasons, the proposed change is reasonable.

The Proposed Change Is Equitable

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between market participants. Rather, it would apply to all market participants equally.

In addition, the Exchange believes that the proposal is equitable because only Users that voluntarily select to receive TF Connectivity would be charged for it. The proposed TF Connectivity is available to all Users on an equal basis, and all Users that voluntarily choose to purchase TF Connectivity would be charged the same amount for that circuit as all other market participants purchasing that type of TF Connectivity.

The Exchange believes that it is equitable that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering these varied technological options, FIDS provides potential Users more choices from which to choose the option that would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it easier for potential purchasers of the service to assess what connectivity will best serve them.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntary and the Fee Schedule will be applied uniformly to all market participants.

In addition, the Exchange believes that the proposal is not unfairly discriminatory because only Users that voluntarily select to receive TF

¹⁵ The specifications of FIDS's competitors' circuits are not publicly known. The Exchange understands that FIDS has gleaned any information it has about its competitors through anecdotal communications, by observing customers' purchasing choices in the competitive market, and from its own experience as a purchaser of circuits from telecommunications providers to build FIDS's own networks.

¹⁶ Note that in the case of wireless connectivity, a User still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

¹⁷ See Securities Exchange Act Release No. 97998 (July 26, 2023), 88 FR 50238 (August 1, 2023) (SR-NYSE-2023-27) ("MMR Notice").

¹⁸ See *id.* at 50241. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

¹⁹ See Wireless Approval Order, *supra* note 11.

Connectivity would be charged for it. TF Connectivity is available to all market participants on an equal basis, and all Users that voluntarily choose to purchase TF Connectivity are charged the same amount as all other market participants purchasing that type of TF Connectivity.

The Exchange believes that it is not unfairly discriminatory that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering these varied technological options, FIDS provides potential Users more choices from which to choose the option that would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it easier for potential purchasers of the service to assess what connectivity will best serve them.

For the reasons above, the proposed change does not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.²⁰

The proposed change would not impose a burden on competition among national securities exchanges or among members of the Exchange.

The proposed change would enhance competition in the market for circuits transmitting data into and out of colocation at the MDC to the Trading Floors, by adding TF Connectivity, in addition to the 16 Telecoms that also sell circuits to Users. TF Connectivity does not have any latency, bandwidth, or other advantage over the Telecoms' circuits. The proposal would not burden competition in the sale of such circuits, but rather, enhance it by providing Users with an additional choice for their circuit needs.

The Exchange believes that it would not be a burden on competition that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering

these varied technological options, FIDS provides potential Users more choices from which to choose the option that would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it easier for potential purchasers of the service to assess what connectivity will best serve them.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-81 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-NYSE-2024-81. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-81 and should be submitted on or before January 24, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-31505 Filed 1-2-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 3 p.m. on Wednesday, January 8, 2025.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

²⁰ 15 U.S.C. 78f(b)(8).

²¹ 17 CFR 200.30-3(a)(12).

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Resolution of litigation claims; and
- Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Authority: 5 U.S.C. 552b.

Dated: December 31, 2024.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-31645 Filed 12-31-24; 11:15 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m. on Friday, January 10, 2025.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street, NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5

U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Resolution of litigation claims; and
- Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION:

For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Authority: 5 U.S.C. 552b.

Dated: December 31, 2024.

Stephanie J. Fouse,
Assistant Secretary.

[FR Doc. 2024-31777 Filed 12-31-24; 4:15 pm]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35438]

Deregistration Under Section 8(f) of the Investment Company Act of 1940

December 27, 2024.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC")

ACTION: Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of December 2024. A copy of each application may be obtained via the Commission's website by searching for the applicable file number listed below, or for an applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretaries-Office@sec.gov and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on January 21, 2025, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at Secretaries-Office@sec.gov.

ADDRESSES: The Commission: Secretaries-Office@sec.gov.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551-6413 or Chief Counsel's Office at (202) 551-6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549-8010.

ADDRESSES: The Commission: Secretaries-Office@sec.gov.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551-6413 or Chief Counsel's Office at (202) 551-6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549-8010.

BNY Mellon Municipal Bond Funds, Inc. [File No. 811-02653]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to BNY Mellon AMT-Free Municipal Bond Fund, a series of BNY Mellon Municipal Funds, Inc., and on March 8, 2024 made a final distribution to its shareholders based on net asset value. Expenses of \$176,946 incurred in connection with the reorganization were paid by the applicant.

Filing Date: The application was filed on November 25, 2024.

Applicant's Address: c/o BNY Mellon Investment Adviser, Inc., 240 Greenwich Street, New York, New York 10286.

John Hancock Tax-Advantaged Global Shareholder Yield Fund [File No. 811-22056]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to John Hancock Global Shareholder Yield Fund, and on April 26, 2024 made a final distribution to its shareholders based on net asset value. Expenses of \$707,832 incurred in connection with the reorganization were paid by the applicant, the acquiring fund, and the acquiring fund's investment adviser.

Filing Date: The application was filed on December 12, 2024.

Applicant's Address: 200 Berkeley Street, Boston, Massachusetts 02116.

List Income Opportunities Fund [File No. 811-23864]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on October 15, 2024, and amended on November 15, 2024, and December 4, 2024.

Applicant's Address: 195 Highway 50, Number 7172-210, Stateline, Nevada 89449.

PREDEX [File No. 811-22808]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to USQ Core Real Estate Fund, and on September 6, 2024 made a final distribution to its shareholders based on net asset value. Expenses of \$105,679 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Dates: The application was filed on December 6, 2024, and amended on December 17, 2024.

Applicant's Address: 4221 North 203rd Street, Suite 100, Elkhorn, Nebraska 68022-3474.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-31497 Filed 1-2-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102040; File No. SR-NYSECHX-2024-37]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing of Proposed Rule Change To Amend the Connectivity Fee Schedule

December 27, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³

notice is hereby given that, on December 17, 2024, the NYSE Chicago, Inc. ("NYSE Chicago" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule ("Fee Schedule") to add connectivity to the New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc. trading floors. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to add connectivity to the New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc. trading floors ("Trading Floors").

A User⁴ may wish to have a connection between the Mahwah, New

Jersey data center ("MDC")⁵ and a Trading Floor. A connection between the MDC and a Trading Floor may be between the User and itself or between the User and a third party. The User may use such connection for receiving and transmitting trading-related data (including pre- and post-trade data and clearing information) or providing services to individuals physically located on the floor (including access to back-office systems), as determined by the User.

The Exchange proposes to add an option for such a connection to the Fee Schedule. Specifically, the Exchange proposes to amend the Fee Schedule to add unicast connections through which a User can establish a connection between the MDC and a Trading Floor over dedicated bandwidth ("TF Connections").⁶ Presently, a TF Connection can be in the form of a virtual control circuit between the MDC and a single Trading Floor ("TF VCC"), or a virtual routing and forwarding service between the MDC and one or more Trading Floors ("TF VRF"). A TF Connection may be used for any purpose: neither FIDS nor the Exchange has any visibility into a TF Connection.

All TF Connections must be authorized by both parties to the connection before FIDS will establish a connection. Establishing a User's TF Connection will not give FIDS or the Exchange any right to use the relevant exchange's system. A TF Connection will not provide direct access or order entry to the Exchange's execution system, and a User's TF Connection will not be through the Exchange's execution system.

TF Connections are offered at a monthly fee based on bandwidth requirements, which fee is consistent with the monthly fees charged for VCC connections and the same as those charged for connectivity to Third Party Systems.⁷ When a User requests a TF Connection, it identifies the size of bandwidth connection it requires, and the monthly charge for the TF

proposed rule change to propose the change described herein. See SR-NYSE-2024-81, SR-NYSEAMER-2024-80, SR-NYSEARCA-2024-113, and SR-NYSEENAT-2024-33.

⁵ Through its Fixed Income and Data Services ("FIDS") business, Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE.

⁶ Information flows over existing network connections in two formats: "unicast" format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange; and "multicast" format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast.

⁷ See Connectivity Fee Schedule—A. Co-Location Fees.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Connection varies based on the size of the bandwidth. The calculation of the monthly fee may differ based on whether the form chosen by the User is a TF VCC or TF VRF. This is because

the TF VCC connects the MDC to one Trading Floor, while the TF VRF may connect the MDC to more than one Trading Floor. Accordingly, the

Exchange proposes to add a note to the Fee Schedule to clarify the difference.

To make the change, the Exchange proposes to amend the Fee Schedule as follows (all text new):

Type of service	Description	Amount of charge
Connectivity to Trading Floor *	1Mb	\$200 monthly charge
	3Mb	400 monthly charge
	5Mb	500 monthly charge
	10Mb	800 monthly charge
	25Mb	1,200 monthly charge
	50Mb	1,800 monthly charge
	100Mb	2,500 monthly charge

* The amount of the charge for Connectivity to Trading Floor may differ based on the connectivity chosen: (a) a virtual control circuit between the Mahwah data center and a single Trading Floor ("VCC"), or (b) a virtual routing and forwarding service between the Mahwah data center and one or more Trading Floors ("VRF"). Specifically, if the User chooses VCCs or combination of a VCC and VRF for connectivity to several Trading Floors, it will be charged separately for each connection. If the User chooses one VRF for connectivity to multiple trading floors, the User will be charged for one connection.

General

The proposed rule change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

Use of the services proposed in this filing are completely voluntary and available to all Users on a non-discriminatory basis.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with

Section 6(b)(4) of the Act,¹⁰ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable.

In considering the reasonableness of proposed services and fees, the Commission's market-based test considers "whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees."¹¹ If the Exchange meets that burden, "the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder."¹² Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the third-party vendors

are not at a competitive disadvantage created by the Exchange.

In 2013 the MDC opened two meet-me-rooms to telecommunications service providers ("Telecoms"),¹³ to enable Telecoms to offer circuits into the MDC. The TF Connections compete with circuits currently offered by the 16 third-party Telecoms that have installed their equipment in the MDC's two meet-me-rooms.

The Telecom circuits (including any circuit-based network services a Telecom may offer) are reasonable substitutes for TF Connections. The Commission has recognized that products do not need to be identical to be considered substitutable; it is sufficient that they be substantially similar.¹⁴ Because Telecoms can connect to the Trading Floors, the TF Connections and the circuits provided by the Telecoms perform the same function: connecting into and out of the MDC and the Trading Floors. The providers of the TF Connection and Telecom circuits design them to perform with particular combinations of latency, bandwidth, price, termination point, and other factors that they believe will attract Users, and Users choose from among these competing services on the basis of their business needs.

The TF Connections are sufficiently similar substitutes to the circuits offered by the 16 Telecoms even though the TF Connections all terminate on a Trading Floor while circuits from the 16 Telecoms could terminate on a Trading Floor or other locations. While neither the Exchange nor FIDS knows the end

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEArca-2020-08, SR-NYSECHX-2020-02, SR-NYSEAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEArca-2020-15, SR-NYSECHX-2020-05, SR-NYSEAT-2020-08) ("Wireless Approval Order"), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) ("2008 ArcaBook Approval Order"). See *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

¹² Wireless Approval Order, *supra* note 11, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 11, at 74781.

¹³ Telecoms are licensed by the Federal Communications Commission and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

¹⁴ See 2008 ArcaBook Approval Order, *supra* note 11, at 74789 and note 295 (recognizing that products need not be identical to be substitutable).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

point of any particular Telecom circuit, the Exchange understands that the Telecoms can offer circuits terminating in any location, including the Trading Floors. Moreover, the Telecoms may offer smaller circuits that are the same as or similar size to the TF Connections. Ultimately, Users can choose to configure their pathway in the way that best suits their business needs.

The TF Connections do not have a distance or latency advantage over the Telecoms' circuits within the MDC. FIDS has normalized (a) the distance between the meet-me-rooms and the colocation halls and (b) the distance between the rooms where the FIDS circuits and the TF Connections exit the MDC and the colocation halls. As a result, a User choosing whether to use the TF Connections or Telecom circuits does not face any difference in the distances or latency within the MDC. The Exchange is not aware of any differences under its control that give the Exchange a latency advantage.

The Exchange also believes that the TF Connections do not have any latency or bandwidth advantage over the Telecoms' circuits outside of the MDC. The Exchange believes that the Telecoms operating in the meet-me-rooms offer circuits with a variety of latency and bandwidth specifications, some of which may exceed the specifications of the TF Connections.¹⁵ The Exchange believes that Users consider these latency and bandwidth factors—as well as other factors, such as price and termination point—in determining which offerings will best serve their business needs.

In sum, the Exchange is not aware of anything that would make the Telecoms' circuits inadequate substitutes for the TF Connections.

Nor does the Exchange have a competitive advantage over any third-party competitors by virtue of the fact that it owns and operates the MDC's meet-me-rooms. In most cases, circuits coming out of the MDC are provided by the Telecoms.¹⁶ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the

fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level¹⁷ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.¹⁸ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis the Telecoms. They are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

If the Exchange were to set the price of the TF Connections at a level that Users found to be too high, Users would likely respond by choosing one of the many alternative options offered by the 16 Telecoms. Conversely, if the Exchange were to offer the TF Connections at prices aimed at undercutting comparable Telecom

circuits, the Telecoms might reassess whether it makes financial sense for them to continue to participate in the MDC's meet-me-rooms. Their departure might negatively impact User participation in colocation and on the Exchange. As a result, the Exchange is not motivated to undercut the prices of Telecom circuits.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because the Exchange believes that a substantially similar substitute for TF Connectivity is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the TF Connectivity are reasonable.¹⁹

For these reasons, the proposed change is reasonable.

The Proposed Change Is Equitable

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between market participants. Rather, it would apply to all market participants equally.

In addition, the Exchange believes that the proposal is equitable because only Users that voluntarily select to receive TF Connectivity would be charged for it. The proposed TF Connectivity is available to all Users on an equal basis, and all Users that voluntarily choose to purchase TF Connectivity would be charged the same amount for that circuit as all other market participants purchasing that type of TF Connectivity.

The Exchange believes that it is equitable that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering these varied technological options, FIDS provides potential Users more choices from which to choose the option that would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it easier for potential purchasers of the service to assess what connectivity will best serve them.

¹⁵ The specifications of FIDS's competitors' circuits are not publicly known. The Exchange understands that FIDS has gleaned any information it has about its competitors through anecdotal communications, by observing customers' purchasing choices in the competitive market, and from its own experience as a purchaser of circuits from telecommunications providers to build FIDS's own networks.

¹⁶ Note that in the case of wireless connectivity, a User still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

¹⁷ See Securities Exchange Act Release No. 98001 (July 26, 2023), 88 FR 50202 (August 1, 2023) (SR-NYSECHX-2023-14) ("MMR Notice").

¹⁸ See *id.* at 50199. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

¹⁹ See Wireless Approval Order, *supra* note 11.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntary and the Fee Schedule will be applied uniformly to all market participants.

In addition, the Exchange believes that the proposal is not unfairly discriminatory because only Users that voluntarily select to receive TF Connectivity would be charged for it. TF Connectivity is available to all market participants on an equal basis, and all Users that voluntarily choose to purchase TF Connectivity are charged the same amount as all other market participants purchasing that type of TF Connectivity.

The Exchange believes that it is not unfairly discriminatory that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering these varied technological options, FIDS provides potential Users more choices from which to choose the option that would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it easier for potential purchasers of the service to assess what connectivity will best serve them.

For the reasons above, the proposed change does not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.²⁰

The proposed change would not impose a burden on competition among national securities exchanges or among members of the Exchange.

The proposed change would enhance competition in the market for circuits transmitting data into and out of

colocation at the MDC to the Trading Floors, by adding TF Connectivity, in addition to the 16 Telecoms that also sell circuits to Users. TF Connectivity does not have any latency, bandwidth, or other advantage over the Telecoms' circuits. The proposal would not burden competition in the sale of such circuits, but rather, enhance it by providing Users with an additional choice for their circuit needs.

The Exchange believes that it would not be a burden on competition that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering these varied technological options, FIDS provides potential Users more choices from which to choose the option that would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it easier for potential purchasers of the service to assess what connectivity will best serve them.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include file number SR-NYSECHX-2024-37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSECHX-2024-37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSECHX-2024-37 and should be submitted on or before January 24, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024-31502 Filed 1-2-25; 8:45 am]

BILLING CODE 8011-01-P

²⁰ 15 U.S.C. 78f(b)(8).

²¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–521, OMB Control No. 3235–0579]

Submission for OMB Review; Comment Request; Extension: Regulation BTR; Correction

AGENCY: Securities and Exchange Commission. **ACTION:** Notice; correction.

SUMMARY: The Securities and Exchange Commission published a notice document in the **Federal Register** on December 27, 2024, concerning a Submission for OMB Review; Comment Request; Extension: Regulation BTR. The document contained a typographical error.

FOR FURTHER INFORMATION CONTACT:

Naomi P. Lewis, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, (202) 551–5400.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of December 27, 2024, in FR Doc. 2024–30768, at 89 FR 105665, in the first column, in the last paragraph, on the 51st and 52nd lines, the reference to “https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202412-3235-022” should be replaced with “https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202412-3235-023”.

Dated: December 30, 2024.

Stephanie J. Fouse,
Assistant Secretary.

[FR Doc. 2024–31577 Filed 1–2–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102042; File No. SR–NYSEAMER–2024–80]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Change To Amend the Connectivity Fee Schedule

December 27, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on December 17, 2024, NYSE American LLC (“NYSE American” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the

proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule (“Fee Schedule”) to add connectivity to the New York Stock Exchange LLC, NYSE American, and NYSE Arca, Inc. trading floors. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to add connectivity to the New York Stock Exchange LLC, NYSE American, and NYSE Arca, Inc. trading floors (“Trading Floors”).

A User⁴ may wish to have a connection between the Mahwah, New Jersey data center (“MDC”)⁵ and a

Trading Floor. A connection between the MDC and a Trading Floor may be between the User and itself or between the User and a third party. The User may use such connection for receiving and transmitting trading-related data (including pre- and post-trade data and clearing information) or providing services to individuals physically located on the floor (including access to back-office systems), as determined by the User.

The Exchange proposes to add an option for such a connection to the Fee Schedule. Specifically, the Exchange proposes to amend the Fee Schedule to add unicast connections through which a User can establish a connection between the MDC and a Trading Floor over dedicated bandwidth (“TF Connections”).⁶ Presently, a TF Connection can be in the form of a virtual control circuit between the MDC and a single Trading Floor (“TF VCC”), or a virtual routing and forwarding service between the MDC and one or more Trading Floors (“TF VRF”). A TF Connection may be used for any purpose: neither FIDS nor the Exchange has any visibility into a TF Connection.

All TF Connections must be authorized by both parties to the connection before FIDS will establish a connection. Establishing a User’s TF Connection will not give FIDS or the Exchange any right to use the relevant exchange’s system. A TF Connection will not provide direct access or order entry to the Exchange’s execution system, and a User’s TF Connection will not be through the Exchange’s execution system.

TF Connections are offered at a monthly fee based on bandwidth requirements, which fee is consistent with the monthly fees charged for VCC connections and the same as those charged for connectivity to Third Party Systems.⁷ When a User requests a TF Connection, it identifies the size of bandwidth connection it requires, and the monthly charge for the TF Connection varies based on the size of the bandwidth. The calculation of the monthly fee may differ based on whether the form chosen by the User is a TF VCC or TF VRF. This is because the TF VCC connects the MDC to one

(“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE.

⁶ Information flows over existing network connections in two formats: “unicast” format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange; and “multicast” format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast.

⁷ See Connectivity Fee Schedule—A. Co-Location Fees.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁵ Through its Fixed Income and Data Services (“FIDS”) business, Intercontinental Exchange, Inc.

Trading Floor, while the TF VRF may connect the MDC to more than one Trading Floor. Accordingly, the

Exchange proposes to add a note to the Fee Schedule to clarify the difference.

To make the change, the Exchange proposes to amend the Fee Schedule as follows (all text new):

Type of service	Description	Amount of charge
Connectivity to Trading Floor *	1Mb	\$200 monthly charge.
	3Mb	400 monthly charge.
	5Mb	500 monthly charge.
	10Mb	800 monthly charge.
	25Mb	1,200 monthly charge.
	50Mb	1,800 monthly charge.
	100Mb	2,500 monthly charge.

* The amount of the charge for Connectivity to Trading Floor may differ based on the connectivity chosen: (a) a virtual control circuit between the Mahwah data center and a single Trading Floor ("VCC"), or (b) a virtual routing and forwarding service between the Mahwah data center and one or more Trading Floors ("VRF"). Specifically, if the User chooses VCCs or combination of a VCC and VRF for connectivity to several Trading Floors, it will be charged separately for each connection. If the User chooses one VRF for connectivity to multiple trading floors, the User will be charged for one connection.

General

The proposed rule change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

Use of the services proposed in this filing are completely voluntary and available to all Users on a non-discriminatory basis.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with

Section 6(b)(4) of the Act,¹⁰ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable.

In considering the reasonableness of proposed services and fees, the Commission's market-based test considers "whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees."¹¹ If the Exchange meets that burden, "the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder."¹² Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the third-

party vendors are not at a competitive disadvantage created by the Exchange.

In 2013 the MDC opened two meet-me-rooms to telecommunications service providers ("Telecoms"),¹³ to enable Telecoms to offer circuits into the MDC. The TF Connections compete with circuits currently offered by the 16 third-party Telecoms that have installed their equipment in the MDC's two meet-me-rooms.

The Telecom circuits (including any circuit-based network services a Telecom may offer) are reasonable substitutes for TF Connections. The Commission has recognized that products do not need to be identical to be considered substitutable; it is sufficient that they be substantially similar.¹⁴ Because Telecoms can connect to the Trading Floors, the TF Connections and the circuits provided by the Telecoms perform the same function: connecting into and out of the MDC and the Trading Floors. The providers of the TF Connection and Telecom circuits design them to perform with particular combinations of latency, bandwidth, price, termination point, and other factors that they believe will attract Users, and Users choose from among these competing services on the basis of their business needs.

The TF Connections are sufficiently similar substitutes to the circuits offered by the 16 Telecoms even though the TF Connections all terminate on a Trading Floor while circuits from the 16 Telecoms could terminate on a Trading Floor or other locations. While neither the Exchange nor FIDS knows the end

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEArca-2020-08, SR-NYSECHX-2020-02, SR-NYSENAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEArca-2020-15, SR-NYSECHX-2020-05, SR-NYSENAT-2020-08) ("Wireless Approval Order"), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) ("2008 ArcaBook Approval Order"). See *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

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¹⁴ See 2008 ArcaBook Approval Order, *supra* note 11, at 74789 and note 295 (recognizing that products need not be identical to be substitutable).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

point of any particular Telecom circuit, the Exchange understands that the Telecoms can offer circuits terminating in any location, including the Trading Floors. Moreover, the Telecoms may offer smaller circuits that are the same as or similar size to the TF Connections. Ultimately, Users can choose to configure their pathway in the way that best suits their business needs.

The TF Connections do not have a distance or latency advantage over the Telecoms' circuits within the MDC. FIDS has normalized (a) the distance between the meet-me-rooms and the colocation halls and (b) the distance between the rooms where the FIDS circuits and the TF Connections exit the MDC and the colocation halls. As a result, a User choosing whether to use the TF Connections or Telecom circuits does not face any difference in the distances or latency within the MDC. The Exchange is not aware of any differences under its control that give the Exchange a latency advantage.

The Exchange also believes that the TF Connections do not have any latency or bandwidth advantage over the Telecoms' circuits outside of the MDC. The Exchange believes that the Telecoms operating in the meet-me-rooms offer circuits with a variety of latency and bandwidth specifications, some of which may exceed the specifications of the TF Connections.¹⁵ The Exchange believes that Users consider these latency and bandwidth factors—as well as other factors, such as price and termination point—in determining which offerings will best serve their business needs.

In sum, the Exchange is not aware of anything that would make the Telecoms' circuits inadequate substitutes for the TF Connections.

Nor does the Exchange have a competitive advantage over any third-party competitors by virtue of the fact that it owns and operates the MDC's meet-me-rooms. In most cases, circuits coming out of the MDC are provided by the Telecoms.¹⁶ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the

fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level¹⁷ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.¹⁸ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis the Telecoms. They are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

If the Exchange were to set the price of the TF Connections at a level that Users found to be too high, Users would likely respond by choosing one of the many alternative options offered by the 16 Telecoms. Conversely, if the Exchange were to offer the TF Connections at prices aimed at undercutting comparable Telecom

circuits, the Telecoms might reassess whether it makes financial sense for them to continue to participate in the MDC's meet-me-rooms. Their departure might negatively impact User participation in colocation and on the Exchange. As a result, the Exchange is not motivated to undercut the prices of Telecom circuits.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because the Exchange believes that a substantially similar substitute for TF Connectivity is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the TF Connectivity are reasonable.¹⁹

For these reasons, the proposed change is reasonable.

The Proposed Change Is Equitable

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between market participants. Rather, it would apply to all market participants equally.

In addition, the Exchange believes that the proposal is equitable because only Users that voluntarily select to receive TF Connectivity would be charged for it. The proposed TF Connectivity is available to all Users on an equal basis, and all Users that voluntarily choose to purchase TF Connectivity would be charged the same amount for that circuit as all other market participants purchasing that type of TF Connectivity.

The Exchange believes that it is equitable that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering these varied technological options, FIDS provides potential Users more choices from which to choose the option that would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it easier for potential purchasers of the service to assess what connectivity will best serve them.

¹⁵ The specifications of FIDS's competitors' circuits are not publicly known. The Exchange understands that FIDS has gleaned any information it has about its competitors through anecdotal communications, by observing customers' purchasing choices in the competitive market, and from its own experience as a purchaser of circuits from telecommunications providers to build FIDS's own networks.

¹⁶ Note that in the case of wireless connectivity, a User still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

¹⁷ See Securities Exchange Act Release No. 97999 (July 26, 2023), 88 FR 50190 (August 1, 2023) (SR-NYSEAmex-2023-36) ("MMR Notice").

¹⁸ See *id.* at 50193. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

¹⁹ See Wireless Approval Order, *supra* note 11.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntary and the Fee Schedule will be applied uniformly to all market participants.

In addition, the Exchange believes that the proposal is not unfairly discriminatory because only Users that voluntarily select to receive TF Connectivity would be charged for it. TF Connectivity is available to all market participants on an equal basis, and all Users that voluntarily choose to purchase TF Connectivity are charged the same amount as all other market participants purchasing that type of TF Connectivity.

The Exchange believes that it is not unfairly discriminatory that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering these varied technological options, FIDS provides potential Users more choices from which to choose the option that would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it easier for potential purchasers of the service to assess what connectivity will best serve them.

For the reasons above, the proposed change does not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.²⁰

The proposed change would not impose a burden on competition among national securities exchanges or among members of the Exchange.

The proposed change would enhance competition in the market for circuits transmitting data into and out of

colocation at the MDC to the Trading Floors, by adding TF Connectivity, in addition to the 16 Telecoms that also sell circuits to Users. TF Connectivity does not have any latency, bandwidth, or other advantage over the Telecoms' circuits. The proposal would not burden competition in the sale of such circuits, but rather, enhance it by providing Users with an additional choice for their circuit needs.

The Exchange believes that it would not be a burden on competition that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering these varied technological options, FIDS provides potential Users more choices from which to choose the option that would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it easier for potential purchasers of the service to assess what connectivity will best serve them.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-

NYSEAMER-2024-80 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEAMER-2024-80. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEAMER-2024-80 and should be submitted on or before January 24, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-31504 Filed 1-2-25; 8:45 am]

BILLING CODE 8011-01-P

²⁰ 15 U.S.C. 78f(b)(8).

²¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102045; File No. SR–CBOE–2024–056]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Cboe Timestamping Service Which is a Market Data Service Comprised of Two Distinct Market Data Reports

December 27, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on December 13, 2024, Cboe Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Item I below, which Item has been substantially prepared by the Exchange. The Exchange has designated this proposal for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b–4(f) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt the Cboe Timestamping Service, which is a market data service comprised of two distinct market data reports. The Cboe Timestamping Service will provide timestamp information for orders,⁵ quotes and cancels for market participants. More specifically, the Cboe Timestamping Service reports will provide various timestamps relating to the message lifecycle throughout the exchange system. The first report—the Missed Liquidity Report—will cover order and quote messages and the second report—Cancels Report—will cover cancel messages. The proposed reports are optional products that will be available to all Members and

Members may opt to choose both reports, one report, or neither report. Corresponding fees will be assessed based on the number of reports selected.⁶

The proposed rule change, including the Exchange’s statement of the purpose of, and statutory basis for, the proposed rule change, is available on the Exchange’s website at <http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>, at the Exchange’s Office of the Secretary, and on the Commission’s website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-CBOE-2024-056.

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.⁷ Comments may be submitted electronically by using the Commission’s internet comment form (https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-CBOE-2024-056) or by sending an email to rule-comments@sec.gov. Please include file number SR–CBOE–2024–056 on the subject line. Alternatively, paper comments may be sent to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to file SR–CBOE–2024–056. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-CBOE-2024-056). Do not include personal identifiable information in submissions;

⁶ The Exchange plans to submit a separate filing with the Commission pursuant to Section 19(b)(1) to propose fees for the Missed Liquidity Report and Cancels Report.

⁷ Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of SRO.

you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2024–056 and should be submitted on or before January 24, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–31507 Filed 1–2–25; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 12626]

Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2023

All information reported to the Office of the Chief of Protocol, including gift appraisal and donor information, is the responsibility of the employing agency, in accordance with applicable law and GSA regulations.

The Office of the Chief of Protocol, Department of State, submits the following comprehensive listing of the statements which, as required by law, federal employees filed with their employing agencies during calendar year 2023 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined in 5 U.S.C. 7432 and GSA regulations. For calendar year 2023 (January 1, 2023, through December 31, 2023), minimal value is \$480.00.

Pursuant to Title 22 of the Code of Federal Regulations Section 3.4, the report includes all gifts given on a single occasion when the aggregate value of those gifts exceeds minimal value. Also included are twenty-three gifts from 2022 and one gift from 2021. These latter gifts are being reported in this year’s report for calendar year 2023 because the Office of the Chief of Protocol, Department of State, did not receive the relevant information at the time of reporting to include them in earlier reports. Agencies not listed in this report either did not receive relevant gifts during the calendar year, did not transmit a listing to the Secretary of State of all statements filed during the preceding year by the

⁸ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b–4(f). At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

⁵ Orders shall include both complex and simple orders.

employees of that agency pursuant to 5 U.S.C. 7432(f)(1), or did not respond to the State Department's Office of the Chief of Protocol's request for data. The U.S. Senate maintains an internal minimal value of \$100; therefore, all

gifts over the \$100 limit are furnished in the U.S. Senate report.

Publication of this listing in the **Federal Register** is required by Section 7342(f) of Title 5, United States Code, as added by Section 515(a)(1) of the Foreign Relations Authorization Act,

Fiscal Year 1978 (Pub. L. 95–105, August 17, 1977, 91 Stat. 865).

Alaina B. Teplitz,

Assistant Secretary (M), Performing the Duties of Under Secretary for Management, Department of State.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT
[REPORT OF TANGIBLE GIFTS FURNISHED BY THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Joseph R. Biden Jr., President of the United States.	Glass Footed Bowl, Book Titled "The Government of Tongue", Lapel Pin, Irish Hug Plaque. Rec'd—3/17/2022. Est. Value—\$1,237.00. Disposition—Transferred to NARA.	His Excellency Micheál Martin, Taoiseach of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Backpack, Playing Card Set, Montblanc Pen, Notebook, Various Food Items. Rec'd—6/26/2022. Est. Value—\$975.00. Disposition—Transferred to NARA (Backpack, Cards, Pen, Notebook). Perishable items disposed of pursuant to USSS policies (Food Items).	His Excellency Olaf Scholz, Chancellor of the Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Rug in Velvet Case. Rec'd—10/20/2022. Est. Value—\$525.00. Disposition—Transferred to NARA.	His Excellency Shehbaz Sharif, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Eye of Ugat Artwork. Rec'd—11/10/2022. Est. Value—\$570.00. Disposition—Transferred to NARA.	His Excellency Abdel Fattah El-Sisi, President of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Painting. Rec'd—11/15/2022. Est. Value—\$1,000.00. Disposition—Transferred to NARA.	His Excellency Narendra Modi, Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Beaded Necklace. Rec'd—12/12/2022. Est. Value—\$440.00. Disposition—Transferred to NARA.	The Honorable Jane Waetara, Ambassador of the Solomon Islands to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Bronze Statue of Horseman. Rec'd—12/15/2022. Est. Value—\$595.00. Disposition—Transferred to NARA.	His Excellency Paul Biya, President of the Republic of Cameroon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Copper Artwork. Rec'd—12/15/2022. Est. Value—\$620.00. Disposition—Transferred to NARA.	His Excellency Felix Tshisekedi, President of the Democratic Republic of Congo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Cufflinks. Rec'd—12/15/2022. Est. Value—\$2,000.00. Disposition—Transferred to NARA.	His Excellency Nana Akufo-Addo, President of the Republic of Ghana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Book Titled "The Splendours of Tunisian Mosaics", Ship Model, Traditional Sweets & Olive Oil. Rec'd—12/15/2022. Est. Value—\$2,375.00. Disposition—Transferred to NARA. Perishable items retained for Official Use and/or disposed of pursuant to USSS policies (Sweets, Olive Oil).	His Excellency Kais Saied, President of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Framed Paintings (qty. 2). Rec'd—12/16/2022. Est. Value—\$500.00. Disposition—Transferred to NARA.	The Honorable Pravind Jugnauth, Prime Minister of the Republic of Mauritius.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	"Virgin of Quito" Wood Statue. Rec'd—12/19/2022. Est. Value—\$427.00. Disposition—Transferred to NARA.	His Excellency Juan Carlos Holguin, Minister of Foreign Affairs and Human Mobility of the Republic of Ecuador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Tiled Painting. Rec'd—12/28/2022. Est. Value—\$1,990.00. Disposition—Transferred to NARA.	His Excellency Ayman Benabderrahmane, Prime Minister of the People's Democratic Republic of Algeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Vase Set, Socks, Scarf, Blanket, Book, Scent Oil Infuser, Succulent Kit, Candle, Candies. Rec'd—1/3/2023. Est. Value—\$829.00. Disposition—Transferred to NARA. (Vase Set, Socks, Scarf, Blanket, Book). Perishable items disposed of pursuant to USSS policies (Scent Oil, Infuser, Succulent Kit, Candle, Candies).	His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaula Ibni Al-Marhum, Sultan and Yang Di-Pertuan of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Mother of Pearl Cufflinks. Rec'd—2/2/2023. Est. Value—\$780.00. Disposition—Transferred to NARA.	His Majesty King Abdullah II ibn Al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued
[REPORT OF TANGIBLE GIFTS FURNISHED BY THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Joseph R. Biden Jr., President of the United States.	Wooden Bench. Rec'd—2/10/2023. Est. Value—\$1,170.00. Disposition—Transferred to NARA.	His Excellency Luiz Inacio Lula da Silva, President of the Federative Republic of Brazil.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Driza-Bone Coat. Rec'd—3/13/2023. Est. Value—\$499.00. Disposition—Transferred to NARA.	The Honorable Anthony Albanese MP, Prime Minister Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Sterling Silver Poporo, Wool Ruana. Rec'd—4/20/2023. Est. Value—\$867.00. Disposition—Transferred to NARA.	His Excellency Gustavo Petro, President of the Republic of Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Commemorative Photo Album, Traditional Jarikki Set. Rec'd—4/26/2023. Est. Value—7,100.00. Disposition—Transferred to NARA.	His Excellency Suk Yeol Yoon, President of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Jewelry Box. Rec'd—5/1/2023. Est. Value—\$480.00. Disposition—Transferred to NARA.	His Excellency Ferdinand Romualdez Marcos, Jr., President of the Republic of Philippines.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Vase "Den" Lacquerware, Furoshiki. Rec'd—5/19/2023. Est. Value—\$1,153.00. Disposition—Pending Transfer to NARA.	Hidehiko Yuzaki, Governor of Hiroshima Prefecture.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Drinking Set. Rec'd—5/19/2023. Est. Value—\$1,070.00. Disposition—Transferred to NARA.	Kazumi Matsui, Mayor of Hiroshima Prefecture.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Framed Poster, Aircraft Fragment, Bilum Bag, "Birds of Paradise" Artwork, Shirt, Gold Pin, Coffee. Rec'd—5/22/2023. Est. Value—\$1,254.00. Disposition—Retained for Official Use (Poster & Aircraft), Transferred to NARA. (Bag, Artwork, Shirt, Pin). Perishable items disposed of pursuant to USSS policies (Coffee).	His Excellency James Marape, MP, Prime Minister of Papua New Guinea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	"Iro-Miyabi" Fountain Pen, Maki-E Glasses, Furoshiki. Rec'd—5/23/2023. Est. Value—\$2,414.00. Disposition—Transferred to NARA.	His Excellency Kishida Fumio, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Carved Sandalwood Box, Book Titled "The Ten Principal Upanishads", Statue, Oil Lamp. Rec'd—6/22/2023. Est. Value—\$6,232.00. Disposition—Transferred to NARA.	His Excellency Narendra Modi, Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	"Sinews of Peace" Book, Jar of Honey. Rec'd—7/10/2023. Est. Value—\$1,405.00. Disposition: Transferred NARA. (Book) Perishable items disposed of pursuant to USSS policies (Honey).	His Majesty King Charles III of the United Kingdom of Great Britain and Northern Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Glass Thomas Lyte Bowl. Rec'd—7/10/2023. Est. Value—\$900.00. Disposition—Transferred to NARA.	The Right Honorable Rishi Sunak MP, Prime Minister of the United Kingdom of Great Britain and Northern Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Book, Order of Vyautas the Great, and Photographs. Rec'd—7/12/2023. Est. Value—\$1,275.00. Disposition—Transferred to NARA.	His Excellency Gitanas Nauseda, President of the Republic of Lithuania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Whooper Swan Sculpture. Rec'd—7/13/2023. Est. Value—\$520.00. Disposition—Transferred to NARA.	His Excellency Sauli Niinistö and Dr. Jenni Haukio, President and First Lady of the Republic of Finland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Sterling Silver Inscribed Tray by Hazorfim. Rec'd—7/18/2023. Est. Value—\$3,160.00. Disposition—Pending Transfer to NARA.	His Excellency Isaac Herzog, President of the State of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Lacquer Box by Yamada Heiando. Rec'd—8/17/2023. Est. Value—\$770.00. Disposition—Transferred to NARA.	His Excellency Kishida Fumio, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Statue of Mongolian Warriors. Rec'd—8/2/2023. Est. Value—\$3,495.00. Disposition—Transferred to NARA.	His Excellency Oyun-Erdene Luvsannamsrai, Prime Minister of the People's Republic of Mongolia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Wooden Box, Chocolates, Cufflinks. Rec'd—8/29/2023. Est. Value—\$515.00. Disposition—Transferred to NARA (Box, Cufflinks). Perishable items disposed of pursuant to USSS policies (Chocolates).	His Excellency Rodrigo Chaves Robles, President of the Republic of Costa Rica.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued
[REPORT OF TANGIBLE GIFTS FURNISHED BY THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Joseph R. Biden Jr., President of the United States.	Gemstones Portrait. Rec'd—9/10/2023. Est. Value—\$2,100.00. Disposition—Transferred to NARA.	His Excellency Nguyen Phu Trong, General Secretary of the Communist Party of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Collage Titled “Qirim. Return”. Rec'd—9/20/2023. Est. Value—\$2,400.00. Disposition—Transferred to NARA.	His Excellency Volodymyr Zelenskyy, President of Ukraine.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Mixed Media Artwork, Commemorative Tala, Siapo. Rec'd—9/24/2023. Est. Value—\$570.00. Disposition—Transferred to NARA.	Her Excellency Fiamē Naomi Mata'afa, Prime Minister of the Independent State of Samoa.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Silver Bowl. Rec'd—11/15/2023. Est. Value—3,300.00. Disposition—Transferred to NARA.	His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaula Ibni Al-Marhum, Sultan and Yang Di-Pertuan of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Bone China Tea Set, Bronze Statue Titled “Fine Horse”. Rec'd—11/15/2023. Est. Value—\$1,080.00. Disposition—Transferred to NARA.	His Excellency Xi Jinping, President of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	“Earth Vessel” Vase, Ice Cream Scoop. Rec'd—11/17/2023. Est. Value—\$600.00. Disposition—Transferred to NARA.	The Right Honorable Justin Trudeau, P.C., M.P., Prime Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Oil Painting Titled “Suasana Desa”. Rec'd—12/13/2023. Est. Value—\$635.00. Disposition—Transferred to NARA.	His Excellency Joko Widodo, President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States and Dr. Jill Biden, First Lady of the United States.	Ceramic plate, Wine Bottles (Qty. 2), Fruit. Rec'd—1/8/2023. Est. Value—\$550.00. Disposition—Transferred to NARA (Plate). Perishable items disposed of pursuant to USSS policies (Wine, Fruit).	His Excellency Andrés Manuel López Obrador, President of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States, Dr. Jill Biden, First Lady of the United States of America.	Footed Bowl, Irish Flag, Jersey, Pin. Rec'd—3/17/2023. Est. Value—\$1,302.00. Disposition—Transferred to NARA.	His Excellency Leo Varadkar, Taoiseach of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States, Dr. Jill Biden, First Lady of the United States of America.	Moon Jar, Gujeolpan. Rec'd—4/26/2023. Est. Value—\$1,760.00. Disposition—Transferred to NARA (Jar). Perishable items disposed of pursuant to USSS policies (Gujeolpan).	His Excellency Suk Yeol Yoon, President of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States, Dr. Jill Biden, First Lady of the United States of America.	Wine, Handkerchiefs (Qty. 2). Rec'd—8/25/2023. Est. Value—\$686.00. Disposition—Transferred to NARA (Jar and Handkerchiefs). Perishable items disposed of pursuant to USSS policies (Wine).	His Excellency Miguel Filipe Machado De Albuquerque, President of the Autonomous Region of Madeira.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Bronze Statue of Horseman. Rec'd—12/15/2022. Est. Value—\$595.00. Disposition—Transferred to NARA.	Mrs. Chantal Biya, First Lady of the Republic of Cameroon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Pair of Bangles. Rec'd—12/16/2022. Est. Value—\$3,400.00. Disposition—Transferred to NARA.	His Excellency Mohamed Younis A. Menfi, Chairman of the Presidential Council of the State of Libya.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Scarf, Book Titled “Carthage—Fact and Myth”, Sculpture, Traditional Sweets. Rec'd—12/16/2022. Est. Value—\$3,015.00. Disposition—Transferred to NARA (Scarf, Book, Sculpture). Perishable items disposed of pursuant to USSS policies (Traditional Sweets).	Mrs. Ichraf Chebil Ep Saied, First Lady of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Eye of Horus Necklace, Egyptian Wood Inlaid Shell Purse. Rec'd—1/22/2023. Est. Value—\$2,000.00. Disposition—Transferred to NARA.	Mrs. Entissar El-Sisi, First Lady of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Wooden Bowl with Tiered Artwork. Rec'd—2/2/2023. Est. Value—\$750.00. Disposition—Transferred to NARA.	Her Majesty Queen Rania Al Abdullah, Queen of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Steel Fragment Forget-Me-Not Flower Brooch. Rec'd—2/7/2023. Est. Value—\$14,063.00. Disposition—Retained for Official Use in the East Wing.	Her Excellency Oksana Markarova, Ambassador of Ukraine to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued
[REPORT OF TANGIBLE GIFTS FURNISHED BY THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Dr. Jill Biden	Book Titled "Epic Land Namibia Exposed", Silver Earrings, Silver Bracelet. Rec'd—2/23/2023. Est. Value—\$519.00. Disposition—Transferred to NARA.	Her Excellency Monica Geingos, First Lady of the Republic of Namibia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Swarovski Necklace, Earrings, Ring. Rec'd—4/19/2023. Est. Value—\$1,370.00. Disposition—Transferred to NARA.	Her Excellency Petra Schneebauer, Ambassador of Austria to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Brown Lip Shell Jewelry Box. Rec'd—5/1/2023. Est. Value—\$480.00. Disposition—Transferred to NARA.	Mrs. Louise Araneta-Marcos, First Lady of the Republic of the Philippines.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Binoculars, Bowl and Spoon Set, Champagne Flute. Rec'd—5/23/2023. Est. Value—\$542.00. Disposition—Transferred to NARA.	Mrs. Kishida Yuko, Spouse of the Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Incense Burner, Candy Jar. Rec'd—5/30/2023. Est. Value—\$1,160.00. Disposition—Transferred to NARA.	Their Royal Highnesses Prince Hussein bin Abdallah II & Princess Rajwa Al Hussein, Crown Prince of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Chairs, Brooch, Photograph Album, Bracelet. Rec'd—6/2/2023. Est. Value—\$4,510.00. Disposition—Transferred to NARA (Chairs, Photograph Album, Bracelet), Retained for Personal Use (Brooch).	His Excellency Abdel Fattah and Mrs. Entissar El-Sisi, President and First Lady of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Calligraphy Titled "The Ship in the Sky", by Ms. Sugako Hamazaki. Rec'd—6/13/2023. Est. Value—\$2,500.00. Disposition—Retained for Official Use in the East Wing.	Mrs. Kishida Yuko, Spouse of the Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	7.5 Carat Lab Diamond. Rec'd—6/22/2023. Est. Value—\$20,000.00. Disposition—Retained for Official Use in the East Wing.	His Excellency Narendra Modi, Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Canisters (Qty. 3). Rec'd—9/13/2023. Est. Value—\$980.00. Disposition—Transferred to NARA.	Their Majesties King Abdullah II ibn Al Hussein and Queen Rania Al Abdullah of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Table Runner, Brooch. Rec'd—9/13/2023. Est. Value—\$490.00. Disposition—Pending Transfer to NARA.	Mrs. Emine Erdoğan, First Lady of the Republic of Türkiye.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Delvaux Pouch. Rec'd—9/20/2023. Est. Value—\$1,050.00. Disposition—Transferred to NARA.	Mrs. Annik Penders, Spouse of the Prime Minister of the Kingdom of Belgium.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Joanna Louca Scarf. Rec'd—9/20/2023. Est. Value—\$750.00. Disposition—Transferred to NARA.	Mrs. Philippa Karsera Christodoulides, First Lady of the Republic of Cyprus.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Zeus+Dione Blouse. Rec'd—9/20/2023. Est. Value—\$570.00. Disposition—Transferred to NARA.	Mrs. Mareva Grabowski Mitsotakis, Spouse of the Prime Minister of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Keyth Beauty Products, Blanket. Rec'd—11/17/2023. Est. Value—\$554.00. Disposition—Perishable items disposed of pursuant to USSS policies (Beauty Products, Blanket).	Mrs. Kim Keon Hee, First Lady of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	"Blooming Roses" Porcelain Plate. Rec'd—11/15/2023. Est. Value—\$485.00. Disposition—Transferred to NARA.	His Excellency Xi Jinping, President of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jacob Sullivan, Assistant to the President for National Security Affairs.	Metal Statue of Wildebeest. Rec'd—12/12/2022. Est. Value—2,100.00. Disposition—Pending transfer to GSA.	The Honorable Monica Juma, National Security Advisor for the Republic of Kenya.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jacob Sullivan, Assistant to the President for National Security Affairs.	Silver Jaguar Statue. Rec'd—1/31/2023. Est. Value—\$485.00. Disposition—Pending transfer to GSA.	His Excellency Ajit Doval, National Security Advisor of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jacob Sullivan, Assistant to the President for National Security Affairs.	Wooden Elephant Sculpture. Rec'd—7/1/2023. Est. Value—\$638.00. Disposition—Pending transfer to GSA.	His Excellency Ajit Doval, National Security Advisor of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jacob Sullivan, Assistant to the President for National Security Affairs.	Grand Cross of Commander of the Order for Merits to Lithuania. Rec'd—7/12/2023. Est. Value—\$975.00. Disposition—Pending transfer to GSA.	His Excellency Gitanas Nausėda, President of the Republic of Lithuania.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued
[REPORT OF TANGIBLE GIFTS FURNISHED BY THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Jacob Sullivan, Assistant to the President for National Security Affairs.	William & Son Clock. Rec'd—11/14/2023. Est. Value—\$1,600.00. Disposition—Pending transfer to GSA.	His Royal Highness Salman Bin Hamad Al Khalifa, Crown Prince and Prime Minister of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Elizabeth Sherwood-Randall, Assistant to the President and Homeland Security Advisor.	Tea Set. Rec'd—3/22/2023. Est. Value—\$900.00. Disposition—Pending transfer to GSA.	His Excellency Javlon Vakhobov, Ambassador of the Republic of Uzbekistan to the United States and Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Elizabeth Sherwood-Randall, Assistant to the President and Homeland Security Advisor.	Silver Elephant Sculpture. Rec'd—9/23/2022. Est. Value—\$3,980.00. Disposition—Pending transfer to GSA.	Mr. Rajinder Khanna, Deputy National Security Advisor & Secretary of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jonathan Finer, Assistant to the President and Principal Deputy National Security Advisor.	Framed Gold-Tone Disc. Rec'd—3/30/2023. Est. Value—\$590.00. Disposition—Pending transfer to GSA.	Mr. Kamchybek Tashiev, Chairman of the State Committee for National Security of the Kyrgyz Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Kurt Campbell, Deputy Assistant to the President and Coordinator for Indo-Pacific Affairs.	Wall Hanging. Rec'd—8/1/2023. Est. Value—\$850.00. Disposition—Pending transfer to GSA.	His Excellency Narendra Modi, Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Brett McGuirk, Deputy Assistant to the President and Coordinator for Middle East and North Africa.	William & Son Clock. Rec'd—11/14/2023. Est. Value—\$1,600.00. Disposition—Pending transfer to GSA.	His Royal Highness Salman Bin Hamad Al Khalifa, Crown Prince and Prime Minister of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Anne Neuberger, Deputy Assistant to the President and Deputy National Security Advisor for Cyber & Emerging Technology.	Silver Candlestick, Silver Picture Frame. Rec'd—7/1/2022. Est. Value—\$515.00. Disposition—Pending transfer to GSA.	Mr. Rajinder Khanna, Deputy National Security Advisor & Secretary of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Eileen Laubacher, Special Assistant to the President and Senior Director for South Asia.	Traditional Rug. Rec'd—2/9/2023. Est. Value—\$600.00. Disposition—Pending transfer to GSA.	His Excellency Masood Khan, Ambassador of the Islamic Republic of Pakistan to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Nicholas Berliner, Special Assistant to the President and Director for Russia.	Uzbek Hat, Cookbook, 2 Silk Fabrics, Coin and Pin Set, Plate. Rec'd—4/5/2023. Est. Value—\$837.00. Disposition—Pending transfer to GSA.	His Excellency Javlon Vakhobov, Ambassador of the Republic of Uzbekistan to the United States and Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Adam Farrar, Special Advisor for East Asia and Oceania.	Wristwatches (Qty. 2) by Kono Corporation. Rec'd—6/27/2022. Est. Value—\$740.00. Disposition—Pending transfer to GSA.	The Government of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Naomi Biden	Embroidery Screen. Rec'd—11/14/2022. Est. Value—\$510.00. Disposition—Pending transfer to GSA.	His Excellency Xi Jinping, President of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Naomi Biden	Jewelry Holder, Napkin Rings, Magnet, Linen Napkins and Placemats, Wooden Utensils, Backpack, Book, Table Runner, Tote Bag. Rec'd—2/23/2023. Est. Value—\$566.00. Disposition—Retained for Personal Use (Rings, Linens, Wooden Utensils, Book, Tote Bag), Transferred to NARA (Jewelry Holder, Magnet, Backpack, Book, Table Runner).	Her Excellency Monica Geingos, First Lady of the Republic of Namibia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Ashley Biden	Silver Necklace, Silver Bracelet. Rec'd—5/30/2023. Est. Value—\$1,395.00. Disposition—Transferred to NARA.	His Excellency Abdel Fattah and Mrs. Entissar El-Sisi, President & First Lady of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE EXECUTIVE OFFICE OF THE VICE PRESIDENT
[Report of Tangible Gifts Furnished by the Executive Office of the Vice President]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Kamala D. Harris, Vice President of the United States.	Kente Cloth, Necklace, Bracelet. Rec'd—3/28/2023. Est. Value—\$600.00. Disposition—Transferred to NARA.	His Excellency Dr. Mahamudu Bawumia, Vice President of the Republic of Ghana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Kamala D. Harris, Vice President of the United States.	Dress from The Lotte. Rec'd—3/28/2023. Est. Value—\$580.00. Disposition—Transferred to NARA.	Mrs. Rebecca Naa Okaikor Akufo-Addo, First Lady of The Republic of Ghana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Kamala D. Harris, Vice President of the United States.	Kente Dress, Jacket, Bracelet. Rec'd—3/28/2023. Est. Value—\$536.00. Disposition—Transferred to NARA.	His Excellency Nana Akufo-Addo, President of the Republic of Ghana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Kamala D. Harris, Vice President of the United States.	Two Kente Cloth Shawls, Flip Flops, Necklace, Earrings. Rec'd—3/28/2023. Est. Value—\$795.00. Disposition—Transferred to NARA.	The Chiefs and People of Cape Coast, Republic of Ghana.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE EXECUTIVE OFFICE OF THE VICE PRESIDENT—Continued

[Report of Tangible Gifts Furnished by the Executive Office of the Vice President]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Kamala D. Harris, Vice President of the United States.	Jewelry with Tanzanian Gemstones, Ujamaa Wood Carving. Rec'd—3/30/2023. Est. Value—\$2,550.00. Disposition—(Jewelry) Transferred to NARA. (Ujamaa Wood Carving) Retain for Official Display.	Her Excellency Samia Suluhu Hassan, President of the United Republic of Tanzania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Kamala D. Harris, Vice President of the United States.	Photo Album of Vice President Kamala Harris's Visit to Zambia, Gold Brooch in the Shape of Africa with Tanzanite and Zambian Emerald, Wooden Carved Sculpture of Person, Playing an Instrument, Two Cloths, Painting of an Elephant. Rec'd—3/31/2023. Est. Value—\$4,025.00. Disposition—(Photo Album) Pending Transfer to NARA. (Gold Brooch, Wooden Carved Sculpture, and Painting) Transferred to NARA.	His Excellency Hakainde Hichilema, President of the Republic of Zambia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Kamala D. Harris, Vice President of the United States.	Tiger Pen Shell with Caraboa Horn Handle. Rec'd—5/1/2023. Est. Value—\$645.00. Disposition—Transferred to NARA.	His Excellency Ferdinand R. Marcos, Jr., President of the Republic of the Philippines.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Kamala D. Harris, Vice President of the United States.	A Painting by Kartika Affandi "Flowers", A Stola Scarf, A Conference Kit. Rec'd—9/8/2023. Est. Value—\$830.00. Disposition—Transferred to NARA.	Dr. Kao Kim Hourn, Secretary-General of Association of Southeast Asian Nations (ASEAN).	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Kamala D. Harris, Vice President of the United States.	Silver Metal Bowl with Lid in Presentation Case. Rec'd—11/16/2023. Est. Value—\$780.00. Disposition—Transferred to NARA.	The Government of Brunei Darussalam	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE

[Report of Tangible Gifts Furnished by the Department of State]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Antony J. Blinken, Secretary of State.	Three Photographs from the Centropa Project & Book: <i>Best of Austropop</i> . Rec'd—2/7/2023. Est. Value—\$600.00. Disposition—Transferred to GSA.	His Excellency Alexander Schallenberg Minister of Foreign Affairs of the Republic of Austria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Antony J. Blinken, Secretary of State.	Framed Acrylic Artwork in Wooden Case. Rec'd—2/14/2023. Est. Value—\$1,000.00. Disposition—Retained for Official Use.	His Highness Sheikh Abdullah bin Zayed Al Nahyan Minister of Foreign Affairs of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Antony J. Blinken, Secretary of State.	Chess Set with Natural Marble Board and Silver-plated Chess Pieces. Rec'd—2/28/2023. Est. Value—\$1,200.00. Disposition—Pending Transfer to GSA.	His Excellency Shavkat Mirziyoyev President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Antony J. Blinken, Secretary of State.	Acrylic Landscape Portrait on Canvas. Rec'd—7/20/2023. Est. Value—\$4,000.00. Disposition—Transferred to GSA.	His Excellency Dr. Abdul Latif bin Rashid Al Zayani Minister of Foreign Affairs of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Linda Thomas-Greenfield, United States Representative to the United Nations.	Red Leather Suitcase, Official FIFA Handover Soccer Ball, Brass Stand, Commemorative FIFA Medal/Coins, 21k Cuff Bracelet, FIFA Stadiums Engraved Cubes, Kashmiri Embroidered Scarf, Silver Burqa Mask, Perfume, Midkhan Incense Burner, and Agarwood. Rec'd—5/25/2023. Est. Value—\$1,070.00. Disposition—Pending Purchase through GSA.	His Highness Sheikh Tamim bin Hamad Al Thani Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable John Kerry, Special Presidential Envoy for Climate.	Painting. Rec'd—11/1/2023. Est. Value—\$511.60. Disposition—Transferred to GSA.	His Excellency Joko Widodo, President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued
[Report of Tangible Gifts Furnished by the Department of State]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Leslie M. Tsou, United States Ambassador to Oman.	1 Wooden Box of Amouage Fragrances, 1 Bottle of Amouage Perfume (women), 2 Bottles of Amouage Perfume (men), 1 Silver Jewelry Set, 1 Silver Letter Opener, Key Ring, and Cufflinks. Rec'd—2/26/2023. Est. Value—\$2,748.22. Disposition—Transferred to GSA.	His Excellency MG Nassir Saleh Al-Mawali, Secretary General of Liaison and Coordination, Sultanate of Oman.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Leslie M. Tsou, United States Ambassador to Oman.	1 Kilo of Hojary Frankincense, 1 Silver Mabkhar, Engraved Box. Rec'd—2/27/2023. Est. Value—\$676.00. Disposition—Transferred to GSA.	General Sultan bin Mohammed Al-Naamani, Minister of the Royal Office, Sultanate of Oman.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Leslie M. Tsou, United States Ambassador to Oman.	Decorative Box with Frankincense and Khanjar. Rec'd—3/9/2023. Est. Value—\$544.00. Disposition—Transferred to GSA.	His Excellency Mohamed Said Khalfan Al Mamari Minister of Endowment and Religious Affairs, Sultanate of Oman.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Leslie M. Tsou, United States Ambassador to Oman.	2 Bottles of Amouage of Perfume. Rec'd—3/12/2023. Est. Value—\$720.00. Disposition—Transferred to GSA.	His Excellency Mohammed Al Zaabi, Secretary General of Ministry of Defense, Sultanate of Oman.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Leslie M. Tsou, United States Ambassador to Oman.	Silver and Gold Vase, Daggar Form Letter Opener. Rec'd—3/19/2023. Est. Value—\$3,124.88. Disposition—Transferred to GSA.	His Excellency Sayyid Badr bin Hamad bin Hamood Albusaidi, Foreign Minister of the Sultanate of Oman.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Leslie M. Tsou, United States Ambassador to Oman.	Silver Mabkhar and Silver Bangle. Rec'd—3/19/2023. Est. Value—\$702.00. Disposition—Transferred to GSA.	His Excellency Sayyid Asaad Bin Tarik Bin Taimur Al-Said, Deputy Prime Minister and Personal Representative of the Sultan of the Sultanate of Oman.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jonathan Henick, United States Ambassador to Uzbekistan.	Cultural Legacy of Uzbekistan in the World Collection—50-Volume Set of Blue Leather Bound Books Qty: 3. Rec'd—5/19/2023. Est. Value—\$3,750.00. Disposition—Retained for Official Use.	Mr. Dilshod Rasulov, Cultural Heritage Agency of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Junaid Munir, United States Deputy Chief of Mission to the Sultanate of Oman.	Ebony Wood Box, Amouage Four Perfume Set, Amouage Enclave, Amouage Crimson Rocks, Amouage Ashore, and Amouage Meander. Rec'd—7/6/2023. Est. Value—\$700.00. Disposition—Transferred to GSA.	Major General Idris Al Kindi, National Security Council, Sultanate of Oman.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF JUSTICE
[Report of Tangible Gifts and Gifts of Travel Furnished by the Department of Justice]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ms. Julie Younts Assistant Chief Inspector, Asset Forfeiture Division for the Criminal Division.	GIFT OF TRAVEL: Travel to European Union through the Camden Asset Recovery Inter-agency Network (CARIN) in Brussels, Belgium. Est. \$3,855.00. Rec'd—4/30/2023—5/5/2023.	European Union through the Camden Asset Recovery Inter-Agency Network (CARIN).	Non-acceptance would cause embarrassment.
Hon. Bruce C. Swartz, Deputy Assistant Attorney General and DOJ Counselor for International Affairs.	GIFT OF TRAVEL: Two Nights of Lodging. Est. \$816.55. Rec'd—7/6/2023.	Government of Japan G7 Interior Ministerial.	Non-acceptance would cause embarrassment.
Hon. Bruce C. Swartz, Deputy Assistant Attorney General and DOJ Counselor for International Affairs.	GIFT OF TRAVEL: Two Nights of Lodging. Est. \$521.64. Rec'd—12/8/2023.	Government of Japan G7 Interior Ministerial.	Non-acceptance would cause embarrassment.

AGENCY: CENTRAL INTELLIGENCE AGENCY
[Report of Tangible Gifts and Gifts of Travel Furnished by the Central Intelligence Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable William Burns, Director of the Central Intelligence Agency.	Rug. Rec'd—1/26/2023. Est. Value—\$500.00. Disposition—Transferred to GSA.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts and Gifts of Travel Furnished by the Central Intelligence Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable William Burns, Director of the Central Intelligence Agency.	Omega Watch. Rec'd—2/2/2023. Est. Value—\$11,000.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable William Burns, Director of the Central Intelligence Agency.	Ceremonial Sword, Bischt. Rec'd—2/2/2023. Est. Value—\$550.00. Disposition—Mission Display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable William Burns, Director of the Central Intelligence Agency.	Alcohol, Watch. Rec'd—2/23/2023. Est. Value—\$875.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable William Burns, Director of the Central Intelligence Agency.	Astroph. Rec'd—4/4/2023. Est. Value—\$18,600.00. Disposition—Pending transfer to GSA.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable William Burns, Director of the Central Intelligence Agency.	Port, Cufflinks, and Plaque. Rec'd—11/2/2023. Est. Value—\$875.00. Disposition—Port—Destroyed Cufflinks—Transferred to GSA (Pending) Plaque—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Wood Carved Chess Set, Persian Rug, Shadow Box, Books. Rec'd—9/28/2023. Est. Value—\$2,000.00. Disposition—Mission Display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Montblanc Explorer, Montblanc Meisterstück Pocket, Montblanc Fine Stationary Notebook, Montblanc Blue Soft Grain Cosmetic Case, Montblanc Starwalker Precious Resin Ballpoint Pen. Rec'd—2/3/2023. Est. Value—\$963.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Montblanc Explorer, Montblanc Meisterstück Pocket, Montblanc Fine Stationary Notebook, Montblanc Blue Soft Grain Cosmetic Case, Montblanc Starwalker Precious Resin Ballpoint Pen. Rec'd—2/4/2023. Est. Value—\$963.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Tsiskolia Brand Georgian Defense Forces Watch. Rec'd—2/10/2023. Est. Value—\$543.00. Disposition—Retaining for Personal Use (Pending Purchase with GSA).	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Challenge Coin, iPhone 14 Max Pro, Oud Fragrance. Rec'd—3/20/2023. Est. Value—\$1,369.00. Disposition—Phone Destroyed, Oud on Mission Display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Box of Four Fragrances from Penhaligon's "Portrait Series". Rec'd—3/22/2023. Est. Value—\$1,240.00. Disposition—Destruction Pending.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	6 Tickets to Meydan World Cup Horse Race and 3 Parking Passes. Rec'd—3/24/2023. Est. Value—\$1,536.00. Disposition—Official Use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Rolex Oyster DateJust, 41mm, Oystersteel, Green. Rec'd—4/15/2023. Est. Value—\$8,100.00. Disposition—Official Use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	A Rado Captain Cook Men's Wristwatch. Rec'd—4/15/2023. Est. Value—\$2,000.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Morsel Chocolates—Al Khubeirah. Rec'd—4/17/2023. Est. Value—\$776.10. Disposition—Official Use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Omega Seamaster Aqua Terra Watch, Ladies Omega Constellation 31mm, Diamond Necklace, Earring Bracelet, and Ring. Rec'd—5/19/2023. Est. Value—\$65,100.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Mont Blanc Meisterstück Document Case. Rec'd—5/28/2023. Est. Value—\$1,265.00. Disposition—Official Use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued
 [Report of Tangible Gifts and Gifts of Travel Furnished by the Central Intelligence Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Cohiba Maduro Secretos (Box of 25). Rec'd—5/30/2023. Est. Value—\$5,000.00. Disposition—Mission Display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Amouage Perfume Chapter III Escape Collection. Rec'd—5/31/2023. Est. Value—\$10,670.00. Disposition—Destruction Pending.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Amouage Perfume/Cologne—Crimson Rocks, Opus XIV Royal, Frederique Constant Highlife Automatic Chronometer watch, Bag of Frankincense. Rec'd—6/8/2023. Est. Value—\$2,940.00. Disposition—Destruction Pending.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Taser H3 PP6 Sports Watch. Rec'd—6/11/2023. Est. Value—\$499.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Mont Blanc Pen. Rec'd—6/13/2023. Est. Value—\$600.00. Disposition—Official Use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Luminox Watch. Rec'd—6/14/2023. Est. Value—\$555.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Mont Blanc Black Leather Document Case. Rec'd—6/15/2023. Est. Value—\$1,652.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Rolex Air King Model 116900. Rec'd—6/18/2023. Est. Value—\$7,450.00. Disposition—Destruction Pending.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Omega Watch. Rec'd—6/18/2023. Est. Value—\$3,000.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Al Grew Woman's Jewelry Set. Rec'd—6/18/2023. Est. Value—\$2,000.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Rolex Model 126300 Oyster Datejust, 41mm, Oystersteel, Green. Rec'd—6/18/2023. Est. Value—\$8,050.00. Disposition—Purchase Pending with GSA.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Al Grew Woman's Jewelry Set (Necklace, Bracelet, Ring, Earrings). Rec'd—6/18/2023. Est. Value—\$30,000.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Rado Captain Cook Watch. Rec'd—6/18/2023. Est. Value—\$4,000.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Omega Watch. Rec'd—6/18/2023. Est. Value—\$3,000.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Men's Rolex Watch, Oyster Perpetual—Yacht Master II. Rec'd—6/20/2023. Est. Value—\$18,700.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Van Cleef and Arpels Vintage Alhambra Necklace. Rec'd—6/20/2023. Est. Value—\$8,400.00. Disposition—Pending Transfer to GSA.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Rolex, Lady-Datejust, Oyster Oyster steel and Yellow Gold. Rec'd—6/20/2023. Est. Value—\$12,500.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Two Large and Two Medium Size Chocolate Gifts. Rec'd—7/6/2023. Est. Value—\$1,400.00. Disposition—Official Use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Beretta Hand Gun. Rec'd—7/6/2023. Est. Value—\$650.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Louis Vuitton Purse (Speedy). Rec'd—7/6/2023. Est. Value—\$1,490.00. Disposition—Pending Purchase Through GSA.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts and Gifts of Travel Furnished by the Central Intelligence Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Wooden box with Frankincense, Gift Box with Four Amouage Cologne/Perfumes. Rec'd—7/6/2023. Est. Value—\$1,600.00. Disposition—Destruction Pending.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Mont Blanc Pen, Dubai Skyline 3D Wall Art. Rec'd—7/25/2023. Est. Value—\$673.56. Disposition—Destruction Pending.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Persian Carpet. Rec'd—9/9/2023. Est. Value—\$1,100.00. Disposition—Purchase Pending Through GSA.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Movado Watch. Rec'd—9/26/2023. Est. Value—\$1,500.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Women's Movado Watch. Rec'd—9/26/2023. Est. Value—\$1,700.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Cohiba Cigars Box (10 Cigars). Rec'd—9/29/2023. Est. Value—\$950.00. Disposition—Official Use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Montblanc Writers Edition Homage to Brothers Grimm Limited Edition Rollerball Pen. Rec'd—11/18/2023. Est. Value—\$1,000.00. Disposition—Official Use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Formula One Tickets. Rec'd—11/24/2023. Est. Value—\$1,200.00. Disposition—Official Use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Mont Blanc Leather Belt and Cufflinks. Rec'd—12/3/2023. Est. Value—\$490.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Creed Cologne Set. Rec'd—12/5/2023. Est. Value—\$810.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Hermes Scarf. Rec'd—12/11/2023. Est. Value—\$510.00. Disposition—Retained by Protocol.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Hermes Scarf. Rec'd—12/11/2023. Est. Value—\$510.00. Disposition—Mission Display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	30 Yr. Tomatin Scotch. Rec'd—12/14/2023. Est. Value—\$500.00. Disposition—Destroyed.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Turntable with Stereo System. Rec'd—12/14/2023. Est. Value—\$699.95. Disposition—Pending Purchase Through GSA.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Gift Card. Rec'd—12/14/2023. Est. Value—\$654.24. Disposition—Official Use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Gift Basket with Alcohol and Food. Rec'd—12/17/2023. Est. Value—\$1,350.00. Disposition—Official Use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	12 Gift Baskets (Italian Dinner Gift Basket). Rec'd—12/26/2023. Est. Value—\$1,980.00. Disposition—Official Use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

[Report of Tangible Gifts Furnished by the Office of the Director of National Intelligence]

Name and title of person accepting the gift on behalf of the U.S. Government.	Gift, date of acceptance on behalf of the U.S. Government., estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Indian Cashmere Silk Rug. Rec'd—4/12/2023. Est. Value—\$500.00. Disposition—Official Use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Ballantine's Blended Scotch Whiskey in Case. Rec'd—12/19/2023. Est. Value—\$500.00. Disposition—Official Use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE—Continued
 [Report of Tangible Gifts Furnished by the Office of the Director of National Intelligence]

Name and title of person accepting the gift on behalf of the U.S. Government.	Gift, date of acceptance on behalf of the U.S. Government., estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Ballantine's Blended Scotch Whiskey in Case. Rec'd—12/29/2023. Est. Value—\$500.00. Disposition—Official Use.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE
 [Report of Tangible Gifts Furnished by the Department of the Defense]

Name and title of person accepting the gift on behalf of the U.S. Government.	Gift, date of acceptance on behalf of the U.S. Government., estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Lloyd J. Austin, Secretary of Defense.	South Seal Pearl Brooch Pendant, Silvertone Nacre in Presentation box, Scarf by Raffaella, Photo Montage. Rec'd—2/2/2023. Est. Value—\$1,390.00. Disposition—Pending Transfer to GSA.	His Excellency Carlito Galvez Jr., Secretary of Defense of the Republic of the Philippines.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Lloyd J. Austin, Secretary of Defense.	Knife in Bespoke Elliptical Walnut Presentation Box. Rec'd—2/9/2023. Est. Value—\$1,900.00. Disposition—Pending Transfer to GSA.	His Excellency Juansher Burchuladze, Minister of Defense of Georgia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Lloyd J. Austin, Secretary of Defense.	Letter Box and Envelope Opener. Rec'd—3/5/2023. Est. Value—\$1,700.00. Disposition—Pending Transfer to GSA.	His Majesty King Abdullah II ibn Al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Lloyd J. Austin, Secretary of Defense.	"ROK-U.S." Book, Framed Collage of Wine Photos. Rec'd—3/8/2023. Est. Value—\$720.00. Disposition—Pending Transfer to GSA.	His Excellency Jong-Sup Lee, Minister of Defense of the Republic of South Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Lloyd J. Austin, Secretary of Defense.	Plate in Presentation Box, Egyptian Statue. Rec'd—4/5/2023. Est. Value—\$1,080.00. Disposition—Pending Transfer to GSA.	His Excellency General Mohamed Zaki Mohamed, Minister of Defense of the Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Lloyd J. Austin, Secretary of Defense.	Plate in Bespoke Presentation Box. Rec'd—9/14/2023. Est. Value—\$1,700.00. Disposition—Pending Transfer to GSA.	His Royal Highness Prince Salman bin Hamad Al Khalifa, Crown Prince and Prime Minister of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Lloyd J. Austin, Secretary of Defense.	Pistol in Bespoke Presentation Box. Rec'd—11/16/2023. Est. Value—\$2,560.00. Disposition—Pending Transfer to GSA.	His Excellency Prabowo Subianto, Minister of Defense of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Mark A. Milley, Chairman	Silver Pitcher in Presentation Box, Plaque. Rec'd—2/28/2023. Est. Value—\$610.00. Disposition—Pending Transfer to GSA.	Lt. General Osama Asker, Chief of Staff of the Armed Forces of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Mark A. Milley, Chairman	Moroccan Rug, Twelve Glass Bottles of Assorted Oils in Presentation Box. Rec'd—3/4/2023. Est. Value—\$910.00. Disposition—Pending Transfer to GSA.	His Excellency Nasser Bourita, Minister of Foreign Affairs of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Mark A. Milley, Chairman	2 Plaques, Skincare Products in Presentation Box. Rec'd—3/14/2023. Est. Value—\$1,560.00. Disposition—Plaques Retained for Official Display, Skincare Pending Transfer to GSA.	Belkhir El Farouk, Inspector General, Chief of Defense of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Mark A. Milley, Chairman	Sandalwood Carving of Garuda Whisnu Kencana, 2 Silk Brocade Batik Textiles. Rec'd—6/21/2023. Est. Value—\$675.00. Disposition—Pending Transfer to GSA.	Yudo Margono, Chief of Defense of the Republic Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Daniel Erikson, Deputy Assistant Secretary of Defense for the Western Hemisphere.	Jade Face Sculpture in Presentation Box. Rec'd—4/4/2023. Est. Value—\$970.00. Disposition—Pending Transfer to GSA.	The Government of Guatemala	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Heidi Shyu, Under Secretary of Defense for Research & Engineering.	Scarf, Writing Set. Rec'd—5/11/2023. Est. Value—\$830.00. Disposition—Official Display.	Lt. General Luciano Portolano, Secretary General of Defense and National Armaments Director of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Tyler Nocita, Iraq Country Director for Deputy Assistant Secretary of Defense Middle East.	Harp Miniature Replica. Rec'd—7/6/2023. Est. Value—\$690.00. Disposition—Pending Transfer to GSA.	His Excellency Nazar Al Khirullah, Ambassador of the Republic of Iraq to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lieutenant General Scott Berrier, Director, Defense Intelligence Agency.	Fighting Stick. Rec'd—7/12/2023. Est. Value—\$675.00. Disposition—Pending Transfer to GSA.	Retired Air Commodore Tim Walshe, Chief of Defense Intelligence of New Zealand.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued
 [Report of Tangible Gifts Furnished by the Department of the Defense]

Name and title of person accepting the gift on behalf of the U.S. Government.	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mr. Ronald Moultrie, Under Secretary of Defense for Intelligence and Security.	Boot, Hat Rec'd—7/16/2023. Est. Value—\$770.00. Disposition—Purchase Completed Through GSA.	Lt. General Gavan Reynolds, Chief of Defense Intelligence of the Commonwealth of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Celeste Wallander, Assistant Secretary of Defense for International Security Affairs.	Painting. Rec'd—7/25/2023. Est. Value—\$550.00. Disposition—Pending Transfer to GSA.	His Excellency Hanena Ould Sidi, Minister of Defense of the Islamic Republic of Mauritania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Colin Khal, Under Secretary of Defense for Policy.	Gold Armenian Coin. Rec'd—9/8/2023. Est. Value—\$870.00. Disposition—Pending Transfer to GSA.	His Excellency Suren Papikyan, Minister of Defense of the Republic of Armenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Melissa Dalton, Assistant Secretary of Defense for Homeland Defense & Hemisphere Affairs.	Leather Tote Bag, Aluminum Round Tray. Rec'd—11/4/2023 Est. Value—\$630.00. Disposition—Pending Transfer to GSA.	His Excellency Elias Antonio Melgar, Vice Minister of Defense of the Republic of Honduras.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE AIR FORCE
 [Report of Tangible Gifts Furnished by the Department of Air Force]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Major General Wendul G. Hagler	Tissot Seastar Analog Men's Watch. Rec'd—Unknown Est. Value—\$1,025.00. Disposition—Transferred to GSA.	Unknown	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General Richard J. Quirk	Tissot Men's Watch. Rec'd—Unknown Est. Value—\$875.00. Disposition—Transferred to GSA.	Unknown	Non-acceptance would cause embarrassment to donor and U.S. Government.
Major General Wendul G. Hagler	Tudor 79030B Men's Watch. Rec'd—Unknown Est. Value—\$2,545.00. Disposition—Transferred to GSA.	Unknown	Non-acceptance would cause embarrassment to donor and U.S. Government.
Major General Wendul G. Hagler	Tudor 79580 Watch. Rec'd—Unknown Est. Value—\$2,325.00. Disposition—Transferred to GSA.	Unknown	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General Richard J. Quirk	Tumi Harrison Sycamore Briefcase. Rec'd—Unknown Est. Value—\$750.00. Disposition—Transferred to GSA.	Unknown	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Michael E. Kurilla	Movado 800 Series Watch. Rec'd—Unknown Est. Value—\$1,195.00. Disposition—Transferred to GSA.	Unknown	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General Richard J. Quirk	Remarkable 2 Bundle (Tablet, Marker, Case). Rec'd—Unknown Est. Value—\$557.00. Disposition—Transferred to GSA.	Unknown	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF NAVY
 [Report of Tangible Gifts Furnished by the Department of Navy]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Admiral James Caldwell, Director of Navy Nuclear Propulsion.	Brass Cylinder, Former Artillery Shell with Wooden Cap. Rec'd—6/9/2023. Est. Value—\$1,600.00. Disposition—Official Use (Display).	Admiral Sir Tony Radakin, Chief of Defense Staff to the United Kingdom of Great Britain and Northern Ireland?	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: ENVIRONMENTAL PROTECTION AGENCY
 [Report of Tangible Gifts Furnished by the Environmental Protection Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ms. Jane Bare, Chemical Engineer, Office of Research & Development, Environmental Solutions & Emergency Response, Land Remediation & Technology Division, Environmental Decision Analytics Branch.	GIFT OF TRAVEL: Reimbursement for Travel Expenses to Copenhagen, Denmark. Est. Value—\$1,277.00. Rec'd—5/28/2023–6/3/2023.	United Nations Environment Programme.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: ENVIRONMENTAL PROTECTION AGENCY—Continued
 [Report of Tangible Gifts Furnished by the Environmental Protection Agency]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ms. Jane Bare, Chemical Engineer, Office of Research & Development, Environmental Solutions & Emergency Response, Land Remediation & Technology Division, Environmental Decision Analytics Branch.	GIFT OF TRAVEL: Reimbursement for Travel Expenses to Copenhagen, Denmark. Est. Value—\$1,277.00. Rec'd—5/28/2023–6/3/2023.	United Nations Environment Programme.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Richard Wormell, Associate Director, Office of Chemical Safety and Pollution Prevention, Office of Program Support.	GIFT OF TRAVEL: Reimbursement for Travel Expenses to Geneva, Switzerland. Est. Value—\$1,220.00. Rec'd—11/3/2023–11/11/2023.	United Nations Food and Agriculture Organization.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Amy Porter, Senior International Advisor, Office of Enforcement and Compliance Assurance.	GIFT OF TRAVEL: Reimbursement for Travel Expenses to Santiago, Chile. Est. Value—\$570.00. Rec'd—11/4/2023–11/11/2023.	Chilean National Agency for Research and Development (ANID).	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Timothy Epp, Associate General Counsel, Office of General Counsel, National FOIA (Freedom of Information Act) Office.	GIFT OF TRAVEL: Reimbursement for Travel Expenses to Nairobi, Kenya. Est. Value—\$1,500.00. Rec'd—11/10/2023–11/15/2023.	United Nations Environment Programme.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Amy Porter, Senior International Advisor, Office of Enforcement and Compliance Assurance.	GIFT OF TRAVEL: Reimbursement for Travel Expenses to Mexico City. Est. Value—\$552.00. Rec'd—11/27/2023–11/30/2023.	InterAmerican Development Bank	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: U.S. GOVERNMENT ACCOUNTABILITY OFFICE
 [Report of Tangible Gifts Furnished by the U.S. Government Accountability Office]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Gene Dodaro, Comptroller General of the United States.	Loro Piana Gloves, XL. Rec'd—1/5/2023. Est. Value—\$675.00. Disposition—On Display for Official Use.	Dr. Al Anghari, Auditor General of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mrs. Joan M. Dodaro, Spouse of the Comptroller General of the United States.	Chloe Gloves, XL. Rec'd—1/5/2023. Est. Value—\$580.00. Disposition—On Display for Official Use.	Dr. Al Anghari, Auditor General of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: FEDERAL COMMUNICATIONS COMMISSION
 [Report of Tangible Gifts Furnished by the Federal Communications Commission]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mr. Jared Carlson, Supervisory Attorney Advisor, Office of International Affairs.	GIFT OF TRAVEL: Travel Expenses to Bogota, Colombia. Est. Value—\$640.00. Rec'd—9/3/2023–9/9/2023.	Comision de Regulacion de Comunicaciones (Communications Regulatory Commission), Republic of Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: FEDERAL RESERVE SYSTEM
 [Report of Tangible Gifts Furnished by the Federal Reserve System]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Philip N. Jefferson, Vice Chair of the Board of Governors of the Federal Reserve System.	Sadeli Wooden Box, Filigree Wood Craft Art Replica of Sidi Saiyyed Mosque, Cotton Stole with Soof Embroidery, Ikat Print Briefcase with Notebook, Pencils, Ballpoint pen, and Magnet, USB Flash Drive, Embroidery Wallpiece, A Set of Four Agate Coasters, Semi-Ikat Stole, "Tree of Life" Rogan Art Textile in Wooden Frame. Rec'd—7/17/2023. Est. Value—\$602.10. Disposition—Pending Completion of Purchase through GSA.	Government of India, President of the G20.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE TREASURY

[Report of Tangible Gifts Furnished by the Department of the Treasury]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Janet Yellen, Secretary of the Treasury of the United States.	Framed Mixed Media Painting of Senegalese Woman. Rec'd—7/18/2023. Est. Value—\$501.37. Disposition—Transferred to GSA.	His Excellency Macky Sall, President of the Republic of Senegal.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Janet Yellen, Secretary of the Treasury of the United States.	Framed Artwork. Rec'd—7/21/2023. Est. Value—\$2,000.00. Disposition—Transferred to GSA.	His Excellency Vuong Dinh Hue, Chairman of National Assembly of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Adewale Adeyemo, Deputy Secretary of the Treasury of the United States.	Set of Four Commemorative Coins. Rec'd—4/11/2023. Est. Value—\$599.00. Disposition—Transferred to GSA.	His Excellency Mher Grigoryan, Deputy Prime Minister of the Republic of Armenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Erick Placencia, Intelligence Analyst, Department of the Treasury.	Bottle of Mont Blanc Cologne, Mont Blanc Starwalker Resin Pen, Mont Blanc Sketchbook, Monte Blanc Key Fob, Mont Blanc Leather Card Holder, and a Box of Figs. Rec'd—11/29/2023. Est. Value—\$1,117.95. Disposition—Pending transfer to GSA.	The Government of United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Jaclyn Cahan, Senior Advisor, Under Secretary Terrorism and Financial Intelligence.	GIFT OF TRAVEL: Rec'd—9/5/2023. Travel and Accommodations for Cyber Conference in Poland. Est. Value—\$1,095.00. Rec'd—9/5/2023.	Mr. Michał Pukaluk, Director for Digital Policy Department at the Chancellery of the Prime Minister of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ms. Emily Williams, Enforcement Officer, Office of Foreign Assets Control.	GIFT OF TRAVEL: Travel and Accommodation Rome, Italy for Training Event. Est. Value—\$2,166.00. Rec'd—11/5/2023.	Brigadier General Salvatore Russo, Italian Guardia di Finanza of the Italian Republic.	Non-acceptance would cause embarrassment.
Ms. Magdalena Martinez, Investigative Specialist (Global) Global Investigations Division, Financial Crimes Enforcement Network.	GIFT OF TRAVEL: Travel and Accommodation Rome, Italy for Training Event. Est. Value—\$2,707.00. Rec'd—11/5/2023.	Major General Francesco Mattana, Guardia di Finanza's Economic and Financial Police of the Italian Republic.	Non-acceptance would cause embarrassment.

AGENCY: U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

[Report of Tangible Gifts Furnished by the U.S. Agency for International Development]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ms. Nidia Melisa Portillo, Foreign Service National.	GIFT OF TRAVEL: Registration Fee, Transportation, Lodging, and Meals. Est. Value—\$3,510.00. Rec'd—2/2/2023.	Agency for International Development Cooperation in the Ministry of Foreign Affairs of the State of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. James Kovar, Foreign Service Officer.	GIFT OF TRAVEL: Air Travel. Est. Value—\$5,798.29. Rec'd—2/23–24/2023.	International Organization for Migration (IOM).	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

[Report of Gifts of Travel Furnished by the U.S. House of Representatives]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Amata Radewagen, Member of Congress.	GIFT OF TRAVEL: Transportation and Lodging. Rec'd—5/30/2023–6/1/2023.	Her Excellency Fiamē Naomi Mata'afa, Prime Minister of the Independent State of Samoa.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Rosa DeLauro, Member of Congress.	GIFT OF TRAVEL: Transportation in Spain. Rec'd—11/18/2023–11/22/2023.	Mr. Ernesto Gasco, High Commissioner Against Child Poverty in Spain.	Non-acceptance would cause embarrassment.
Ms. Ola Foster, District Scheduler/Manager/Executive Assistant.	GIFT OF TRAVEL: Transportation and Lodging while in Samoa. Rec'd—5/30/2023–6/1/2.	Government of the Independent State of Samoa.	Non-acceptance would cause embarrassment.
Mr. David Winfrey, Legislative Director, United States House of Representatives.	GIFT OF TRAVEL: Lodging and Transportation in Berlin. Rec'd—6/30/2023–7/9/2023.	The Parliament of the Federal Republic of Germany.	Non-acceptance would cause embarrassment.
Mr. Daniel Chulak, Digital Manager/Legislative Aide, United States House of Representatives.	GIFT OF TRAVEL: Lodging and Transportation in Berlin. Rec'd—6/30/2023–7/9/2023.	The Parliament of the Federal Republic of Germany.	Non-acceptance would cause embarrassment.
Ms. Julia Cook, Assistant Parliamentarian, United States House of Representatives.	GIFT OF TRAVEL: Lodging and Transportation in Berlin. Rec'd—6/30/2023–7/9/2023.	The Parliament of the Federal Republic of Germany.	Non-acceptance would cause embarrassment.

AGENCY: U.S. HOUSE OF REPRESENTATIVES—Continued
[Report of Gifts of Travel Furnished by the U.S. House of Representatives]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ms. Jasmine Kemp, Deputy Chief of Staff, United States House of Representatives.	GIFT OF TRAVEL: Lodging and Transportation in Berlin. Rec'd—6/30/2023—7/9/2023.	The Parliament of the Federal Republic of Germany.	Non-acceptance would cause embarrassment.
Mr. Nadav Konforty, Special Assistant, United States House of Representatives.	GIFT OF TRAVEL: Lodging and Transportation in Berlin. Rec'd—6/30/2023—7/9/2023.	The Parliament of the Federal Republic of Germany.	Non-acceptance would cause embarrassment.
Ms. Emily Silverberg, Legislative Director, United States House of Representatives.	GIFT OF TRAVEL: Lodging and Transportation in Berlin. Rec'd—6/30/2023—7/9/2023.	The Parliament of the Federal Republic of Germany.	Non-acceptance would cause embarrassment.
Mr. Christopher Bien, Director of Floor Operations, United States House of Representatives.	GIFT OF TRAVEL: Lodging and Transportation in Berlin. Rec'd—7/1/2023—7/9/2023.	The Parliament of the Federal Republic of Germany.	Non-acceptance would cause embarrassment.

AGENCY: U.S. SENATE
[Report of Tangible Gifts Furnished by the U.S. Senate]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Dan Sullivan, United States Senator.	Two Titanium Tumblers. Rec'd—11/14/2022. Est. Value—\$352.00. Disposition—Secretary of the Senate.	His Excellency Koji Tomita, Ambassador Extraordinary and Plenipotentiary of Japan to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Chris Van Hollen, United States Senator.	Leather Briefcase. Rec'd—12/12/2022. Est. Value—\$102.00. Disposition—Secretary of the Senate.	His Excellency Ntsokoane Samuel Matekane, Prime Minister of the Kingdom of Lesotho.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Mark Kelly, United States Senator.	Moroccan Rug, Moroccan Oil Set, Silver Desktop Supply Set. Rec'd—1/30/2023. Est. Value—\$1,150.00. Disposition—Secretary of the Senate.	His Excellency Nasser Bourita, Minister of Foreign Affairs and International Cooperation of the Kingdom of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable James Lankford, United States Senator.	Moroccan Rug, Moroccan Perfume Set. Rec'd—1/30/2023. Est. Value—\$550.00. Disposition—Secretary of the Senate.	His Excellency Nasser Bourita, Minister of Foreign Affairs and International Cooperation of the Kingdom of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Dan Sullivan, United States Senator.	Moroccan Rug, Desk Supply Set, Moroccan Perfume Set. Rec'd—1/30/2023. Est. Value—\$700.00. Disposition—Secretary of the Senate.	His Excellency Nasser Bourita, Minister of Foreign Affairs and International Cooperation of the Kingdom of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jack Reed, United States Senator.	Handcrafted Table. Rec'd—2/23/2023. Est. Value—\$152.79. Disposition—Secretary of the Senate.	Lt. General Nadeem Anjum, Director-General of Inter-Services Intelligence of Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Mark R. Warner, United States Senator.	Sillanwali Handcrafted Side Table. Rec'd—2/23/2023. Est. Value—\$120.00. Disposition—Secretary of the Senate.	Lt. General Nadeem Anjum, Director-General of Inter-Services Intelligence of Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Lindsey Graham, United States Senator.	Yellow Pattern Rug. Rec'd—2/27/2023. Est. Value—\$150.00. Disposition—Secretary of the Senate.	His Excellency Nasser Bourita, Minister of Foreign Affairs and International Cooperation of the Kingdom of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Christopher A. Coons, United States Senator.	Moroccan Rug. Rec'd—2/27/2023. Est. Value—\$400.00. Disposition—Secretary of the Senate.	His Excellency Nasser Bourita, Minister of Foreign Affairs and International Cooperation of the Kingdom of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Martin Heinrich, United States Senator.	Moroccan Rug. Rec'd—2/27/2023. Est. Value—\$500.00. Disposition—Secretary of the Senate.	His Excellency Nasser Bourita, Minister of Foreign Affairs and International Cooperation of the Kingdom of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Mark Kelly, United States Senator.	Moroccan Rug, Desk Supply Set. Rec'd—3/7/2023. Est. Value—\$550.00. Disposition—Secretary of the Senate.	His Excellency Nasser Bourita, Minister of Foreign Affairs and International Cooperation of the Kingdom of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Mitch McConnell, United States Senator.	Jali Work Box. Rec'd—6/23/2023. Est. Value—\$125.00. Disposition—Secretary of the Senate.	His Excellency Narendra Modi, Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Charles E. Schumer, United States Senator.	Camel Bone Box. Rec'd—6/29/2023. Est. Value—\$125.00. Disposition—Secretary of the Senate.	His Excellency Narendra Modi, Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable John Cornyn, United States Senator.	Tea Set. Rec'd—6/30/2023. Est. Value—\$225.00. Disposition—Secretary of the Senate.	His Excellency Hakan Fidan, Minister of Foreign Affairs for the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Menendez, United States Senator.	Pottery Gift Set. Rec'd—7/20/2023. Est. Value—\$399.00. Disposition—Secretary of the Senate.	Mr. Hans Chiao, Deputy Director, Taipei Economic and Cultural Representative Office in the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: U.S. SENATE—Continued
[Report of Tangible Gifts Furnished by the U.S. Senate]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Robert Menendez, United States Senator.	Tea Set. Rec'd—7/20/2023. Est. Value—\$138.00. Disposition—Secretary of the Senate.	Mr. Sherzon Rikhsiboev, Attache from the Embassy of the Republic of Uzbekistan to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Menendez, United States Senator.	Daily Routine Set. Rec'd—7/20/2023. Est. Value—\$130.00. Disposition—Secretary of the Senate.	Rep. Kim Gi-Hyeon, Leader of the Korean People Party, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Menendez, United States Senator.	Spoon and Chopsticks Set. Rec'd—7/20/2023. Est. Value—\$110.00. Disposition—Secretary of the Senate.	Rep. Kim Gi-Hyeon, Leader of the Korean People Party, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Menendez, United States Senator.	Pottery. Rec'd—7/27/2023. Est. Value—\$158.00. Disposition—Secretary of the Senate.	His Excellency Minister Toshimitsu Motegi, Secretary General of the Liberal Democratic Party of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Christopher A. Coons, United States Senator.	Wooden Box of Chocolates. Rec'd—10/21/2023. Est. Value—\$203.00. Disposition—Secretary of the Senate.	His Royal Highness Prince Mohammed bin Salman bin Abdulaziz Al Saud, Crown Prince and Prime Minister of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Marco Rubio, United States Senator.	GIFT OF TRAVEL: Transportation within Ecuador via Government Aircraft. Rec'd—2/23/2023.	His Excellency Guillermo Lasso, President of the Republic of Ecuador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Hon. Samantha Roberts, Minority General Counsel, Senate Select Committee on Intelligence.	GIFT OF TRAVEL: Transportation within Ecuador via Government Aircraft. Rec'd—2/23/2023.	His Excellency Guillermo Lasso, President of the Republic of Ecuador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Hon. Viviana Bovo, Senior Advisor for Western Hemisphere Affairs, Office of Senator Marco Rubio.	GIFT OF TRAVEL: Transportation within Ecuador via Government Aircraft. Rec'd—2/23/2023.	His Excellency Guillermo Lasso, President of the Republic of Ecuador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Hon. Deanna Segall, Legislative Aide, Office of Senator Dianne Feinstein.	GIFT OF TRAVEL: Local Transportation within Germany, Lodging, and Meals. Rec'd—7/1/2023–7/9/2023.	Hon? Merve Dikme, International Relations Staff—International Exchange Programmes, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Hon. Asna Ashfaq, Legislative Aide, Office of Senator Jon Ossoff.	GIFT OF TRAVEL: Local Transportation within the Republic of Korea, Lodging, and Meals. Rec'd—6/23/2023–8/2/2023.	Committee on Foreign Affairs, Trade, and Unification, The Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: U.S. COMMODITY FUTURES TRADING COMMISSION (CFTC)
[Report of Tangible Gifts Furnished by the U.S. Commodity Futures Trading Commission]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Caroline D. Pham, Commissioner, Commodity Futures Trading Commission.	Complimentary "Speaker" pass to Abu Dhabi Finance Week 2023. Rec'd—11/29/2023–11/30/2023. Est. Value—\$5,000.00.	Abu Dhabi Global Market (ADGM)	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Caroline D. Pham, Commissioner, Commodity Futures Trading Commission.	Complimentary "Delegate" pass to Abu Dhabi Finance Week 2023. Rec'd—11/29/2023–11/30/2023. Est. Value—\$500.00.	Abu Dhabi Global Market (ADGM)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
[Report of Tangible Gifts Furnished by the Administrative Office of the United States Courts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable John G. Roberts, Jr., Chief Justice of the United States.	GIFT OF TRAVEL: Lodging (3 Nights). Est. \$2,387.00. Rec'd—9/6/2023–9/9/2023.	Supreme Court of Canada	Non-acceptance would cause embarrassment.
The Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States.	GIFT OF TRAVEL: Lodging (3 Nights). Est. \$1,207.00. Rec'd—9/6/2023–9/9/2023.	Supreme Court of Canada	Non-acceptance would cause embarrassment.
The Honorable Stephen G. Breyer (Retired), Associate Justice of the Supreme Court of the United States	GIFT OF TRAVEL: Lodging (3 Nights). Est. \$808.00. Rec'd—9/6/2023–9/9/2023.	Supreme Court of Canada	Non-acceptance would cause embarrassment.
The Honorable Robert M. Dow, Jr., Counselor to the Chief Justice.	GIFT OF TRAVEL: Lodging (3 Nights). Est. \$1,207.00. Rec'd—9/6/2023–9/9/2023.	Supreme Court of Canada	Non-acceptance would cause embarrassment.

[FR Doc. 2024–31509 Filed 1–2–25; 8:45 am]

BILLING CODE 4710–20–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on January 30, 2025. The Commission will hold this hearing in person and telephonically. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. The Commission will also hear testimony on a proposed general permit, GP–04 relating to Into Basin Diversions of Water and a proposed Dry Cooling Resolution to update the 2015 Dry Cooling Resolution previously adopted by the Commission. Such projects and actions are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for March 13, 2025, which will be noticed separately. The public should note that this public hearing will be the only opportunity to offer oral comments to the Commission for the listed projects and actions. The deadline for the submission of written comments is February 10, 2025.

DATES: The public hearing will convene on January 30, 2025, at 6 p.m. The public hearing will end at 9 p.m. or at the conclusion of public testimony, whichever is earlier. The deadline for submitting written comments is Monday, February 10, 2025.

ADDRESSES: This public hearing will be conducted in person and telephonically. You may attend in person at Susquehanna River Basin Commission, 4423 N Front St., Harrisburg, Pennsylvania, or join by telephone at Toll-Free Number 1–877–304–9269 and then enter the guest passcode 2619070 followed by #.

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423 or joyler@srbc.gov.

Information concerning the project applications is available at the Commission's Water Application and Approval Viewer at <https://www.srbc.gov/waav>. The Proposed General Permit and the Proposed Dry Cooling Resolution are available on the Commission's website at [https://www.srbc.gov/regulatory/public-](https://www.srbc.gov/regulatory/public-participation/)

[participation/](https://www.srbc.gov/regulatory/policies-guidance/docs/access-to-records-policy-2009-02.pdf). Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at www.srbc.gov/regulatory/policies-guidance/docs/access-to-records-policy-2009-02.pdf.

SUPPLEMENTARY INFORMATION: In addition to the Proposed General Permit, GP–04 relating to the Into Basin Diversion of Water and the Proposed Dry Cooling Resolution, the public hearing will cover the following projects:

Projects Scheduled for Action

1. *Project Sponsor and Facility:* Beavertown Municipal Authority, Beaver Township, Snyder County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.199 mgd from Well 6 and 0.199 mgd from Well 7 (Docket No. 19930901).

2. *Project Sponsor and Facility:* Bedford Township Municipal Authority, Bedford County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.324 mgd from Bowman Well 1 and 0.100 mgd from Bowman Well 2 (Docket No. 19990502). *Service area is located in an Environmental Justice area.*

3. *Project Sponsor:* BlueTriton Brands, Inc. *Project Facility:* Pine Grove Spring, Pine Grove Township, Schuylkill County, Pa. Applications for renewal of groundwater withdrawal of up to 0.288 mgd (30-day average) from Borehole PB–1, consumptive use of up to 0.288 mgd (30-day average), and an out-of-basin diversion of up to 0.288 mgd (30-day average) (Docket No. 20000202).

4. *Project Sponsor:* Borough of Ephrata. *Project Facility:* Ephrata Area Joint Authority, Ephrata Borough, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.260 mgd (30-day average) from Well 2 (Docket No. 19940706). *Service area is located in an Environmental Justice area.*

5. *Project Sponsor and Facility:* College Township Water Authority, College Township, Centre County, Pa. Application for groundwater withdrawal of up to 1.405 mgd (30-day average) from Well OH–20.

6. *Project Sponsor and Facility:* Diversified Production LLC (Wilson Creek), Duncan Township, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.720 mgd (peak day) (Docket No. 20200302).

7. *Project Sponsor and Facility:* DS Services of America, Inc., West Earl Township, Lancaster County, Pa. Application for renewal of consumptive

use of up to 0.242 mgd (30-day average) (Docket No. 20000203). *Located adjacent to an Environmental Justice area.*

8. *Project Sponsor and Facility:* EQT ARO LLC (Lycoming Creek), Lewis Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 1.340 mgd (peak day) (Docket No. 20200301).

9. *Project Sponsor:* First Investors General, Inc. *Project Facility:* Cool Creek Golf Club, Hellam Township, York County, Pa. Application for renewal with modification for consumptive use of up to 0.190 mgd (30-day average) (Docket No. 20000602).

10. *Project Sponsor and Facility:* Fredericksburg Sewer and Water Authority, Bethel Township, Lebanon County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.158 mgd from Well 7 and 0.144 mgd from Well 8.

11. *Project Sponsor:* H&K Group, Inc. *Project Facility:* Penn/MD Materials Quarry, Fulton Township, Lancaster County, Pa. Applications for consumptive use of up to 0.024 mgd (peak day) and groundwater withdrawals (30-day averages) of up to 1.980 mgd from the Pit Sump, 0.004 mgd from the Primary and Secondary Well, and 0.011 mgd from the Tertiary Well.

12. *Project Sponsor:* HP Hood LLC. *Project Facility:* Arkport NY Plant, Hornellsville Town, Steuben County, N.Y. Application for groundwater withdrawal of up to 0.600 mgd (30-day average) from Well 2.

13. *Project Sponsor and Facility:* Huntsinger Farms, Inc. (Deep Creek 3), Hegins Township, Schuylkill County, Pa. Application for surface water withdrawal of up to 0.504 mgd (peak day).

14. *Project Sponsor and Facility:* JKLM Energy, LLC (Tioga River), Tioga Township, Tioga County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

15. *Project Sponsor:* McStern, L.L.C. *Project Facility:* Deer Valley Golf Course, South Hanover Township, Dauphin County, Pa. Application for renewal with modification for consumptive use of up to 0.217 mgd (30-day average) (Docket No. 20020618).

16. *Project Sponsor and Facility:* Meadia Heights Golf Club LLC (Conestoga River), West Lampeter Township, Lancaster County, Pa. Applications for renewal of surface water withdrawal of up to 0.249 mgd (peak day) and consumptive use of up to 0.249 mgd (30-day average) (Docket

No. 20200910). *Located in an Environmental Justice area.*

17. *Project Sponsor:* Michael Foods, Inc. *Project Facility:* Papetti's Hygrade Egg Products, Inc., d.b.a. Michael Foods Egg Products Company, Upper Mahantango Township, Schuylkill County, Pa. Applications for renewal of consumptive use of up to 0.225 mgd (peak day) and groundwater withdrawals (30-day averages) of up to 0.186 mgd from Well 1, 0.079 mgd from Well 2, and 0.350 mgd from Well 3 (Docket No. 19990903).

18. *Project Sponsor and Facility:* Repsol Oil & Gas USA, LLC (Sugar Creek), Troy Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.750 mgd (peak day).

19. *Project Sponsor:* Susquehanna Nuclear, LLC. *Project Facility:* Susquehanna Steam Electric Station, Salem Township, Luzerne County, Pa. Applications for renewal of surface water withdrawal of up to 76.000 mgd (peak day) from the Susquehanna River, consumptive use of up to 53.000 mgd (peak day), and groundwater withdrawal of up to 0.125 (30-day average) from Well TW-2 (Docket No. 19950301).

20. *Project Sponsor and Facility:* SWN Production Company, LLC (Susquehanna River), Oakland Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 3.000 mgd (peak day) (Docket No. 20200305).

21. *Project Sponsor and Facility:* SWN Production Company, LLC (Tunkhannock Creek), Lenox Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 1.218 mgd (peak day) (Docket No. 20200306).

22. *Project Sponsor:* Valley CC LLC. *Project Facility:* Valley Country Club, Sugarloaf Township, Luzerne County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.090 mgd from the Shop Well and 0.090 mgd from the Pumpouse Well (Docket No. 20090632).

23. *Project Sponsor:* Weaverland Valley Authority. *Project Facility:* Terre Hill Water System, East Earl Township, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.098 mgd (30-day average) from Well 6 (Docket No. 19880405).

24. *Project Sponsor and Facility:* Westfield Borough, Tioga County, Pa. Application for groundwater withdrawal of up to 0.412 mgd (30-day average) from the Harvey Well.

Opportunity To Appear and Comment

Interested parties may appear or call into the hearing to offer comments to the Commission on any business listed above required to be the subject of a public hearing. Given the nature of the meeting, the Commission strongly encourages those members of the public wishing to provide oral comments to pre-register with the Commission by emailing Jason Oyler at joyler@srbc.gov before the hearing date. The presiding officer reserves the right to limit oral statements in the interest of time and to control the course of the hearing otherwise. Access to the hearing via telephone will begin at 5:45 p.m. Guidelines for the public hearing are posted on the Commission's website, www.srbc.gov, before the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any business listed above required to be the subject of a public hearing may also be mailed to Mr. Jason Oyler, Secretary to the Commission, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110-1788, or submitted electronically through <https://www.srbc.gov/meeting-comment/default.aspx?type=2&cat=7>. Comments mailed or electronically submitted must be received by the Commission on or before Monday, February 10, 2025, to be considered.

Authority: Pub. L. 91-575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: December 30, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2024-31584 Filed 1-2-25; 8:45 am]

BILLING CODE 7040-01-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2024-0313]

Agency Information Collection Activities; Revision of an Approved Information Collection: National Consumer Complaint Database

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR)

described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. This revision is for the National Consumer Complaint Database (NCCDB), which is an online interface allowing consumers, drivers, and others to file complaints against unsafe and unscrupulous companies and/or their employees, including shippers, receivers, and transportation intermediaries, depending on the type of complaint. These complaints cover a wide range of issues, including but not limited to driver harassment, coercion, movement of household goods, financial responsibility instruments for brokers and freight forwarders, Americans with Disability Act (ADA) compliance, Electronic Logging Device (ELD), Entry-Level Driver Training (ELDT), Medical Review Officer (MRO), and Substance Abuse Professional (SAP) complaints. FMCSA requests approval to revise the ICR titled "National Consumer Complaint Database."

DATES: Comments on this notice must be received on or before March 4, 2025.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2024-0313 using any of the following methods:

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

- **Mail:** Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

- **Fax:** (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Donnice Wagoner, Commercial Enforcement Division/MC-SEI, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590-0001; (202) 366-8045; Donnice.Wagoner@dot.gov.

SUPPLEMENTARY INFORMATION:

Instructions

All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Public Participation and Request for Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2024–0313), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2024-0313/document>, click on this notice, click “Comment,” and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, including any personal information the commenter provides, to www.regulations.gov as described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>. The comments are posted without edits and are searchable by the name of the submitter.

Background

FMCSA maintains online information and resources to assist consumers, drivers, and others associated with the motor carrier industry with understanding their consumer

protection rights and, if necessary, with filing a complaint with the Agency. When effectively applied, this information can contribute to safer motor carrier operations on our nation’s highways and improved consumer protection. NCCDB complaint data also provides FMCSA with statistical information regarding motor carriers, in particular the household goods moving industry. NCCDB data is used to alert consumers of those motor carriers with a history of complaints related to transporting household goods and helps FMCSA provide guidance to the public on how to avoid being victimized by unscrupulous moving companies. The data also allows FMCSA to identify problematic motor carriers for enforcement actions and promote compliance. Motor carriers can use NCCDB data to assist with complaint reconciliation.

Since 2016, the NCCDB system has been the central repository for motor carrier complaints received by FMCSA; however, responding to consumer complaints has a long-standing Agency regulatory history. Congress first mandated a Safety Violation Hotline Service in section 4017 of the “Transportation Equity Act of the 21st Century,” (Pub. L. 105–178, 112 Stat. 107 (June 9, 1998)). Congress required DOT to establish, maintain, and promote the use of a nationwide toll-free telephone system to be used by drivers of commercial motor vehicles and others to report potential violations of Federal Motor Carrier Safety Regulations.

The Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1748 (Dec. 9, 1999)) created FMCSA and expanded the Safety Violation Hotline Service to include a 24-hour operation and accept consumer complaints on violations of the commercial regulations previously administered by the Interstate Commerce Commission (*i.e.*, household goods and hostage load complaints).

The Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144 (Aug. 10, 2005)) required FMCSA to create a system, database, and procedures for filing and logging consumer complaints relating to household goods motor carriers for the purpose of compiling or linking complaint information gathered by FMCSA and the States with regard to such carriers. SAFETEA–LU also required FMCSA to create procedures to allow the public to have access, subject to 5 U.S.C. 552(a), to aggregated complaint information and a process for

carriers to challenge duplicate or fraudulent information in the database.

Complaints are also accepted through the NCCDB in connection with other statutory mandates including the protection of drivers against harassment and coercion under sections 32301(b) and 32911, respectively, of the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141, 126 Stat. 405 (July 6, 2012)).

FMCSA is in the process of modernizing its NCCDB complaint program and system as well as expanding the program alongside process recommendations submitted by the U.S. Government Accountability Office in September 2023. These recommendations are being implemented to expand and enhance FMCSA’s ability to centralize the collection, monitoring, and response to consumer complaints about Agency programs, to establish reasonable procedures to provide timely responses to consumers regarding their complaints, and to share complaint information with the public as well as Federal and State agencies, as necessary and applicable.

Title: National Consumer Complaint Database.

OMB Control Number: 2126–0067.

Type of Request: Revision of a currently approved ICR.

Respondents: Consumers, Drivers, and Other Participants in the Motor Carrier Industry.

Estimated Number of Respondents: 64,545.

Estimated Time per Response: 15 minutes.

Expiration Date: June 30, 2025.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 16,136. The annual burden was calculated using the complaint volume for each of the 12 categories of complaint types.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA’s functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB’s clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2024–31549 Filed 1–2–25; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2001–11213, Notice No. 29]

Drug and Alcohol Testing: Determination of Minimum Random Testing Rates for 2025

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notification of determination.

SUMMARY: This notification of determination announces FRA's minimum annual random drug and minimum annual random alcohol testing rates for covered service, maintenance-of-way (MOW), and mechanical (MECH) employees for calendar year 2025.

DATES: This determination takes effect January 3, 2025.

FOR FURTHER INFORMATION CONTACT:

Gerald Powers, FRA Drug and Alcohol Program Manager, by email: gerald.powers@dot.gov or by telephone: 202–493–6313; or Melissa Van Dermeir, FRA Drug and Alcohol Program Specialist, by email: melissa.vandermeir@dot.gov or by telephone: 312–720–9491.

SUPPLEMENTARY INFORMATION: Each year, FRA sets its minimum annual random testing rates after considering the last two complete calendar years of railroad industry drug and alcohol program data submitted to its Management Information System (MIS). FRA, however, reserves the right to consider factors other than MIS-reported data before deciding whether to lower annual minimum random testing rates. *See* 85 FR 81265 (Dec. 15, 2020).

FRA is announcing that its minimum annual random drug and alcohol testing rates for calendar year 2025 will continue to be the same as those for calendar year 2024, as follows:

- Covered service employees—25 percent for drugs and 10 percent for alcohol.
- MOW employees—25 percent for drugs and 10 percent for alcohol.
- MECH employees—50 percent for drugs and 25 percent for alcohol.

These rates are minimums, and railroads and railroad contractors may

conduct FRA random testing at higher rates.

Discussion

Random Testing Rates for Covered Service Employees

The industry-wide random drug testing positive rate for covered service employees remained below 1.0 percent for 2022 and 2023. The Administrator has therefore determined the minimum annual random drug testing rate for covered service employees will remain at 25 percent for the period January 1, 2025, through December 31, 2025.

The industry-wide random alcohol testing violation rate for covered service employees remained below 0.5 percent for 2022 and 2023. The Administrator has therefore determined the minimum random alcohol testing rate for covered service employees will remain at 10 percent for the period January 1, 2025, through December 31, 2025.

Random Testing Rates for MOW Employees

The industry-wide random drug testing positive rate for MOW employees remained below 1.0 percent for 2022 and 2023. The Administrator has therefore determined the minimum annual random drug testing rate for MOW employees will remain at 25 percent for the period January 1, 2025, through December 31, 2025.

The industry-wide random alcohol testing violation rate for MOW employees remained below 0.5 percent for 2022 and 2023. The Administrator has therefore determined the minimum random alcohol testing rate for MOW employees will remain at 10 percent for the period January 1, 2025, through December 31, 2025.

Random Testing Rates for MECH Employees

FRA will not have the two full years of industry-wide MIS data required to adjust the random testing rates for MECH employees until it has the MIS data for 2024, since MECH employees did not become subject to FRA random drug and alcohol testing until March 2022. *See* 87 FR 5719 (Feb. 2, 2022). The Administrator has therefore determined that the minimum random rates for MECH employees will remain at 50 percent for drugs and 25 percent for alcohol for the period January 1, 2025, through December 31, 2025.

Issued in Washington, DC

Allison Ishihara Fultz,
Chief Counsel.

[FR Doc. 2024–31582 Filed 1–2–25; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2024–0013]

National Transit Database Reporting Changes and Clarifications for Report Years 2025 and 2026

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice, reopening of comment period.

SUMMARY: The Federal Transit Administration (FTA) is reopening the comment period for the **Federal Register** notice regarding FTA's National Transit Database reporting changes and clarifications, which was published on October 31, 2024, with the original comment period closing on December 30, 2024.

DATES: The comment period for the document published October 31, 2024 at 89 FR 86907 is reopened. Comments should be filed by January 29, 2025. FTA will consider comments received after that date to the extent practicable.

ADDRESSES: You may send comments, identified by docket number FTA–2024–0013, by any of the following methods:

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

- *Mail:* Send comments to Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Management Facility, U.S. Department of Transportation, at (202) 493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket Number (FTA–2024–0013) for this notice, at the beginning of your comments. If sent by mail, submit two copies of your comments.

Electronic Access and Filing: This document and all comments received may be viewed online through the Federal eRulemaking portal at <https://www.regulations.gov> or at the street address listed above. Electronic submission, retrieval help, and guidelines are available on the Federal eRulemaking portal website. The

website is available 24 hours each day, 365 days a year. Please follow the instructions. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at <https://www.federalregister.gov>.

Privacy Act: Except as provided below, all comments received into the docket will be made public in their entirety. The comments will be searchable by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You should not include information in your comment that you do not want to be made public. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at <https://www.transportation.gov/privacy>.

FOR FURTHER INFORMATION CONTACT: For program matters, contact Chelsea Champlin, National Transit Database Program Manager, FTA Office of Budget and Policy, 202–366–1651, Chelsea.champlin@dot.gov.

SUPPLEMENTARY INFORMATION: FTA's Office of Budget and Policy is reopening the comment period for the **Federal Register** notice on National Transit Database Reporting Changes and Clarifications, originally published on October 31, 2024 (89 FR 86907). Given the complex nature of these reporting requirements and its impact on NTD reporting agencies, it is essential that transit agencies and all affected parties have sufficient time to review these proposals and comment on them if so desired. The extension is supported by FTA's Transit Advisory Committee for Safety and FTA's Office of Transit Safety, as the notice contains proposed changes that impact safety and security reporting as well. In support of public transportation safety, in light of the comment period coinciding with the end-of-year holidays, and to allow for more input on the implementation of these reporting changes, FTA believes offering the standard 30-day extension of time is justified and is reopening the comment period until January 29, 2025.

Veronica Vanterpool,
Deputy Administrator.

[FR Doc. 2024–31495 Filed 1–2–25; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection Tools Relating to the Qualified Electric Vehicle Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning information collection requirements related to the qualified electric vehicle credit.

DATES: Written comments should be received on or before March 4, 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 control number 1545–1374 or Qualified Electric Vehicle Credit, in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at Kerry.L.Dennis@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Qualified Electric Vehicle Credit.

OMB Number: 1545–1374.

Form Number: 8834.

Abstract: Form 8834 is used to claim any qualified electric vehicle passive activity credit allowed for the current tax year. The IRS uses the information on the form to determine that the credit is allowable and has been properly computed.

Current Actions: There is no change in the form or paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and businesses or other for-profit organizations.

Estimated Number of Respondents: 3,136.

Estimated Time per Response: 4 hours, 47 min.

Estimated Total Annual Burden Hours: 15,022 hours.

The following paragraph applies to all 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 if 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.

Kerry L. Dennis,
Tax Analyst.

[FR Doc. 2024–31559 Filed 1–2–25; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of

the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq
Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
Yemen

Lindsay Kitzinger,

International Tax Counsel, (Tax Policy).

[FR Doc. 2024–31585 Filed 1–2–25; 8:45 am]

BILLING CODE 4810-AK-P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nomination for Appointment to the Advisory Committee on Disability Compensation

AGENCY: Department of Veterans Affairs.

ACTION: Notice of solicitation for nominations.

SUMMARY: The Department of Veterans Affairs (VA), Advisory Committee on Disability Compensation (the Committee), is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee for the 2025–2026 membership cycle.

DATES: Nominations for membership on the Committee must be received by February 3, 2025, no later than 4 p.m., eastern standard time. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be emailed to 21C_ACDC.VBACO@va.gov. Please write Nomination for ACDC Membership in the subject line.

FOR FURTHER INFORMATION CONTACT: Jadine Piper, Designated Federal Officer, 21C_ACDC.VBACO@va.gov or (202) 461–8459.

SUPPLEMENTARY INFORMATION: In carrying out the duties set forth, the Committee provides a Congressionally mandated biennial report to the Secretary, which includes:

(1) Providing ongoing assessment of the effectiveness, maintenance, and periodic readjustment of the VA Schedule for Rating Disabilities (VASRD).

(2) Reviewing programs and activities within VA that relate to the payment of disability compensation and providing

recommendations on the most appropriate means of responding to the needs of Veterans relating to disability compensation in the future.

(3) Assessing the needs of Veterans with respect to compensation benefits and VASRD by meeting with VA officials, Veterans Service Organizations, and other stakeholders.

Management and support services for the Committee are provided by VBA.

Authority: The Committee is authorized by 38 U.S.C. 546 and operates under the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. ch. 10.

Membership Criteria: VBA is requesting nominations for vacancies on the Committee. As required by statute, the members of the Committee are appointed by the Secretary from the general public, including, but not limited to:

(1) Individuals with experience with the provision of disability compensation by the Department; or

(2) Individuals who are leading medical and scientific experts in relevant fields.

In accordance with section 546, the Secretary shall determine the terms of service, and pay and allowances of the Committee members. A term of service may not exceed four years. The Secretary may reappoint any member for additional terms of service.

Professional Qualifications: In addition to the criteria above, VA seeks:

(1) Diversity in professional and personal qualifications (*e.g.*, current employment (indicate if retired) (Non-Veterans are also eligible for nomination)); (2) Experience working in large and complex organizations; (3) Experience in military service (please identify branch, rank, deployments, status (*i.e.*, active/retired)); (4) Current work with Veterans (if employed as by a Veterans Service Organization, indicate current, prior, or retired and which organization); (5) Disability compensation subject matter expertise; and (6) Diversity in demographics (*e.g.*, gender; ethnicity, geographic location, etc.).

Requirements for Nomination Submission

Nomination packages must be typewritten (12-point font) (one nomination per nominator) and include: (1) a cover letter from the nominee and (2) a current resume or curriculum vitae (CV). The cover letter must summarize: The nominee's interest in serving on the committee and contributions they can make to the work of the committee; any relevant Veterans' service activities they are currently engaged in; and the

military branch affiliation and timeframe of military service (if applicable). Finally, the cover letter must include the nominee's complete contact information (name, mailing address, email address and phone number); and a statement indicating a willingness to serve as a member of the Committee and confirming that they are not a Federally-registered lobbyist.

The resume/CV should show professional and/or work experience and Veterans' service involvement—especially service that involves disability compensation issues. To promote inclusion and demographic balance of membership, please include as much information related to your race, national origin, disability status, minority Veteran status, or any other factors that may give you a diverse perspective on disability compensation, as well as a summary of your experience and qualifications relative to the membership criteria and professional qualifications listed above.

Self-nominations are acceptable. Any letters of nomination from organizations or other individuals must accompany the package when it is submitted. Letters of nomination submitted without a complete nomination package will not be considered. If you are submitting a package on behalf of an individual, it must include all of the required components and complete contact information. Do not submit a package without the nominee's consent or awareness.

Membership Terms: Individuals selected for appointment to the Committee shall be invited to serve a two-year term. Committee members will receive a stipend for attending Committee meetings, including per diem and reimbursement for travel expenses incurred.

The Department makes every effort to ensure that the membership of its Federal advisory committees is fairly-balanced in terms of points of view represented. Every effort is made to ensure that a broad representation of geographic areas, gender, and racial and ethnic minority groups, and that the disabled are given consideration for membership. Appointments to this Committee shall be made without discrimination because of a person's race, color, religion, sex (including gender identity, transgender status, sexual orientation, and pregnancy), national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An

ethics review is conducted for each
selected nominee.

Dated: December 30, 2024.

Jelessa M. Burney,
*Federal Advisory Committee Management
Officer.*

[FR Doc. 2024–31581 Filed 1–2–25; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

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Friday,

No. 2

January 3, 2025

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Occupant Crash Protection, Seat Belt Reminder Systems, Controls and Displays; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2024–0071]

RIN 2127–AL37

Federal Motor Vehicle Safety Standards; Occupant Crash Protection, Seat Belt Reminder Systems, Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document amends Federal Motor Vehicle Safety Standard (FMVSS) No. 208, “Occupant crash protection,” to require a seat belt use warning system for rear seats. The rule also updates and enhances the current seat belt warning requirements for the driver’s seat belt and extends these requirements to the front outboard passenger seat. The final rule applies (with some exceptions) to passenger cars, trucks, most buses, and multipurpose passenger vehicles with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less. This document also makes related amendments to FMVSS No. 101, “Controls and displays.”

DATES: *Effective date:* The effective date of this final rule is March 4, 2025.

Compliance date: The compliance date of this final rule is September 1, 2026, for the front seat belt warning system requirements and September 1, 2027, for the rear seat belt warning system requirements, with optional early compliance permitted. Multi-stage manufacturers and alterers would have an additional year to comply.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than February 18, 2025.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Note that all petitions received will be posted without change to www.regulations.gov, including any personal information provided.

Privacy Act: Petitions will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the

comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>.

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I. Executive Summary

This final rule amends Federal Motor Vehicle Safety Standard (FMVSS or Standard) No. 208, “Occupant crash protection,” to require a seat belt use warning system for rear seats. This rule completes NHTSA’s response to a mandate in the Moving Ahead for Progress in the 21st Century Act (MAP–21) that directed NHTSA to initiate a rulemaking to require a seat belt warning for the rear seats in motor vehicles; it also completes NHTSA’s action on a rulemaking petition from Public Citizen and Advocates for Highway and Auto Safety for the same rule. The final rule also updates and enhances the current seat belt warning requirements for the driver’s seat belt and extends these requirements to the front outboard passenger seat. The final rule applies (with some exceptions) to passenger cars, trucks, most buses, and multipurpose passenger vehicles (MPVs) with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less. NHTSA is issuing this final rule under the National Traffic and Motor Vehicle Safety Act (Safety Act), 49 U.S.C. chapter 301, Motor Vehicle Safety (49 U.S.C. 30101 *et seq.*).

Safety Need for the Final Rule

Using a seat belt is one of the most effective ways a motor vehicle occupant can prevent death and injury in a crash. Seat belts prevent occupants from being ejected from the vehicle, provide “ride-down” by gradually decelerating the occupant as the vehicle deforms and absorbs energy, and reduce occupant contact with harmful interior surfaces and other occupants. Seat belts are effective in most types of crashes and

greatly reduce the risk of fatal and non-fatal injuries compared to the risk faced by unrestrained occupants.

While seat belt use is meaningfully higher than it was a decade ago, there is room for improvement. Usage rates for seat belts in rear seats have consistently been below those for the front seats; and while front seat belt use rates increased in the early 2010s, for the last several years they have plateaued. According to data from NHTSA's annual study of observed seat belt use, in every year from 2013 through 2022, seat belt use was lower in the rear seats than in the front seats, ranging from a difference of about 9 percentage points in 2013 (78 percent vs. 87 percent) to about 14 percentage points in 2017 (75 percent vs. 89 percent). In 2022, front seat belt use was about 91.6 percent and rear seat belt use was about 81.7 percent.

Every year, thousands of unrestrained motor vehicle occupants are killed in crashes and tens of thousands of unrestrained occupants are injured (additional details on the target population are provided in the summary of benefits and costs later in this executive summary). Seat belt warning systems (also referred to as seat belt reminder systems) encourage seat belt use by reminding unbuckled occupants to fasten their belts and/or by informing the driver that a passenger is unbelted so that the driver can request the unbelted occupant to buckle up. The warnings provided by seat belt warning systems typically consist of visual and/or audible signals. Research by NHTSA and others shows that seat belt warning systems are effective at getting unbuckled occupants to fasten their seat belts.

FMVSS No. 208 currently requires a short-duration audio-visual seat belt warning for the driver's seat belt in passenger cars, most trucks and MPVs with a GVWR of 4,536 kg (10,000 lb) or less, and buses with a GVWR of 3,855 kg (8,500 lb) or less. Under these current requirements, the visual component of the warning generally must be at least 60 seconds long, and the audible component must be at least four seconds long.

Voluntary adoption by vehicle manufacturers of warnings that go beyond this regulatory minimum, while considerable, has been mixed. Although the regulations do not require seat belt warnings for any seating position other than the driver's seat, almost all model year (MY) 2022 vehicles have a voluntarily provided seat belt warning for the front outboard passenger seat. However, voluntary adoption for rear seats has been much slower, as only

about 47 percent of MY 2022 vehicles come equipped with a voluntarily provided rear seat belt warning system. Most vehicles already provide a seat belt warning for both front outboard seats that is much longer than the minimal required warning for the driver's seat belt, with the vast majority of vehicles including an alert that is at least 90 seconds. This widespread adoption suggests that the front seat belt warning minimum requirements in the FMVSS are outdated, as consumers accept audio-visual reminders that are far longer than the required minimums.

As discussed above, rear seat belt use rates have persistently been below those for the front seats, and progress on front seat belt use rates has slowed. Moreover, unbuckled occupants, in the front and rear seats, continue to be overrepresented in fatal crashes (51 percent), given the lower exposure of unbelted occupants relative to belted occupants (because front seat belt use is about 90 percent and rear seat belt use is 80 percent). Despite the effectiveness of seat belts and seat belt warnings, most new vehicles continue to lack a rear seat belt warning. Additionally, while most vehicles provide some level of enhanced reminders for the front seats, this level of enhanced protection has not occurred for all vehicles and is not standardized. This gap in protection suggests a need for a beneficial safety technology that is not being met in the vehicle market. This final rule is intended to meet this safety need.

Legal Authority and Prior Regulatory History

NHTSA is issuing this final rule pursuant to the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30101 *et seq.*) (Safety Act), which authorizes NHTSA to establish FMVSSs. That statute requires safety standards to be objective, practicable, and meet the need for safety, among other things. NHTSA has concluded that the finalized requirements satisfy these statutory criteria.

This final rule completes NHTSA's response to a rulemaking mandate in MAP-21. MAP-21 required DOT (NHTSA, by delegation) to initiate a rulemaking proceeding to require rear seat belt warnings and directed the agency to issue a final rule unless the rule would not meet the Safety Act requirements for an FMVSS.

This final rule also completes NHTSA's action on a rulemaking petition from Public Citizen and Advocates for Highway and Auto Safety. The petition requested that NHTSA issue a rule requiring a seat belt warning system for rear seats on passenger cars

and MPVs with a GVWR of 4,536 kg (10,000 lb) or less.

Summary of the Final Rule

This final rule amends the existing seat belt warning provisions in FMVSS No. 208. The final rule has two main components. The first requires a seat belt warning for the rear seats. The second amends and enhances the seat belt warning requirements for the front outboard seats. The requirements apply (with some exceptions) to passenger cars and trucks, most buses, and multipurpose passenger vehicles with a GVWR of 4,536 kg (10,000 lb) or less.

1. Rear Seat Belt Reminder Requirements

The first component of this final rule is a set of requirements for a seat belt warning for rear seats. The new requirements have four main elements.

- *Visual warning on vehicle start-up to inform the driver of the status of the rear seat belts.* The final rule requires a visual warning that informs the driver how many or which rear seat belts are in use and/or not in use. The warning must activate when the ignition (or, for electric vehicles (EVs), propulsion system) is activated, and last for at least 60 seconds. No visual warning is required if the system can determine that there are no occupied rear seats or if there are no occupied rear seats with a seat belt that is not in use.

- *Audio-visual change-of-status warning.* The final rule requires an audio-visual warning whenever a fastened rear seat belt is unfastened while the vehicle is in forward or reverse drive mode. (The warning is not required if the system can determine that a rear passenger has unfastened the seat belt in order to exit the vehicle or switch seats.) The warning must last for at least 30 seconds or until the seat belt that triggered the warning is re-fastened. The audible portion of the warning may be temporarily paused to allow another audible safety warning alerting the driver to take immediate action.

- *Requirements related to electrical connections.* Readily removable rear seats must either automatically establish the electrical connections when the seat is put in place or, if a manual connection is required, the connectors must be readily accessible. Vehicles equipped with certain types of seat belt warning systems are additionally required to provide a visual warning to the driver if a proper electrical connection has not been established.

- *Owner's manual requirements.* The vehicle owner's manual (which includes information provided by the vehicle manufacturer to the consumer, whether

in digital or printed form) must describe the warning system's features, including the location and format of the visual warnings. It must also include instructions on how to make any manual electrical connections for readily removable seats.

2. Front Outboard Seat Belt Warning Requirements

The final rule includes several changes and enhancements to the seat belt warning requirements for the front outboard seats. The new requirements have two main elements.

- *Seat belt warning now required for front outboard passenger seat.* This final rule requires a seat belt warning for the front outboard passenger seat. It does not require one for front center seats because, among other things, doing so would not be cost-effective. Currently, only the driver's seat is required to have a seat belt warning, although almost all vehicles now provide a seat belt warning for the front outboard passenger seat as well.

- *Enhanced audio-visual seat belt warning.* The final rule requires a longer-duration audio-visual warning than is currently required for the driver's seat belt. The final requirements for this warning differ from the proposal, which would have required (with some exceptions) an audio-visual warning lasting until the belt at any occupied front outboard seat was fastened. This included a warning at the start of a trip and if a belt was unfastened during a trip. The proposal did not include any other warning triggers, such as vehicle speed. The final rule requires a visual warning and a two-phase audible warning that is based, in part, on vehicle speed.

Visual warning. Under the final rule, a visual warning is required whenever the ignition switch is in the "on" or "start" position (or the propulsion system is activated), the seat is occupied, and the seat belt is not in use. The warning must be visible to the driver.

Audible warning. The final rule requires a two-phase audible warning. The first phase warning must activate when the ignition/propulsion system is activated, the seat is occupied, and the belt is not in use. The first phase warning must last for at least 30 seconds, unless the seat belt that

triggered the warning is fastened or the second phase audible warning is activated within that time. The second phase audible warning must activate, and remain active, whenever the seat is occupied, the seat belt is not in use, and the vehicle speed is at least 10 km/h (6.2 mph). The audible warning may be temporarily paused to allow another audible safety warning alerting the driver to take immediate action.

The final rule also contains requirements for the visual and audible warnings as well as for other system features.

Compliance Date

This final rule establishes a compliance date for the amendments to FMVSS No. 208, "Occupant crash protection," as follows. Manufacturers must comply with the amendments as of September 1, 2026 for the front seat belt warning system requirements and September 1, 2027 for the rear seat belt warning system requirements, with optional early compliance (see Section IX for details). Consistent with 49 CFR 571.8(b), multi-stage manufacturers and alterers have an additional year to comply.

Regulatory Alternatives

NHTSA considered a wide range of alternatives to the proposed requirements. The main alternatives NHTSA considered were the seat belt warning requirements in Economic Commission for Europe (ECE) Regulation No. 16 (R16) and Euro New Car Assessment Programme (Euro NCAP). The finalized requirements are identical or similar to ECE R16 and Euro NCAP in many respects but differ from them in several ways. For instance, while under ECE R16 the smallest occupant a rear seat belt system with occupant detection must be capable of detecting is a small-statured adult female, under the final rule such systems must be capable of detecting occupants as small as a 6-year-old child and activating the warning accordingly. Another way the proposal differs from ECE R16 is the duration of the front seat belt warning on vehicle start-up: R16 generally requires only a 30–60 second audio-visual warning; the final rule requires, under certain conditions, an audio-visual warning that lasts until the

seat belt is buckled. The final regulatory analysis quantifies the costs and benefits of three specific regulatory alternatives: requiring occupant detection for the rear seat belt warning system; requiring (for the front outboard seats) an audio-visual warning on vehicle start-up with a duration of 90 seconds; and requiring a seat belt warning for front center seats.

Benefits and Costs of the Proposed Requirements

This final rule is significant and was reviewed by the Office of Management and Budget under Executive Order 12866, as amended by Executive Order 14094.

NHTSA estimates the target population and the benefits and costs of the final rule requirements in the stand-alone final regulatory impact analysis (FRIA) that is being placed in the docket with this final rule and is summarized in this document.

Based on NHTSA's data on fatalities and injuries from motor vehicle crashes, adjusted to account for the benefits of other mandatory safety technologies, there are, on average, 822 fatalities and 11,409 injuries to unrestrained rear seat occupants and 8,383 fatalities and 154,739 injuries to unrestrained front outboard seat occupants each year. The final rule requirements are aimed at reducing these deaths and injuries.

NHTSA estimates the benefits it expects from the final rule seat belt warning requirements. The benefits are the fatalities and injuries that would be prevented by these requirements. The benefits depend, principally, on the expected increase in seat belt use and the effectiveness of seat belts in preventing deaths and injuries.

For the rear seat belt warning system analysis, NHTSA used a "low" and a "high" estimate for the increase in rear belt use with the warning system. For occupants 11 years and older, these were 3 and 5 percentage points, respectively, and for occupants from 6 to 10 years old, 0.3 and 0.4 percentage points respectively.¹ For simplicity, NHTSA refers to these scenarios as "Low" and "High." The estimated annual benefits for rear seat belt warning systems are presented in table 1.²

¹ Children in booster seats are part of the target population for this final rule because they should be restrained with the seat belt and so would benefit from a seat belt reminder. The transition to a booster seat typically occurs from ages 4–7 years, and recommendations to remain in a booster seat exist until age 12 years. <https://www.nhtsa.gov/>

vehicle-safety/car-seats-and-booster-seats#find-the-right-car-seat-car-seat-recommendations.

² The Abbreviated Injury Scale (AIS) is a classification system for assessing impact injury severity developed and published by the Association for the Advancement of Automotive Medicine and is used for coding single injuries,

assessing multiple injuries, or for assessing cumulative effects of more than one injury. MAIS represents the maximum injury severity of an occupant at an AIS level, *i.e.*, the highest single AIS for a person with one or more injuries. MAIS 1 & 2 injuries are considered minor injuries and MAIS 3–5 are considered serious injuries.

TABLE 1—ESTIMATED ANNUAL BENEFITS—POTENTIAL LIVES SAVED AND INJURIES PREVENTED FOR REAR SEAT BELT WARNING SYSTEMS (SBWS) WITHOUT OCCUPANT DETECTION, WITH ESTIMATED “LOW” AND “HIGH” PERCENTAGE POINT INCREASE IN BELT USE

Injury level	Low	High
MAIS 1	36	54
MAIS 2	80	120
MAIS 3	26	38
MAIS 4	4	6
MAIS 5	1	2
Total Injuries	148	221
Fatal	26	39

Another way to measure benefits is by calculating equivalent lives saved (ELS). Equivalent lives saved are the number of prevented fatalities added to the number of prevented injuries, with the

prevented injuries expressed in terms of fatalities (that is, with an injury expressed as a fraction of a fatality, so that the more serious the injury, the higher the fraction). The estimated

equivalent lives saved assuming either a 3 percent or 7 percent discount rate are presented in table 2.

TABLE 2—ESTIMATED ANNUAL BENEFITS—EQUIVALENT LIVES SAVED (ELS)—REAR SBWS WITHOUT OCCUPANT DETECTION

Belt use increase	3 Percent discount rate	7 Percent discount rate
Low	29.98	24.31
High	45.09	36.55

NHTSA also estimates the costs of the final rule requirements for rear seat belt warnings. NHTSA estimates that the minimum cost to comply with the rear seat belt warning requirements is \$166.44 million (M). This is based on a per-vehicle cost of \$19.59 for 53.1 percent of 16M affected new vehicles.

Based on the foregoing, NHTSA performed benefit-cost and cost-effectiveness analyses. A benefit-cost analysis calculates the net benefits, which is the difference between the benefits flowing from injury and fatality reductions and the cost of the rule. The net benefit estimates are presented in

table 3. The cost-effectiveness analysis derives the cost per equivalent life saved, which is equal to the total cost of the rule divided by the total fatal equivalents that it prevents. These estimates are presented in table 4.

TABLE 3—NET BENEFITS—REAR SBWS WITHOUT OCCUPANT DETECTION
[2020 Dollars, in millions]

Belt use increase	Benefits 3 percent discount	Benefits 7 percent discount	Cost	Net benefits 3 percent discount rate	Net benefits 7 percent discount rate
Low	\$357.78	\$290.05	\$166.4	\$191.34	\$123.62
High	538.00	436.16	166.4	371.56	269.72

TABLE 4—COST-EFFECTIVENESS ANALYSIS (COST PER EQUIVALENT LIFE SAVED)—REAR SBWS WITHOUT OCCUPANT DETECTION
[2020 Dollars, in Millions]

Belt use increase	ELS 3 percent discount	ELS 7 percent discount	Cost	Cost/ELS 3 percent discount	Cost/ELS 7 percent discount
Low	29.98	24.31	\$166.4	\$5.55	\$6.85
High	45.09	36.55	166.4	3.69	4.55

This final rule also enhances the driver seat belt warning requirements by requiring an indefinite visual warning and a two-phase audible warning that is based, in part, on vehicle speed that

remains active until the driver's seat belt is buckled and extending these enhanced driver's seat belt warning requirements to the front outboard passenger seat. NHTSA estimates the

annual benefits of a seat belt warning for the driver and outboard front passenger that remains active until the occupant's seat belt is buckled as shown in table 5 and table 6.

TABLE 5—ESTIMATED ANNUAL BENEFITS—LIVES SAVED AND INJURIES PREVENTED—INDEFINITE DURATION SBWS (FRONT OUTBOARD SEATS)

Injury level	Driver	Front passenger	Total
MAIS 1	129	14	143
MAIS 2	151	19	170
MAIS 3	62	8	69
MAIS 4	9	1	10
MAIS 5	3	0	3
Total Injuries	354	42	395
Fatal	20	2	22

TABLE 6—ESTIMATED ANNUAL BENEFITS—EQUIVALENT LIVES SAVED—INDEFINITE DURATION SBWS (FRONT OUTBOARD SEATS)

	Undiscounted	3 Percent discount rate	7 Percent discount rate
Driver	42.26	34.98	28.36
Front Passenger	4.44	3.68	2.99
Total	46.70	38.66	31.35

NHTSA estimates that the incremental cost of the enhanced seat belt warning for the driver's seat and the front outboard passenger seat would be no greater than the currently available seat belt warning. Although a seat belt warning is currently not required for the front outboard passenger seats, we estimate that 96 percent of new vehicles are equipped with them.³ NHTSA

estimates that the cost for equipping a front outboard passenger seat with a seat belt warning system is about \$2.13 per vehicle. To equip a seat belt warning system in the front outboard passenger seat positions on the remaining four percent of the new vehicle fleet (16 million) without such a warning is \$1.36 million (= \$2.13 × 0.04 × 16 million).

The total monetized benefits, costs, and net benefits (total monetized benefits—total cost) of the enhanced seat belt warning system for the driver and front passenger are shown in table 7. Table 8 presents the results of the cost effectiveness analysis—cost per equivalent lives saved from enhanced SBWS for the driver and front outboard passenger.

TABLE 7—ANNUAL MONETIZED BENEFITS, COSTS, AND NET BENEFITS—INDEFINITE SBWS (FRONT OUTBOARD SEATS)
[2020 Dollars, in Millions]

	Driver		Front passenger		Driver and front passenger	
	3 Percent	7 Percent	3 Percent	7 Percent	3 Percent	7 Percent
Passenger Car Benefits	\$188.89	\$154.12	\$22.86	\$18.65	\$211.75	\$172.77
Light Truck & Van Benefits	228.51	184.29	21.05	16.97	249.56	201.26
Total Benefits	417.41	338.41	43.90	35.62	461.31	374.03
Total Costs	0	0	1.36	1.36	1.36	1.36
Net Benefits	417.41	338.41	42.54	34.26	459.95	372.67

TABLE 8—COST-EFFECTIVENESS ANALYSIS (COST PER EQUIVALENT LIFE SAVED)—INDEFINITE SBWS (FRONT OUTBOARD SEATS)
[2020 Dollars, in millions]

Discount rate	ELS	Cost	Cost/ELS
3 percent	38.66	\$1.36	\$0.04
7 percent	31.35	1.36	0.04

The net benefits of the final rule requiring seat belt warning for rear

seating positions and the enhanced seat belt warning for the front outboard seats

are shown in table 9. The net benefits are positive for both 3 percent and 7

³ Based on data on total projected vehicle sales in the United States for MY 2022 from the agency's

New Car Assessment Program *Purchasing with*

Safety in Mind: What to Look For When Buying a Vehicle program.

percent discount rates and for both the low and high effectiveness estimates for rear seat SBWS.

TABLE 9—NET BENEFITS FROM THE FINAL RULE (SBWS WITHOUT OCCUPANT DETECTION FOR REAR SEATING POSITIONS AND INDEFINITE SBWS FOR FRONT OUTBOARD SEATING POSITIONS)
[2020 Dollars, in millions]

	3 Percent discount rate	7 Percent discount rate
Front Outboard Seats	\$459.95	\$372.67
Rear Seats (low increase in rear seat belt use)	191.34	123.62
Rear Seats (high increase in rear seat belt use)	371.56	269.72
Total Net Benefits (low increase in rear belt use)	651.29	496.28
Total Net Benefits (high increase in rear belt use)	831.51	642.39

II. Background

On September 7, 2023, NHTSA published a notice of proposed rulemaking (NPRM) to amend FMVSS No. 208, “Occupant crash protection,” to require a seat belt use warning system for rear seats and to enhance the existing front seat belt warning requirements, including requiring a seat belt warning for the front outboard passenger seat and increasing the duration of the warning.⁴ This section provides an abbreviated background on the subject matter and regulatory history of the proposed requirements. For a fuller discussion, the reader is referred to the NPRM.⁵

Seat Belts and Seat Belt Warning Systems

Using a seat belt is one of the most effective actions a motor vehicle occupant can take to prevent death and

injury in a crash.⁶ Seat belts protect occupants in various ways. They prevent occupants from being ejected from the vehicle, gradually decelerate the occupant as the vehicle deforms and absorbs energy, and reduce the occurrence of occupant contact with harmful interior surfaces and other occupants.⁷ Research has found that seat belts greatly reduce the risk of fatal and non-fatal injuries compared to the risk faced by unrestrained occupants. For rear seat occupants, seat belts reduce the risk of fatality by 55 percent (for passenger cars) and 74 percent (for light trucks and vans). For drivers, seat belts reduce the risk of fatality by 48 percent (for passenger cars) and 61 percent (for light trucks and vans) and reduce the risk of moderate to greater severity injuries by 65 percent. For front outboard passengers, seat belts reduce the risk of fatality by 37 percent (for passenger cars) and by 58 percent (for

light trucks and vans) and reduce the risk of moderate to greater severity injuries by 65 percent.⁸

While seat belt use is meaningfully higher than it was a decade ago, there is room for improvement. Usage rates for rear seat belts have consistently been below those for the front seats, and while front seat belt use rates increased early in the previous decade, for the last several years they have plateaued. According to data from NHTSA’s National Occupant Protection Use Survey (NOPUS), from 2013 to 2022, seat belt use was lower in the rear seat than in the front seat, ranging from a difference of 8.8 percentage points in 2013 (78.3 percent vs. 87.1 percent) to 14.3 percentage points in 2017 (75.4 percent vs. 89.7 percent).⁹ In 2022, front seat belt use was 91.6 percent and rear seat belt use was 81.7 percent.¹⁰ See Figure 1.

⁴ 88 FR 61674.

⁵ *Id.* at pgs. 61680–61686.

⁶ *See, e.g.*, 68 FR 46262 (Aug. 5, 2003). *See also* Buckling Up: Technologies to Increase Seat Belt Use. Special Report 278 at 18, Committee for the Safety Belt Technology Study, Transportation Research Board of The National Academies (2003).

⁷ Charles J. Kahane, *Lives Saved by Vehicle Safety Technologies and Associated Federal Motor Vehicle Safety Standards, 1960 to 2012—Passenger Cars and LTVs—With Reviews of 26 FMVSS and the Effectiveness of Their Associated Safety Technologies in Reducing Fatalities, Injuries, and*

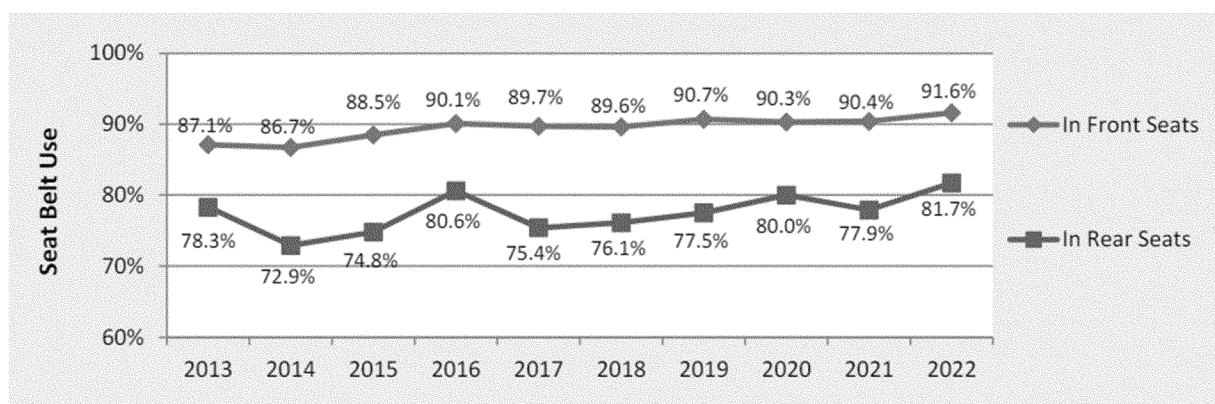
Crashes. 89 DOT HS 812 069 at 89, Department of Transportation, National Highway Traffic Safety Administration (2015).

⁸ *See* the Final Regulatory Impact Analysis (FRIA) (in the docket for this rulemaking) for these effectiveness estimates.

⁹ Boyle, L.L. (2022, August). Occupant restraint use in 2021: Results from the NOPUS Controlled Intersection Study (Report No. DOT HS 813 344). National Highway Traffic Safety Administration. NOPUS is the only nationwide probability-based observational survey of seat belt use in the United States. The survey observes seat belt use as it

actually occurs at randomly-selected roadway sites, and involves a large number of occupants (68,804 in 2021). NOPUS observations are made during daylight hours and are not necessarily representative of high-risk driving times when belt use may be lower.

¹⁰ Boyle, L.L. (2023, November). Occupant restraint use in 2022: Results from the NOPUS Controlled Intersection Study (Report No. DOT HS 813 523). National Highway Traffic Safety Administration.

Figure 1 - Seat Belt Use by Seating Position for Occupants 8 and Older, 2013-2022

NHTSA has, over time, implemented a variety of strategies to increase seat belt use. These have included sponsoring national media campaigns, supporting the enactment of state seat belt use laws and high-visibility enforcement, and facilitating or requiring vehicle-based strategies.¹¹ While such measures have helped make enormous progress, the persistent gaps in seat belt use suggest that additional approaches may be necessary.

Seat belt warning systems (also referred to as seat belt reminder systems) are a vehicle-based strategy to increase belt use. Seat belt warning systems encourage seat belt use by reminding unbuckled occupants to fasten their belts and/or by informing the driver that a passenger is unbelted, so that the driver can request the unbelted occupant buckle up. The warnings provided by seat belt warning systems typically consist of visual and audible signals. An optimized warning system balances effectiveness and annoyance, so that the warning is noticeable enough that the occupants will be motivated to fasten their belts, but not so intrusive that an occupant may attempt to circumvent or disable it or the public will not accept it. Research by NHTSA and others shows that seat belt warning systems are effective at getting unbuckled occupants to fasten their seat belts. (We take a closer look at this research in Section VIII, Overview of Benefits and Costs, and the FRIA.)¹²

FMVSS No. 208 currently requires a short audio-visual seat belt warning for the driver's seat belt on passenger cars;¹³ trucks and MPVs with a GVWR of 4,536 kg (10,000 lb) or less (except for some compliance options which do not require the warning);¹⁴ and buses with a GVWR of 3,855 kg (8,500 lb) or less and an unloaded weight less than or equal to 2,495 kg (5,500 lb).¹⁵ The standard does not require seat belt warnings for any seating position other than the driver's seat.¹⁶

Manufacturers have two compliance options for the driver's warning.¹⁷ The first option requires that if the key is in the "on" or "start" position and the seat belt is not in use, the vehicle must provide a visual warning for at least 60 seconds, and an audible warning that lasts 4 to 8 seconds. Under the second option, when the key is turned to the "on" or "start" position, the vehicle must provide a visual warning for 4 to 8 seconds (regardless of whether the driver seat belt is fastened) and an audible warning lasting 4 to 8 seconds if the driver seat belt is not in use.¹⁸ The current seat belt warning requirements (*i.e.*, for the driver's seat only) have been in the standard since 1974.¹⁹

Although not required by NHTSA's regulations, most currently produced

vehicles have a seat belt warning for the front outboard passenger seat. Based on data on total projected vehicle sales in the United States for MY 2022 from the agency's New Car Assessment Program (NCAP) *Purchasing with Safety in Mind: What to Look For When Buying a Vehicle* program, almost all (about 97 percent) MY 2022 vehicles offered for sale in the United States were equipped with a seat belt warning for the front outboard passenger seat.²⁰ Further, almost all vehicles already provide an audio-visual seat belt warning for both front outboard seats that is longer than the minimum warning for the driver's seat belt currently required in FMVSS No. 208. However, the persistence of the front seat belt warning, while often greater than the minimal durations required by FMVSS No. 208, is not consistent across new vehicles. Specifically, a little over half of MY 2022 vehicles provide a visual warning that lasts until the belts at any occupied front outboard seat are fastened, and almost all (about 93 percent) have an audible warning lasting at least a minute and a half; however, less than half have an audible warning lasting at least two minutes.²¹ This means that while many new vehicles have significantly enhanced reminders, many do not. This disparity, along with the plateauing front seat belt use numbers, suggests that the current regulatory minima are

¹³ S4.1.5.1(a)(3); S7.3.

¹⁴ S4.2.6; S7.3.

¹⁵ S4.2.6 (with the exception of some compliance options).

¹⁶ See, *e.g.*, Interpretation Letter from NHTSA to R. Lucki, July 24, 1985 ("Thus, the intent was to require a warning system for only the driver's position."). All NHTSA interpretation letters cited in this preamble are available at <https://www.nhtsa.gov/nhtsa-interpretation-file-search>.

¹⁷ 49 CFR 571.208, S7.3.

¹⁸ The warning requirements for automatic belts in S4.5.3 mirror, with some differences, the first compliance option. Automatic belts are rarely, if ever, installed in current production vehicles, and NHTSA's regulations limit the seating positions for which automatic belts may be used to rear seats.

¹⁹ 39 FR 42692 (Dec. 6, 1974).

²⁰ Through the NCAP program, NHTSA sends annual requests for safety information about new vehicles to vehicle manufacturers. This includes specific questions on seat belt reminder systems. The focus of this request for information is for vehicle models that will be sold in the upcoming model year that have a GVWR of 4,536 kg (10,000 lb) or less, and this data generally covers all such vehicles offered for sale in the U.S. for MY 2022. Throughout this document we will refer to this data as our "NCAP data" or "Purchasing with Safety in Mind: What to Look For When Buying a Vehicle" data or information.

²¹ See NPRM, pgs. 61709–61711, and appendix A.

¹¹ For example, NHTSA runs a Congressionally mandated High Visibility Enforcement annual campaign focused on increasing seat belt use. The Click It or Ticket nationwide campaign has been in effect for about 20 years. It runs every year from mid-May through the Memorial Day weekend, into the first week in June.

¹² See also Section V of the NPRM (pgs. 61684–61685).

too short, and that in the absence of a requirement, persistent audible reminders that could improve front seat belt use are not widely available in the market.^{22 23 24}

While almost all MY 2022 vehicles have a seat belt warning for the front outboard passenger seat, under half come equipped with a rear seat belt warning system. Rear seat belt warnings were first introduced in the United States by Volvo around 2009. About 47 percent of MY 2022 vehicles, from 15 vehicle manufacturers, are equipped with a rear seat belt warning system. Thus, while rear seat belt warnings have become more widely deployed in recent years, the majority of the current fleet still is not equipped with them.

In short, front seat belt use rates appear to have plateaued, and rear seat belt use rates have persistently been below those for the front seats. Moreover, unbuckled occupants continue to be overrepresented in fatal crashes (51 percent), given the lower exposure of unbelted occupants relative to belted occupants (because front seat belt use was about 90 percent and rear seat belt use was 80 percent for the period in question). In spite of the effectiveness of seat belts and seat belt warnings, most new vehicles continue to lack a rear seat belt warning, and, while many vehicles provide significantly enhanced reminders for the front seats, many do not. This suggests a need for a beneficial safety technology that is not being met in the vehicle market. This final rule is intended to meet that need.

Rulemaking Petition, MAP–21 Mandate, and Prior Rulemaking Notices for This Action

On November 21, 2007, Public Citizen and Advocates for Highway and Auto Safety (Advocates, and, collectively, petitioners) petitioned NHTSA to amend FMVSS No. 208 to require a seat belt warning system for rear seats on passenger cars and MPVs with a GVWR of 4,536 kg (10,000 lb) or less.²⁵ On June 29, 2010, the agency published a

Request for Comments document (RFC) on the petition.²⁶ The RFC discussed the agency's research and findings regarding rear seat belt warnings and solicited comments. NHTSA subsequently granted the petition.

In 2012, Congress passed the Moving Ahead for Progress in the 21st Century Act (MAP–21).²⁷ That legislation contained two provisions regarding seat belt warning systems. First, it repealed the 8-second durational limit for the driver's seat belt audible warning.²⁸ Second, it required the Secretary of Transportation to initiate a rulemaking proceeding to amend FMVSS No. 208 to provide a safety belt use warning system for designated seating positions in the rear seat.²⁹ It directed the Secretary to either issue a final rule, or, if the Secretary determines that such an amendment does not meet the requirements and considerations of 49 U.S.C. 30111,³⁰ to submit a report to Congress describing the reasons for not prescribing such a standard.

In 2019, NHTSA published an Advance Notice of Proposed Rulemaking (ANPRM) seeking comment on a variety of issues related to potential rear seat belt warning requirements.³¹ NHTSA published the NPRM on September 7, 2023.³²

III. Other Seat Belt Reminder Requirements and Protocols

The Economic Commission for Europe (ECE) has instituted seat belt warning requirements, and the European New Car Assessment Programme (Euro NCAP) and the Insurance Institute for Highway Safety (IIHS) have also included seat belt reminder systems in their respective ratings protocols. Below we briefly summarize the seat belt reminder provisions in each of these.

ECE Requirements

The ECE has issued an updated version of Regulation No. 16³³ (R16) that requires seat belt reminder systems in all front and rear seats on new cars.³⁴

The seat belt reminder system is required to have both a start-of-trip warning and a change-of-status warning for both the rear and front seats, though the exact requirements differ somewhat for rear and front seats.

Rear seat requirements. R16 specifies a two-level warning. The first-level warning is a visual warning and the second-level warning is an audio-visual warning. The first-level warning applies at the start of a trip and the second-level warning applies when a fastened belt becomes unfastened during a trip. The first-level warning must activate when the seat belt of any of the rear seats is not fastened and the ignition switch or master control switch is activated. The first-level warning must last at least 60 seconds or until the belt is fastened (or the seat is no longer occupied, if equipped with occupant detection). The second-level warning must activate when a belt becomes unfastened and certain specified speed or distance thresholds are met and must last for 30 seconds unless other specified criteria are met (e.g., the belt is re-fastened).

Front seat requirements. The front seat belt warning requirements are similar to the rear seat warnings, with some differences. First, the first-level visual warning is only required to last 30 seconds, not 60 seconds. Second, the second-level audio-visual warning applies to unfastened belts at the start of the trip as well as to changes in belt status (i.e., a fastened belt that becomes unfastened).

The regulation also contains a variety of other requirements relating to the seat belt warning systems (e.g., telltales, exemptions for certain vehicles and seating positions). R16 also allows for short- and long-term deactivation of both front and rear warnings.

The ECE requirements are discussed in more detail where relevant in later sections of this preamble.

Euro NCAP

Euro NCAP introduced seat belt warnings in their assessment protocol in 2002. The Euro NCAP protocol for Safety Assist systems describes which features a seat belt reminder must have to qualify for points in this area of assessment,³⁵ which is then used to calculate the overall vehicle rating.³⁶

vehicle models with a new type approval) and September 1, 2021 for all newly-produced and registered vehicles.

³⁵ Euro NCAP's overall safety rating is based on four areas of assessment (Adult Occupant Protection, Child Occupant Protection, Vulnerable Road Users, and Safety Assist).

³⁶ European New Car Assessment Programme Assessment Protocol—Safety Assist, Safe Driving, Version 10.3, December 2023.

²² Mark Freedman *et al.* The Effectiveness of Enhanced Seat Belt Reminder Systems Draft Report: Observational Field Data Collection Methodology and Findings. 2007. DOT HS–810–844. Washington, DC: National Highway Traffic Safety Administration.

²³ N. Lerner *et al.* 2007. Acceptability and Potential Effectiveness of Enhanced Seat Belt Reminder System Features. DOT HS 810 848. Washington, DC: National Highway Traffic Safety Administration [hereinafter DOT 2007].

²⁴ Transportation Research Board Study at 8, 25; Mark Freedman *et al.*, Effectiveness and Acceptance of Enhanced Seat Belt Reminder Systems: Characteristics of Optimal Reminder Systems Final Report. DOT HS 811 097.

²⁵ Docket No. NHTSA–2010–0061–0002.

²⁶ 75 FR 37343 (June 29, 2010) (Docket No. NHTSA–2010–0061).

²⁷ Public Law 112–141 (2012).

²⁸ *Id.* at section 31202(a)(2) (repealing portion of 49 U.S.C. 30124).

²⁹ *Id.* at section 31503. Authority has been delegated to NHTSA. 49 CFR 1.95.

³⁰ Section 30111 requires that a Motor Vehicle Safety Standard meet the need for safety, be stated in objective terms, and be practicable, among other requirements. *See infra* Section IV.

³¹ 84 FR 51076 (Sept. 27, 2019) (Docket No. NHTSA–2019–0093).

³² 88 FR 61674.

³³ ECE Regulation No. 16, Revision 10.

³⁴ The regulation was introduced in two phases: September 1, 2019 for new vehicle types (i.e., all

Rear seat warnings. For rear seats, a visual signal must start once the ignition switch is engaged. The visual signal must be at least 60 seconds long. Occupant detection is required for rear seats to be eligible for a score; this is a new requirement that was instituted after NHTSA published the NPRM. For systems without occupant detection,³⁷ the visual signal must clearly indicate to the driver which seat belts are in use and not in use. For systems with occupant detection on all rear seating positions, the visual signal does not need to indicate the number of seat belts in use or not in use, but the signal must remain active if a seat belt remains unfastened on any of the occupied seats in the rear. No visual signal is required if all the rear occupants are belted. For systems with rear seat occupant detection, a 30-second audible signal needs to activate before the vehicle reaches a speed of 25 km/h (15.5 mph) or before it travels 500 meters when any occupied seat has an unbuckled belt. When any seat belt experiences a change of status at vehicle speeds above 25 km/h (15.5 mph), an audio-visual signal is required, with the visual signal lasting 60 seconds and the audible warning lasting 30 seconds, unless certain conditions are met.

Front seat warnings. The Euro NCAP protocol requires that, to receive points, at the start of a trip the system must provide a visual seat belt warning that lasts until the belt is fastened³⁸ and an audible warning that activates when certain conditions are met and generally must last at least about 90 seconds (the exact duration depends on a variety of specified criteria, such as vehicle speed or distance travelled). It also specifies an audio-visual change-of-status warning that meets the requirements of the initial start-of-trip warning.

Insurance Institute for Highway Safety (IIHS) Protocol

On December 2021, IIHS released its Seat Belt Reminder System Test and Rating protocol.³⁹ It sets out general requirements for the seat belt reminder visual and audible signals for front

outboard and rear seating positions. It specifies that a visual signal must be displayed in the instrument panel, overhead panel, or center console, indicating an unfastened belt. The audible warning must begin if the seat belt is unfastened at ignition and for change-of-status, and can cease when the seat belt is unfastened, the vehicle is no longer in motion, or the seat is no longer occupied. The protocol also has sound pressure level and frequency requirements for the audible warning.

For the rear seats, the IIHS protocol specifies that the visual signal must activate within 10 seconds of the ignition being turned on, that the signal must indicate whether the seat belt at each rear seating position is fastened or unfastened, and that it must last at least 60 seconds. It does not require a visual signal if the seat belts at all occupied rear seats are fastened or if no rear occupants are present. It allows the visual signal to be cancelled by the driver. For a seat belt change-of-status in the rear seats when the vehicle is in motion, it requires an audible and visual signal that lasts at least 30 seconds. It further specifies that the audible and visual signal can stop when seat belts at the occupied rear seats are fastened, the vehicle is no longer in motion, or the seats are no longer occupied.

For the front seats, under the IIHS ratings protocol, the primary audible reminder signal for the front outboard seats must be at least 90 seconds in total duration to obtain an “acceptable” or “good” rating.

Unlike Euro NCAP, the IIHS rating system provides ratings (Poor, Marginal, Acceptable, and Good) instead of points. For instance, if the front-passenger seat has an audible signal that lasts less than 8 seconds it would be given a “Poor” rating. For a “Good” rating both the driver and front-passenger belt reminder must have an audible signal that lasts at least 90 seconds and meet the rest of the belt reminder system requirements for an “Acceptable” rating, including the requirements for a rear seat belt reminder system. Accordingly, a vehicle cannot receive a “Good” rating without having a rear seat belt reminder system, and a rear seat belt reminder system is not required for all the other ratings. The protocol does not specify occupancy criteria (that is, the smallest occupant (or the size and weight corresponding to the smallest occupant)) that the system must be able to detect.

IV. Statutory Authority

NHTSA is issuing this final rule pursuant to its authority under the National Traffic and Motor Vehicle

Safety Act (Safety Act). Under 49 U.S.C. chapter 301, Motor Vehicle Safety (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards. The responsibility for promulgation of FMVSS is delegated to NHTSA.⁴⁰

Section 30111 of the Safety Act requires that an FMVSS be practicable, meet the need for motor vehicle safety, and be stated in objective terms.⁴¹ The Safety Act defines “motor vehicle safety” as “the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.”⁴² “Motor vehicle safety standard” means a minimum performance standard for motor vehicles or motor vehicle equipment.⁴³ When prescribing safety standards, the Secretary must consider all relevant, available motor vehicle safety information.⁴⁴ The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the types of motor vehicles or motor vehicle equipment for which it is prescribed, and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.⁴⁵

The statutory criterion of practicability is multidimensional. Most relevant to this rule, it means that in issuing this final rule, NHTSA must balance benefits and costs, with safety as the preeminent consideration.⁴⁶ This requirement means that NHTSA ought not simply choose the least costly regulatory option.⁴⁷ It also means that

⁴⁰ See 49 CFR 1.95.

⁴¹ 49 U.S.C. 30111(a).

⁴² 49 U.S.C. 30102(a)(9).

⁴³ Section 30102(a)(10).

⁴⁴ Section 30111(b)(1).

⁴⁵ Section 30111(b)(3)–(4).

⁴⁶ See, e.g., *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 55 (1983) (“The agency is correct to look at the costs as well as the benefits of Standard 208 When the agency reexamines its findings as to the likely increase in seatbelt usage, it must also reconsider its judgment of the reasonableness of the monetary and other costs associated with the Standard. In reaching its judgment, NHTSA should bear in mind that Congress intended safety to be the preeminent factor under the Motor Vehicle Safety Act.”).

⁴⁷ See, e.g., *Public Citizen, Inc. v. Mineta*, 340 F.3d 39, 58 (2d Cir. 2003) (“The notion that ‘cheapest is best’ is contrary to *State Farm*. There the Court instructed NHTSA ‘to look at the costs as well as the benefits’ of motor vehicle safety standards, and to ‘bear in mind that Congress intended safety to be the pre-eminent factor under the [Safety Act.]’ Thus, when NHTSA issues

³⁷ This language remains in the protocol as a precondition for receiving a score for seats with occupant detection. In a vehicle where not all the rear seats are equipped with occupant detection, if seats without occupant detection do not meet these requirements the seats with occupant detection would not receive a score.

³⁸ Section 3.4.2.1.

³⁹ Insurance Institute for Highway Safety. (April 2024.) Seat Belt Reminder System Test and Rating Protocol, Version III, available at <https://www.iihs.org/media/f15e5be9-ac62-4ea6-a88d-7511105bfff5/H3hGKQ/Ratings/Protocols/current/Seat%20Belt%20Reminder%20Test%20Protocol.pdf> (last accessed May 16, 2024).

the final rule must be reasonably feasible, both economically⁴⁸ and technologically.⁴⁹ Importantly, however, the Safety Act does allow NHTSA to issue technology-forcing safety standards.⁵⁰ NHTSA must also consider the public acceptability of safety standards⁵¹ and provide adequate lead time.⁵²

In developing this final rule, the agency carefully considered these statutory requirements and has concluded that it meets them. They are discussed in more detail throughout the preamble and in the regulatory analyses where relevant.

V. Summary of the NPRM

The NPRM had two main components. The first proposed requiring a seat belt reminder for the rear seats. The second proposed changes and enhancements to the seat belt warning requirements for the front outboard seats, most notably an audio-visual warning that persists until the seat belt at any occupied front outboard seat is fastened. These proposed requirements would apply to passenger cars and trucks, buses (except school buses), and MPVs with a GVWR of 4,536 kg (10,000 lb) or less.

Rear Seat Belt Reminder Requirements

The first component of the NPRM was a set of proposed requirements for a seat

standards under the Safety Act, *State Farm* requires that the agency weigh safety benefits against economic costs; moreover, *State Farm* instructs the agency to place a thumb on the safety side of the scale.” (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc.*, 463 U.S. at 54) (citations omitted).

⁴⁸ See, e.g., *Public Citizen, Inc. v. Mineta*, 340 F.3d at 58 (2nd Cir. 2003) (“The committee recognizes . . . that the Secretary will necessarily consider reasonableness of cost, feasibility and adequate lead time.”) (quoting H. Rep. No. 1776, at 16 (1966)).

⁴⁹ See, e.g., *Paccar, Inc. v. Nat’l Highway Traffic Safety Admin.*, 573 F.2d 632, 635 n.5 (9th Cir. 1978) (“Practicable is defined to require consideration of all relevant factors, including technological ability to achieve the goal of a particular standard[.]”) (citations and quotations omitted) (quoting H.R. Rep. No. 1776, 89th Cong., 2d Sess. 16 (1966)).

⁵⁰ *Chrysler Corp. v. Dep’t of Transp.*, 472 F.2d 659, 673 (6th Cir. 1972) (“[T]he Agency is empowered to issue safety standards which require improvements in existing technology or which require the development of new technology, and it is not limited to issuing standards based solely on devices already fully developed.”).

⁵¹ *Pac. Legal Found. v. Dep’t of Transp.*, 593 F.2d 1338, 1345–46 (D.C. Cir. 1979) (“We believe that the agency cannot fulfill its statutory responsibility unless it considers popular reaction. Without public cooperation there can be no assurance that a safety system can meet the need for motor vehicle safety.”) (quotations and citations omitted).

⁵² 2 U.S. Code Cong. & Adm. News, 89th Cong., 2d Sess., 1966, p. 2714, quoted in *H & H Tire Co. v. U. S. Dep’t of Transp.*, 471 F.2d 350, 353 (7th Cir. 1972). (“The committee recognizes . . . that the Secretary will necessarily consider [in the issuance of standards] reasonableness of cost, feasibility and adequate lead time.”).

belt warning for rear seats. The proposed requirements had four main elements.

- *Visual warning on vehicle start-up to inform the driver of the status of the rear seat belts.* We proposed three different compliance options from which manufacturers could choose for the rear seat belt warning system. The first would require the system to indicate how many or which rear seat belts are in use (the “positive-only” option). The second would require the system to indicate, for the occupied rear seats, how many or which rear seat belts are not in use (the “negative-only” option). The third would require the system to indicate, for the occupied rear seats, how many or which rear seat belts are in use and how many or which rear seat belts are not in use (the “full-status” option). Certain features would be required of all the options. Each system would have to provide a continuous or flashing visual warning, consisting of either icons or text, visible to the driver. The visual warning would have to last for at least 60 seconds, beginning when the vehicle’s ignition switch is moved to the “on” or “start” position. All the systems would require that the vehicle be equipped with technology to determine that the belt latch is fastened.⁵³ The negative-only and full-status compliance options would additionally have required that the vehicle be equipped with an occupant detection system (which facilitates these more informative warnings).

- *Audio-visual change-of-status warning.* We proposed an audio-visual warning whenever a fastened rear seat belt is unfastened while the ignition switch is in the “on” or “start” position and the vehicle’s transmission selector is in a forward or reverse gear. The warning would have to last for at least 30 seconds. We did not propose any requirements for the volume or tone of the warning. The intent of this warning was to alert the driver or other occupants to a change in belt status during a trip. The warning would not be required if a door is open, which would be the case if a rear passenger unfastened their belt in order to exit the vehicle.

- *Requirements related to electrical connections.* We proposed to require that readily removable rear seats either automatically re-establish the necessary electrical connections, or, if a manual connection is required, have readily

accessible connectors. Further, vehicles with the negative-only compliance option would be required to provide a visual warning to the driver if a proper electrical connection has not been established for a readily removable rear seat.

- *Owner’s manual requirements.* We proposed that the vehicle owner’s manual (which includes information provided by the vehicle manufacturer to the consumer, whether in digital or printed form) describe the warning system’s features (including the location and format of the visual warnings) and include instructions on how to make any manual electrical connections for readily removable seats.

Front Outboard Seat Belt Warning Requirements

The NPRM included several enhancements to the seat belt warning requirements for the front outboard seats. We proposed three main changes.

- *Audio-visual warning on vehicle start-up for front outboard passenger seat.* We proposed to require a seat belt warning for the front outboard passenger seat.

- *Increasing the duration of the audio-visual warning on vehicle start-up.* We proposed enhancing the front seat warning requirements by requiring an audio-visual warning that remains active until the seat belt at any occupied front outboard seat is fastened. Vehicle manufacturers could adjust the characteristics of the auditory warning signal (such as frequency and volume) to make the warning both effective and acceptable to consumers. The proposal included specific duty cycle characteristics.

- *Audio-visual change-of-status warning.* We also proposed to require an audio-visual change-of-status warning whenever a front outboard seat belt is unbuckled during a trip (unless a front door is open, to account for an occupant unfastening the belt to exit the vehicle). The warning would be required to remain active until the seat belt is refastened.

Proposed Compliance Date

We proposed a compliance date for the amendments to FMVSS No. 208, “Occupant crash protection,” as follows. Manufacturers would be required to comply with the amendments as of the first September 1 that is one year after the publication of the final rule for the front seat belt warning system requirements and the first September 1 that is two years after the publication of the final rule for the rear seat belt warning system requirements, with optional early

⁵³ We note the preamble language imprecisely indicated the necessity for a belt latch sensor. As discussed later in this document, it was not our intention to require a specific technology.

compliance. Multi-stage manufacturers and alterers would have an additional year to comply.

Regulatory Alternatives

NHTSA considered alternatives to the proposed requirements. The main alternatives NHTSA considered were the seat belt warning requirements in ECE R16 and Euro NCAP. The proposed requirements were identical or similar to ECE R16 and Euro NCAP in many respects but differed from them in several ways. For instance, while the ECE rear seat belt warning regulations allow a warning for an unfastened seat belt at an unoccupied seat, the proposal would not allow this, because we tentatively believed that the resulting “false” warning would potentially annoy drivers and lead to behaviors that would decrease system effectiveness. Another way the proposal differed from ECE R16 is the duration of the front seat belt warning on vehicle start-up: R16 generally requires only a 30–60 second audio-visual warning; NHTSA proposed a warning that lasts until the seat belt is buckled.

VI. Final Rule and Response to Comments

A. Rear Seat Belt Warning Requirements

1. Applicability

The proposal applied to all rear designated seating positions in passenger cars and all rear designated seating positions certified to a compliance option requiring a seat belt in trucks, buses, and MPVs with a GVWR of 4,536 kg (10,000 lb) or less, except for school buses and law enforcement vehicles. NHTSA’s regulations define a bus as a vehicle designed for carrying more than ten persons.⁵⁴ The proposal included small buses, which refers to buses with a GVWR not more than 10,000 lb; this therefore includes high-capacity vans. However, the proposal did not include medium-sized buses (with a GVWR 10,000 lb–26,000 lb) or large buses (with a GVWR greater than 26,000 lb). We proposed to apply the proposed requirements to the specified categories of vehicles because these vehicles are required to have seat belts at all rear designated seating positions and (except for some buses) a seat belt warning for the driver’s seat. We noted that some types of trucks and MPVs (motor homes, walk-in van-type trucks, vehicles designed to be sold exclusively to the U.S. Postal Service, or vehicles with a

GVWR between 8,500–10,000 lb carrying a chassis-mount camper)⁵⁵ and over-the-road buses that are also prison buses⁵⁶ are not required to have rear seat belts. In the NPRM we explained that we did not propose to exempt special-purpose vehicle types such as ambulances because NHTSA believed that they are typically customized after first sale.

The proposed applicability was largely consistent with ECE R16, with a few differences. The rear seat belt reminder requirements in R16 do not include vehicles that carry more than nine persons (including the driver).⁵⁷ There is also no weight specification for the passenger vehicles to which R16 applies. R16 also exempts “ambulances, hearses, and motor-caravans as well as for all seats for vehicles used for transport of disabled persons, vehicles intended for use by the armed services, civil defense, fire services and forces responsible for maintaining public order.”⁵⁸

Comments

NHTSA received comments that supported the proposal; comments that recommended expanding the applicability; and comments that recommended excluding additional vehicle types.

Some commenters specifically supported various aspects of the proposal. Freedman Seating Company (FSC) and Mr. Koo supported the vehicles covered by the proposal and Ms. Tombrello supported including van-like buses because she believed some have been prone to misloading of passengers and baggage. Mr. Stange agreed that the final rule should exclude medium and large buses, due to the distraction the system would create for the driver; problems with maintenance and sensor reliability; and the fact that bus passengers are not required to wear seat belts in some states.

Some commenters argued for including additional higher-capacity vehicles that the proposal excluded. The National Safety Council (NSC) and Ms. Tombrello supported including school buses (regardless of weight) and Mr. Koo supported including school buses with

a GVWR 10,000 lb and under. FSC supported extending the requirements to over-the-road buses with a GVWR between 10,000 and 26,000 lb (except school, perimeter seating and transit buses). NSC commented that the final rule should include limousines. Relatedly, InterMotive Vehicle Controls (InterMotive) commented that it manufactures an aftermarket seat belt reminder system for buses and vans with a GVWR both below and above 10,000 lb.

On the other hand, some comments argued for excluding additional vehicles from the requirements. The Alliance for Automotive Innovation (Auto Innovators) and Mercedes-Benz and Mercedes-Benz Research and Development North America (Mercedes) recommended exempting vehicles with more than six rear seats or more than two rear rows, pointing to challenges with providing the driver with the status information on all seating positions via the instrument panel (or other in-vehicle display) due to the number of seats that may need to be displayed. Auto Innovators further commented that for high-occupancy vehicles with removeable seats, an electronic control unit and other hardware are needed, which leads to practicability concerns, including increased costs for customers. Mercedes reiterated these practicability concerns.

The Recreational Vehicle Industry Association (RVIA) similarly commented that this final rule should harmonize with R16 and not apply to motor homes. RVIA raised several different issues specific to motor homes. First, it explained that motor homes are used in unique ways because they are used both for transportation and for temporary, recreational, and seasonal use. As an example, RVIA discussed a scenario where occupants are seated in a rear seating position with the motor home turned on, but where the vehicle remains stationary, leading to a false warning. Second, it commented that motor homes’ rear seats are often used for storage, which could again lead to false warnings. Third, RVIA commented that, because motor homes are often equipped with non-conventional seats that convert into a bed, developing wiring and sensors that would not be damaged in the conversion process would be challenging if not impossible. Fourth, RVIA commented that the rear portion of a motor home also has its own electrical system with very little interface with the chassis electronics. This lack of interface between electrical systems is unique in comparison to other types of vehicles that typically have seats installed in standard

⁵⁵ S4.2.7.1.

⁵⁶ S4.4.3.3; S4.4.5.1.

⁵⁷ Section 8.4.1.2 (rear seat belt warning requirements apply to M₁ and N₁ category vehicles); Consolidated Resolution on the Construction of Vehicles (R.E.3) Revision 6, Section 2.2.1 (category M₁ vehicles) (“Vehicles used for the carriage of passengers and comprising not more than eight seats in addition to the driver’s seat.”) and Section 2.3.1 (category N₁ vehicles) (“Vehicles used for the carriage of goods and having a maximum mass not exceeding 3.5 tonnes [7,716 lb].”).

⁵⁸ Section 8.4.1.3.

⁵⁴ 49 CFR 571.3 (“*Bus* means a motor vehicle with motive power, except a trailer, designed for carrying more than 10 persons.”) (italics in original).

configurations in the same factory as the vehicle is assembled, completed, and shipped. RVIA stated that there is currently not a way to provide electronic signals from the seating positions in the rear portion of the motor home to the sophisticated electronics controls that are proprietary to the chassis manufacturers.

Finally, Braun Northwest (BNW) commented that the final rule should exempt ambulances, giving essentially two different reasons. First, BNW commented that the reason NHTSA gave for not exempting ambulances—that they are typically customized after first sale—was factually inaccurate. BNW commented that while some special-purpose vehicles may be customized after first sale, that is not the case with ambulances. BNW explained that data from the Ambulance Manufacturer's Division of the National Truck Equipment Association indicates that van ambulances with a GVWR under 10,000 lb, which would be affected by this NPRM, comprise more than 20 percent of the annual production of United States ambulance manufacturers. Second, BNW pointed out that, while circuited buckles needed for seat belt buckle status indication are commonly available and simple to install on the two- and three-point seat belts commonly used on most vehicles, they are inherently problematic on the four, five, and six-point belts needed on ambulances. BNW explained that recent work facilitated by NHTSA resulted in a new SAE International (SAE) recommended practice, SAE J3026 Ambulance Patient Compartment Seating Integrity and Occupant Restraint, developed specifically for testing occupant restraint systems in ambulances. All three national ambulance standards (KKK-A-1822F, Federal Specification: Star-Of-Life Ambulance; NFPA 1917 Standard for Automotive Ambulances; and CAAS Ground Vehicle Standard) now require compliance with SAE J3026. BNW indicated that the critical ramification of SAE J3026 for the NPRM was that side-facing ambulance bench seats must be fitted with four-point, five-point, or six-point seat belts. BNW commented that there are practicability concerns with enabling buckle status indication for these seat belts, including the problem of getting wires from an emergency locking seat belt retractor to a circuited buckle located at the center front of the occupant's torso. Additionally, BNW argued that seat belt reminders may prevent medical personnel from administering medical care, as changes in occupant position required to render

patient care would cause alarm indications that add distraction and confusion in an environment where such distractions can have dire consequences.

Agency Response

NHTSA is adopting the proposal except that the final rule contains an additional exemption for ambulances.

The major difference between the vehicles to which R16 and the final rule apply is that the final rule applies to small buses, which typically include buses with up to about four rear rows—mainly high-capacity passenger vans (10 to 15-passengers), such as Chevrolet Express, Ford Transit, GMC Savana, and Mercedes Sprinter passenger vans. However, because the rule applies only to vehicles with a GVWR less than 10,000 lb, it would generally not include vehicles with more than four rows.

We believe that including small buses such as these high-capacity vans addresses an important safety need. As we explained in the NPRM, we believe it is particularly important to include vehicles with a GVWR greater than 3,855 kg (8,500 lb), but less than or equal to 4,536 kg (10,000 lb), because this range includes high-occupancy vehicles. Including these vehicles is important because an increasing number of high-occupancy vehicles are used as personal vehicles and are not solely used for work-related purposes.⁵⁹ In addition, multiple rear seats or rows make it more difficult for the driver to ascertain rear seat belt use, so a warning could prove especially useful in these vehicles. We think this requirement would be especially beneficial for 15-passenger vans, for which there is both an increased risk of rollover (related to the occupancy level of these vehicles) and lower seat belt use rates compared to other passenger vehicles.⁶⁰

Providing a reminder in vehicles with multiple rear rows is technically feasible. As we noted above, because the final rule applies to vehicles with a GVWR 10,000 lb or less, it generally would not include vehicles with more than four rear rows of seats, which should make it easier to implement a reminder. We are unaware of any currently produced full-size passenger

vans having a rear seat belt reminder system. We did find aftermarket solutions from abroad for medium to large buses,⁶¹ and InterMotive commented that a seat belt warning system already exists for multipurpose passenger vehicles with a GVWR both below and above 10,000 lb. They currently manufacture an after-market solution, SeatLink, for the bus and van market, including seats supplied by Freedman Seating Company (Freedman). However, we do not have any information on the performance and reliability of these systems.

We do acknowledge that vehicles such as high-capacity vans may encounter visual signal complexities. Accordingly, our intent was to propose performance requirements that provide manufacturers with the flexibility to design a warning system that is appropriate for each vehicle type (for example, the final rule does not require a full schematic of the rear seats). For example, a visual warning option for vehicles with multiple rows could be the seat belt icon with an adjacent number corresponding to how many rear seat belts are fastened. In addition, as we explain in more detail below (see Section VI.A.2.a.i), in response to the comments, we have expanded the compliance options to allow additional types of visual warning systems. This too should help address any concerns related to feasibility.

The final rule, however, also follows the proposal in excluding school buses and medium and large buses. As we explained in the NPRM, extending the requirements to school buses would place additional cost burden on school systems and may result in reductions in service; would place additional burdens on the driver; and raises liability issues and the potential for buses being out of service due to malfunctioning systems. Many of these concerns were raised by commenters to the ANPRM and we believe these concerns are still valid. Moreover, as we also pointed out in the NPRM, school buses use compartmentalization, which provides protection even to unbelted occupants. Similarly, the final rule also excludes medium and large buses because of issues such as those noted by Mr. Stange, including cost, reliability, and driver burden.

The final rule also follows the proposal by including motor homes. As an initial matter, we note that some motor homes are not required to have

⁵⁹ See, e.g., <https://media.ford.com/content/fordmedia/fna/us/en/news/2016/07/29/nothing-mini-about-this-van-ford-transit-attracts-large-familie.html> (last accessed May 16, 2024).

⁶⁰ Belt use rates among occupants in 15-passenger vans involved in fatal crashes are significantly lower compared to other passenger vehicles. See Subramanian, R. (2008). Fatalities to Occupants of 15-Passenger Vans, 1997–2006. (Report No. DOT-HS 810 947). National Highway Traffic Safety Administration.

⁶¹ See <https://www.phoenixseating.com/our-products/all-buckled-up> and <https://www.fsrtek.com/applications/bus-seat-belt-alarm-system> (last accessed May 16, 2024).

rear seat belts so the requirements will not necessarily apply to all motor homes. In addition, the seat belt requirements do not apply to seats in motor homes with a GVWR over 10,000 lb and classified as MPVs which the manufacturer designates and conspicuously labels as not intended for occupancy while the vehicle is in motion.⁶² Accordingly, such vehicles are not subject to the requirements in this rule. Although we recognize that R16 exempts motor homes (motor caravans), we see no reason to exclude from this rule designated seating positions (DSPs) in motor homes that are required to have seat belts. Those DSPs are designed to have passengers while the vehicle is in motion. Such occupants would benefit from a seat belt and therefore, from a seat belt reminder. We note that if the motor home is turned on for other purposes than driving, the start-up warning is a 30-second visual warning that should not be unduly annoying.

Limousines, depending on their characteristics, may also be covered by the rule. Limousines are not currently a vehicle class defined in the FMVSS. Depending on its characteristics, a limousine might be classified as a passenger car, MPV, or bus.⁶³ Generally, a passenger car is designed for carrying 10 or fewer persons, an MPV is a vehicle carrying 10 or fewer persons which is constructed either on a truck chassis or with certain special features, and a bus is designed to carry more than 10 persons. The final rule encompasses all these vehicle types, so a limousine would be covered by the requirements as long as it weighed 10,000 lb or less. At the same time, the FMVSS generally apply to new vehicles, including new vehicles that are altered, or vehicles manufactured in more than one stage. Limousines (such as “stretch” limousines) that are the result of modifications made to a vehicle after first purchase other than for resale would not be required to be certified to the seat belt reminder requirements for seating positions that are added in the modification process.⁶⁴

The one way the final rule does depart from the proposal with respect to the applicability is by including an exemption for ambulances from the rear seat belt warning system requirements.⁶⁵ Given the information provided by BNW, the original intent of the rule not applying to ambulances, and the fact that excluding ambulances harmonizes with ECE R16, the final rule exempts ambulances. Although neither FMVSS No. 208 nor 49 CFR 571.3 defines “ambulance,” FMVSS No. 201, “Occupant protection in interior impact,” defines it to mean “a motor vehicle designed exclusively for the purpose of emergency medical care, as evidenced by the presence of a passenger compartment to accommodate emergency medical personnel, one or more patients on litters or cots, and equipment and supplies for emergency care at a location or during transport.”⁶⁶ We are including a cross-reference to this definition in the regulatory text. However, we have not included a broader carve-out for emergency vehicles. We did not receive any comments indicating that such a carve-out was necessary. Moreover, there are a number of ways that owners and purchasers of emergency vehicles for official purposes could disable the warnings. These owners and purchasers already sometimes alter vehicles significantly.⁶⁷

2. Requirements

The NPRM proposed a 60-second visual warning on vehicle start-up; a 30-second audio-visual warning if a buckled belt is unfastened during a trip; and requirements or criteria related to readily removable seats, the owner’s manual instructions, the location of the telltale, and how NHTSA would determine that a belt was or was not in use. We discuss these requirements in turn below.

a. Visual Warning on Vehicle Start-Up

The NPRM proposed a 60-second visual warning on vehicle start-up that would inform the driver of how many or which seat belts are and/or are not in

use. We proposed three different compliance options for the type of information conveyed to the driver. Occupant detection would not be required for one of the three compliance options. The warning would be triggered when the ignition is placed in the “on” or “start” position. When testing a system certified to one of the compliance options necessitating occupant detection, NHTSA would seat a dummy or human occupant corresponding to a 6-year-old. We discuss these proposed requirements below in more detail.

i. Type of Information Conveyed by the Visual Warning and Whether Occupant Detection Should Be Required

The proposed requirements for the rear seat belt warning system (RSBWS) included a visual warning that would activate on vehicle start-up to inform the driver of the status of the rear seat belts. We proposed three different compliance options. The first would require the system to indicate how many or which rear seat belts are in use (the “positive-only” option). The second would require the system to indicate, for the occupied rear seats, how many or which rear seat belts are not in use (the “negative-only” option). The third would require the system to indicate, for the occupied rear seats, how many or which rear seat belts are in use and how many or which rear seat belts are not in use (the “full-status” option). The negative-only and full-status compliance options would require that the rear seats be equipped with a mechanism to determine when a belt latch is fastened and an occupant detection system (which facilitates these more-informative warnings), while the positive-only option would only require that the rear seats be equipped with a mechanism to determine when a belt latch is fastened.

In the NPRM we stated that we had tentatively decided not to require occupant detection in the rear seats because occupant detection continued to present technical challenges which could reduce the effectiveness and/or acceptance of these systems. This tentative decision was also based on factors such as the needed increase in seat belt use for this regulatory alternative to have positive net benefits. Because we did not propose to require occupant detection, we also did not propose requiring enhanced warnings (such as an audible warning on vehicle start-up).

The proposal harmonized with ECE R16 and Euro NCAP in a variety of ways, but also deviated from them in some respects.

⁶² 49 CFR 571.3 (definition of “designated seating position”); FMVSS No. 207 S4.4.

⁶³ 49 CFR 571.3.

⁶⁴ The Infrastructure, Investment and Jobs Act, H.R. 3684, Sections 23015, 23023 (117th Congress) (2021), contains two provisions that direct NHTSA to conduct research and issue rules (if such rules would meet the criteria in section 30111 of the Safety Act) related to various aspects of limousine crashworthiness and occupant protection. NHTSA’s research in these areas is ongoing. *See, e.g.*, DOT Regulatory Agenda, Fall 2023, RIN 2127-AM48, “Seat Belts in Limousines,” available at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=2127-AM48>

(last accessed December 16, 2024). The law also directs that the rules issued pursuant to it apply to modified vehicles. However, that law also defines the term “limousine” to, among other things, refer to vehicles weighing between 10,000 and 26,000 lb. This would therefore not include any limousines that are covered by this final rule, which is limited to vehicles up to 10,000 lb. GVWR.

⁶⁵ This does not exempt ambulances from the front seat belt warning requirements.

⁶⁶ FMVSS No. 201, S3 (definitions).

⁶⁷ Although section 30122 of the Safety Act prohibits making inoperative required safety devices, this prohibition does not apply to vehicle owners. *See infra* n. 91 and accompanying text.

ECE R16 requires a visual warning at the start of a trip. That warning “indicate[s] at least all rear seating positions to allow the driver to identify, while facing forward as seated on the driver seat, any seating position in which the safety-belt is unfastened.”⁶⁸ Occupant detection is not required, but in vehicles that do have occupant detection the warning does not need to indicate unfastened belts for unoccupied seating positions.⁶⁹

The Euro NCAP rating protocol also requires a visual warning at the start of a trip. The requirements are similar to ECE R16. However, Euro NCAP’s rating protocol was recently revised to require occupant detection in the rear seat to receive points for this feature. For systems without occupant detection, the visual signal must clearly indicate to the driver the seating positions showing the rear seat belts in use and not in use. (These seats would not be eligible for points, but in order for seats with occupant detection to receive points the seats without occupant detection would have to meet these requirements.) For systems with occupant detection, the visual signal does not need to indicate the number of seat belts in use or not in use, but the signal must remain as long as the seat belt remains unfastened on any of the occupied seats in the rear.⁷⁰ No signal is required if all of the rear occupants are belted⁷¹ or no rear occupants are detected.⁷²

The IIHS rating protocol requires a visual signal indicating “whether the seat belt at each rear seating position is fastened or unfastened.”⁷³

The NPRM acknowledged that the proposed compliance options were not consistent with all seat belt warning systems currently deployed in the U.S. and Europe or with Euro NCAP’s requirements. Specifically, we noted that manufacturers appeared to be deploying systems that would be categorized as either positive-only or negative-only except without occupant detection, the latter of which would not be permitted under the proposed compliance options. We also noted that the positive-only compliance option did not appear to be consistent with Euro NCAP because Euro NCAP requires that systems without occupant detection show the rear seat belts in use and not in use, and the positive-only

compliance option would not permit a visual signal for an unfastened seat belt.

Accordingly, while we tentatively concluded that the proposed compliance options would help mitigate false warnings and the possibly attendant consumer acceptance issues, we explained that we were considering altering the proposed compliance options to accommodate systems that are currently being deployed, or that manufacturers may wish to deploy in the future.

Comments

Auto Innovators, General Motors (GM), American Honda Motor Co. (Honda), and Hyundai America Technical Center, Inc. (HATCI) generally supported including multiple compliance options in the final rule. Freedman, Automotive Safety Council (ASC), Tesla, Advocates and Public Citizen, and the National Automobile Dealers Association (NADA) generally supported the proposed compliance options, although as noted below some of these commenters preferred certain compliance options or requested that additional compliance options be added.

Several commenters (Consumer Reports, Safe Kids Worldwide (SKW), Paradise, NSC, Safe Ride News (SRN), Cross, and Ms. Tombrello) argued that NHTSA should require occupant detection in the rear seats. Other commenters (Freedman, IEE,⁷⁴ ASC), while not explicitly recommending that occupant detection be required, either preferred options requiring occupant detection or focused on the benefits and feasibility of rear-seat occupant detection. These commenters made a variety of arguments.

Some commenters argued that the necessary technology for occupant detection is feasible. Consumer Reports commented that occupant detection does not pose unreasonable technical challenges, and is not prohibitively expensive (see Section VIII, Overview of Costs and Benefits). Consumer Reports and Mr. Paradise commented that rear-seat occupant detection technology is already widely available; Mr. Paradise also noted that 7 percent of vehicles already have the technological capability of occupant detection in rear seats. NSC commented that challenges with false positives (e.g., transportation of cargo and pets) can be addressed through a relatively small investment, such as with low-cost 2-D or digital cameras, and that costs would further decrease over time if it were required. Consumer Reports noted that occupant

detection is already widely deployed in the front outboard passenger seats. Relatedly, although not recommending that occupant detection be required, IEE commented that today’s occupant detection sensors, predominantly designed for a detection of 5th percentile adult female, can reliably differentiate occupants from cargo.

Several commenters focused on the benefits of requiring occupant detection. Consumer Reports, Mr. Paradise, SKW, SRN, ASC, Ms. Cross, NSC, and Ms. Tombrello commented that warning systems using occupant detection would be more effective than those without it. Consumer Reports, Paradise, Ms. Cross, and NSC noted that occupant detection would enable enhanced warnings, which are more effective.

Accordingly, some of these commenters recommended requiring the proposed full-status and/or negative-only options that required occupant detection. Consumer Reports argued that NHTSA should require the full-status compliance option because the “positive-only” and “negative-only” compliance options are insufficient to incentivize rear seat belt use. Consumer Reports commented that the positive-only option would be the least technically complex, but it would also be the least effective type of warning system (because it creates unnecessary mental work for the driver and allows room for human error). Consumer Reports further explained that the positive-only system would be a departure from Euro NCAP, which requires that systems without occupant detection show both the rear seat belts in use and those not in use. Consumer Reports also commented that given that both the negative-only and the full-status options require a belt latch sensor and an occupant detection system, the negative-only option should be eliminated because the full-status option is more informative and effective. SRN, ASC, NSC, and Ms. Cross similarly commented that NHTSA should require negative-only or full-status systems, which would be more effective in alerting caregivers to an unbuckled rear passenger than “positive-only” systems. Ms. Cross commented that negative-only and full-status systems can inform the driver whether any rear seat occupants are unbuckled without having to make a comparison between number of seats to the number of occupants and an audible component can be added. ASC also noted that permitting only negative-only and full-status systems would harmonize with the requirements in Europe.

⁶⁸ Section 8.4.4.2.

⁶⁹ Section 8.4.4.2.

⁷⁰ Section 3.4.3.1.3.

⁷¹ Section 3.4.3.1.4.

⁷² Section 3.4.3.1.1.

⁷³ Seat Belt Reminder System Test and Rating Protocol, Version III at pg. 7.

⁷⁴ A supplier of automotive sensing systems.

Consumer Reports, Cross, and SKW also recommended requiring occupant detection because that feature could eventually be used for other safety functions such as rear occupant alerts for vehicular heatstroke prevention and air bag suppression. SKW and Ms. Cross pointed to the potential to detect children or other vulnerable occupants in child safety seats, booster seats, or seat belts.

On the other hand, vehicle manufacturers commented that the final rule should not require occupant detection. Toyota Motor North America, Inc. and Toyota Motor Corporation (Toyota) and Auto Innovators commented that an occupant detection system can introduce false positives. Several manufacturers requested removing the requirement for occupant detection from one or both of the proposed compliance options that required it (full-status and negative-only).

Toyota argued that NHTSA should allow negative-only systems without occupant detection because an occupant detection system does not provide any additional safety benefit for the negative-only system. Toyota explained that it is reasonable to anticipate that a driver knows whether a rear occupant is in the vehicle, and, as with a positive-only system, can combine that knowledge with the information from the visual indicator. Toyota also commented that a telltale indicating a seat belt is not fastened at an unoccupied seat is not a false positive, but is instead useful information for the driver.

More generally, several manufacturers and trade groups (Auto Innovators, Ford Motor Company (Ford), Nissan North America (Nissan), NADA, Honda, Hyundai Motor Company (Hyundai)) commented that NHTSA should permit manufacturers to convey information on positive belt status information (*i.e.*, when belt is in use) and/or negative belt status information (*i.e.*, when the belt is not in use) without occupant detection—that is, NHTSA should expand the proposed compliance options to permit negative-only systems without occupant detection and/or full-status systems without occupant detection.⁷⁵ NADA argued that these options would provide better contextual information for drivers than the proposed full-status option because they would provide seat belt status information for all seating positions regardless of occupancy. Nissan, Ford,

and Auto Innovators argued that presenting information on the seat belt status regardless of whether the seat is occupied or not should not be deemed as misleading but rather as furnishing the driver with pertinent contextual information concerning seat belt usage across all positions. Nissan and Ford argued that this information would empower the driver to distinguish easily between buckled and unbuckled seat belts, particularly when compared to the locations where known passengers are situated in the rear row. Auto Innovators, Nissan, NADA and Ford commented that this approach would be consistent with European regulations. Nissan, NADA, and Ford indicated that this approach would align with ECE R16, and Ford and Auto Innovators commented that the approach aligns with the IIHS approach. Honda commented that systems without occupant detection that provide visual information on both fastened and unfastened seat belts have been in use in Europe for many years and are well understood by those that use it regularly. Auto Innovators and NADA commented that not expanding the compliance options in this way would require development and deployment of new systems and increase cost and lead time for some original equipment manufacturers (OEMs), which ultimately harms consumers and hinders achievement of NHTSA's safety objective. Auto Innovators further commented that it was unaware of any data that would support NHTSA's claim that a visual indication of an unfastened seat belt at an unoccupied seat would annoy drivers and argued that if driver annoyance is a concern, NHTSA should consider allowing a dismissible initial warning, as is the case with both IIHS and R16.

In addition, Ford, Toyota, and Honda raised concerns with the proposed positive-only compliance option. Ford and Toyota commented that it conflicts with R16 and the IIHS protocol. Honda commented that if all rear occupants are unbuckled and there is no indication of their status, the driver may remain unaware of the system's ability to support the determination of the statuses of the belts for the rear occupants.

Agency Response

In response to the comments, the final rule follows the proposal in not requiring occupant detection, but modifies the proposal by revising the requirements to allow full-status and negative-only reminder systems without occupant detection.

The final rule follows the proposal in not requiring that rear seat belt reminder systems be equipped with occupant detection. There are a few reasons for this decision.

One reason is that we believe rear-seat occupant detection continues to present technical challenges. This is especially the case because we have concluded that rear-seat occupant detection systems should be able to detect, at a minimum, occupant characteristics matching a 6-year-old for determining whether a rear seat is occupied. This standard differs from ECE R16 and Euro NCAP, both of which base their requirements for occupant detection-equipped rear seat belt reminder systems on the 5th percentile female. This difference is discussed in more detail in Section VI.A.2.a.iv, Seat Occupancy Criteria and Interaction with Child Restraint Systems. Rear-seat belt reminder systems with occupant detection have only been recently deployed in vehicles sold in the U.S. (starting in MY 2021 based on our available data) and are currently offered on only a small proportion of new vehicles.⁷⁶ Based on the projected sales for MY 2022, approximately 7 percent of vehicles were equipped with rear-seat occupant detection. We have no data on how the occupant detection in these vehicles is working.

While occupant detection technology is readily available and standard equipment in most front outboard passenger seats, the occupant detection technology used for the front outboard passenger seat does not necessarily translate directly to the rear seats. By comparison, vehicles subject to advanced air bag requirements comply using either suppression or low-risk deployment for different size child dummies, including the 6-year-old child dummy, in the front outboard passenger seat. Vehicles with a suppression system use some type of occupant detection technology in addition to other inputs (*e.g.*, seat belt use, seat position, etc.) to determine whether or not to deploy the air bag. Vehicles using low-risk deployment, however, do not necessarily need to use occupant detection to meet the advanced air bag requirements for that option. The vast majority of vehicles use the suppression option in the front outboard passenger

⁷⁵ Some of the comments were ambiguous with respect to whether they were referring to full-status systems, negative-only systems, or both.

⁷⁶ NHTSA does not have any specific information on the size of occupant these systems are designed to detect. However, based on the manufacturer comments requesting that NHTSA require occupant detection systems to detect a 5th percentile female occupant, it is likely that these systems are designed to detect occupants as small as the 5th percentile female.

seat for at least one child dummy, and therefore use occupant detection.^{77 78}

Vehicle manufacturers that opt to use a rear seat belt warning system with occupant detection will have to develop and implement occupant detection solutions that work for the unique seat designs and configurations found in rear seats (e.g., bench seats, folding seats, different types of seat cushions, etc.) and validate the performance to ensure that they meet the new requirements and mitigate the potential for false positives. Among other challenges, rear seats create more potential for false positives than the front seats. As we explained in the NPRM and ANPRM, while occupant detection can reduce false warnings for unoccupied seats, it can also result in false warnings, due to the limitations of the sensors and different use scenarios in the rear seats (e.g., transportation of cargo and pets). In addition, rear seats may be less well-defined than front seats (most rear seat rows, unlike the front seat rows, are comprised of three closely spaced seating positions), which could impede accurate detection. This deficiency could negatively affect consumer acceptance and/or effectiveness.

Another reason the final rule does not require occupant detection is that it adds non-trivial costs to the seat belt warning system. While we agree with Consumer Reports that rear-seat occupant detection is not prohibitively expensive in the sense that this is true for some vehicle lines, our cost-benefit analysis shows that occupant detection would be cost-beneficial only if rear seat belt use increased substantially more than we estimate it would for a warning system without occupant detection. Our teardown analysis indicates that occupant detection components cost \$39.74 per vehicle, which, added to the \$19.59 per vehicle cost of the buckle sensor, results in a combined warning system cost of \$59.33 per vehicle (2020 \$). We estimate that the total new fleet cost of a rear seat belt warning system with occupant detection would be about \$802 million (2020 \$). With respect to benefits, there is uncertainty with respect to how much more effective systems with occupant detection are compared to systems without it. Because of this uncertainty, our regulatory analysis does not attempt to estimate the net benefits or cost-

effectiveness of rear seat belt reminder systems that use an occupant detection system. The regulatory analysis does, however, include a break-even analysis for a rear seat belt reminder system that requires occupant detection. For benefits and costs to break even (be equal) for this regulatory option, seat belt use for rear seat occupants 11 years and older would need to increase by approximately 5.2 percent when discounted at 3 percent and 6.4 percent when discounted at 7 percent. Furthermore, NHTSA considered the increase in seat belt use for rear seat occupants that would be required to match the net benefits under the final rule, which does not require occupant detection. When discounted at three and seven percent, seat belt use for rear seat occupants 11 years and older would need to increase by 6.43 percent to 8.57 percent to match the net benefits (taking into account the Low and High estimates) under the final rule. This is about two to three times greater than that estimated for the compliance option without occupant detection. (For more details, see Section VIII.B.1 and the FRIA.) Accordingly, while we agree with the commenters who supported a requirement for occupant detection because there may be benefits to having occupant detection (such as facilitating enhanced or more effective warnings)⁷⁹ and would expect some potential increase in seat belt use from that specific functionality, an effectiveness increase of this order of magnitude seems unlikely. Therefore, we do not expect this regulatory alternative to be net beneficial and would not generate the same level of net benefits as the final rule. Manufacturers may voluntarily equip vehicles with occupant detection if they so choose. Our hope is that over time, as the systems evolve and penetrate the fleet, the technology will mature and per-unit costs will decrease.

With respect to the comment from Mr. Paradise concerning what he believed was an inconsistency between NHTSA's statements that a single-digit percentage of vehicles with rear-seat occupant detection being a small percentage of the fleet, and weighing in favor of not requiring it, and a single-digit percentage of vehicles with an indefinite reminder being non-trivial and supporting our proposal to require an indefinite reminder for the front seat belt start-of-trip warning, we do not believe these statements are

inconsistent. In the context of occupant detection, we are referring to technological feasibility and likely regulatory cost; in the front seat belt warning section, we are referring solely to the optimum duration, as there is no question about feasibility. That is, a single-digit percentage has a different meaning in the two contexts.

Because we have decided not to require occupant detection, we disagreed with commenters who recommended requiring one or both of the proposed options that required occupant detection (full-status with occupant detection or negative-only with occupant detection). We continue to believe, as we explained in the NPRM, that while the full-status system (with occupant detection) does provide the driver with the most information, the other allowable types of systems, including those without occupant detection, will provide the driver with sufficient information to easily determine whether and where there are any unbuckled occupants and request that they fasten their seat belts.

Accordingly, the final rule allows the proposed positive-only option. These systems, while not providing information on the occupancy status of each seat, do provide information on which seat belts are buckled. The driver can combine this information with knowledge of the other occupants in the vehicle and determine if there are any unbuckled occupants and request them to fasten their belts. While this does require mental work on the part of the driver, and may not be as effective as a full-status system, we believe it is not so burdensome as to render such systems ineffectual to such a degree that we see a basis for prohibiting them. While such systems are not permitted under ECE R16 or Euro NCAP, manufacturers could select another type of system if they wished to harmonize with those protocols. (The positive-only system without occupant detection does conform with the IIHS protocol.) With respect to Honda's comment that the proposed positive-only option could potentially leave the driver unaware that the vehicle was equipped with a seat belt reminder system, we acknowledge that is a possibility, but it would not be a long-term problem. This would be limited to times when a driver is driving a vehicle new to them (unless the driver always reads owner's manuals first) and would only be an issue until a rear passenger buckles up. Once a rear passenger buckles up the driver would become aware of the existence of the warning.

We have modified the proposal so that the final rule does not dictate

⁷⁷ There is also an option to use a dynamic automatic suppression system. To date, no manufacturer has attempted to certify using this option.

⁷⁸ With respect to the driver's seat, while it is subject to certain advanced air bag requirements, those particular requirements do not necessitate occupant detection.

⁷⁹ With respect to SKW's comments about the benefits of monitoring children in forward- or rear-facing CRSs, as we explained in the NPRM, children restrained by child restraint systems are not part of the target population for this rule.

specific compliance options for the information conveyed by the visual warning; the finalized requirements for the visual warning allow all of the systems that would have been allowed under the proposed rule, as well as additional systems that would not have been allowed under the proposal, such as a negative-only system without occupant detection, and a full-status system without occupant detection. Both the negative-only system without occupant detection and the full-status system without occupant detection are consistent with ECE R16 and the IIHS protocol (they would not be eligible for points under Euro NCAP). One factor underlying this choice is the lack of firm research data that could lead NHTSA to meaningfully compare the effectiveness of the different types of systems,⁸⁰ coupled with the fact that rear seat belt reminder systems conforming to the finalized requirements have already been deployed on vehicles sold in the United States.⁸¹ These factors make us reluctant to prohibit particular design choices and inhibit manufacturer flexibility and ability to optimize system characteristics. We believe that the finalized regulatory text (“A visual warning indicating how many or which rear seat belts are in use and/or not in use must activate when the ignition switch is placed in the ‘on’ or ‘start’ position (or upon manual activation of the propulsion system, but prior to the vehicle being placed in “possible active driving mode” as defined by FMVSS No. 305))”⁸² includes all of the systems manufacturers are currently deploying, but is specific enough to be objective and enforceable. For example, if there is one rear occupant, and that occupant is belted, a positive-only system without occupant detection that accurately indicates one buckled rear belt, and a full-status system with occupant

detection that accurately indicates one rear occupant with a fastened belt, would both comply with the finalized regulatory text.

We agree with Toyota and Honda that the negative-only system requires the same cognitive effort on the part of the driver as the proposed positive-only option, and that it would still be effective and beneficial, even without occupant detection. We no longer agree with the view we expressed in the NPRM that such a signal is a false positive that might either desensitize the driver to the warning signal or lead them to circumvent or defeat the system. We now agree with Toyota that this is instead more accurately considered relevant information on seat belt status that the driver can use to determine whether there are any unbuckled occupants and request them to fasten their seat belts.

We reached a similar conclusion with respect to full-status systems without occupant detection. As we discussed above for the negative-only systems without occupant detection, we agree that while this system does not provide as much information as would a system with occupant detection, the information it does provide on the seat belt status at every seating position (occupied or not) is useful information for the driver. We also agree with the commenters who argued that allowing this option would support the introduction of systems that are already in widespread use, without adding in additional cost and complexity.

ii. Lack of an Audible Warning

The NPRM recognized that warnings with an audible component are generally more effective than visual-only warnings. However, we also recognized that requiring an audio-visual warning would necessitate requiring occupant detection because, without occupant detection, an audible warning would activate every time a rear seat is empty. These “false positives” would annoy the driver (as well as other occupants) and would decrease the effectiveness of the warning. Thus, the NPRM did not propose an audible warning on start-up. However, manufacturers would be free to provide an audible warning on start-up if they so choose. This approach is also consistent with ECE R16, Euro NCAP, and IIHS.

Comments

Many of the commenters who supported requiring occupant detection also supported requiring an audible warning (NSC, Consumer Reports, SRN, Karleigh Cross, and an anonymous

commenter). SRN, Consumer Reports, and Ms. Cross commented that audible warnings are more effective than visual-only warnings. Consumer Reports also commented that requiring an audible component to the rear seat start-up warning would also make start-up warnings more consistent throughout a vehicle, regardless of the seating position.

Agency Response

The final rule does not require a rear seat audible start-of-trip warning, for the reasons articulated in the proposal. Because the final rule does not require occupant detection in the rear seats, it does not require an audible warning. We acknowledge that audio-visual warnings are more effective than visual warnings alone, and we believe that consumers would accept them. However, we believe that a visual warning alone will still be effective. While we cannot precisely estimate effectiveness, we have used a three to five percent belt use rate increase range (“lower” and “higher” scenario) in our analysis based on the available research. This analysis is explained in detail in the FRIA. We agree that in general, consistency between the rear reminder and front reminder requirements (which do require an audio-visual start-of-trip warning) is desirable, but do not believe that not requiring an audible component to the rear start-of-trip warning will create an issue in practice. In this context, the relevant potential concern with this inconsistency is that the driver—the recipient of the warning—would be confused or annoyed by any differences in the two warnings. Ultimately, we do not believe this inconsistency is a significant problem. The front seat belt warnings have been in vehicles for many years. Rear seat belt warnings will be new to most drivers, so drivers will have to become accustomed to them. In addition, the rear reminder will be a fairly prominent visual warning. If the driver is unsure of how the warnings operate, this rule also requires that the owner’s manual include an accurate and easily understandable description of system features and operation.

iii. Triggering Conditions for Start-of-Trip Warning (Not Including Occupant Detection Criteria)

The NPRM proposed that the rear seat start-of-trip warning (which, as discussed above, is only required to be a visual warning) activate when the ignition switch is placed in the “on” or “start” position, except for negative-only systems when there are no occupied rear seats with a seat belt not

⁸⁰ See Mark Freedman et al., *Effectiveness and Acceptance of Enhanced Seat Belt Reminder Systems: Characteristics of Optimal Reminder Systems Final Report*. DOT HS 811 097 at pg. 49 (Feb. 2009) (hereinafter “DOT 2009 Seat Belt Study”).

⁸¹ An exception is a positive-only system with occupant detection, which is not prohibited by the finalized requirements and has yet to be deployed on vehicles sold in the United States. However, we believe it would be unlikely that a manufacturer would deploy such a system because the presence of occupant detection allows for more informative reminders—for example, a full-status reminder—than provided by a positive-only system. This is reflected in the fact that while we are aware of production versions of positive-only systems without occupant detection, negative-only and full-status systems with and without occupant detection, we are not aware of any vehicle equipped with both occupant detection and a positive-only reminder system.

⁸² The language relating to EVs is discussed in Section VI.C.1.

in use (for which we proposed that a warning not be required to activate). The activation criteria were modeled on the existing driver seat belt warning requirements and are also similar to those in ECE R16, Euro NCAP, and the IIHS protocol.

ECE R16 requires that the rear seat belt visual warning activate when a belt is not fastened and the ignition or master control switch activated.⁸³ It also provides that for vehicles with rear seat occupant detection, the visual signal does not need to indicate unfastened belts at unoccupied seats.⁸⁴

Euro NCAP similarly requires that the warning “start” at the commencement of each ‘journey’ that the vehicle makes.”⁸⁵ More specifically, the Euro NCAP protocol specifies that the visual signal be activated “when the ignition switch is engaged (engine running or not) and a seatbelt is not fastened.”⁸⁶ However, Euro NCAP allows for short breaks in the journey (up to 30 seconds) to account for events such as engine stalling where the reminder is not required to start again.⁸⁷ Euro NCAP also provides that for systems with rear seat occupant detection, the visual signal does not need to indicate the number of rear seat belts in use or not in use.⁸⁸

For the rear seats, the IIHS protocol permits a 10-second delay between the ignition being turned on and the activation of the visual signal. Similar to ECE R16 and Euro NCAP, no visual signal is required for the rear seat belts if there are no unfastened belts at occupied seats.

The major differences between the proposal and other approaches were that, unlike ECE R16, we did not propose to refer to a “master control switch” because we did not believe it is necessary to introduce this new term into FMVSS No. 208; unlike Euro NCAP we proposed not allowing for short breaks in the journey; and unlike IIHS we did not propose allowing any delay after the ignition was turned on.

Comments

Commenters differed on whether the start-of-trip warning should be permitted to be delayed. HATCI and Ford supported the proposed trigger conditions (which did not permit a delay). On the other hand, Auto Innovators, NADA, Freedman, and Nissan recommended allowing a delay.

Nissan, Auto Innovators, and NADA recommended aligning with the IIHS protocol and permitting a 10-second delay, while Freedman favored a 30-second delay. Auto Innovators also commented that while it generally supports the agency harmonizing with ECE R16, the agency should maintain flexibility for when these warnings are displayed on startup and allow for a brief delay for when the alert is provided. Freedman also commented that certain systems, such as an electronic system separate from that of the OEM system, will require a powerup and boot cycle which can take several seconds.

Auto Innovators also requested that the final rule allow the visual warning to be suppressed if all rear row seating positions are belted or determined to be empty based on occupant detection.

Lastly, RVIA explained that motor homes can be used in many ways other than for transportation, such that the ignition may be turned on with occupants seated in the rear accessing the vehicle’s amenities, but with no intention of placing the vehicle in motion. RVIA was concerned that such use of the rear seats would trigger the rear seat belt visual warning, even though the motor homeowner has no intention of operating the vehicle. RVIA concluded that a visual warning system on vehicle start-up would often go unnoticed in this scenario, creating a requirement not suitable for the application of the start-up trigger in a motor home.

Agency Response

The final rule adopts the proposal for the warning to activate on start-up, with no provision for a delay. We continue to believe that basing the trigger on the ignition switch is preferable to delaying the warning until the vehicle is placed in gear because with a delay, there could be instances where a driver would pull out onto the road before the warning starts and before passengers have belted. The finalized requirements increase the likelihood that the occupants fasten their belts before the vehicle is in motion.⁸⁹ With respect to mitigating interaction with other vehicle warnings, NHTSA does not believe this will be an issue at vehicle start-up because critical safety warnings that activate at start-up would likely have dedicated space on the display. Interactions between warnings is discussed in more detail in Section VI.C.4. We believe consumers will accept this start-up warning. The longstanding current front seat belt

warning is based on similar triggers and has not caused any issues. In addition, the rear start-of-trip warning is visual-only, so any potential annoyance is minimized. This factor distinguishes the rear-seat warning from the front seat belt warning, which we are requiring to be both audio-visual and to have two phases. We acknowledge there may be some scenarios during a trip where a rear seat belt warning is not required for an unbuckled occupant; for example, a passenger pickup scenario when the car is not turned off. In such a scenario, we are not requiring a warning because we are not requiring occupant detection, which would be necessary to detect the new occupant (and potentially avoid a false warning). Manufacturers of vehicles with rear-seat occupant detection may choose to provide warnings for such situations.

In addition, we are modifying the proposed trigger condition related to the vehicle ignition being in the “on” or “start” position for both the front and rear seat belt warning to better account for EVs. This change is discussed in Section VI.C.1. This modification generally harmonizes with ECE R16, Euro NCAP, and the IIHS protocol, so that a vehicle that complies with the finalized trigger requirements can still meet these requirements; some exceptions are discussed immediately below.

In addition, we have also modified the proposal so that the final rule does not require a visual warning in three circumstances: (1) for an unoccupied seat if the system is able to determine whether a seat is occupied; (2) for a seat belt that is in use in a system designed to indicate to the driver how many or which rear seat belts are not in use; and (3) for a seat belt that is not in use in a system designed to indicate to the driver how many or which rear seat belts are in use. This regulatory text is intended to clarify two things.

First, that, depending on the type of seat belt reminder system and belt use/occupancy scenario, a visual signal may not be necessary for a particular DSP, or may not be necessary for any DSP. So, for example, no visual warning would be required for a negative-only system when every rear seat is occupied by a belted occupant. Another example: if no rear seats are occupied, no visual signal is required for negative-only, positive-only, or full-status systems with occupant detection; a visual warning would, however, be required in this case for a negative-only system without occupant detection (assuming that no rear belts were in use) and a full-status system without occupant detection.

⁸³ Section 8.4.2.3.1.

⁸⁴ Section 8.4.4.2.

⁸⁵ Section 3.4.1.

⁸⁶ Section 3.4.2.1 (front); § 3.4.3.1.1 (rear).

⁸⁷ Section 3.4.1.

⁸⁸ Section 3.4.3.1.3.

⁸⁹ See DOT 2009 Seat Belt Study at pg. 65.

This requirement is consistent with ECE R16, Euro NCAP, and IIHS.

Second, this also clarifies, in response to the comments, that systems utilizing symbols or numbers may utilize colors other than green or red to indicate unoccupied seats or seating positions for which the system is not providing information on belt use. Accordingly, a negative-only system would be permitted to display a pictogram that denotes a seating position with an in-use belt as grayed-out (to give one example).⁹⁰

Freedman's comment regarding certain vehicles requiring more time to boot up appears to be referring to accommodating aftermarket systems. Because the final requirements apply to vehicles before first purchase other than for resale, they do not directly apply to aftermarket systems that are installed later on. However, § 30122 of the Safety Act prohibits a vehicle modifier from taking a vehicle out of compliance with an applicable FMVSS.⁹¹ (The vehicle owner is not subject to the make inoperative provision). Therefore, a vehicle modification performed after the compliance date of this final rule on a vehicle with a rear seat belt warning system certified to the requirements in this rule that modifies the vehicle such that the rear seat belt visual warning does not activate when the ignition is in the "on" or "start" position (or upon manual activation of the propulsion system, but prior to the vehicle being placed in "possible active driving mode" as defined by FMVSS No. 305)⁹² would violate § 30122 and would therefore not be permitted.

The final rule does not incorporate RVIA's request to accommodate use scenarios specific to Recreational Vehicles (RVs). We agree that in the scenarios identified by RVIA the warning would activate when the vehicle was turned on with no intent to drive (thus obviating the need for a seat belt). A speed or motion trigger could

address this issue, but we believe that such a trigger is undesirable because there is a safety benefit to having occupants belted before the vehicle is in motion or when it is travelling at lower speeds. Moreover, because the rear seat belt start-of-trip warning is visual-only, there are not the same consumer acceptance concerns that led us to include a speed criterion like we have included for the second-phase front seat belt audible warning. (See Section VI.B.3.) We could also potentially address this concern by either exempting RVs or crafting trigger criteria specific to RVs. We conclude the former is undesirable due to the significant safety benefit of belts when the vehicle is in motion, and that the latter would be overly complex. In addition, the rear seat belt start-of-trip warning is a mild visual warning that should not cause meaningful consumer annoyance (or condition them to ignore the warning) in these use cases.

iv. Seat Occupancy Criteria and Interaction With Child Restraint Systems

For rear seat belt warning systems that manufacturers voluntarily choose to equip with occupant detection, NHTSA proposed the occupancy criteria for the test dummy (or human, at the manufacturer's option) that NHTSA would position in the seat to conduct compliance testing of the system. NHTSA proposed that a rear designated seating position would be considered "occupied" when an occupant who weighs at least 46.5 lb (21 kg), and is at least 45 in (114 cm) tall, is seated there. These criteria are proxies for a 6-year-old child, which roughly corresponds to a typical age at which a child would begin using a seat belt (with a booster seat), transitioning from a forward-facing child restraint system (CRS). These are the same criteria used in FMVSS No. 208 to specify the smallest child that may be used as an alternative to the 6-year-old dummy in static suppression tests under FMVSS No. 208. We proposed using either a human being, at the manufacturer's option, or any anthropomorphic test device specified in 49 CFR part 572 that meets these proposed weight and height criteria (Section VI.C.8., Test Procedures).

The proposed criteria corresponded to a smaller occupant than ECE R16 or Euro NCAP, each of which essentially specifies an occupant (or load) no smaller than a 5th percentile adult female (e.g., the HIII-5F specified in 49 CFR part 572). In the NPRM we explained that we believed that harmonizing with ECE R16 and using a

heavier dummy would not capture the child segment of the population that could be restrained with a seat belt. We also did not believe it was necessary to use a larger-size occupant because a system capable of recognizing a 6-year-old should also be capable of recognizing larger occupants.

At the same time, we tentatively believed that the proposed criteria were preferable to criteria reflecting a younger occupant (lower weight). The smallest dummy that would meet the proposed weight and height criteria is the 6-year-old dummy specified in part 572. The next smallest dummy represents a 3-year-old child (*i.e.*, the Hybrid III 3-year-old); we believed it would not be appropriate to specify the use of the 3-year-old because a child represented by this dummy should be seated in a forward- or rear-facing CRS, not restrained with a seat belt.

NHTSA did not propose to require any sort of CRS detection capabilities. As explained in the NPRM, there are essentially three types of CRSs: rear-facing CRSs, forward-facing CRSs, and booster seats. Rear-facing and forward-facing CRSs are child seats that are installed using either Lower Anchors and Tethers for Children (LATCH) or a seat belt to secure it in place. Booster seats raise and position a child so the vehicle's lap-and-shoulder belt fits properly. We tentatively believed that a forward- or rear-facing CRS installed with the seat belt would not cause problematic false warnings; rather the system would just register the CRS as a buckled passenger. Similarly, we believed that a forward- or rear-facing CRS installed with LATCH would not pose issues necessitating any specific requirements related to the LATCH system, such as LATCH sensors.

We also did not believe a booster seat would present any special challenges to a seat belt warning system. If an unbelted child is in a booster seat, the system would register the belt as not fastened and, if equipped with occupant detection, that the seat was occupied. The system would not have to specifically detect the booster seat because the performance criteria are weight-based. In addition, we would not expect an occupant detection system to provide a false warning for an unoccupied booster seat because the proposed seat occupancy criterion (roughly equivalent to a 6-year-old) is heavier than an unoccupied booster seat. We did not propose to specify the use of a booster seat for testing because children may be prematurely transitioned to a seat belt without the use of a booster, and we believe it is desirable to test the lower end of the

⁹⁰ See also Section VI.C.3, Visual Warning Characteristics.

⁹¹ 49 U.S.C. 30122(b) ("A manufacturer, distributor, dealer, rental company, or motor vehicle repair business may not knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard prescribed under this chapter unless the manufacturer, distributor, dealer, rental company, or repair business reasonably believes the vehicle or equipment will not be used (except for testing or a similar purpose during maintenance or repair) when the device or element is inoperative."); section 30122(a) ("(a) Definition. In this section, 'motor vehicle repair business' means a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment.").

⁹² See Section VI.C.1.

possible weight range that encompasses children that could conceivably be restrained with a seat belt.

Comments

A number of commenters (Auto Innovators, Mercedes, GM, NADA, IEE, Honda, HATCI, and Consumer Reports) disagreed with the proposal and recommended harmonizing with ECE R16 and Euro NCAP and specifying occupancy criteria based on a 5th-percentile adult female occupant. These commenters made a variety of arguments.

Auto Innovators commented that harmonizing with the ECE requirements would avoid introducing unnecessary complexity and reduce the need for additional lead time to develop U.S.-specific designs. IEE commented that the proposed detection criterion would entail significant additional costs.

IEE also commented that a detection criterion based on the 5th percentile female would address the key target population of unbelted teenagers and adults. Relatedly, IEE noted that the NPRM analysis investigated potential benefits for the age group 6 to 10 years old and only found a very small belt usage increase (by only 0.27 percent to 0.41 percent) and concluded that members of this age group already have high rates of seat belt use (98 percent according to the preliminary regulatory impact analysis).

Consumer Reports, IEE, Auto Innovators, Honda, HATCI, NADA, RVIA, and GM raised concerns regarding feasibility. Consumer Reports agreed with NHTSA on the importance of testing the lower end of the possible weight range that encompasses children that could conceivably be restrained with a seat belt alone, but believed that it would be premature to require the detection of dummies smaller than the 5th percentile adult female because the ability to detect occupants smaller than the 5th percentile adult female is limited. IEE commented that while detecting a 5th percentile female is well-established in the market and would not present any design or technical challenges, it was not aware of any car on the market that would be able to meet the proposed detection of the 6-year-old child scenarios, with or without a booster cushion. IEE commented that the 5th percentile female is the state-of-the-art in contemporary sensing technology for seat belt reminder-related occupant detection and that no realistic alternative technologies are readily available at comparably low costs. IEE stated that it believed that the 7 percent of U.S. MY 2022 vehicles with rear seat

occupant detection all meet the 5th percentile female detection criterion, not the one 6-year-old proposed in the NPRM.

IEE also commented that the proposal assumed that a 6-year-old child on the booster seat would be automatically covered and detected as it has a higher total weight than the weight proposed for the occupancy criteria. IEE stated that this assumption is wrong: rear occupant detection systems are designed to detect a load that is generating a pressure profile on the seat foam that matches the pressure profile of a human buttocks. IEE commented that the pressure profile generated by a booster seat is different and would not be classified by the system as an occupant; contemporary occupant detection sensors used for seat belt reminder systems are not designed to detect booster seats, and child seats are considered as non-detection objects. IEE indicated that this distinction is also required to differentiate between humans and objects, to avoid objects that would be likely to trigger false positives. Auto Innovators similarly commented that the contact area between a booster seat and a seat cushion can vary, causing some of the occupant's weight to be distributed to the seat itself or to the LATCH system, rather than to the weight sensor.

Auto Innovators also pointed out that child occupants are also more likely to be out-of-position compared to an adult, further contributing to uneven weight transfer. Auto Innovators argued that if the weight of a child in a booster seat is not transferred to the weight sensor, the proposed system could misclassify the seat as empty. If this misclassification occurs, coupled with the lack of a visual warning for an unfastened seat belt at an unoccupied seat, Auto Innovators argued there would be no visual warning for cases where an age-appropriate child is sitting in a booster seat and not wearing a belt. Relatedly, IEE commented that more advanced detection technologies (such as cameras or radar sensors) are not currently used in the context of a seat belt reminder function, and that these technologies would still have to prove their reliability and robustness for the occupant detection needs of a seat belt reminder system. IEE explained that while future developments may enable the support of seat belt reminder functionalities with these technologies, it is too early to consider such a potential innovation in a regulatory pass/fail scenario.

Honda, HATCI, Auto Innovators, NADA, IEE, RVIA, Honda, and GM commented that specifying criteria

matching a 6-year-old would exacerbate the problem of false positives. HATCI and IEE commented that behavioral alternatives to avoid false positives, such as moving cargo to the floor of the vehicle or buckling the belt before loading heavy cargo onto seats, may not always be feasible or reliable. Auto Innovators and Honda argued that the proposed criteria would potentially discourage manufacturers from implementing occupant detection systems due to the potential for false warnings.

IEE similarly commented that if the agency were to adopt the 6-year-old criterion proposed in the NPRM, manufacturers would be disincentivized from implementing occupant detection in rear seats. IEE explained that because the proposed detection threshold is not technically feasible today within a regulatory pass/fail context, the threshold proposed in the NPRM would fail advanced rear seat belt reminder systems that have already entered the U.S. market and that offer a seat belt warning functionality that exceeds the proposed legal minimum. IEE stated that this requirement would force vehicle manufacturers to withdraw these advanced seat belt reminder systems from the market and downgrade the seat belt reminder systems features to the legal minimum (the positive-only compliance option). IEE argued that this result would be counterproductive from a safety perspective.

IEE and Consumer Reports commented that manufacturers could voluntarily detect occupants smaller than the 5th percentile female. IEE argued that making such detection voluntary would provide flexibility for innovation. Consumer Reports recommended that NHTSA incorporate detection of dummies smaller than the 5th percentile female into NCAP ratings for rear seat belt reminders, which would award manufacturers for going above and beyond the regulatory minimum and drive innovation.

On the other hand, NSC and SRN suggested a 3-year-old child for the occupancy criterion. NSC commented that data from the National Digital Car Seat Check Form show that many children are not riding in the appropriate CRS based on their height and weight, so specifying criteria corresponding to a 3-year-old child would protect children. SRN similarly noted that the weight of a 3-year-old dummy, though average for a toddler, is also the weight of many older children in the lower growth chart percentiles. SRN argued that since nearly all school-age children ride in seat belts or boosters (including these lighter-weight

children, regardless of NHTSA best-practice recommendations), families would benefit from warnings about the belt-use status of those children. SRN explained that this is especially true for warnings that a passenger has unbuckled during a ride, which younger, less mature children may be prone to do. SRN explained that, as proposed, a system with occupant detection would not recognize some of the youngest booster/belt users, may provide inadequate warnings to families, and may cause caregivers some frustration in interpreting status indicators. SRN also commented that in comments to the ANPRM, SRN had voiced the concern that LATCH-installed car seats could trigger false alarms. SRN was less concerned that the proposed system will rise to the level of nuisance and is more concerned that false warnings will happen, such as when relatively heavy car seats are installed using LATCH. SRN argued that owners will need clear guidance in owner's manuals on how to interpret warnings when traveling with children, and that these instructions should be included (or at least referenced) in the child passenger section of the manual.

Consumer Reports, HATCI, and Freedman agreed with NHTSA that a CRS detection requirement was not necessary. Consumer Reports stated that consumers might be better served by incorporating CRS detection into a component of NCAP for rear seat belt reminder systems to help drive safety innovation. Freedman commented that the easiest and most effective solution for LATCH-installed CRS is to continue recommending the seat belt be fastened behind the CRS.

Auto Innovators and GM recommended that NHTSA ensure a technology-neutral approach that includes consideration of compliance options that permit the use of camera- or vision-based sensors, or other technologies that may be adopted in lieu of weight-based sensors, as a means for determining occupant presence at a given designated seating position. Advocates and Public Citizen commented that the final rule should not preclude or discourage the use of existing state-of-the-art technology.

Agency Response

After considering the comments, NHTSA has decided to adopt the proposal to use (at the option of the manufacturer) either an anthropomorphic test device at least as large as a 49 CFR part 572, subpart N 6-year-old child dummy or a person, at the manufacturer's option, that is at least 21 kg in weight and 114 cm in height to

define an occupied rear designated seating position for the purposes of testing the rear seat belt reminder system. These criteria represent a 50th percentile 6-year-old child, and only specify the low end of the occupancy criteria used for compliance testing. Therefore, when we refer to a 6-year-old as our occupancy criteria, this includes occupants or dummies that are larger.

Before addressing the specific issues raised by the commenters, it is important to recognize that this final rule does not require or necessitate occupant detection. Moreover, we recognize that a manufacturer currently deploying reminder systems with occupant detection based on the 5th percentile female would likely need some time and effort to develop and implement new sensor solutions in the rear. Based on MY 2022 NCAP data, approximately 7 percent of vehicles sold in the U.S. are equipped with rear seat belt reminders using occupant detection. The commenters, however, did not provide specific information on what additional development would be necessary to meet the requirements when tested with a 6-year-old.

Further, as explained above (Section VI.A.2.a.i) we have revised the proposed requirements to provide greater flexibility for systems without occupant detection. The proposal only included one compliance option (the positive-only compliance option) without occupant detection. In response to the comments, the final rule would allow for additional warning systems without occupant detection (e.g., negative-only and full-status). Given this flexibility, manufacturers can simply use reminder systems without occupant detection if they believe they cannot deploy a reminder system using occupant detection that would comply with the requirements when tested with a 6-year-old.

Given the above, NHTSA has concluded that it would fulfill the MAP-21 mandate, meet the need for safety, and be practicable and appropriate to require that an occupant detection system be capable of detecting at least a 6-year-old. There are several reasons for this decision.

First, section 31503 of MAP-21 directs NHTSA to initiate and finalize, if the § 30111 criteria are met) a rulemaking proceeding "to provide a safety belt use warning system for designated seating positions in the rear seat." Section 31503 itself does not refer to particular classes of occupants or identify a target population. "Subtitle E—Child Safety Standards", in which § 31503 is located, however, contains four mandates related to child passenger

safety: improving the protection seated in CRSs during side impact crashes; improving the ease of use for LATCH systems; providing seat belt reminders for rear seats; and researching the risk of hyper- or hypothermia to children or other unattended passengers in rear seating positions.^{93 94}

In addition, the Safety Act gives NHTSA the discretionary authority to issue safety standards to address specific safety needs, provided that the standard is objective, practicable, and appropriate for the type(s) of vehicles to which it applies.⁹⁵ NHTSA has concluded that requiring a rear seat belt warning system equipped with occupant detection be able to detect unbelted children smaller than the size represented by the 5th percentile female crash test dummy meets a safety need and is practicable and appropriate.

Specifying occupant characteristics corresponding to a 5th percentile female would not address rear seat belt usage by children because the vast majority of children are smaller than the 5th percentile female test dummy. The population of children seated in the rear who should be restrained with a seat belt is comprised of children seated in a booster seat and children who have transitioned out of a booster seat to sit directly on the vehicle seat. As we explained in the NPRM, children typically begin sitting in a booster seat (transitioning out of a forward-facing CRS) around 4–7 years old (depending on the height and weight of the child and the respective limits of their forward-facing car seat). Children typically transition out of a booster seat between the ages of about eight and thirteen (again, exactly when depends on the child's height and weight). The Hybrid III 5th percentile female crash test dummy weighs 108 lb (50 kg). This weight corresponds (approximately) to a 50th percentile fourteen-year-old girl and a 50th percentile thirteen-and-a-half-year-old boy.⁹⁶ This means that if

⁹³ See, e.g., Norman J. Singer & Shambie Singer, 2b Sutherland Statutory Construction section 46:5 (7th ed.) ("[E]ach part or section of a statute should be construed in connection with every other part or section to produce a harmonious whole. Thus, it is not proper to confine interpretation to the one section to be construed."); section 47:3 (explaining that while legislative titles cannot control a statute's plain words they "may help resolve uncertainty" and "illuminate statutory meaning"). See also *id.* section 47:6 ("Courts give effect to all the language of a purview as a harmonious whole, in light of the statute's purpose, and regardless of sectional formatting, unless to do so is plainly contrary to legislative intent.").

⁹⁴ MAP-21, Division C, Title I, "MOTOR VEHICLE AND HIGHWAY SAFETY IMPROVEMENT ACT OF 2012."

⁹⁵ 49 U.S.C. 30111.

⁹⁶ Center for Disease Control Growth Charts for Children 2–20 years of age: Boys Stature-for-age and

NHTSA were to specify criteria matching the 5th percentile female, it would essentially be ignoring a large percentage of children ages 6–14, and likely some 15–18 year old children with weight lower than that of a 5th percentile female. That is, if NHTSA specified the 5th percentile female, the rear seat belt warning requirements would only be targeting older children, not younger children.⁹⁷ This disparity strongly suggests that NHTSA should specify a smaller occupant for testing if doing so would be practicable.

Although NHTSA has concluded that specifying occupant characteristics matching those of a 6-year-old child would meet a safety need and be fully consistent with MAP–21, MAP–21 directs NHTSA to issue a final rule only if the rule would meet the criteria set out in § 30111 of the Safety Act. These criteria include that the rule be practicable. As noted earlier, the statutory criterion of practicability is multidimensional (see Section IV, Statutory Authority). After considering the comments, NHTSA agrees that most currently deployed rear seat belt warning systems utilizing occupant detection are not able (or designed) to reliably detect a 6-year-old occupant. NHTSA also agrees with the commenters who indicated that there are a number of challenges to rear-seat occupant detection, related both to false negatives and false positives. However, while many or most currently deployed rear occupant detection systems used for seat belt warnings may not comply with the requirements in the final rule, we believe that OEMs are capable of improving the technology and meeting these challenges. Further, NHTSA believes that selecting a 6-year-old child instead of the 5th percentile female appropriately balances benefits and costs. We explain this conclusion in more detail below.

NHTSA believes that while current occupant detection systems might not reliably detect a 6-year-old child, or a booster seat, such a requirement is

feasible. NHTSA acknowledges the commenters who argued that many or most rear occupant detection systems that are currently deployed may not be able to reliably detect a 6-year-old occupant, either seated directly on the seat or in a booster seat. NHTSA has not tested current systems to verify or refute this claim, so we have no firm basis on which to agree or disagree with these comments. NHTSA has, though, noted that some owner's manuals inform consumers that if they place lightweight objects (such as a briefcase) on the rear seat, it may trigger the seat belt warning; this suggests that some rear seat belt occupant detection systems may be capable of detecting younger (and therefore lighter) occupants. For example, the owner's manual for the MY 2024 Cadillac Escalade states that "[t]he rear passenger seat belt reminder light and chime may come on if an object is put on the seat such as a briefcase, handbag, grocery bag, laptop, or other electronic device. To turn off the reminder light and/or chime, remove the object from the seat or buckle the seat belt."⁹⁸ In most cases the weights of these listed items would be less than the weight of a 6-year-old. Furthermore, we understand (although again, have not been able to verify) that at least one manufacturer's system may be able to detect a 6-year-old not in a booster.⁹⁹

We also acknowledge that some rear-seat occupant detection systems may not be able to reliably classify a young child seated in a booster seat as an occupant. We explained in the NPRM that children start using belts (with a booster seat) at about 6 years old, and typically transition out of a booster seat around 8 to 13 years old. We acknowledge, as IEE commented, that some rear detection systems may not simply classify objects/occupants based on weight, but may also base the classification on other information, such as the pressure profile, so that a child seated in a booster seat may not be classified as a human occupant, regardless of the child's weight and height. We recognize that manufacturers would have to develop a solution to this issue. We also acknowledge other issues pointed out by the commenters that make accurate detection a challenge, such as out-of-position children.

Nevertheless, we believe that it is feasible to develop this technology. We agree with IEE that more advanced technologies (such as radar sensors) are not yet proven. However, occupant detection technology similar to that used for advanced air bag testing in the front that is used to detect different sized dummies in different test scenarios,¹⁰⁰ including 6-year-old dummies, could potentially be reprogrammed to address our occupancy criteria needs and this would also address the comments about not being able to detect children in boosters. Testing with a 6-year-old should also be compatible with the requirements in ECE R16 and Euro NCAP; if a system can recognize a 6-year-old occupant, it should also be able to recognize an occupant with the characteristics of the 5th percentile female. Moreover, to give manufacturers flexibility, we have kept the requirements as technology-neutral as possible in order to facilitate innovation. We acknowledge that requiring an occupant detection system to meet the final requirements when tested with a dummy or human representing a 6-year-old could increase the cost of the system and may take some time to implement and test, but again, the final rule does not require occupant detection. We are also providing two years of lead time, so current occupant detection systems could be offered until then (See Section IX, Compliance Date).

With respect to the comments on cargo (or pets) leading to false warnings based on the relatively low weight specification for the occupancy criteria, while this is a potential issue, we believe that it is mitigated in a variety of ways. First, potential consumer annoyance should be mitigated by the relatively short duration of the warning (60 sec) and the fact that it does not have an audible component. The weight of the types of objects typically placed on the rear seats (such as briefcases, water bottles, and groceries) would also likely be well under the weight of a 6-year-old (46.5 lb).

There may also be technical solutions to mitigate false warnings. Several comments referred to complications with detection related to the weight of the occupant or object placed on the seat. However, occupant detection technology reliant solely on weight-based sensors may not necessarily be the only technology solution to meet the performance requirements in this final

Weight-for-age percentiles and Girls Stature-for-age and Weight-for-age percentiles, published in May 2000 (modified in November 2000) and available at <https://www.cdc.gov/growthcharts/data/set1clinical/cj41c022.pdf> and <https://www.cdc.gov/growthcharts/data/set1clinical/cj41c021.pdf>, respectively. (last accessed September 10, 2024).

⁹⁷ A booster seat augments the total weight on the rear seat. However, as we explained in the NPRM—and as we adopt in this final rule—we will not be testing with a booster seat because we are aware that children can be prematurely transitioned to a seat belt without the use of a booster, and we believe it is desirable to test the lower end of the possible weight range that encompasses children that could conceivably be restrained with a seat belt alone. We discuss the issue of booster seats in our discussion regarding feasibility later in this section.

⁹⁸ Page 114. As another example, the owner's manual for the MY 2024 Tesla Model Y states: "If all occupants are buckled up and the [seat belt] reminder stays on, . . . remove any heavy objects (such as a briefcase) from an unoccupied seat."

⁹⁹ NHTSA is not disclosing further details about this finding because this information is confidential.

¹⁰⁰ The Advanced Air Bag rule was targeted at protecting all individuals from potential harm from air bags; specific requirements were included that were targeted at protecting children. See Section VI.A.2.a.1.

rule. We also note that, based on the comments alone, it appears that there are presently issues with false alarms for current systems which are presumably based on detecting a 5th percentile female occupant. (However, no specific data were provided on the performance of these systems with relation to false warnings or how such false warnings have affected acceptance.)

If technical solutions to mitigating any remaining consumer acceptance concerns are not readily available, NHTSA continues to believe the behavioral solutions we suggested in the NPRM (such as placing objects on the floor instead of the seat, or buckling the belt if cargo is placed on the seat) are viable. Although Honda and HATCI did not believe such behavioral solutions were viable, as noted earlier, at least some manufacturers are already providing such guidance in the owner's manual. We acknowledge that there may be some trade-off in effectiveness if consumers frequently buckle the belt when cargo is placed on the seat or become accustomed to ignoring the warning. (We are not aware of any data or research on such trade-offs.) Nevertheless, we believe that this concern would not meaningfully affect the warning's effectiveness, and that any lessening in effectiveness should be offset by the system being able to detect the full range of occupants that should be using a seat belt.

With respect to interactions between the occupant detection system and CRSs, we agree with the commenters that the final rule should not require that the occupant detection system be able to detect a forward- or rear-facing CRS installed with LATCH. We agree with Freedman and Honda that the easiest and most effective solution to avoid false warnings for LATCH-installed CRSs is to continue recommending the seat belt be fastened behind the CRS. We encourage this practice on our website¹⁰¹ and some manufacturers are already providing consumers with this guidance.¹⁰²

NHTSA also considered the relative costs and benefits of specifying a 6-year-old child as opposed to the 5th percentile female. In particular, we

considered some commenters' assertions that specifying the 6-year-old would discourage manufacturers from adopting systems with occupant detection or would force manufacturers to downgrade their systems to the positive-only option (which did not require occupant detection). We have concluded that specifying a 6-year-old as opposed to the 5th percentile female appropriately balances costs and benefits. There are several reasons for this conclusion.

First, and most important, a system that does not monitor child occupants smaller than a 5th percentile female does not monitor the entire population of children who can and should be using seat belts. As we noted above, the height and weight of the 5th percentile female dummy correspond, approximately, to that of a 14-year-old. Because the 5th percentile female dummy would not represent most younger children, the system would not work accurately for these children. This is especially worrisome given that children 12 years old and younger represent more than half of the rear seat occupant population.¹⁰³

Accordingly, specifying the 5th percentile female could result in unbelted child occupants in the rear not benefiting from the seat belt warning. For instance, if a negative-only system with occupant detection did not detect an unbelted child smaller than the 5th percentile female seated in a rear seat, the visual warning would not indicate an unbelted occupant at an occupied seat (e.g., for systems with a pictogram that indicates which seat are not in use, the pictogram would likely display something like a "grayed-out" seat to indicate that the system was registering a seat as unoccupied). In this scenario, the driver may not realize that the system was not detecting the child occupant and may think the child is buckled when they are not. This concern is not hypothetical. The owner's manual for the MY 2024 Subaru Forester states that "[t]he driver must check that all the passengers have fastened their seatbelts properly since the seatbelt warning system may not detect passengers under the following circumstances.—When cushions or child restraint systems, etc., are used—When a child or small adult is sitting in the seat." The fact that the system does not work for some classes of occupants could also lead the driver to be less likely to respond to accurate warnings.

These shortcomings could also affect consumer acceptance of the system.

Second, the concern about downgrading to a positive-only system is alleviated because we have modified the proposal so that the final rule does not dictate specific compliance options for the information conveyed by the visual warning; the finalized requirements for the visual warning allow all of the systems that would have been allowed under the proposed rule, as well as additional systems that would not have been allowed under the proposal.

Third, a very small percentage of vehicles currently sold in the U.S. is equipped with rear-seat occupant detection. Based on the 2022 NCAP data, approximately seven percent of light vehicles have SBWS with occupant detection for the rear seats. Relatedly, rear systems with occupant detection are a relatively new feature in the U.S. vehicle market. So even if some manufacturers were to stop offering occupant detection, it would affect a relatively new feature on a small fraction of vehicles offered for sale in the U.S. and would not be a meaningful reduction in the choices presently offered to consumers.

Fourth, this trade-off may or may not materialize. The trade-off would not occur if manufacturers develop and deploy rear-seat occupant detection systems capable of detecting a 6-year-old within the allotted lead time (two years).

Fifth, the possibility that some manufacturers may choose to forgo occupant detection because the final rule specifies the 6-year-old does not lead us to conclude that it would be preferable to specify the 5th percentile female. We considered the relative benefits and costs of specifying each of these systems.

The target population addressed by this rule will necessarily be larger if we specify the 6-year-old—and, importantly, this addition to the target population consists of children. Due to a lack of data, the FRIA was unable to establish how much more effective a rear seat belt reminder system with occupant detection would be relative to a seat belt reminder system without occupant detection. However, it is important to note that the baseline seat belt use rate for rear seat occupants ages 6 to 10 years is already very high. As it is unlikely that the seat belt use rate would reach 100 percent, this leaves very little room for improvement.

Accordingly, the children who will benefit from the rule if we specify the 6-year-old is effectively children from about ages 11–18. This is still a larger

¹⁰¹ See www.nhtsa.gov/road-safety/child-safety (last accessed May 16, 2024).

¹⁰² For example, the owner's manual for the MY 2024 Subaru Forester advises the consumer that "[t]he seatbelt warning system of the rear seats detects if any of the seats are occupied by a passenger. Installing a child restraint system in the rear seating area, using the LATCH anchors, may result in the activation of the passenger seatbelt warning light and chime. Fastening the rear seatbelt prior to installing the child restraint system will avoid activating the passenger seatbelt warning light and chime."

¹⁰³ See <https://www.nhtsa.gov/crashworthiness/child-safety-crashworthiness-research#:~:text=Since%20children%2012%20years%20old,booster%20seats%20and%20seat%20belts> (last accessed May 16, 2024).

target population than if we specified the 5th percentile female. Targeting this population points towards greater benefits.

On the other hand, if NHTSA specifies the 6-year-old, at least some manufacturers may offer fewer rear seat belt reminder systems with occupant detection. However, we are unable to estimate the overall impact of this potential reduction because of several unknowns: how many fewer systems with occupant detection will be offered; the difference in effectiveness between systems with occupant detection and systems without occupant detection;¹⁰⁴ and the seat belt use rates, injuries, or fatalities for children ages 11–18.¹⁰⁵ We also believe that any short-term decrease in net benefits (if that should in fact materialize) is outweighed by what we anticipate to be the greater benefits in the medium-to-long term for children. Moreover, specifying the 6-year-old would result in seat belt reminder systems that are able to reliably inform the driver of unbelted children in the rear seat. While our regulatory analysis is not able to quantify these benefits to an especially vulnerable occupant population, we recognize the importance of these unquantified benefits. NHTSA therefore concludes that specifying the 6-year-old appropriately balances benefits and costs compared to specifying the 5th percentile female.

v. Duration

NHTSA proposed that the start-of-trip warning last for at least 60 seconds. We believed that 60 seconds would be sufficient to capture the driver's attention and appropriately balanced effectiveness and acceptance.

60 seconds is a shorter warning than we proposed for the front outboard seats. There were a couple of reasons for our tentative decision that a shorter warning is warranted for the rear seats. First, we did not propose to require occupant detection for the rear seat belt warning system; the positive-only compliance option would require that the driver be informed of which rear seat belts are fastened. This type of “warning” functions more to provide information to the driver, rather than a true warning (because it will be providing information to the driver even

if all rear occupants have fastened their seat belts), so we tentatively believed that it is not necessary to require that it be particularly long-lasting. Second, and related, even for the compliance options that would entail occupant detection, the complexities of occupant detection in the rear seats and the possibilities for false positives provide another reason for not requiring an extremely long-lasting warning. Manufacturers would be free to provide a longer warning.

This duration was consistent with ECE R16, Euro NCAP, and the IIHS protocol, each of which requires a visual warning at the start of the trip for the rear seat belts lasting at least 60 seconds. It is also consistent with many of the rear seat belt warning systems currently deployed in the United States. In the NPRM we noted that, of the fifteen manufacturers that provide vehicle models with a rear seat belt warning system in the United States, eight appeared to provide systems with initial visual warnings that are active for at least 60 seconds. An additional three manufacturers appeared to provide visual warnings until the seat belt is fastened.

Comments

Auto Innovators, Freedman, Honda, HATCI, and Consumer Reports supported a 60-second minimum requirement. Auto Innovators and HATCI commented that this requirement would align with ECE R16.

SRN requested a longer-duration warning requirement. It argued that the proposed warning would be only moderately effective (especially for occupants of rideshare vehicles) because it could be easily ignored. SRN also commented that caregivers, who may have children in car seats and boosters, may need more time to interpret the warning. SRN also suggested that a seat belt status indicator could be valuable as a constant readout on the dashboard, as warning lights are sometimes dismissed or ignored.

Agency Response

The final rule adopts the proposed 60-second minimum duration. We believe this requirement appropriately balances effectiveness and acceptance. A 2015 survey of drivers of vehicles with RSBWSs found that 28 percent of GM drivers noticed an increase in rear seat belt usage, and 23 percent of Volvo drivers reported an increase in rear seat belt usage.¹⁰⁶ The GM system used a 30-second visual warning at start-up and

the Volvo system provided a short message at start-up, suggesting that a 60-second warning would be at least as effective. The 60-second minimum duration also harmonizes with ECE R16, Euro NCAP, and the IIHS protocol.

A longer warning than 60 seconds could be annoying (in particular for systems without occupant detection that display unfastened belts). We also believe that 60 seconds is long enough to interpret the warning. This is what some current systems use, and we have no information to suggest that consumers have had difficulty interpreting the warning. This is a minimum performance requirement so manufacturers may voluntarily provide warnings lasting longer than 60 seconds. On the other hand, we are aware of vehicles that provide shorter warnings, so having a 60-second requirement will ensure a minimum level of performance.

vi. Other Aspects

NHTSA also received comments on other aspects of the proposed rear seat belt warning requirements.

Comments

Tesla requested that NHTSA clarify whether the “rear rows” reference includes all designated rear seating positions. Tesla also commented asking if the agency had a plan to also address integrated child seats that have seat belt reminder technology. Auto Innovators commented that the proposed S7.5(c)(1)(ii), requiring a visual and audible change of status warning, and S7.5(c)(2)(ii), prohibiting a visual warning that a seat belt is not in use for an unoccupied seat, are inconsistent and require clarification.

Agency Response

The final rule retains the reference to “all rear designated seating positions.” The proposed regulatory text did not refer to “rows”; it simply referred to “rear designated seating positions.” Accordingly, it applies to all rear designated seating positions in applicable vehicles.

It is not necessary that the rule specifically address integrated child seats. Integrated child seats are CRSs or booster seats that are built into the vehicle seat. A child seated in an integrated child seat is secured with either a seat belt or a harness. If the child is secured with a seat belt, then the seat belt warning should monitor belt use as with any seat belt. If the child is secured with a harness, the seat belt reminder would not be required for the harness, because children in an integrated seat with a harness are not part of the target population for this rule

¹⁰⁴ The NPRM explained that while the main advantage is more informative warnings and that it can reduce false warnings for unoccupied seats, it can also (as pointed out by some commenters) result in false warnings.

¹⁰⁵ Because of data limitations, NHTSA was unable to break out this information for this age group specifically. NHTSA was only able to segment the analysis into occupants ages 6–10 and occupants 11 and older.

¹⁰⁶ Paul Schroeder & Melanie Wilbur, Survey of Principal Drivers of Vehicles with a Rear Seat Belt Reminder System. Washington, DC: National Highway Traffic Safety Administration (2015).

just as children in rear- and forward-facing CRSs are not part of the target population. In addition, we were unable to identify any new vehicles with integrated child seats that use a harness. Integrated booster seats would not pose an issue for the seat belt warning system, and we are aware of only one vehicle manufacturer that offers integrated booster seats on some vehicles as an option.¹⁰⁷ Regarding Auto Innovators comment, the final rule does not include the proposed requirement that the warning is not permitted to indicate a seat belt is not in use for an unoccupied seat because we do not believe this is necessary.

b. Audio-Visual Change-of-Status Warning

NHTSA proposed requiring an audio-visual warning when a rear seat belt is unbuckled during a trip. We proposed that an audio-visual warning must activate when the ignition switch is in the “on” or “start” position, the vehicle is in forward or reverse drive mode, and the status of the seat belt changes from in use to not in use, unless any rear door is open, in which case a change-of-status warning would not be required. The exception for an open rear door was intended to allow for passengers to exit the vehicle when the driver does not shift into park without activating the change-of-status warning.

The audio-visual warning would have to last for at least 30 seconds or until the seat belt that triggered the warning is in use. We proposed that the audible signal may be “intermittent” (*i.e.*, not continuous), which mirrors the longstanding requirements for the driver’s seat belt warning. If intermittent, we proposed that inactive periods longer than three seconds would not be counted toward the total minimum duration of the audible warning. Because the required minimum duration was relatively short, we did not propose additional audible signal characteristics, such as a duty cycle. (In contrast, we proposed additional signal characteristics for the front seat belt change-of-status warning because of the required longer duration for that warning. The final rule decisions on these aspects of the front seat warning are discussed in Section VI.B.3).

ECE R16 similarly specifies an audio-visual change-of-status warning for rear seats. Specifically, if a fastened belt becomes unfastened when the vehicle is in “normal operation” (defined as

forward motion at a speed greater than 10 km/h (6.2 mph)),¹⁰⁸ ECE R16 specifies an audio-visual warning (second level) when certain distance, time, and/or speed threshold(s) (at the choice of the manufacturer) are exceeded.¹⁰⁹ The additional thresholds are distance traveled (not to exceed 500 meters), vehicle speed (not to exceed 25 km/h (15.5 mph), and/or travel time (not to exceed 60 sec). This warning must last for at least 30 seconds unless the unfastened belt becomes fastened, the seat associated with the unfastened belt is no longer occupied, or the vehicle is no longer in normal operation.¹¹⁰ This warning may not be canceled by the driver.

Euro NCAP also requires (to earn points) an audio-visual change-of-status warning at vehicle speeds of 25 km/h (15.5 mph) and above.¹¹¹ If the change of status occurs below 25 km/h (15.5 mph) and no doors are opened, the signal may be delayed until the vehicle has been in forward motion for 500 meters or has reached a forward speed of 25 km/h (15.5 mph).¹¹² A warning is not required if the system has occupant detection as long as all doors remain closed and the number of buckled positions remains the same, in order to minimize the number of false positives (*e.g.*, children remaining in the vehicle but swapping seats in the rear while at a traffic light).¹¹³ The warning duration differs for the visual and audible warnings. With respect to the visual warning, if the system does not have occupant detection, the warning must last until the seat belt is fastened or 60 seconds have elapsed.¹¹⁴ If the system does have occupant detection, the signal must remain on until the belt is fastened. The audible warning must last until the belt is fastened,¹¹⁵ 30 seconds have elapsed,¹¹⁶ or the vehicle speed falls below 10 km/h (6.2 mph).¹¹⁷

ECE R16¹¹⁸ and Euro NCAP¹¹⁹ do not count periods in which the warning

stops for longer than three seconds as part of the overall duration.

The IIHS protocol also requires an audio-visual change-of-status warning lasting at least 30 seconds when the vehicle is in motion. The exact trigger depends on vehicle speed. When vehicle speed is between 10 and 40 km/h (6.2 and 24.9 mph), the audio-visual warning must start within 30 seconds of continuous forward motion, and when the speed exceeds 40 km/h (24.9 mph), the audio-visual warning must begin within two seconds if the signal has not already begun. The warning can deactivate when the seat belt that triggered the warning is fastened; the vehicle is no longer in forward motion above 10 km/h (6.2 mph); or the seat or seats that triggered the warning are no longer occupied. Similar to Euro NCAP, the thresholds to trigger the primary audible signal and visual signal may be reset if any doors have been opened when the vehicle is not in motion.

The proposal differed from ECE R16, Euro NCAP, and the IIHS protocol in some respects. The proposed 30-second duration was shorter than the 60-second duration for the visual signal specified in Euro NCAP, but consistent with the 30-second duration for the audible signal. We also did not propose any speed, distance, or time triggers. And we did not propose the Euro NCAP allowance for not requiring a change-of-status warning when all doors remain closed and the number of buckled positions remains the same because it would require a delay in the activation of the change-of-status warning; also, these types of events are likely uncommon and require very little time to complete, so exposure to the warning would be very limited.

Comments

Consumer Reports agreed with the agency’s decision to require the change-of-status warning to include both audible and visual components. It also supported departing from ECE R16 and Euro NCAP and requiring a warning whether or not a vehicle is in motion because a stopped vehicle presents the best opportunity for the driver to ensure that the occupants are belted.

On the other hand, Honda, Nissan, NADA, Tesla, Ford, Auto Innovators, and HATCI commented that reminder trigger conditions should harmonize with ECE R16 and/or Euro NCAP and be based on vehicle motion. Auto Innovators and Honda commented that the proposed requirements for providing an audible alert may result in widespread consumer acceptance issues. For example, Auto Innovators argued that establishing a trigger

¹⁰⁸ Section 2.4.7.

¹⁰⁹ Section 8.4.3.3 (front seat belts) and section 8.4.4.5 (rear seat belts).

¹¹⁰ These summaries simplify the requirements somewhat. They will be discussed in greater detail later in the preamble where relevant.

¹¹¹ Section 3.4.1.5.

¹¹² Section 3.4.1.5.

¹¹³ Section 3.4.1.5.

¹¹⁴ Section 3.4.3.1.1.

¹¹⁵ Section 3.4.1.6.

¹¹⁶ Section 3.4.3.2.

¹¹⁷ Section 3.4.1.6. The audio signal must resume when the speed goes above 25 km/h (15.5 mph) and no doors have been opened and the seat belt(s) remain unbuckled. In addition, the audible signal may instead meet the requirements for the front seating positions, if the vehicle is equipped with occupant detection.

¹¹⁸ Section 8.4.2.4.1.

¹¹⁹ Section 3.4.3.2.3.

¹⁰⁷ See <https://www.volvocars.com/lb/support/car/xc90/article/3212aabb4f810a77c0a8015146e81cc9> (last accessed May 16, 2024).

threshold based solely on the ignition being on, absent vehicle motion, will result in scenarios where an unbelted condition that may otherwise be viewed as reasonably acceptable would result in an audible alarm, including those where the vehicle is either stopped (and in drive) or slowing in anticipation of an upcoming stop (e.g., in a rideshare scenario or school drop-off). Auto Innovators recommended that NHTSA harmonize with ECE R16, which requires the audio-visual warning to be provided only when there is a change in seat belt status when the vehicle is traveling above 25 km/h (15.5 mph) or moving below 25 km/h (15.5 mph) for a period of 60 seconds.

Auto Innovators further commented that the agency did not articulate why it has proposed that an audible alert occur when the vehicle is in reverse. Auto Innovators explained that such maneuvers are typically low-speed events, and that the agency has not provided clear justification for why an audible alert is needed in these scenarios.

Honda commented that if NHTSA does not adopt a speed threshold, it could consider an alternative approach that would allow a single chime when the change of status occurs (assuming the vehicle is stationary) and then resume the full alarm when the vehicle begins moving. Honda commented this modification would minimize intrusive and annoying alarms, ensuring that the system still provides a warning but does not cause excessive consumer annoyance.

We also received comments both in support of the proposed warning duration, as well as comments that recommended alternative durations. Auto Innovators, HATCI, and Honda support the proposed 30 second duration and harmonizing with ECE R16. Tesla encouraged harmonizing with either ECE R16 or Euro NCAP.

Some commenters favored a longer minimum duration. Freedman argued that the audio warning should be the same as that for the driver seat (indefinite). Consumer Reports commented that the warning should last at least 60 seconds unless the belt is buckled, to be consistent with the start-of-trip visual warning. Ms. Cross proposed requiring at least a 90 second minimum duration, pointing to, for example, consumer surveys showing that many consumers favor persistent warnings.

Honda and Auto Innovators recommended that NHTSA allow the change-of-status warning to cease if a different belt is buckled (and the total number of buckled seats is restored) to

allow the driver to recognize that a rear occupant has changed seats and refastened the belt.

Tesla requested that NHTSA define the start time to measure the 30 seconds duration. Tesla further commented that if the warning continues after the seat belt is fastened, it may lead to a potential confusion on system functionality, which could lead to occupants ignoring future warnings.

Agency Response

In response to the comments, the final rule adds a provision to accommodate occupants switching seats. However, we are declining to adopt additional trigger conditions, such as a speed criterion. The final rule also includes the proposed 30-second duration. Our reasoning for these and other choices is detailed below.

The final rule includes the proposed exception from activation when a rear door is opened, *i.e.*, for a drop-off scenario: a change-of-status warning is not required if a rear passenger unbuckles and exits the vehicle. However, the final rule omits the additional proposed language that “the system may consider this situation as a new trip with respect to that seat belt and reset the warning system.” This language is vague and superfluous. The exception is based on the door opening, and there is no need to permit the system to “reset”; manufacturers can program the system logic for the state of the system after a belt is unfastened and a door is opened as they deem appropriate, as long as the system complies with the finalized requirements.

The final rule implements the recommendation from Auto Innovators and Honda to follow Euro NCAP and allow the change-of-status warning to deactivate if the system is able to recognize passenger(s) switching seats when all the doors are closed and the number of buckled positions remains the same. This change would limit the exposure to the warning if the occupant(s) changes seats and refastens the belt in another seat. Without this allowance, the warning would remain activated when all occupants were belted and would be unnecessarily annoying. This condition will also accommodate situations where a passenger buckles into a wrong buckle and corrects it. The additional regulatory text is based on Euro NCAP.¹²⁰

¹²⁰ Section 3.4.1.5 (“Where the system is able to track the number of buckled positions in the rear, no change of status signal (for the rear seats) is required as long as all doors remain closed, and the

However, we are declining to add the additional requested trigger conditions, or to simply require a single chime when a change of status occurs because, as we explained in the NPRM, seat belts provide a safety benefit even at lower speeds, and regardless of the direction of motion. We also believe a warning would be beneficial even if the vehicle is not moving. A driver may want to know if any rear seat occupants—especially children—have been unbuckled while the vehicle is temporarily stopped (e.g., at a traffic light) or slowed (e.g., in a parking lot), because the vehicle could soon be resuming travel. In addition, providing a warning when the vehicle is stationary would allow the driver to attend to the unbuckled passengers before having to focus attention on the driving task. We similarly believe that a warning would be useful before the vehicle has reached any distance or trip time threshold. The final rule also includes the reverse driving mode as a trigger as proposed. We believe this trigger is beneficial because it will require a warning before a vehicle begins driving on the road (e.g., before pulling out on to the road). We believe the benefits of having a warning activate in these circumstances outweighs the potential drawbacks identified by the commenters (for example, when the vehicle is stopped and the belt is unbuckled before a door is opened). In addition, we have eliminated the condition that the ignition switch be in the “on” or “start” position because it was redundant with the condition that the vehicle be in a forward or reverse drive mode.

We do not believe that a visual warning alone, without an audible component, would be sufficient; a change of status is a serious event, due to the higher risk that comes with riding unbelted, and we believe this risk warrants a more effective audio-visual warning. In addition, the relatively short duration of the warning (30 seconds) should help minimize consumer annoyance in other scenarios that might result in an unbelted occupant in very low-risk scenarios. We therefore believe that consumers will accept the warning.

NHTSA is also finalizing the proposal that the audio-visual change-of-status warning last at least 30 seconds (or until a rear door is opened). As we explained in the NPRM, this requirement is comparable to the change-of-status warnings on vehicles currently equipped with rear seat belt warnings.

number of buckled positions remains the same. This is to minimize the number of false positives (ex: children remaining in the vehicle but swapping seats in the rear while at a traffic light.”).

While we recognize that longer warnings may be more effective, we are not requiring a longer warning for the rear change-of-status warning. This requirement differs from the front seat, for which we are requiring a visual warning that lasts until the belt is re-buckled and a speed threshold for the indefinite audible warning. The main reason we are not requiring a longer rear change-of-status warning is to mitigate driver distraction. Because the majority of rear passengers are children, the driver would not necessarily be able to address the issue immediately and a longer warning could distract from the driving task.¹²¹ With respect to Ms. Cross's comment, the survey on consumer acceptance for rear warnings does not support a specific duration, just that the majority found the feature acceptable, and the data on the majority of vehicles having at least a 90 second warning is for the front seat belt warning at the start of a trip, not a change-of-status warning, so they are not necessarily directly comparable.

With respect to Tesla's question about start time, the 30-second clock commences when the trigger conditions specified in the rule are met. The warning is permitted to stop if the occupant of the seat with the belt triggering the warning buckles within 30 seconds.

c. Electrical Connections/Removable Seats

In the NPRM we explained that we had tentatively decided not to propose any requirements with respect to the electrical connections for folding, rotating, or stowable seats. Because these seats are not readily removable, the electrical connections should not be disturbed and could be accommodated with additional wiring. We did, however, propose two requirements related to the electrical connections for readily removable seats.

First, we proposed that readily removable seats must either automatically connect the electrical connections when the seat is put in place or, if a manual connection is required, the connectors must be readily accessible. A system using a wireless connection could be classified as either automatic or manual, depending on whether the user needs to take any additional actions to establish the wireless connection when the seat is installed. We agreed with the commenters who recommended no

prescriptive requirements to ensure manufacturers have flexibility in system design.

Second, we proposed that vehicles using the negative-only compliance option provide a visual warning to the driver if a proper electrical connection has not been established for a readily removable seat because we were concerned that consumers could reinstall removable seats without making a proper electrical connection. We proposed requiring a visual warning for negative-only systems only because a faulty connection would result in the system not triggering any warning of an unbelted rear seat occupant. Moreover, for a negative-only system, the driver would otherwise have no reason to suspect that the system was malfunctioning, and so might mistake the lack of a warning as an indication that the rear seat occupant was belted. In the NPRM we explained why we believed that these issues were not present in full-status or positive-only warning systems.

In the NPRM we stated our belief that both requirements would mainly affect minivans, which make up a small percentage of the fleet, but further explained that it might be possible to use the rear seat belt visual warning signal, with slight modifications (*e.g.*, a different color) to comply.

Comments

Freedman, ASC, Honda, and Consumer reports commented that they agree that readily removable seats should not be exempt from the proposed requirements.

ASC also commented on potential challenges in establishing reliable electrical connections, explaining that seat belt technology to support seat belt reminder systems in the field today is contained within an electrical switch inside the buckle. According to ASC, this functionality presents two challenges. First, since the removal and reattachment of the seat will result in disconnecting/reconnecting the buckle wiring to the vehicle wire harness, the reliability of this connection needs to be studied to ensure it is robust against malfunction considering its use case. (RVIA also raised this concern in its comment.) Second, a user's handling of the electrical interface presents an opportunity for accidental damage. ASC recommended further study to determine the robustness of this connection in these systems.

RVIA commented that motor homes are also often equipped with non-conventional, custom-made rear seating, so that developing wiring and sensors for the seat belt warning system that are

not damaged in the conversion process from seat to bed would be challenging if not impossible. RVIA further commented that the NPRM does not consider convertible seats.

IEE recommended that a visual warning be required for all systems, not just the negative-only system.

Agency Response

The final rule includes the proposed electrical connection requirements for readily removable seats. We agree with the commenters who supported including these requirements that doing so would provide important safety benefits by helping to ensure that proper electrical connections are made and the warning system operates correctly, and, in the case of negative-only systems, warns users that a proper connection has not been made. We agree with ASC that there is a foreseeable possibility that users can accidentally damage the system. This risk is why the final rule requires a warning that alerts the driver if a connection has not been properly made or if there is a malfunction for negative-only systems (where there is a risk of the driver not being aware of the issue).

We acknowledge the potential challenges associated with electrical connections pointed out by some of the commenters, but we believe the requirements are feasible. NHTSA's understanding is that removable rear seats are relatively rare, and typically only installed in the second row of passenger vans (a very small percentage of the fleet). In the vehicles in which they are present, it is likely that the seats are not frequently removed, which would suggest that the electrical connections would not be exposed to constant removal and re-installation that could increase the likelihood of damage. Moreover, the fact that the seat is removable does not necessarily mean that removing the seat means disturbing the electrical connection. NHTSA is aware of one minivan model with a rear seat belt reminder and a removable seat (MY 2024 Toyota Sienna Hybrid); in that vehicle, the seat belt anchors—which contain the wiring necessary for the rear reminder signal to function—remain in place when the seat is removed, obviating any need to re-establish any electrical connections when the seat is re-installed.

Furthermore, the technology at issue here is not complex; re-installing the seats simply would require re-establishing a connection. If a seat is designed to be removable, it would not be unreasonable to expect that the seat, when re-installed, continues to have the same functionality it had before it was

¹²¹ The change-of-status warning does not present the same concerns with false warnings as does the start-of-trip warning because the change-of-status warning is not triggered by occupancy.

removed. The fact that removable seats are not exempted by ECE R16 or Euro NCAP strongly suggests that this requirement is not unreasonable.¹²² Accordingly, we do not believe more study is necessary to determine the robustness of the connection. Electrical connections may not be necessary for every removable seat and only a limited number of vehicles are equipped with removable rear seats. It is also unlikely that seats are removed and reinstalled frequently. Therefore, this issue does not appear to warrant further study. In addition, the requirement for a warning if there is a malfunction also addresses safety risks associated with potential damage over time.

With respect to RVIA's comment regarding seating specific to motor homes, such as dinette seating, it is unlikely the requirements apply to motor home convertible seats. Motor homes not greater than 10,000 lb GVWR are generally not required to have rear seat belts.¹²³ And NHTSA's regulations exempt motor home seating locations labeled in accordance with S4.4 of FMVSS No. 207 from being classified as "designated seating positions," so that the seat belt and seat belt reminder requirements do not apply to motor home seats so labeled.¹²⁴

The final rule does not expand the connection warning requirements to systems beyond the negative-only system. As mentioned in the NPRM, we only think this issue would pose a serious risk for negative-only systems.

d. Owner's Manual Instructions

NHTSA proposed that the owner's manual (which includes information provided by the vehicle manufacturer to the consumer, whether in digital or printed form) describe the warning system's features, including the location, format, and meaning of the visual warnings. We also proposed that the owner's manual include instructions on how to make any manual electrical connections for readily removable seats. These proposed additions would require a revision to the approved collection of information in OMB No. 2127-0541.

Comments

We received comments both in support of and in opposition to the proposed owner's manual instructions.

ASC agreed with the proposal to include information regarding seat belt reminder systems in the owner's manual instructions. NSC commented that the owner's manual instructions should include instructions on how to make any manual electrical connections for readily removable seats, like child passenger safety seats. NSC urged NHTSA to consider standardizing generic nomenclature as well as standardizing warning and icon symbols to reduce driver confusion. SRN requested that instructions regarding false warnings, such as when relatively heavy car seats are installed using LATCH, be provided.

Auto Innovators opposed any specific owner's manual requirements, particularly if the required language is not relevant or applicable to all vehicles. Auto Innovators commented that the extent to which guidance may need to be included in the owner's manual is a function of how the system is designed; if there are certain aspects of the system design that may require additional instruction, this information should be provided at the discretion of the manufacturer.

Agency Response

The final rule includes, without any substantive changes, the proposed owner's manual requirements. We agree that these requirements will aid in public adoption of the warning systems and help to achieve their full safety potential. In addition, with increased system complexity, greater knowledge and understanding of the system is required. Including detailed information in the vehicle itself is not practical.

The final rule to some extent standardizes nomenclature by defining some terms used in the regulation and by specifying requirements for the visual warning characteristics. However, we attempted to minimize such requirements to the extent possible to provide manufacturers with design flexibility. We agree with Auto Innovators not to require including specific information on how warning systems with occupant detection function when a CRS is installed with LATCH and guidance on how to avoid activating the warning (e.g., by fastening the seat belt). As Auto Innovators points out, the extent of the guidance needed to potentially limit false warnings depends on the type of system and its technology and should be left up to the discretion of the manufacturer.

Manufacturers may include language in the child passenger section of their manuals for further guidance on potential false warnings that is specific to their system capabilities.

e. Telltale Location

The NPRM proposed that the visual warning signal be required to be visible to the driver only and not the rear passengers.

Comments

Auto Innovators supported the proposal to provide flexibility for manufacturers to specify the location of any necessary telltales related to rear row seat belt use, provided they are visible to the driver. On the other hand, Freedman commented it would be beneficial for passengers to see the seat belt status in those vehicles with multiple rows of rear seats, and indicated that this requirement could be accomplished with additional monitors in the passenger seating area.

Agency Response

The final rule adopts the proposed requirement that the visual signal needs to be visible only to the driver. Although we agree with Freedman that it could be beneficial for rear passengers to see the warning, we conclude that the increased cost, complexity, and redesign such a requirement would entail would not be justified. However, manufacturers would have the flexibility to place the visual warning where it could be seen by some or all rear seat occupants. In Section VI.C.7, we discuss the implications of the telltale location as it relates to automated vehicles. This requirement harmonizes with ECE R16,¹²⁵ Euro NCAP,¹²⁶ and IIHS,¹²⁷ all of which require that the rear seat belt visual warning be visible only to the driver.

3. Alternative Warning Signals

In the NPRM, we noted that the ANPRM had sought comment on requiring or specifying as a compliance option a rear seat belt warning that differs from the type of audio-visual warning that is currently required for the driver's seat belt, such as a haptic warning. Commenters to the ANPRM generally argued that an alternative warning is not necessary and that an audio-visual warning would be appropriate.

¹²⁵ Section 8.4.4.2.

¹²⁶ Section 3.4.1.1.

¹²⁷ Insurance Institute for Highway Safety. (April 2024.) Seat Belt Reminder System Test and Rating Protocol, Version III, pg. 7.

¹²² NHTSA did some limited market research of European models with removable rear seats. In one (MY 2023 Peugeot 5008) the seat belt anchors did not appear to be affected by the removal of the seat. In another (MY 2023 Ford Tourneo Connect), visual indicators where the seat locks in place were used to confirm proper installation, but not pertaining to electrical connections specifically.

¹²³ FMVSS No. 208 S4.2.7.

¹²⁴ 49 CFR 571.3(b) (definition of "designated seating position").

Comments

We received one comment on this issue. Auto Innovators agreed that an alternative warning is not necessary in addition to the audio-visual warnings proposed. However, Auto Innovators commented that manufacturers should not be prohibited from using alternate warnings (in addition to the required alerts) if they choose to do so.

Agency Response

We are moving forward with the originally proposed requirements for audio-visual warnings, while neither requiring nor prohibiting alternative warning signals. We are specifying minimum performance requirements to balance the effectiveness and acceptability of these systems. Manufacturers may go beyond our requirements, such as by providing a warning on the instrument panel that must be acknowledged by the driver before any other use of the instrument panel is permitted. Manufacturers interested in implementing supplementary alternative warnings signals should take steps to ensure that what is used will not cause unnecessary confusion or annoyance.

B. Front Seat Belt Warning Requirements

1. Applicability

In the NPRM, NHTSA proposed to require an audio-visual seat belt warning for any front outboard seating positions in passenger cars, and all front outboard designated seating positions certified to a compliance option requiring seat belts in trucks, MPVs, and buses with a GVWR of 4,536 kg (10,000 lb) or less.¹²⁸ NHTSA also proposed not to extend the seat belt warning requirements to front center seats. Additionally, in the NPRM the agency noted that the 2022 automated driving system (ADS) final rule¹²⁹ also addresses situations where an ADS-equipped vehicle without manual driving controls has one or no outboard seats in the front row (*e.g.*, an ADS-equipped vehicle with only two seats in the front row, one or both of which would be classified as inboard passenger seating positions under 49 CFR 571.3) and requires seat belt warnings for certain inboard seats in

such vehicles. We proposed that these front inboard passenger seats have the same seat belt warnings as front outboard seats. However, although the proposed regulatory text for passenger cars addressed this ADS-related applicability issue, the regulatory text for trucks, MPVs, and buses did not have conforming revisions.

ECE R16 requires a warning for seats in the same row as the driver in passenger vehicles up to 5 tons (~11,000 lb) and vehicles used for carrying goods (*e.g.*, pick-up trucks, vans, commercial trucks) up to 12 tons (~26,000 lb).¹³⁰ Euro NCAP awards points for warnings for all front row seating positions.

Comments

Several commenters, including Consumer Reports, Ms. Freeman, Honda, Tesla, Mothers Against Drunk Driving (MADD), and Ms. Tombrello commented in support of requiring an audio-visual seat belt warning for front outboard passenger seats. Consumer Reports commented that most manufacturers already implement audible warnings for front outboard passenger seats that last more than eight seconds, and they agreed with updating the requirements to reflect marketplace changes that have resulted in more substantial audible warnings. Ms. Tombrello emphasized the value in mandating this technology to cover the remaining vehicles that have not yet incorporated it.

IEE commented that NHTSA should consider mandating a seat belt reminder warning for the front row seats of vehicles with a GVWR beyond 10,000 lb. IEE indicated that such vehicles are included in ECE R16, and it would be a safety relevant gain to cover the whole vehicle fleet. They also noted that ECE R16 includes some exemptions, such as foldable seats in entry areas of coaches, that could also be incorporated.

Ms. Tombrello, MADD, Advocates and Public Citizen, and IEE supported extending the requirements to the front center seating position. Ms. Tombrello noted the high percentage of center-seat fatalities that were unrestrained and stated that many children may be seated in the front center seat. IEE commented that even with a possibly still negative cost-benefit analysis, NHTSA should consider including the front center seat because the market share of vehicles with front center seats can be expected

to increase as EVs no longer have a transmission tunnel. IEE also noted that because ECE R16 includes the front center seating position, established technical solutions are available.

Agency Response

We are finalizing the applicability of the front seat warning requirements as proposed in the NPRM, except for a correction to the regulatory text for certain ADS-equipped vehicles. NHTSA appreciates IEE's concerns regarding the harmonization and safety benefits that could be gained by expanding this rule to cover vehicles with a GVWR over 10,000 lb. However, the agency will not do so in this final rule because we lack information on implementation cost to support such a requirement for heavy vehicles. The Safety Act requires that FMVSS be practicable, which includes appropriately weighting the benefits and costs of a requirement while ensuring that the standard meets the need for motor vehicle safety. As we explained in the NPRM, long duration or indefinite audio-visual warnings are typically appropriate only for occupied seats due to the nuisance and desensitization effects that occur when warnings are activated for unoccupied seats.¹³¹ We also noted several factors that enabled us to conclude that no cost is associated with requiring front outboard passenger seat occupant detection technology in the light vehicle fleet (the vehicles to which this rule applies). Specifically, light vehicles are covered by the advanced air bag requirements in FMVSS No. 208, so occupant detection in the front outboard passenger seat is already widely deployed as part of the air bag system. Additionally, passenger seat occupant detection systems are often installed in the light vehicle fleet in part for use in voluntary seat belt warning systems. Based on compliance and consumer information submitted to NHTSA, the agency was, and still is, unaware of any vehicles to which the requirements will apply which do not already have occupant detection for the front outboard passenger seating position.

However, we do not currently have such information regarding the heavy vehicle fleet and therefore cannot come to the same (or any) conclusion about the costs associated with implementation of a similar requirement for heavy vehicles, so we are not going to extend the requirements in this final rule. Heavy vehicles are not covered by the advanced air bag requirements in FMVSS No. 208¹³² and we do not have

¹²⁸ There are some compliance options for certain trucks and MPVs that permit passive protection in lieu of seat belts at the front outboard seating positions. See FMVSS 208 S4.2.3 (compliance options for trucks and MPVs weighing between 8,500–10,000 lb); S4.2.6 & S4.2.1.1 (compliance options for walk-in van-type trucks and vehicles designed to be sold exclusively to the U.S. Postal Service 8,500 lb and less).

¹²⁹ 87 FR 18560 (Mar. 30, 2022).

¹³⁰ Section 8.4.1.1. ECE R16 requires seat belt reminders in vehicle categories M (passenger vehicles) and N (vehicles carrying goods). Category M vehicles have a maximum mass of 5 tons (approximately 11,000 lb) and category N vehicles have a maximum mass of 12 tons (approximately 26,500 lb).

¹³¹ 88 FR 61674, 61691 (Sept. 7, 2023).

¹³² 49 CFR 571.208, S14.

data indicating the market penetration of occupant detection systems for front outboard passengers in the heavy vehicle fleet in the United States. Without this or other information indicating the adoption of occupant detection technology, NHTSA is unable to determine whether additional occupant detection systems may need to be incorporated into vehicle designs to support a seat belt reminder system and the associated cost, and therefore at this time cannot determine that such a requirement would be practicable. Given the safety problem associated with a lack of seat belt use in light vehicles, and the availability and strength of data for systems in light vehicles, delaying this rule to obtain information for heavy vehicles would not be prudent. Instead, we are finalizing this rule to cover light vehicles and achieve those safety benefits quickly. In the future, as more data regarding heavy vehicles is available, we may choose to extend these requirements. However, we are not doing so in this final rule.

Additionally, NHTSA is finalizing this rule without a requirement for front center seats. As we explained in the NPRM, a system for the front center seat without occupant detection would provide limited benefit because it would be only a visible and not an audible warning, the low occupancy of the front center seat, and the limited number of vehicles in the fleet with a front center seat. In addition, we estimated that requiring a system with occupant detection for the front center seats would not be cost effective.¹³³ This is discussed further in Section VIII.B.3 as well as in the docketed FRIA. While EVs present fewer technical barriers to having a front center seat, we do not have data suggesting that manufacturers of EVs are incorporating front center seats at higher rates, or that if they did so, the requirement would become cost effective.

Finally, NHTSA is correcting the regulatory text for trucks, MPVs, and buses to address the potential for ADS-equipped vehicles that may have one or no outboard seats in the front row. We discuss other considerations related to ADS vehicles in Section VI.C.7.

2. Driver's Seat Belt Warning for Light Buses

In the NPRM we proposed to require buses with a GVWR greater than 3,855 kg (8,500 lb) and less than or equal to

4,536 kg (10,000 lb), or with a GVWR less than or equal to 3,855 kg (8,500 lb) and an unloaded weight greater than 2,495 kg (5,500 lb), to be equipped with a driver seat belt warning. This requirement would close a loophole in FMVSS No. 208.¹³⁴

Comments

Consumer Reports supported NHTSA's efforts to close this regulatory gap.

Agency Response

NHTSA is finalizing this provision as proposed without change.

3. Visual and Audible Warning Duration and Activation

In the NPRM, we proposed two separate audio-visual warnings for the driver and front outboard passenger seats. First, we proposed an audio-visual "start-of-trip" warning that must activate when the ignition switch is placed in the "on" or "start" position if the seat is occupied and the seat belt is not in use. This warning would be required to continue until the seat belt that triggered the warning is in use. Second, we proposed an audio-visual change-of-status warning that would be required to activate when the ignition switch is in the "on" or "start" position, the vehicle is in forward or reverse drive mode, and the status of the seat belt changes from in use to not in use. We also proposed that if the change-of-status occurs and a front door on the same side of the vehicle as the belt triggering the warning is open, the system can consider that the start of a new trip. The warning would be required to continue until the seat belt that triggered the warning is in use. We also proposed that the audio-visual warning would otherwise not be permitted to activate.

ECE R16 requires a first-level visual warning and a second level audio-visual warning. The first level visual warning is a start-of-trip warning that must activate for at least 30 seconds a front seat belt is not fastened and the ignition is activated. The second-level audio-visual warning must activate when a seat belt at an occupied seat is or becomes unfastened when the vehicle is in "normal operation" (defined as forward motion at a speed greater than 10 km/h) and specific threshold criteria are met (distance traveled, speed, time). The second-level warning must remain activated for at least 30 seconds, unless the safety belt is fastened, the seat is no

longer occupied, or the vehicle is no longer in "normal operation."

The Euro NCAP specifications are largely similar to those in ECE R16, with some differences. For example, Euro NCAP requires a longer-duration "Loud and Clear" audible warning (90 seconds) when an additional speed, time or distance threshold is met. The audio-visual signal must also immediately deploy if a change of status to unbuckled occurs at speeds over 25 km/h (15.5 mph). When the change of status occurs below 25 km/h and the doors are opened, the system may consider this a "new journey." To prevent unnecessary signals, both ECE R16 and Euro NCAP require that the system be capable of detecting whether the front passenger seat is occupied.

The IIHS ratings protocol for the initial signal specifies that if a seat belt at an occupied outboard front-row seating position is unfastened at ignition and the vehicle achieves continuous forward motion (at least 10 km/h (6.2 mph)), the audible signal must begin within 30 seconds when the vehicle speed remains between 10 and 40 km/h (6.2 and 24.9 mph) and within 2 seconds once the vehicle speed exceeds 40 km/h (24.9 mph), if not already active. For the change-of-status signal, IIHS specifies the following: If a fastened seat belt at an occupied outboard front-row seating position is unfastened when the vehicle's forward motion is between 10 and 40 km/h (6.2 and 24.9 mph), then the primary audible signal must begin within 30 seconds of continuous forward motion; if a seat belt at an occupied outboard front-row seating position is unfastened when the vehicle's forward motion exceeds 40 km/h (24.9 mph), then the primary audible signal must begin within 2 seconds if it has not already begun.

In the NPRM, NHTSA proposed to require that the audio-visual reminder last indefinitely until the belts are fastened (or refastened, in the case of a change-of-status scenario) at any occupied front outboard seating position. We proposed that this requirement be both upon start-up as well as in a change-of-status scenario. We based this proposal on five reasons that supported our belief that the proposal would be practicable, objective, and meet the need for motor vehicle safety. First, the existing requirements are significantly exceeded by the warnings provided in current vehicles. Second, we tentatively found (in agreement with IIHS) that the current audible signal duration upper limit of eight seconds is ineffective for increasing seat belt use. Third, we tentatively believed that contemporary

¹³³ Due to lack of data, NHTSA was unable to establish seat belt use rates for front center seat passengers under the baseline. The analysis therefore used the use rates for front outboard passengers.

¹³⁴ In the NPRM, NHTSA mistakenly referred to these vehicles as "medium-sized buses." This was incorrect. "Medium-sized buses" refers to buses with GVWRs between 10,000 lb and 26,000 lb.

consumers would accept a longer warning. Fourth, the technology necessary to implement such an enhanced warning is already standard equipment on almost all light vehicles. Fifth, a longer duration would be consistent with seat belt warning durations required or encouraged in other markets and ratings programs.

We also sought comment on other duration alternatives, including those specified in or by ECE R16, Euro NCAP, and the IIHS. ECE R16 requires a 30 second visual warning when the front seat belts are not fastened and the ignition is activated as well as an audio-visual warning that must activate for at least 30 seconds if the seat belt remains unfastened and specific onset criteria are met (*e.g.*, distance traveled, speed, etc.). The Euro NCAP assessment protocol requires a visual signal that remains active until the seat belt is fastened, and a two-stage audible signal; the initial audible signal must not exceed 30 seconds and the final audible signal must be at least 90 seconds. Under the IIHS ratings protocol, the primary audible reminder signal for the front outboard seats must be at least 90 seconds in total duration to obtain an “acceptable” or “good” rating.

Comments

Duration

NSC, Consumer Reports, and Ms. Freeman supported the proposed indefinite warning. NSC and GM cited IIHS studies estimating that audible reminders lasting at least 90 seconds were significantly more effective for increasing seat belt use than an intermittent audible reminder and could save up to 1,489 lives annually. NSC also noted IIHS research that suggests that indefinite and 100 second constant reminders increased seat belt use by 30–34 percent over an intermittent reminder. Consumer Reports agreed with updating the requirements to reflect that the marketplace now accepts more substantial audible warnings.

Auto Innovators, Mercedes, Honda, NADA, GM, Tesla, Nissan, and Rivian Automotive (Rivian) opposed the proposed indefinite reminder. Commenters cited consumer acceptance concerns, and some, such as Mercedes, Ford, and Auto Innovators, expressed concern that vehicle owners might seek to circumvent use of the system in various ways. Auto Innovators also commented that requiring a persistent audible warning may distract the driver from the driving task and other relevant safety warnings and may also result in desensitization. Honda noted that these concerns may lead to consumer

backlash if the triggering conditions fail to accurately target risky situations when trips commence or when trips are actively occurring.

Auto Innovators commented that the proposal is inconsistent with the agency’s assertions with respect to the rear seat where a 60-second visual warning would be effective. They argued that 60 seconds is sufficient to capture the driver’s attention and that a longer warning would have the potential to become distracting or a nuisance.

Commenters suggested a variety of alternative warning durations. Auto Innovators, Mercedes, NADA, and Nissan encouraged NHTSA to align the final requirement with the ECE R16 requirement of 30 seconds.

Honda and General Motors both recommended adopting a 90-second continuous audio-visual warning because it would be the most effective and is sufficiently persistent to ensure that occupants buckle up. Honda also encouraged the agency to consider whether adopting a warning that is continuously active (*i.e.*, 100 percent duty cycle) for a definite duration of 90 seconds would be as effective as the proposal to require an indefinite warning with a minimum duty cycle of 20 percent. Honda comments that it believes that a continuous 90-second chime is sufficiently persistent and might offer greater effectiveness compared to an indefinite warning that delivers only a 6-second chime followed by a 24-second pause between chimes. GM cited the IIHS research mentioned above and an internal research study with the Virginia Tech Transportation Institute that they stated showed that even a seat belt reminder chime lasting only approximately 34 seconds could result in all vehicle occupants in the study buckling their seat belts.

Tesla and Rivian suggested maintaining the current 4-second regulatory duration. Tesla noted that longer duration warnings may increase the risk of distraction if a sensor malfunctions as well as lead to defeat attempts. Rivian commented that, based on the proposed triggers, the proposed continuous audible warning would sound in EVs even if the occupant does not intend to initiate a trip but rather just sits in the vehicle. It explained that depressing the brake at ignition places the vehicle in “Go” power mode and provides access to the vehicle’s full feature set. As a result, a driver occupying the vehicle and depressing the brake, even without shifting the vehicle into Drive mode, would initiate the continuous chime. Rivian suggested

that the current requirement resolves this concern, or alternatively, NHTSA could allow a manual reset or discontinue feature.

Start-Up Warning Trigger

NADA, Nissan, Auto Innovators, Ford, Mercedes, Rivian, Honda, and HATCI specifically disagreed with the proposed ignition trigger for the indefinite warning and argued that it would result in consumer annoyance.

Some commenters, such as Auto Innovators, HATCI, and NADA, suggested that the agency should more closely align with the trigger requirements of ECE R16, which requires a first level visual warning on start-up but does not require an audible alert to be provided until the vehicle travels 500 m, the vehicle speed exceeds 25 km/h (15.5 mph), or the duration time (engine running, propulsion system activated, etc.) is more than 60 seconds (second level warning). Nissan, Ford, and Honda urged NHTSA to contemplate harmonization with Euro NCAP and ECE R16 by including a minimum speed criterion for the trigger.

Mercedes made a similar comment and argued that harmonization would allow for new seat belt reminder technology/designs to be implemented faster in the U.S. market. It also commented that it would support implementing the approach taken in IIHS’s protocol, which requires an audible warning to begin after driving for 30 seconds while exceeding 10 km/h (6.2 mph) or within 2 seconds while exceeding 40 km/h (24.9 mph). Rivian also suggested use of the 10 km/h (6.2 mph) IIHS threshold for the indefinite audible alert because it largely mitigates low speed crash concerns. Rivian also noted that this requirement would resolve concerns with activating the reminder during activation of Auto Hold, which applies the brakes when the vehicle is stopped even though the brake pedal is released. Ford supported using a visual warning when the vehicle is stationary because it offers the best balance of providing an important reminder before the start of a trip without the potential annoyance of a persistent audio warning, especially in use cases where an audio warning is not warranted.

Several commenters, including Nissan, Ford, Auto Innovators, and Honda, had concerns regarding the proposed triggering conditions when it comes to consumer acceptance. Honda commented that the start-of-trip audio-visual warning should be triggered by vehicle motion (or, alternatively, by the vehicle being shifted into drive or reverse), not by the vehicle’s ignition

being turned on. Honda referred to consumer research suggesting desensitization regarding the intended purpose of the existing start-up alarm, which it argued might worsen under the proposed approach. Honda commented that most individuals do not comprehend why their car chimes at start-up and that consumers also often incorrectly identify this chime as being merely a normal start-up sound. Honda argued that an alarm should sound only when genuine need for the alarm exists.

Honda also requested a clarification, if NHTSA were to retain the status of the ignition switch as a trigger. It pointed out that as proposed, the start-of-trip warning “must activate when the ignition switch is *placed* in the ‘on’ or ‘start’ position” (emphasis Honda’s). Relatedly, the proposed trigger for the change-of-status warning was tied to the vehicle being in forward or reverse gear. Honda pointed to a scenario where the driver buckles after turning on the ignition, and then unbuckles while the vehicle is still in park. In such a case, a warning would not be required (either start-of-trip or change-of-status). Accordingly, Honda suggested modifying the logic of the start-of-trip and/or change-of-status warning to require a warning in this situation.

A number of commenters, such as Ford, HATCI, and Mercedes, noted specific consumer acceptance concerns with an ignition trigger in circumstances where a vehicle has been started but a trip has not begun or is not going to occur or when a vehicle is going to be travelling at low speeds. Commenters described situations including: when idling, waiting for passenger(s), warming up or cooling down a vehicle prior to a trip (Honda), waiting out inclement weather inside a vehicle, sitting in a stationary vehicle listening to audio (Honda), and, in the case of EVs, keeping the vehicle “ignition” on for extended periods while charging to allow use of air conditioning (Mercedes and Honda).

Honda also commented that the proposed trigger is excessively stringent to meet the safety need and asked that the agency reevaluate the trigger mechanism to ensure it aligns with safe consumer expectations and behavior. Auto Innovators commented similarly, noting that the proposed approach does not meet the need for safety. Auto Innovators noted customer complaints regarding overly aggressive start-of-trip warnings that begin on start-up, before the driver even has the opportunity to put the belt on. Honda argued that crash data illustrate that crashes at sufficiently low speeds are not likely to lead to injury, and pointed to data indicating

that occupants are highly unlikely to sustain injuries in crashes occurring below 10 mph. Honda also argued that speeds below 15 mph are typically not associated with regular roadway driving. The lowest posted speed limits on residential or urban roadways in the U.S. are typically set at 25 mph. Speed limits of 15 mph are more common in non-roadway settings like residential neighborhoods or parking lots.

Some commenters suggested other alternatives beyond incorporation of a speed-based trigger. For example, HATCI and Honda suggested a trigger in which the audible warning begins when the transmission is placed into a forward or reverse gear. HATCI commented that this trigger would resolve some concerns with a stationary vehicle pre-trip or during pick-up and drop-off and for EVs. Auto Innovators posited a short visual warning as an alternative to an ECE R16 harmonization. It noted that this approach would be consistent with the IIHS requirements for front-row seating positions, which also predicate second level audible alerts based on forward motion of the vehicle. Additionally, Auto Innovators argued that for the front outboard passenger seat, the triggering conditions should provide for a delay before a visual warning is required. Auto Innovators argued that this delay would be consistent with the proposal to allow for a similar delay for rear row occupants. It expected that this delay would address challenges in detecting seat occupancy instantaneously upon ignition.

Change-of-Status Warning Trigger

With regard to the change-of-status warning, commenters generally supported a requirement but several, including Mercedes, NADA, Honda, and Tesla, commented that the trigger for the change-of-status warning should include a minimum vehicle speed. Mercedes and NADA recommended NHTSA harmonize with the ECE R16 on this issue and require only a visual warning if the vehicle is stopped or travelling at slow speeds and incorporate an audio warning if the vehicle is travelling at speeds of 25 km/h (15.5 mph) or greater. Nissan emphasized that when the trigger for audio warnings is solely based on gear selection, and these warnings are activated even when the vehicle is stationary, it has the potential to be irritating for the occupants, especially in situations such as being stuck in heavy traffic or waiting in drop-off lines. Honda commented that using vehicle speed would be more aligned with safety needs, and that triggering the

warning any time the vehicle is in the drive mode would result in unnecessary alarms for individuals who are otherwise consistent belt users. Honda commented that this trigger would reduce acceptance of the system among regular belt users and desensitize consumers to the alarm. Honda also suggested adding seat occupancy as one of the activation criteria for the change-of-status warning to address use cases where an occupant buckles a seat belt for another seat that is unoccupied, and then unbuckles it.

Nissan and HATCI emphasized consumer acceptance concerns with the proposed change of-status warning, in particular regarding drop-off. HATCI noted that the ECE R16 triggers are particularly useful for addressing these scenarios. It explained that in these drop-off scenarios, the proposed audible alert would sound until the passenger opens the door, which could be considered a nuisance to the occupants. Ford also noted that its vehicles tend to experience frequent ingress/egress scenarios (e.g., work use of farmers, ranchers or construction workers) where a persistent warning is not warranted.

Honda suggested that if the agency retains the drive mode trigger for the change-of-status warning, an alternative could be to use a single chime when the vehicle speed is below a certain threshold at the time of unbuckling that becomes a persistent reminder of indefinite duration once the vehicle resumes motion (if the door remains closed). Honda argued that if NHTSA believes that a notification is needed, the single-chime approach would adequately notify the occupants in a non-intrusive manner.

Mr. Gaal suggested that once a driver or front outboard seat passenger has unbuckled their seat belt during a trip, a visual change-of-status warning should immediately appear along with a singular audible beep, followed by a two-minute gap allowed before the indefinite audible component of the change-of-status warning occurs again.

In the NPRM, the agency sought comment on the possibility of allowing deactivation of the audio-visual system and the situations under which it would be warranted. While comments on this topic are discussed more broadly in Section VI.C.6, we note here that a few commenters, such as Rivian, suggested a manual reset or discontinue feature as an alternative to a speed-based trigger. Honda, however, commented that if deactivation requires a complicated procedure, it is impractical to deactivate nuisance warnings for short trips and therefore this approach does not effectively mitigate driver annoyance,

especially in comparison to alternative triggers, like vehicle motion. Honda noted that the use of a motion-based trigger would eliminate the need for deactivation.

Tesla requested clarification on the definition of “during the trip.” Tesla also asked how the front change-of-status warning is envisioned to be applied to vehicles in automated mode or full automation.

Auto Innovators commented that NHTSA proposed unnecessary restrictions on when an audio-visual warning for a front outboard seat belt warning system is permitted to activate and requested that they be removed. It argued that there may be other circumstances, including those currently unforeseen by the agency, where a manufacturer may seek to provide a similar audio-visual warning. It also stated that it is unclear whether these restrictions prevent standardization of the audible alert used for both front and rear rows.

AVIA observed, with regard to vehicles with automated driving systems, that the NPRM proposed that the front outboard seats be allowed to suppress and reset the change-of-status warning only when the front door being opened is on the same side of the vehicle as the seat belt triggering the warning. In contrast, the NPRM proposed that the rear seat belt warning system may suppress and reset the change-of-status warning when any rear door is opened. AVIA commented that while this distinction makes sense for a conventional vehicle, some vehicles with automated driving systems may have interior configurations that allow for a front outboard occupant to exit through a door that is not adjacent to their seat. Further, AVIA indicated that autonomous ride hailing manufacturers or operators may implement safety measures that only permit the door(s) on a particular side to be opened to encourage safer egress, even though the door(s) may not be adjacent to the occupant’s seat. AVIA noted that this scenario could lead to a seat belt change-of-status warning remaining active indefinitely after a front row occupant exits the vehicle. AVIA suggested the language of the change-of-status warnings (both front and rear) be updated to allow the change-of-status warning to be reset when any door designed to provide egress for the seat is opened.

Agency Response

After considering the comments, NHTSA has decided to modify the proposed front seat belt warning requirements. The final rule requires a

visual warning whenever a driver or front outboard occupant is unbelted, and a two-phase audible warning.¹³⁵

The first-phase audible warning is required to activate whenever the ignition switch is placed in the “on” or “start” position (or upon manual activation of the propulsion system, but prior to the vehicle being placed in “possible active driving mode” as defined by FMVSS No. 305), the seat is occupied, and the seat belt is not in use. The first-phase audible warning must continue for 30 seconds, until the seat belt that triggered the warning is in use, until the seat is no longer occupied, or until the second-phase warning activates, whichever comes first.

The second-phase audible warning must activate and remain active when the vehicle speed is equal to or greater than 10 km/h (6.2 mph), the seat is occupied, and the seat belt is not in use.

Under this approach, there is a start-of-trip audio-visual warning, with the visual warning lasting until the driver and any front outboard passenger have fastened their belts, and the audible component lasting at least 30 seconds (regardless of vehicle speed) and remaining activated whenever the vehicle speed is 10 km/h or more. Thus, if the vehicle is on but not traveling at least 10 km/h (6.2 mph), the audible warning would end after 30 seconds, but would either continue or reactivate should the vehicle speed reach 10 km/h or more. Similarly, the final rule requires an audio-visual change-of-status warning, with the visual warning required to activate and remain activated as long as the occupant remains unbuckled, and the audible component required to activate and remain activated whenever the vehicle is traveling at least 10 km/h.

We are making these accommodations to reduce the potential that frequent belt users will interact with the audible warning. Additionally, as explained later in Section VI.C.5 and in the NPRM, we are specifying a level of audible characteristics, *i.e.*, 30 second warning cycle, 0.5 Hz chime frequency, and a 20 percent duty cycle, which we believe will allow manufacturers to optimize for acceptability while maintaining effectiveness.

This brief summary only gives a high-level overview of the requirements; the final rule contains additional specifications and nuances. These, as well as a response to the comments, are covered in detail below. First, we

discuss the audible warning; then we discuss the visual warning.

Audible Warning Duration

NHTSA has chosen to finalize the indefinite warning (subject to certain triggers and conditions) because NHTSA has concluded that it strikes an appropriate balance between effectiveness and annoyance and meets the need for safety.

As NHTSA explained in the NPRM and PRIA, and explains in the FRIA, over the years there have been a number of studies of reminder effectiveness by NHTSA and others. The results of these studies have been consistent though somewhat fragmentary. In general, longer warnings are more effective than shorter warnings, and audio-visual warnings are more effective than visual warnings alone. Overall, these studies provide evidence that the relative annoyance (*e.g.*, longer duration, more frequent cycle) of a warning increases the effectiveness. The studies also suggest that annoyance and effectiveness are inversely related to acceptance, although not necessarily in the same way. Therefore, there is the potential to optimize systems so as to increase effectiveness and also enhance acceptance. However, NHTSA’s research also found that the evidence to date was not sufficient to clearly identify which specific signal characteristics were optimal.

The proposal explained that in developing our estimate of the effectiveness of a front seat belt reminder with an indefinite duration, we used the results of a study conducted by the Insurance Institute for Highway Safety (IIHS) by Kidd et al. (2019).¹³⁶ We explained that the study found that, relative to a short intermittent reminder, an audio-visual seat belt warning with a 100-second audible component increased seat belt use by 30 percent, and an audio-visual seat belt warning with an indefinite audible component increased belt use by 34 percent. In the NPRM, we explained that there were several limitations in this study, the main one being that the number of study participants was small, and, consequently, there was limited statistical power when comparing the change in rate of belt use between the different vehicle technology conditions. We noted that the study further discusses this and other limitations, such as how the demographics of the

¹³⁵ The final rule also applies to any inboard designated seating position for which a seat belt warning is required in S4.1.5.6 (which concerns inboard designated seating positions in passenger cars without manually operated driving controls).

¹³⁶ “The effects of persistent audible seat belt reminders and a speed-limiting interlock on the seat belt use of drivers who do not always use a seat belt,” April 2019, David G. Kidd Insurance Institute for Highway Safety, Jeremiah Singer Westat, Inc.

study sample differs from part-time belt users nationwide.

Another limitation in the study is that the confidence intervals for the reported estimates are large. The 34 percent effectiveness estimate for the indefinite reminder had a 95 percent confidence interval of (12.7, 59.9), and the 30 percent effectiveness estimate for the 100-second reminder had a 95 percent confidence interval of (10.9, 52.4.). Not only are the confidence intervals large, they also substantially overlap.

We also note that the Kidd study further adjusted these effectiveness estimates to account for potential circumvention by study participants (e.g., buckling the seat belt behind the driver's back). Four of the seventeen study participants assigned to the vehicle with the 100 second reminder and three of the sixteen participants assigned to the vehicle with the indefinite reminder circumvented the warning. Accordingly, "due to concern that the rate of seat belt use for participants who circumvented the vehicle technologies could bias the comparisons being made,"¹³⁷ the study authors repeated the analysis, except this time excluding those individuals who circumvented the warning. With that adjustment, the indefinite reminder increased seat belt use by 23 percent (95 percent CI [6.5, 42.6]) and the 100 second reminder increased seat belt use by 25 percent (95 percent CI [8.2, 44.3]).¹³⁸

In addition to these limitations in the Kidd study, the estimation of the effectiveness in the regulatory analysis has several other limitations or assumptions. These are discussed in detail in the FRIA. Thus, while the research is clear that longer durations are generally more effective than shorter durations, there is no conclusive evidence regarding what duration will maximize effectiveness (recognizing, of course, that duration is not the only warning characteristic and that other attributes, such as duty cycle, also affect effectiveness as well as annoyance).

Nevertheless, the evidence is such that we are able to easily reject some of the specific suggestions from commenters for shorter warning durations. The 4-second and 30-second warnings suggested by some

commenters are well below the typical duration for an audible warning in current vehicles. Further, a 4- or 30-second reminder is shorter and less persistent than the intermittent Chevy Cruise reminder¹³⁹ included in the Kidd study, compared to which both the 100-second and indefinite audible warnings were significantly more effective. We are similarly unable to agree with General Motors, which referred to internal research showing that an audible warning lasting 34 seconds would be sufficient. (In addition, NHTSA has not seen the underlying research or data.)

The available evidence also does not lead us to conclude with confidence that, as asserted by Honda and General Motors, a 90-second continuous warning would be most effective. As we explained earlier, the Kidd study, while informative, still leaves uncertainty about whether a 90-second or indefinite warning would be most effective. We are also unaware of any study, as suggested by Honda, comparing a 90-second continuous warning to an indefinite 20 percent duty cycle warning. However, a study of indefinite warnings with 100 percent and 20 percent duty cycles found no difference in their relative effectiveness, which suggests that a 90-second continuous warning would not necessarily be more effective than a 20 percent duty cycle indefinite warning.¹⁴⁰ Similarly, we are not aware of—and the commenters did not present—any persuasive evidence that an audible warning lasting greater than 90 seconds and less than indefinite would be at least as effective as an indefinite warning.

In light of the available evidence, NHTSA has therefore concluded that requiring an audible warning that lasts until all front outboard occupants are belted best and appropriately balances effectiveness and annoyance, and will help to ensure that as many as possible occupants take advantage of one of the most safety-enhancing technologies, the seat belt. As we explained above, there is uncertainty about the most effective duration and the magnitude of the effectiveness. The commenters did not provide any persuasive evidence or data that a shorter audible warning would be at least as effective as an indefinite warning.

At the same time, there is no uncertainty that seat belts save lives, and there would appear to be little uncertainty that, regardless of assumptions and estimates, the monetized net benefits of a long warning would almost certainly be positive, because almost all subject vehicles already provide a seat belt warning for the front outboard seats, and any necessary changes to implement a longer warning (such as re-programming to optimize the warning characteristics) would likely be quite low-cost. Moreover, although an indefinite-duration warning would likely require some re-engineering, audio-visual seat belt warnings are a longstanding and established technology, so there should be no concerns about the technical feasibility of such a warning.

Of course, effectiveness and component cost are not the only considerations in deciding what duration to require. Consumer acceptance is also crucial, and the Safety Act requires NHTSA to consider it. NHTSA is cognizant of—and takes seriously—likely disbenefits from annoyance. Many of the commenters' criticisms relate to the potential for an indefinite warning being annoying. In the NPRM the agency acknowledged past studies that found a correlation between annoyance and warning effectiveness.¹⁴¹ Elsewhere in this preamble we discuss the modifications NHTSA has made to the proposal in response to the comments in order to address concerns related to consumer acceptance, such as including a speed threshold for the indefinite audible warning. However, despite the steps the agency is taking to make the audible warning acceptable, it is not unreasonable to expect that there will be some level of annoyance, particularly from hardcore non-belt users, for an effective reminder. Similarly, it would be expected that with annoyance would come some level of distraction. Consequently, we would expect some level of lack of acceptance from hardcore non-users.¹⁴³ Additionally, we

¹⁴¹ N. Lerner et al. (2007). Acceptability and Potential Effectiveness of Enhanced Seat Belt Reminder System Features. (Report No. DOT HS 810 848). National Highway Traffic Safety Administration.

¹⁴² Kidd, D.G. (2012). Response of part-time belt users to enhanced seat belt reminder systems of different duty cycles and duration. Transportation Research Part F, 15, 525–534.

¹⁴³ The Kidd study excluded from participation individuals who reported never using a seat belt from participating in the study. As we explain in Section VIII, Overview of Benefits and Costs and the FRIA, our benefits estimates conservatively

Continued

¹³⁷ *Id.* at pg. 16.

¹³⁸ The study does not report how often these excluded participants circumvented the warning. Accordingly, this exclusion could lead the effectiveness estimate to be lower than it actually was. And to the extent that the rate of circumvention for the excluded BMW and Subaru participants differed, that could also affect the relative effectiveness of the indefinite and 100-second warnings.

¹³⁹ This was an enhanced reminder with three cycles that occurred at ignition, 105 seconds after ignition, and 360 seconds after ignition. Each cycle was 20 seconds in duration.

¹⁴⁰ Kidd, D.G. (2012). Response of part-time belt users to enhanced seat belt reminder systems of different duty cycles and duration. Transportation Research Part F, 15, 525–534.

understand that this lack of acceptance could lead to some level of misuse or attempts to defeat the system for some in this same group. The agency has studied such potential misuse in previous research¹⁴⁴, and, as noted earlier, some of the Kidd study participants circumvented both the indefinite and 90 second audible warnings.

NHTSA, however, believes that the population of occupants who will not respond to the warning by fastening the belt will be relatively small in number; as noted earlier, about 5.4 percent of occupants never or seldom use a seat belt. Moreover, we note that NHTSA's survey data does suggest that even though "[s]eat belt reminder systems are likely to have little effect on hard-core nonusers who choose not to buckle up",¹⁴⁵ some individuals who report never using a belt would likely be responsive to a reminder. When asked about their reasons for not using a seat belt, many people who report never using a seat belt give reasons suggestive of some amenability to a reminder (for example, only driving a short distance or forgetting), as opposed to reasons that indicate general opposition to belts (such as e.g., "don't like being told what to do" or "belts sometimes cause injuries").¹⁴⁶ In addition, many of those who never or rarely used a belt do not necessarily hold strongly negative beliefs about seat belts or seat belt use. For example, of drivers who never or rarely used a belt, 43 percent do not report disliking seat belts or finding them annoying;¹⁴⁷ about half do not believe that the belt is just as likely to harm them as help them;¹⁴⁸ and only 20 percent report that putting on a seat belt makes them worry.¹⁴⁹ And, when asked

assume that an indefinite audible warning will not cause occupants who "never" use a seat belt to begin using a seat belt. This is a change from the PRIA, which assumed that the indefinite reminder would be effective for such occupants. We note that the NPRM incorrectly stated that "for the purposes of our effectiveness (and benefits) analysis, we conservatively assume that the increase in belt use would be due entirely to part-time nonusers" (pg. 61711, n.231).

¹⁴⁴ Mazzae, E.N., Baldwin, G.H.S., & Andrella, A.T. (2018, October). Performance assessment of prototype seat belt misuse detection system. (Report No. DOT HS 812 593). National Highway Traffic Safety Administration. NHTSA has chosen not to implement measures to harden the systems against misuse at this time, for the reasons expressed in the NPRM. However, the agency will monitor this situation and act in the future if need be.

¹⁴⁵ Buckling Up: Technologies to Increase Seat Belt Use. Special Report 278, Committee for the Safety Belt Technology Study, Transportation Research Board of The National Academies (2003), pg. 40.

¹⁴⁶ 2016 MVOSS, pg. 71 (Fig. 53).

¹⁴⁷ 2016 MVOSS, pg. 79 (Fig. 55).

¹⁴⁸ 2016 MVOSS, pg. 89 (Fig. 64).

¹⁴⁹ 2016 MVOSS, pg. 90 (Fig. 65).

whether they would want a belt on in a crash, 63 percent of drivers who never or rarely use a belt strongly or somewhat agreed that they would want to be wearing a belt in a crash.¹⁵⁰ This is consistent with NHTSA's other research, which acknowledges that occupants who sometimes use belts are the primary target for seat belt reminders, but not necessarily the only target.¹⁵¹ Therefore, while our benefits analysis excludes occupants who never use a seat belt, we would expect at least some of these nonusers to begin using a seat belt. Accordingly, overall we believe that the public will accept the required reminder, and that it will not negatively impact public acceptance of warnings in general.

On the whole, in light of the uncertainty about the duration that will be most beneficial; the unquestioned benefit and effectiveness of seat belts; the relatively small proportion of users who will choose not to use the belt and will either experience annoyance from the reminder or choose to circumvent it; and recognizing that in MAP-21 Congress removed the statutory limitation on the required duration for an audible seat belt warning, NHTSA is choosing to require an audible warning that lasts until the front outboard occupants are belted (again, subject to additional triggering criteria, such as the 10 km/h speed threshold).

The other points raised by the commenters also do not persuade us to require a shorter warning. Commenters opposed to the indefinite warning also argued that it would be desensitizing. This conclusion does not seem to be consistent with the IIHS study where the findings indicate that a long duration warning may have a greater impact on seat belt use,¹⁵² and the comments by Honda and GM that warnings lasting 90 or 34 seconds (respectively) may be more effective than an indefinite warning. As to the comments that a seat belt warning will cause other warnings to not be recognized, we address this in the Section VI.C.4. As to the comment by Auto Innovators that an indefinite warning in the front would be inconsistent with the agency's conclusion to limit the rear seat warning to 60 seconds because a longer warning

¹⁵⁰ 2016 MVOSS, pg. 88 (Fig. 63).

¹⁵¹ For example, as we stated in the NPRM (pg. 61705), the 2004 Transportation Research Board Report notes that part-time belt users are the primary (not sole) target group for seat belt warnings.

¹⁵² Kidd, D.G., and Singer, J. (2019, April) The effects of persistent audible seat belt reminders and a speed-limiting interlock on the seat belt use of drivers who do not always use a seat belt. Insurance Institute for Highway Safety, Westat, Inc.

could be distracting, the commenter did not provide the full context of the rationale for the agency's conclusion. Our conclusion was partially based on the fact that the rear seat warning system does not require occupant detection. Because of this, the rear seat belt warnings (particularly what the NPRM referred to as positive-only or full-status systems, which provide information on belted, as well as unbelted, occupants) function more as a source of information for the driver, rather than as a true "warning" for an unbelted occupant. It was for this reason that we believed that it was not necessary to require a particularly long-lasting warning for the rear. This logic does not apply to the front seats, for which occupant detection is either required or (for a driver's seat) can be assumed. Accordingly, the audio-visual signal functions more as a warning than as a source of information, because it is not activated for a belted occupant.

Audible Warning Activation

The final rule incorporates a two-phased audible warning. The first-phase audible warning is required to activate whenever the ignition switch is placed in the "on" or "start" position (or upon manual activation of the propulsion system, but prior to the vehicle being placed in "possible active driving mode" as defined by FMVSS No. 305),¹⁵³ the seat is occupied, and the seat belt is not in use. The first-phase audible warning must continue for 30 seconds, until the seat belt that triggered the warning is in use, until the seat is no longer occupied, or until the second-phase warning activates, whichever comes first. The second-phase audible warning must activate and remain active when the vehicle speed is equal to or greater than 10 km/h (6.2 mph), the seat is occupied, and the seat belt is not in use.

The agency believes that this change in the triggering strategy from that specified in the NPRM will address many of the concerns expressed by the commenters related to potential user annoyance such as when the vehicle occupant is in a stationary vehicle, e.g., interacting with non-driving aspects of the vehicle or waiting for the vehicle's climate control. This change will also ameliorate the concerns related to EVs triggering the indefinite warning while being on, but stationary (Auto Hold applied).

We are rejecting advice from commenters suggesting requiring only a visual warning upon vehicle start. Such

¹⁵³ This EV-specific language is discussed in Section VI.C.1.

a requirement would not even be consistent with the 4–8 second audible warning requirement currently in FMVSS No. 208. The initial 30-second audible warning remains important for the reasons expressed in the NPRM for why we want such a warning to initiate at vehicle start. We believe basing the trigger on the ignition switch is preferable to delaying the warning until the vehicle is placed in gear because the proposed requirement would make it more likely that the occupants fasten their belts before the vehicle is in motion.¹⁵⁴

The selection of 30 seconds is consistent with the ECE R16 start-up visual warning duration and the rear seat change-of-status audible warning for this final rule. We believe the 30-second audible warning will maintain the agency's goal of an effective warning at the start of a trip, while increasing the level of acceptance from what might be the case if the start-up warning remained indefinitely active. The initial 30-second audible warning will have the same characteristics as the rear seat change-of-status audible warning, *i.e.*, the warning may be continuous or intermittent. If intermittent, inactive periods longer than 3 seconds will not be counted toward the total duration of the warning and no gap longer than 10 seconds is allowed. These are also characteristics required by the ECE R16 audible warning, except for the 10-second gap limit, which is required by Euro NCAP.

The second-phase audible warning is important to encourage belt use for occupants that would otherwise wait out a finite warning and not buckle their belt. The 30-second start-up warning alone would have very little additional safety benefit, given that nearly all new vehicles already have audible warnings of this length or greater. Additionally, the agency agrees with commenters that a speed-based approach for the indefinite audible warning should address pick-up and drop-off situations that could lead to consumer backlash, particularly for frequent belt users.

The selected speed threshold (10 km/h (6.2 mph)) is aligned with the IIHS rating system and Rivian's recommendation. ECE R16 also uses a 10 km/h (6.2 mph) threshold for its definition of when a vehicle is in normal operation, and 10 km/h (6.2 mph) is within its maximum allowed speed threshold (25 km/h (15.5 mph)). The selected speed threshold is meant to address such scenarios as where the vehicle is parked, driving to a mailbox, on a long driveway, driving in a parking

lot/garage, or dropping off passengers, but is not high enough that vehicles will be able to drive on roadways and not get a warning. Once the vehicle is traveling below 10 km/h (6.2 mph), the warning may deactivate. We are not allowing for any delay in the warning after the speed threshold is reached as is allowed by the IIHS rating,¹⁵⁵ as we do not believe such a delay is necessary to achieve our goal of limiting the activation of the audible warning for regular belt users and would be counterproductive (*i.e.*, increase the amount of time at which unbelted occupants do not get a warning).

The agency is not allowing manufacturers the choice to initiate the warning based on a combination of speed, timing, or distance traveled, such as is the case for the second level ECE R16 warning. We believe that vehicle speed is the most relevant parameter and that 10 km/h (6.2 mph) limit is sufficiently low to achieve the agency's safety goals. Analysis of agency field data indicates that a 10 km/h (6.2 mph) delta V frontal crash shows a 28 percent probability of MAIS1 and 1.7 percent MAIS2 injuries and essentially no risk of higher level injury, whereas at 20 km/h (12.4 mph) there is a 39 percent probability of MAIS1 and 4.0 percent MAIS2.¹⁵⁶ Though still low probability, this is a 2.4-fold increase in the risk of MAIS2.¹⁵⁷ Although equating vehicle travel speed to delta V would tend to overestimate occupant injury, the results are directionally correct, and a higher speed threshold (or delay in initiating a particular speed threshold) would tend to increase injury risk.

We acknowledge that the data show that MAIS1 and MAIS2 injuries, which are meaningful safety concerns, occur frequently in collisions with delta V at 10 km/h, and that this final rule appears to depart from the NPRM's stated belief that seat belts provide a safety benefit even at lower speeds, regardless of the direction of motion. We also grant that in rare cases a vehicle traveling at a speed below 10 km/h (6.2 mph) may be struck by another vehicle traveling at a higher speed and that seat belt protection would be beneficial in such cases. However, we believe that the resulting increase in the warning systems' overall level of acceptability

(which is an important consideration for both meeting the safety need and practicability), particularly for those that regularly wear seat belts, will outweigh the negative effects from non-activation of the warning system below 10 km/h.

The second phase indefinite audible warning will also serve as a change-of-status warning, except that now that the indefinite audible warning is speed based, there is no need to relate activation to the gear selection or door opening status as was proposed. The fact that the speed threshold is exceeded is a sufficient reason for the audible warning to be active.

With respect to AVIA's comment about modifying the provision for resetting the system when a door is opened for the front seats to address novel seating configurations, NHTSA believes these types of vehicles, specifically vehicles without a driver's seating position where all seats in the front and/or rear rows may be accessed via a common door, are beyond the scope of this rule. The agency did not develop the finalized seat belt warning requirements with these specific vehicles in mind. In any case, AVIA's concern about exposure to the proposed audio-visual change-of-status warning in these vehicles under the scenario it described in its comment is largely addressed by the finalized requirements for the front seat for change-of-status events, which only requires the activation of a visual warning in a drop-off scenario given the speed trigger criteria for the audible component.

Visual Warning

The final rule requires that a visual warning activate and remain active whenever the ignition switch is in the "on" or "start" position (or the propulsion system is activated), the seat is occupied, and the seat belt is not in use. The final rule condenses the proposed "start of trip" and "change-of-status" visual warnings into a single requirement and changes the proposed activation triggers in a few ways.

We agreed with Honda's comment that under the proposed rule, if an occupant unbuckled while the vehicle was in park, no warning would be required to activate, even if the vehicle were subsequently placed in gear and commenced moving. We therefore believe that a "change-of-status" visual warning should not be limited to when the vehicle is in a forward or reverse drive mode. Accordingly, for the visual warning, we removed the activation triggers that referred to the ignition switch being placed in the "on" or "start" position and to the transmission

¹⁵⁴ DOT 2009 Seat Belt Study at pg. 65.

¹⁵⁵ IIHS allows for a 30-second delay at speeds between 10 and 40 km/h (6.2 and 24.9 mph) and a 2-second delay at speeds at and above 40 km/h (24.9 mph).

¹⁵⁶ Wang, J.-S. (2022, May). MAIS(05/08) injury probability curves as functions of delta V (Report No. DOT HS 813 219). National Highway Traffic Safety Administration.

¹⁵⁷ At 25 km/h (15.5 mph) there is a 41 percent probability of MAIS1 and 4.3 percent MAIS2.

gear position. (We have also made analogous changes to the regulatory text related to EVs. These changes are discussed in Section VI.C.1.) These changes will ensure that a warning is activated whenever the vehicle is on and a driver or front outboard passenger is in the seat and not belted. Because this only applies to the visual warning—and not the audible warning—we do not believe this will lead to issues with consumer acceptance, because a visual warning is not nearly as intrusive as an audible warning. (On the other hand, as we explain in the preceding section, we have modified the proposed triggers for the audible warning to limit the scenarios in which it will activate to address concerns with consumer acceptance.) Concerns with consumer acceptance are further allayed by the fact that the warning requirement is tied to seat occupancy, so there will not be nuisance alarms for an unfastened belt at an unoccupied seat.

The finalized regulatory text also adopts Honda's suggestion that the proposed change-of-status warning include seat occupancy as one of the triggering conditions. Because the front seats are either equipped with occupant detection or (for the driver's seat) occupancy can be assumed,¹⁵⁸ there is no reason to require a visual warning for an unoccupied seat. This also addresses the misuse case Honda identifies. Including seat occupancy as a trigger also allows us to further simplify the triggering logic for the visual warning by deleting the exception to the proposed change-of-status warning for when a front door on the same side of the vehicle as the seat belt triggering the warning is open. This language is now unnecessary because seat occupancy is one of the triggers for the visual warning—in a scenario where a driver or front outboard passenger unbuckles and disembarks, a visual warning is not required because the seat is no longer occupied, and any reference to a door opening is unnecessary.

We also implemented Auto Innovators' recommendation to delete the proposed restriction that the audio-visual warning is permitted to activate only to comply with the requirements in this rule.

The finalized requirements for the visual warning are also generally consistent with the broad tenor of the comments on the proposed audio-visual warning, which, as we discussed earlier, were primarily concerned with the proposed indefinite audible warning and the proposed triggers for that warning. For example, we agreed with

Mercedes and NADA that the change-of-status warning should better harmonize with ECE R16 and now require only a visual warning if the vehicle is stationary or travelling at low speeds. We did disagree with the commenters who suggested a shorter visual warning (at or below the 30 seconds required in ECE R16) because, among other things, we believe both that a longer visual warning will be more effective than a shorter warning and also that a long visual warning does not pose the same consumer acceptance concerns as does a long audible warning.

4. Visibility of Visual Warning for Front Outboard Passenger Seat Belt

We proposed requiring that if there is a driver's designated seating position, the visual warning for the driver's seat belt must be visible from the driver's seat and the visual warning for the front outboard passenger seat belt must be visible from both the driver's seat and the front outboard passenger seat. We did not propose to specify more detailed criteria for location or visibility of the telltale. (For discussion of vehicles with no driver's designated seating position, such as ADS-equipped vehicles without any manual driving controls, see Section VI.C.7.) We proposed requiring that the visual warning for the front outboard passenger seat belt be visible to both the driver and the front outboard passenger because NHTSA's study on front seat belt warning systems suggests that visual warnings for front outboard passenger seat belts are more effective when they are visible to the passenger as well as the driver.¹⁵⁹ We tentatively believed it would be practicable for manufacturers to comply with this requirement; for example, the warning could be located in the center console display (which might be a salient place to present visual displays, both because of its location and because it may allow larger size icons or text).¹⁶⁰ Some manufacturers already provide a passenger seat belt warning in close proximity to the passenger air bag status indicator, which is visible to both the driver and front passenger.

We did not propose more detailed criteria for the location or visibility of the telltale as, for example, are provided in FMVSS No. 208 S19.2.2 for the passenger air bag telltale. A visual warning for the driver's seat belt has been required since the early 1970s and we are not aware of any issues with the visibility of that telltale, so we tentatively believed more detailed requirements to be unnecessary.

IIHS's ratings system specifies for the front outboard passenger seat that a visual signal must be displayed in the instrument panel, overhead panel, or center console, indicating an unfastened belt.

ECE R16 specifies only that the visual warning must be readily visible and recognizable in the daylight and at nighttime by the driver and distinguishable from other alerts.¹⁶¹ Euro NCAP recommends that the visual signal must be clearly visible to the driver, without the need for the head to be moved from the normal driving position (such as in the instrument panel, head-up display, rear-view mirror, or center console).¹⁶²

Comments

A number of commenters, such as Auto Innovators, Mercedes, Ford, Nissan, HATCI, NADA, Toyota, and Honda, commented that the rule should require only that the front outboard passenger seat visual warning be visible to the driver. Mercedes noted that the agency did not provide any insight on how to achieve the passenger visibility requirement. Ford commented that a visual warning for front row passenger belt use that is visible to both driver and passenger may be unnecessary, overly complex to implement, and delay implementation. Auto Innovators and Mercedes commented that requiring passenger visibility of the visual reminder would be inconsistent with ECE R16 and Euro NCAP.

Auto Innovators, Nissan, HATCI, Mercedes, Ford, and NADA all commented that the driver has primary responsibility to notify and ensure occupants fasten their seat belts and that the occupant in the front passenger seat will be alerted by the audible warning if the seat belt is not fastened. Honda noted that the primary mechanism for encouraging seat belt use is the audible alarm, and that the visual indicator primarily serves to explain the cause of the alarm. Honda stated that because the driver can hear the audible alarm and interpret the visual alarm, the passenger telltale becomes a matter of convenience.

Honda also commented that the proposed outboard passenger visibility requirements have questionable merit because the DOT 2009 Seat Belt Study, the research upon which much of the expected benefits of the requirement

¹⁶¹ Section 8.4.2.1.1.

¹⁶² Section 3.4.1.1. We note that the NPRM incorrectly referenced a prior version of the Euro NCAP protocols which specified visibility to the passenger. NHTSA appreciates Auto Innovators' comment noting that the referenced material was removed in v8.0 of the assessment protocol.

¹⁵⁸ See Section VI.B.5.

¹⁵⁹ See DOT 2009 Seat Belt Study at pgs. 67–68.

¹⁶⁰ *Id.*

was based, has limitations. Honda noted aspects of the study and the design of the warnings used in the study, such as unusually large and aggressive indicators, which may limit the effectiveness conclusions that can be drawn from the study. Honda commented the study noted that in actual tests the most effective seat belt warning modality was the audible chime that repeated at a frequent interval, which suggested that the placement of the passenger telltale being visible to the passenger is of questionable efficacy.

Auto Innovators, HATCI, Nissan, Mercedes, Ford, NADA, and Honda all commented that requiring that a warning also be visible to the front outboard passenger would require significant interior redesign of displays. Auto Innovators commented that this requirement would likely require either all visual warnings be in a central position (outside of the instrument cluster) so that they are visible to both the driver and right front passenger, or a second visual warning located in a central position to solely communicate the status of the passenger seat belt. Several of the commenters stated that this requirement would necessitate additional lead time.

Toyota, Auto Innovators, and Honda commented that requiring front outboard passenger visibility would be unnecessary and inconsistent with the agency's proposed approach to the rear seat reminder requirements. They emphasized that the agency did not propose a requirement that visual warnings/indicators be visible to rear seat occupants, and that the agency is being inconsistent by proposing a requirement that the front seat visual reminder must be visible to the passenger, while the rear seat visual reminder only must be visible to the driver. These commenters expressed that the visual alert visible to the driver combined with the required audible alert would be sufficient to ensure that occupants in both the rear and the front passenger seats know their belt status.

Auto Innovators and Honda commented that while FMVSS No. 208 specifies requirements for a telltale to indicate the status of the passenger air bag for those seated in the front outboard passenger seat, this does not create a precedent, or support the need for, a similar front outboard passenger belt reminder telltale. Auto Innovators and Honda argued that with respect to seat belt use, the passenger can verify, based on a visual or manual check, whether their seat belt is buckled. This is not the case for air bag systems.

Agency Response

The final rule requires that the front outboard passenger seat belt visual warning be visible only to the driver, with two exceptions related to ADS-equipped vehicles. In response to comments, we have decided not to require that the visual warning for the front outboard passenger seat belt be visible from the front outboard passenger seat. Retaining this requirement for the driver is critical for generating a communication dynamic between the driver and passenger, which is discussed further in this section and in Section VI.C.3 below. Manufacturers retain the flexibility to incorporate a visual signal that is visible to both the driver and front outboard passenger (or an additional signal visible to the passenger), and many already do. The final rule harmonizes with ECE R16 and Euro NCAP. It also matches the requirements for the visibility of alerts for the front passenger and rear seat belt reminders.

Although there is limited information available on the safety benefits and compliance costs of a passenger visibility requirement, what information we have suggests that both would likely be low, at least in the context of this final rule. In this instance we feel that the relatively minimal benefits do not justify the costs that could be realized.

With respect to benefits, because this final rule requires an audible alert, it (along with the visual warning provided to the driver) can serve the role provided by a visual warning to the passenger. The primary study we used to support this proposal does suggest that visual alerts may be more effective when the passenger sees them. It also notes that the visual alert may present an opportunity for communication between driver and passenger to prompt passenger belt usage.¹⁶³ However, given that this rule requires an audible warning which can initiate this communication, the visual alert for the passenger would likely serve a supporting role, limiting its added benefit.¹⁶⁴

It is also worth noting that under the requirements of this final rule there are only rare scenarios in which a visual

alert is the only alert required to be active. We are requiring an indefinite audible alert if the vehicle is traveling at or over 10 km/h (6.2 mph) and a 30 second minimum start-of-trip audible warning if there is an unbelted front passenger. Therefore, the only situation in which the visual alert is the only active warning is when the vehicle is traveling under 10 km/h (6.2 mph) (or stopped) and the start-of-trip warning has elapsed. These situations are limited, and field data shows only small risks of injuries with severity above MAIS1 and almost no risk of injuries with severity above MAIS2 in frontal crashes at these speeds. Therefore, while research suggests the proposed visibility requirement might generate some safety benefits, given the structure of this final rule those additional benefits are hard to determine and may only be minor.¹⁶⁵

Regarding costs, we disagree with commenters about the size and scope of the costs associated with incorporating a signal visible to the passenger. However, we understand that, depending on how manufacturers decided to implement the proposed requirement, there could be more than de minimis costs for certain vehicles and these costs may outweigh the benefits of this requirement.¹⁶⁶ Given this potential imbalance and our belief that most if not all of the desired benefits will be achieved by the indefinite audible warning, we are only finalizing that the front passenger's visual seat belt warning be visible to the driver.

This approach is consistent with the approach we took for the rear seat belt warning. In the NPRM, we did not propose that the rear seat visual warning be visible to the rear passenger because

¹⁶³ Other research referenced in the NPRM that suggested a passenger visibility requirement might increase effectiveness was preliminary on this point and precluded firm conclusions. For example, some research noted that it is not evident to what extent improved effectiveness is due to direct message effects on the passenger and to what extent it may be due to more complex social dynamics between the driver and the passenger. We also cited studies that suggest that center console display locations might be more effective than dashboard display locations but were not conclusive due to other differentiating factors in the visual designs, such as character size, display size, and color, which may be covaried. See N. Lerner et al. (2007). Acceptability and Potential Effectiveness of Enhanced Seat Belt Reminder System Features. (Report No. DOT HS 810 848). National Highway Traffic Safety Administration; DOT 2009 Seat Belt Study.

¹⁶⁶ Given that many manufacturers currently provide visual alerts in the center console or in proximity to the passenger advanced air bag signal, we maintain our confidence that in many cases the cost would be limited and encourage manufacturers to voluntarily provide visual warnings to the passenger.

¹⁶³ DOT 2009 Seat Belt Study at pg. 66.

¹⁶⁴ We also note that this research noted the efficacy of audible alerts, but suggested not using an alert audible to drivers for the passenger's belt due to consumer acceptance concerns. However, as discussed in the NPRM and elsewhere in this final rule, research shows that consumers are now far more accepting of audible alerts. Therefore, the audible alert required by this final rule may serve to more effectively perform the communication role that this research suggested the visual alert to the passenger did. See DOT 2009 Seat Belt Study at pgs. 67–68.

we did not believe that the benefits would outweigh the costs (viewed qualitatively). On the other hand, the NPRM did propose this for the front outboard passenger seat belt warning, because in that case we did expect the benefits to be greater than the costs. We now agree with the commenters, however, that because of the relatively low benefits; potentially non-de minimis costs for at least some vehicles; and the interplay between the visual and audible signals, that it is appropriate not to require that the visual warning for the front outboard passenger be visible to that passenger.

We also wish to clarify the purpose of our reference, in the NPRM, to the advanced air bag visual signal because Honda's and Auto Innovators' comments suggest it may have caused some confusion. In the context of visibility, we referenced the advanced air bag telltale for the passenger only to indicate that it provides a location some manufacturers already use for a visual signal that is visible to the passenger. We did not intend to make any statements about the purpose of these signals within the structure of the FMVSS, their relative safety benefits, or the meanings they convey.

Finally, we believe it is important to address two potential future situations where only requiring the visual warning to be visible to the driver would not be sufficient. The first is for dual-mode ADS-equipped vehicles that still have a driver's seat and driving controls.¹⁶⁷ For such vehicles the driver's seat could remain unoccupied throughout the vehicle's operation. In this situation, limiting the visibility of the front seat warnings to the driver's seat would result in the passenger not seeing the warning. The second is for ADS-equipped vehicles without a driver's designated seating position. For the former, the final rule requires that the visual warning for the front outboard passenger seat belt must be visible from the front outboard passenger seat, and for the latter the final rule requires that the visual warning for each outboard designated seating position be visible from each outboard passenger seating position.

5. Front Seat Occupant Detection and Seat Occupancy Criteria

In the NPRM, we proposed a single compliance option that requires a start-

of-trip audio-visual warning that lasts until the seat belt at any occupied front outboard seat is fastened. We proposed that the warning system consider the front outboard passenger seating position "occupied" when an occupant or dummy that weighs at least 46.7 kg (103 lb) and is at least 139.7 cm (55 in) tall is seated in the seat, which matches the specification in FMVSS No. 208 for a person who is used as an alternative for the 5th percentile adult female test dummy for compliance testing of advanced air bag systems using static suppression. The NPRM also proposed giving the manufacturers the option to use a human being instead of using test dummies for testing purposes. Requiring occupant detection for front outboard passenger seating is consistent with Euro NCAP and IIHS ratings protocols, and the specification is consistent with Euro NCAP and the ECE R16 test procedures. IIHS does not specify any occupancy criteria for either front outboard seating positions.

However, the NPRM was unclear about the occupancy requirements pertaining to the driver's designated seating position. The proposal included occupancy as a condition to trigger the warning for the driver's seat. The proposed test procedures also specified they applied to "front designated seating positions." Thus, the test procedures would have applied to both front outboard seating positions and therefore may have required NHTSA to place a dummy or a human being in the driver's seat to establish occupancy for the test. However, we did not propose to define "occupied" for the driver's seat.¹⁶⁸

Euro NCAP and IIHS allow occupancy for the driver's seat to be assumed. ECE R16 does not require the driver's seat to be occupied in its test procedures for the start-of-trip warning.

For the change-of-status warning for the front outboard passenger seat, NHTSA did not propose that the seat must be occupied when the buckle is unfastened to trigger the alarm. On the other hand, IIHS protocol requires occupancy to trigger the change-of-status warning and ECE R16 allows the warning to be discontinued if the seat which triggered the warning is no longer occupied. This is also true of IIHS's and ECE R16's specification for the driver's seat.

Comments

IEE, Honda, and Consumer Reports expressed support for requiring occupant detection for the front outboard passenger seat and for using occupancy as an element of the trigger for the front outboard passenger seat warning. Consumer Reports commented that it agrees with NHTSA's decision to align with Euro NCAP and require an occupant detection system for the front outboard passenger seat. Consumer Reports further explained that occupant detection is already widely deployed in these seats, either as part of an advanced air bag system or as part of a voluntary seat belt warning system, reinforcing the feasibility of equipping vehicles with occupant detection technology. IEE commented that it supports NHTSA's proposal to use the 5th percentile female as occupant detection criteria for the front outboard passenger seat because it aligns with the requirements for the sensors installed in the front passenger seats of vehicles complying with the advanced air bag requirements of FMVSS No. 208 and the same sensors are widely used for the voluntary front passenger seat belt warning systems.

Honda commented requesting clarification on occupant detection for the driver's seat. Honda explained that the NPRM proposed that the start-of-trip warning for front outboard seats must activate "if the seat is occupied," among other conditions. It commented that while this language is an appropriate condition for the front outboard passenger seat, it is unnecessary for the driver seat. Honda further commented that FMVSS No. 208 does not contemplate an occupant detection system because a driver is assumed to be present in a conventional vehicle. Honda recommended that this language be revised so that occupant detection requirements are not unintentionally prescribed for the driver's seat.

Honda commented that if a speed threshold is not adopted for the change-of-status warning and the proposed transmission trigger is retained, NHTSA should also use occupant detection as a trigger.¹⁶⁹ Honda believes this recommendation would resolve a

¹⁶⁷ An ADS-Equipped Dual-Mode Vehicle is defined as "[a] type of ADS-equipped vehicle designed for both driverless operation and operation by a conventional driver for complete trips." SAE J3016_201806 Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles.

¹⁶⁸ Occupant detection systems are currently used for front outboard passenger seating positions to comply with the advanced air bag requirements in FMVSS No. 208. However, this is not the case for driver's designated seating positions, which do not have the same considerations.

¹⁶⁹ Specifically, Honda recommended the change-of-status warning should be revised to read as follows: "An audio-visual warning must activate when the ignition switch is in the 'on' or 'start' position, the vehicle is in forward or reverse drive mode, the seat is occupied (other than the driver's seat for vehicles with a designated driver seating position), and the status of the seat belt changes from in use to not in use, unless a front door on the same side of the vehicle as the seat belt triggering the warning is open, in which case a warning is not required and the system may consider this as a new trip with respect to that seat belt and reset the warning system."

misuse case in which someone buckles an empty seat and then unbuckles it. Honda expressed concern that under the proposal this type of scenario would require an unending alarm until the seat is re-buckled or the door is opened.

Agency Response

NHTSA appreciates IEE's, Honda's, and Consumer Reports' support for requiring occupant detection for the front outboard passenger seat and for using occupant detection as an element of the trigger for the front outboard passenger seat warning. In addition, NHTSA received no comments in opposition to requiring vehicles to have occupant detection capability for front outboard passenger seats or for including front outboard passenger seat occupancy as one of the trigger conditions for the start-of-trip front outboard passenger seat belt warning. Likewise, NHTSA received no comments in opposition to specifying that the warning system consider a front outboard passenger seating position "occupied" when an occupant or dummy that weighs at least 46.7 kg (103 lb) and is at least 139.7 cm (55 in) tall is seated in the seat. We are finalizing these provisions proposed in the NPRM with some revisions to the final regulatory text for clarity.

With respect to a driver's seat, we have modified the proposal to clarify that the final rule does not require occupant detection for the driver's seat. The final rule does specify seat occupancy as one of the criteria for activation of all of the required front seat belt warnings (the visual warning and first- and second-phase audible warnings). However, the final rule also provides manufacturers with three compliance options for certifying that a driver's seat belt warning complies with these requirements. First, a manufacturer may certify that the system meets the requirements when the 5th percentile female test dummy described in part 572¹⁷⁰ of this chapter, as well as any larger dummy described in part 572, is seated in the seat. Second, a manufacturer may certify that the system meets the requirements when any human occupant that weighs 46.7 kg (103 lb) or more and is 139.7 cm (55 inches) tall or taller is seated in the seat.¹⁷¹ Third, a manufacturer may certify that the system meets the requirements when, instead of seating a dummy or human, the seat is

considered occupied when the ignition switch is in the "on" or "start" position (or the propulsion system is activated). Similar to the front outboard passenger seat, the first two options would necessitate occupant detection technology and is technology-neutral with respect to the type of occupant detection technology used. The third option is consistent with our understanding of how these systems currently work as well as the approaches taken by Euro NCAP and ECE R16, and essentially allows the vehicle to infer that the driver's seat is occupied based on the fact that the vehicle has been turned on.¹⁷²

We are finalizing the rule this way for three reasons. First, requiring that the system activates only when the seating positions are occupied reduces false activations, which is important both for effectiveness and consumer acceptance. Although this is a larger concern for long or indefinite reminders, it is also relevant for the start-of-trip 30-second audible warning.

Second, requiring occupancy for the driver's seat aligns the activation criteria for the front outboard passenger and driver's seating positions. Although Honda suggested that regulatory language is not necessary because driver's seat occupancy can be inferred, including it avoids confusion about when the warning needs to or can activate that could come from specifying different activation criteria.

Third, the first and second compliance options provide manufacturers the flexibility to optimize systems for vehicles with a driver's designated seating position, but which may be "on" without a driver in the vehicle, such as dual-mode vehicles equipped with ADS but which still have a driver's seat and driving controls, as well as vehicles which use remote start. Because dual-mode vehicles could operate without an occupant in the driver's seat, we do not believe that inferring or assuming occupancy (which Euro NCAP and ECE R16 do) fully accounts for these vehicles. Without the option to use occupant detection, these vehicles could be required to initiate the driver's seat start-of-trip audible warning when the ignition switch is placed in the "on" position (or for an EV, when the propulsion system is activated. Such scenarios would therefore result in false positives. By allowing manufacturers to select the

occupancy method, our approach is similar in application to the inference approach taken by Euro NCAP and ECE R16 for conventional vehicles, while being forward-looking for vehicles with ADS.

To clarify, although adding an activation condition that the seat is occupied is a change to the current driver's seat belt warning requirements in FMVSS No. 208, we do not intend it to increase the stringency of the existing requirement for the driver's seat. The activation criteria for the current driver's seat belt warning do not include seat occupancy.¹⁷³ Although the final rule introduces an occupancy criterion, it does not require occupant detection technology for the driver's seat. Indeed, we are not defining occupancy for the driver's seat as we have for the front outboard passenger seat, and the test procedure for the third compliance option does not require placing a test dummy (or human) in the driver's seat. Instead, under this final rule, manufacturers will have the discretion to choose the method by which the seat belt warning system determines whether the driver's seat is occupied in the context of seat belt warning activation. The third option enables systems that do not use occupant detection to certify to occupancy, while the first and second options enable manufacturers, if they so choose, to certify using a test dummy or a person (respectively), which may enable them to optimize a system for vehicles which may not have a person in the driver's seat at start-up.

Finally, in response to a comment from Honda and to incorporate considerations for certain vehicles with ADS, the finalized regulatory text implements Honda's suggestion that the proposed change-of-status warning have occupancy as one of the triggering conditions. Because in the final rule, the visual warning and the second-phase audible warning function as a change-of-status warning, the regulatory text for these warnings includes seat occupancy as one of the triggering conditions.

C. Issues Common to the Front and Rear Seat Belt Warning Requirements

1. Modification of Start-of-Trip Warning Trigger Related Ignition Switch Position To Accommodate EVs

As noted earlier, the NPRM proposed that the activation of both the front and rear seat belt warnings be triggered

¹⁷⁰ 49 CFR part 572, subpart O.

¹⁷¹ These are the bottom of the ranges specified in FMVSS 208 S29.1(f) for the weight and weight of a human female who may be used in certain of the advanced air bag testing in place of the 5th percentile female dummy.

¹⁷² To be clear, although a vehicle might be placed in these conditions without an occupant in the driver's seat, this is not a typical or likely scenario in the field because it is the driver that initiates these conditions (other than for vehicles without a driver's designated seating position).

¹⁷³ The activation criteria are (1) the vehicle's ignition switch is moved to the "on" position or to the "start" position; and (2) the driver's lap belt is not in use, as determined either by the belt latch mechanism not being fastened, or by the belt not being extended at least 4 inches from its stowed position.

when, among other things, “the ignition switch is placed in the ‘on’ or ‘start’ position.” We also stated that this same condition appears in the existing driver seat belt warning requirements and is similar to ECE R16 and Euro NCAP.

ECE R16 specifies that the first-level visual warning activates “when the safety-belt of any of the seats is not fastened and the ignition switch or master control switch is activated.”¹⁷⁴ In the NPRM we explained that we were not proposing to follow ECE R16 and refer to a “master control switch” because we did not believe it necessary to introduce this new term into FMVSS No. 208. The second-level warning and the change-of-status warning have different triggers that are all based on the vehicle being in motion.

Euro NCAP similarly specifies that the visual signal activate “when the ignition switch is engaged (engine running or not)” and the seatbelt is not fastened.”¹⁷⁵ Like ECE R16, the audible and change-of-status warnings have different triggers, mostly related to the vehicle being in motion.

The IIHS protocol similarly links the start-of-trip visual signal to the vehicle engine being “turned on (*i.e.*, powered and capable of propulsion).”

Comments

Tesla requested that NHTSA broaden the definition of “ignition switch” to cover, for example, EVs which do not have one. As an example, Tesla noted that the “ignition switch” definition could be expanded to the moment when power is delivered to wheels to initiate vehicle motion. Tesla also requested clarity on the definition of “vehicle start-up.” Tesla noted that this clarification is especially important for EVs.

Honda had similar concerns, noting that electrified vehicles may differ from traditional internal combustion vehicles in that they may not have a distinct moment when the ignition switch is turned “on” or “started.” Instead, Honda explained that these vehicles typically use automatic “wake” and “sleep” modes, which are activated based on various sensing and detection algorithms. While Honda preferred that NHTSA reconsider using the ignition switch as a trigger, it requested clarification on the start-of-trip warning if it is retained.

Agency Response

We agree with Tesla and Honda that it would be helpful to provide clarity regarding warning activation for

vehicles that do not have a traditional ignition switch or button with “on” and “start” positions or conditions, which could be the case for EVs. Therefore, we are adding regulatory text to address these vehicles.

The start-of-trip warnings (front seat belt visual and first-phase audible warnings and rear seat belt warning) are required to activate when (among other things) the ignition switch is “placed in” the “on” or “start” position or upon manual activation of the propulsion system, but before the vehicle is placed in “possible active driving mode” as defined by FMVSS No. 305.¹⁷⁶ In developing this language, our goal was to specify a time in the start-up process to begin the start-of-trip warning for EVs that is roughly the same as the time we specified for vehicles with a conventional ignition switch such that the safety benefits for EVs would be the same as for ignition-equipped vehicles. For an ignition-equipped vehicle, while in the “on” position the vehicle electrical systems have been powered. While in the “start” position, the engine has been started and in this state a conventional vehicle is ready to be placed in a drive mode. An additional consideration is that, for an ignition-equipped vehicle certified to the option that the system determines the driver’s seat is occupied through movement of the ignition switch to both the “on” or “start” position, the driver is presumed to be in the vehicle to initiate the action. However, what actions by the driver initiate these modes, and whether a vehicle even has an analogous state to “on,” varies widely across EV models. For instance, some EVs, upon the door being opened, may activate some systems without providing electrical power to the motors, and may not be ready to be moved into a drive mode until another action is taken (such as depressing the brake pedal) which would typically entail the driver being seated. Others, however, may provide power to the motors upon the door

¹⁷⁶ More specifically, the “placed in” language is used to specify the rear seat belt start-of-trip warning and the front seat belt first-phase audible warning but not the front seat belt visual warning. The front seat belt visual warning is required to “activate and remain active whenever the ignition switch is in the “on” or “start” position (or the propulsion system is activated), the seat is occupied, and the seat belt is not in use” (emphasis added). Because this visual warning is also serving as a change-of-status warning, this text refers to the ignition switch being “in” the on or start position, not being “placed in” on or start. However, in order for the ignition switch to be “in” the on or start position, it must first be “placed in” that position. Accordingly, this language necessarily includes the start of the trip. Similar reasoning applies to the EV-specific language for the front seat belt visual warning.

being opened. Therefore, the agency attempted to incorporate language that approximates the following moment in a start-up sequence for an EV: an occupied outboard seat, ready to drive, but not yet in a drive mode. (This condition also closely approximates when the ignition of a conventional vehicle, certified to the option which uses the ignition switch “on” or “start” to indicate occupancy, is moved to the “start” position). These requirements should equalize the safety benefits of the start-of-trip warning across vehicles with and without ignition switches.

To accomplish this objective, we are adding language from FMVSS No. 305; “Electric-powered vehicles: electrolyte spillage and electrical shock protection.” That standard defines “possible active driving mode” as “the vehicle mode when application of pressure to the accelerator pedal (or activation of an equivalent control) or release of the brake system causes the electric power train to move the vehicle.”¹⁷⁷ As such, the mode is analogous to the vehicle being placed in a drive gear. Additionally, FMVSS No. 305, S5.4.6.1 *Indicator of possible active driving mode*, states that “[a]t least a momentary indication shall be given to the driver each time the vehicle is first placed in possible active driving mode after manual activation of the propulsion system.” This language implies that “manual activation of the propulsion system” precedes the “possible active driving mode.” In the final rule that added this language to FMVSS No. 305, we explained that the phrase “when the vehicle is first placed in possible active driving mode after manual activation of the propulsion system” was meant to indicate “start up.”¹⁷⁸ Thus, we believe that the appropriate time in the start-up sequence of an EV (which is roughly analogous to the movement of the ignition of a conventional vehicle to the “start” position) is upon manual activation of the propulsion system, but prior to the vehicle being placed in “possible active driving mode” as defined by FMVSS No. 305. We understand that the process of driving system activation could vary from vehicle to vehicle but believe that the criteria in the final rule encompass all or most EV start-up sequences.¹⁷⁹

¹⁷⁷ NHTSA recently proposed to establish FMVSS No. 305a to replace FMVSS No. 305. The proposed FMVSS No. 305a refers to this state as “active driving possible mode.” However, the definition is the same. The terminology is originally from Global Technical Regulation No. 13.

¹⁷⁸ 82 FR 44945, 44956.

¹⁷⁹ We also anticipate that if a vehicle activates the propulsion system before the driver is inside the

¹⁷⁴ Section 8.4.2.3.1.

¹⁷⁵ Section 3.4.2.1 (front); section 3.4.3.1.1 (rear).

2. Belt Use Criteria

The current driver's belt warning requirements specify that a belt is "not in use" when, at the option of the manufacturer, either the seat belt latch mechanism is not fastened or the belt is not extended at least 10.16 centimeters (cm) (4 inches (in)) from its stowed position.¹⁸⁰

We proposed amending these current criteria by specifying criteria related only to the seat belt latch mechanism. Specifically, we proposed that a manual seat belt would be considered "not in use" when the seat belt latch mechanism is not fastened, and "in use" when the seat belt latch mechanism is fastened. We proposed eliminating the spool-out sensor requirements because we tentatively believed that accommodating the use of a spool-out sensor would not allow for an objective or reliable criterion for the proposed change-of-status warning. For instance, there may be instances where the webbing may not readily spool back in when the seat belt is unbuckled (*e.g.*, due to the use of shoulder belt routing features or the use of a belt positioning booster seat), and thus would not reliably trigger the change-of-status warning.

The proposal differed from ECE R16,¹⁸¹ which gives manufacturers the option of using either a belt latch or spool-out sensor.¹⁸² Euro NCAP does not specify webbing spool-out criteria, and only refers to the status of the belt buckle. The IIHS protocol does not specify such criteria.

Comments

We received one comment from Auto Innovators, which generally agreed with the agency's proposal to enable compliance with the regulation through the use of seat belt latch sensors. Auto Innovators indicated that this proposal is consistent with ECE R16 and avoids introducing unnecessary complexity in redesigning rear belt reminder systems for the U.S. market. However, Auto Innovators requested that NHTSA update the definitions for S7.5 to ensure the regulation supports additional compliance options for classifying seat belt use, including systems that rely on camera-based sensors (or other advanced sensor technology). Auto Innovators commented that, currently, these options would not be permitted

vehicle, the warning will be delayed until the driver has entered the vehicle to comply with the occupancy requirement, even if such a vehicle is certified to the first option.

¹⁸⁰ S7.3(c). These are the definitions for manual belts. For automatic belts, see *supra* n.18.

¹⁸¹ Section 2.46.

¹⁸² Section 2.46.

unless the belt use reminder system also included a belt latch mechanism.

Agency Response

In the NPRM we stated that the current FMVSS No. 208 belt use criteria for the driver's seat belt warning requirements allow for the use of a belt latch or spool-out sensor, and that we were proposing to amend the belt use criteria to rely solely on the use of a belt latch sensor, and not provide requirements that would accommodate the use of a spool-out sensor. These statements were imprecise. The intent of the NPRM was not to restrict the types of technology manufacturers may use to determine whether or not an occupant is belted. The proposal was intended to identify objective criteria that NHTSA would use to determine whether or not a belt is in use. A manufacturer may use whatever technology it chooses to detect whether a belt is in use or not. However, regardless of the technology a manufacturer uses—whether it is a latch sensor or a camera—NHTSA, for the purposes of its compliance test, will consider a belt to be "not in use" when the belt latch is not fastened. Suppose, for example, that NHTSA tests a seating position equipped with a spool-out sensor for compliance with the change-of-status warning requirements. Suppose further that, in the test, a fastened belt is unfastened, but the spool-out sensor malfunctions so that the change-of-status warning does not activate. This would be considered an apparent test failure because the warning system did not activate when the status of the belt changed from in use to not in use (*i.e.*, the belt latch became unfastened).

3. Visual Warning Characteristics

NHTSA proposed different requirements for the rear and front seat belt visual warnings.

Rear Seat Belt Visual Warning

We proposed that the visual warning be continuous or flashing and consist of icons or text and indicate how many or which rear seat belts are in use or not in use depending on the type of warning system. If icons are used to indicate how many or which rear belts are in use, we proposed that the icon(s) must be green; if icons are used to indicate to the driver how many or which belts are not in use, we proposed that the icon(s) be red. If text is used to indicate to the driver how many or which rear seat belts are in use or not in use, we proposed that the text contain the words "rear belt(s) in use" or "rear belt(s) not in use." We also proposed to amend table 2 in FMVSS No. 101, "Controls and displays," to

clarify that the "Seat Belt Unfastened Telltale" depicted there does not apply to the rear seat belt reminder and to amend table 1 by adding in a row for the proposed rear seat belt warning.

The requirement that the visual warning be continuous or flashing mirrors the current driver's seat belt visual warning requirement and is also consistent with ECE R16. However, we proposed to depart from the current driver's warning and from ECE R16 and standardize the color of the icons and text for the warnings to increase the likelihood that consumers would notice, recognize, and respond to the warnings. We believed that standardized colors and text will facilitate the interpretation of the signal. We departed from the current driver's warning requirements and followed ECE R16 by not requiring specific icons because we believe the choice of icons would largely depend on whether the system displayed the number of seat belts in use or which seat belts are in use.

Another difference between the proposal and ECE R16 was that ECE R16 requires that the visual warning "indicate at least all rear seating positions." We understood this requirement to mean that the visual warning must depict all the rear seating positions. To give manufacturers design flexibility, we did not propose to require that the warning depict all rear seating positions. Instead, the proposed requirements would allow the visual warning to consist of text or icons indicating how many or which rear seats are fastened or unfastened. For example, the warning text might consist of "Middle and Right rear seat belts fastened." Another visual warning option would be the seat belt icon with an adjacent numeral indicating the number of rear seat belts fastened. Accordingly, the proposal would allow, but not require, use of a pictogram.

Front Seat Belt Visual Warning

The current requirements for the driver telltale differ from those we proposed for the rear seat belts. As noted earlier in this document, some vehicles already equipped with a rear seat belt warning system in addition to a front seat belt warning system combine the two (such as with a pictogram depicting all seating positions). These vehicles also must continue to meet the current requirements for the driver seat belt telltale. These require that the warning be continuous or intermittent (flashing) and display either the identifying symbol or the words ("Fasten Belts" or "Fasten Seat belts") specified in table 2 of FMVSS No. 101. Thus, vehicles that

currently have a rear seat belt warning system using a pictogram also provide a separate, FMVSS No. 101-compliant telltale for the driver's seat belt warning.

We proposed generally retaining, for both front outboard seats, the current visual warning requirement for the symbols or text specified in FMVSS No. 101 because these visual warnings have been in place for decades and we believe that consumers are accustomed to them. Removing the requirement may have unintended negative effects if drivers and front passengers are not accustomed to new visual warnings or do not find the new visual warnings as effective. This means that if a manufacturer chose to use a pictogram format to comply with the new rear seat belt warning requirements, it could—as many manufacturers are already doing—include the front seat belts in this pictogram, but it would also have to provide the telltale specified in FMVSS No. 101, table 2. As we explained earlier, we proposed that the telltale for the front outboard passenger seat would also have to be visible to that passenger. We also proposed to require that for telltales associated with multiple front outboard seats, the seat with which each telltale is associated must be clearly recognizable to the driver and front outboard passenger.

Comments

Regarding the rear seat belt warning telltale, several commenters suggested that NHTSA should require visual warnings that indicated all rear seating positions. Consumer Reports encouraged NHTSA to align with ECE R16 by requiring that visual warnings indicate all rear seating positions. It argued that although a seating map may require a somewhat more sophisticated display, it is preferable because it offers the driver complete information while facing forward. Auto Innovators and HATCI commented that contextual displays or pictograms are generally feasible and useful. Auto Innovators also added that several automakers have already implemented seat belt warning systems that use a contextual display diagram to provide the driver with information on the status of passenger belt use.

Some commenters such as HATCI and NADA also explicitly requested flexibility in telltale design. Rivian requested flexibility in choosing icons for the front and rear seat belt reminder warnings and that NHTSA not require the FMVSS No. 101 icon for the front seat belt reminder warning icon. HATCI supported providing manufacturers flexibility in the rear seat telltale and commented that the use of a pictogram

for the rear seat belt warning will allow for more flexibility for different vehicles and vehicle sizes. Consumer Reports also commented that, within a seating map, easily recognizable icons are preferable to text, as icons enable a driver to assess seating usage at a quick glance, without having to read. Consumer Reports also argued that easily recognizable icons are also useful for drivers for whom English is not a first language.

NSC commented that seat belt warning systems have different operational parameters, generic names, and limitations across manufacturers and sometimes even across the same manufacturer's varying models. It urged NHTSA to consider standardizing generic nomenclature as well as standardizing warning and icon symbols to reduce driver confusion.

Mercedes commented that, based on the requirements in the proposal, there would be technical challenges with providing the driver seat belt status information within the instrument cluster for seating configurations that can hold up to 13 rear passengers.

Auto Innovators commented that in addition to issues related to the symbol, standardizing the text to say "Rear belt(s) in use" or "rear belt(s) not in use" may be difficult to package on the instrument cluster. Auto Innovators requested that the agency permit the use of either the word "Rear" or a corresponding number next to the seat belt icon referencing which seating position is unbuckled as an acceptable alternative. It noted that this request is similar to the number 2 notation used next to the air bag symbol for specifying the icon is relevant to the passenger-side air bag.

Auto Innovators and Rivian supported harmonizing the telltale symbol with ECE R16. However, Auto Innovators, Mercedes, Honda, NADA, and HATCI requested that the agency also permit the use of a neutral color (e.g., gray) that could be used to display either an unoccupied seat or, for positive only systems, a seat that remained in the unbuckled condition. For negative only and full-status systems, the symbol would be required to be red to indicate occupancy in an unbelted condition. Auto Innovators commented that this approach is being widely adopted in the U.S. and other markets and is understood by consumers. Accordingly, Auto Innovators requested aligning the color requirements with ECE R16. Mercedes expressed concern that red icons should not be used if the buckle has not changed status because there is no critical information to be shared with the driver, and red could provide a false

alarm and lead to desensitization if it is always on. Hyundai also noted that it is not aware of consumer complaints or requests to deactivate existing visual seat belt displays.

Auto Innovators and Rivian argued that, given the prevalence of red-green color vision deficiency among the U.S. population, the requirement should not limit the ability of manufacturers to implement approaches that may be more easily understood or recognized by consumers. Auto Innovators indicated that the rule should include allowances for providing a visual diagram of all seating positions whereby belt use can either be communicated through the presence or absence of the belted symbol or through the use of a bi- or tri-color scheme consisting of green and red symbols to indicate belt status, and either gray or white symbols to denote either unoccupied seats (for systems with occupant detection) or unbelted seats (for systems without occupant detection) at the manufacturer's discretion.

Rivian and GM also noted that permitting the use of other icons, such as a checkmark to indicate belts in-use and a "x" to indicate belts not-in use for both front and rear occupants seat belt status, could help mitigate the challenges with red and green coloration if manufacturers were permitted flexibility in the use of different icons for both the front and rear locations. Rivian further commented that the agency proposed that the "Seat Belt Unfastened Telltale" requirement, depicted in table 2 in FMVSS 101, Controls and displays, does not apply to the rear seat belt reminder. Rivian stated that its interpretation of the proposal is that manufacturers may use other icons such as a checkmark to indicate belts in-use and a "x" to indicate belts not in use. Rivian recommended that for consistency and occupant recognition, NHTSA allow this design flexibility for the front and rear belt reminders. It stated that this commonality is particularly important for pictogram designs driven by other protocols, such as IIHS, and would help address the color issue.

GM also indicated that glanceability can be significantly improved through redundancy, which involves combining both color and forms as cues. It cited several studies in support of this assertion. GM argued that the symbols, along with the colors of green representing success, red representing failure, and gray representing an empty seat, can ensure clear communication of the belt status to the customers.

Honda commented requesting clarification on the proposed

requirement that for telltales associated with multiple front outboard seats, the seat with which each telltale is associated must be clearly recognizable to a driver and to any front outboard passenger. Honda indicated that it understands the final rule to require the telltale to use the identifying symbol or words specified in table 2 of FMVSS No. 101 and to also allow the use of a single telltale to be associated with multiple front outboard seats. However, Honda suggested that the “clearly recognizable” language may be contrary to Honda’s understanding. Honda commented that it is not aware of any consumer concerns with distinguishing the front seat positions to which this single telltale is associated and believes that maintaining this standardized approach will facilitate continued consumer understanding. Honda also expressed concern about the cost burden if this requirement cannot be met with a single telltale and concern about the extra visual indicator overriding other warnings. Honda provided a list of telltale designs and requested clarity regarding whether they would meet the “clearly recognizable” language. Honda also requested that the rule allow for a single telltale to display all seating positions.

Agency Response

NHTSA generally agrees with the commenters who recommended that the rule provide manufacturers flexibility, but we do believe that some standardization of the visual warning would provide safety benefits. We note that while many of the requirements discussed below apply only to the rear seat belt warning, manufacturers may choose to integrate the warnings for the front and rear, so we are presenting this material together.

Requirements for the Rear Seat Belt Visual Warning

We disagreed with Consumer Reports and have decided to depart from ECE R16 and not require that all rear seating positions be depicted. While such a requirement would provide the driver with more information, we have decided to give manufacturers design flexibility (such as by using text, number of seats buckled/unbuckled, etc.) so that they can decide how to optimize design for each particular vehicle.

One situation in which this flexibility would be particularly important is for buses and vans with many rear seats. As we explain above (see Section VI.A.1, Applicability) one difference between the final rule and ECE R16 is that the final rule applies to small buses such as

15-passenger vans, while the ECE R16 rear seat belt warning requirements do not apply to vehicles with more than 9 seats (including the driver). As we acknowledged in the NPRM, vehicles with a larger number of rear seats, such as passenger vans and buses, may encounter visual signal complexities; not dictating specific types of signals should provide manufacturers with adequate flexibility to address these types of issues. We believe these vehicles, in particular, would benefit from the option to indicate how many rear seats are fastened; for example, a visual warning option for vehicles with multiple rows would be the seat belt icon with an adjacent numeral indicating the number of rear seat belts fastened. We recognize that such a requirement would require more space if a manufacturer decides to display a warning with multiple rear rows and may entail redesign of the instrument panel or display space. We note that while one commenter (InterMotive) indicated that it has an aftermarket solution for a rear warning system for such higher-occupancy vehicles, NHTSA is not aware of any new vehicles equipped with such systems. In light of the current state of the market, we are providing two years of lead time and have attempted to specify the final requirements in such a way as to provide manufacturers as much flexibility as possible so that they can devise solutions for their specific vehicles.

Similarly, with respect to the visual warning for the rear seat belts, we have decided to finalize the proposal and permit both icons (symbols) and text. However, we are modifying the proposal and not specifying standardized text. We are also clarifying that numbers may also be used in addition to symbols, and are finalizing the proposal to standardize colors for symbols (and numbers). While we recognize that standardized icons would help drivers recognize the icon when driving different (multiple) vehicles, we believe there are even greater benefits to providing manufacturers with flexibility; manufacturers can optimize the visual warning based on the vehicle design and consumer preferences, particularly since there are a range of different approaches being used already. (Icons appear to be prevalent in newer vehicles.) We have also decided to allow the use of text and/or numbers other than what we proposed for the rear seat belt warning to afford manufacturers as much flexibility as possible. We note that the effectiveness of numbers depends on how well the design is

executed; for example, one commenter provided an example showing that it can be confusing. Accordingly, manufacturers should not assume drivers will be familiar with seat numbers when developing their warning. On the other hand, as discussed below, we are standardizing colors to facilitate the interpretation of the signal.

We have decided to finalize the requirements for the color of symbols or numbers if used to indicate how many or which rear seat belts are (not) in use. After considering the comments, NHTSA concludes that the advantages of standardizing colors outweigh the drawbacks. We believe that standardizing colors limits confusion and allows for faster interpretation. We note that the FMVSS generally do not address color blindness. Importantly, however, this requirement does not prevent manufacturers from designing the visual warning so that it can be perceived by colorblind consumers. For example, OEMs could design systems using a combination of color and a positive/negative symbol. Moreover, we agree with GM that such redundancy can aid in rapid interpretation of the warning (glanceability). Use of a symbol without a color would be prohibited but we believe this requirement is warranted because use of a color would aid in faster identification of buckled/unbuckled seats for most users. Similarly, the final rule provides that the change-of-status visual warning may use the same telltale as the start of trip warning, provided that the color of an illuminated symbol or number used to indicate to the driver how many or which rear seat belts experienced a change of status from in use to not in use is red.

NHTSA is, however, clarifying that the proposed requirements were not intended to prohibit the use of gray or other neutral colors or signifiers (such as a non-illuminated indicator) to denote seats that are unoccupied or to denote a seating position for which information about buckle status is not being conveyed (e.g., using gray to indicate seating positions at which the belt is fastened in a negative-only system that does not use occupant detection). This approach is being widely adopted in the U.S. and other markets and, in our view, is understood by consumers. To more clearly convey our intent here, the final rule explicitly provides that a visual warning is not required for (1) an unoccupied seat if the system is able to determine whether or not a seat is occupied; (2) a seat belt that is in use in a system designed to indicate to the driver how many or

which rear seat belts are not in use; and (3) a seat belt that is not in use in a system designed to indicate to the driver how many or which rear seat belts are in use. Therefore, the color requirements will not apply to symbols or numbers that are conveying any of these three types of information, because such information is not considered part of the required warning.

Requirements for the Front Outboard Seat Belt Visual Warning

We have decided to finalize the proposal to maintain the FMVSS No. 101 icon for the driver's seat belt warning and extend it to the front outboard passenger seat belt warning. We continue to believe, as we explained in the NPRM, that this requirement is beneficial because these visual warnings have been in place for decades and we believe that consumers are accustomed to them. It is also in line with ECE R16, which requires the same icon for the front seats.¹⁸³ At this time we therefore do not see a need to remove this requirement.

As stated in Section VI.B.4, in response to the comments, NHTSA has modified the proposal so that the final rule requires that the front outboard passenger visible warning be visible only to the driver, except for two potential future situations where only requiring the visual warning to be visible to the driver would not be sufficient. The first is for dual-mode ADS-equipped vehicles that still have a driver's seat and driving controls. For such vehicles the driver's seat could remain unoccupied throughout the vehicle's operation. In this situation, limiting the visibility of the front seat warnings to the driver's seat would result in the passenger not seeing the warning. The second is for ADS-equipped vehicles without a driver's designated seating position. For the first, the final rule requires that the visual warning for the front outboard passenger seat belt must be visible from the front outboard passenger seat, and for the second the final rule requires that the visual warning for each outboard designated seating position be visible from each outboard passenger seating position.

Accordingly, while we proposed that for telltales associated with multiple front outboard seats the seat with which each telltale is associated must be clearly recognizable to a driver and to "any front outboard passenger," the final rule instead requires that a visual warning associated with multiple front outboard seats must "clearly identify

the seating positions for which the warnings are intended." Honda's comment concerned the proposed "clearly recognizable" language. NHTSA clarifies that this final rule does not require a separate telltale (*i.e.*, a telltale with the identifying symbol specified in table 2 of FMVSS No. 101) for each front seating position nor does it require any particular visual warning design. We believe that one telltale which distinguishes which position is unbuckled would be acceptable, as would separate telltales, as long as the visual warning clearly identifies the seating position(s) for which the warning(s) is intended. We leave it to manufacturers to design their systems such that they can certify in good faith that they meet the standard, and the final rule does not further specify how to do so to preserve that design flexibility.^{184 185}

4. Interaction With Other Vehicle Warnings

NHTSA proposed that neither the visual nor the audible component of the seat belt warning for the both the front and rear seat belts could be overridden by other warnings for the required durations.¹⁸⁶ This proposal was

¹⁸⁴ It is possible to design single telltales that comply both with FMVSS No. 101, Table 2 and the requirement that for telltales associated with multiple front outboard seats, the seat with which each telltale is associated must be clearly identified because FMVSS No. 101 allows supplemental symbols and information. See S5.2.3 ("Supplementary symbols, words, or abbreviations may be used at the manufacturer's discretion in conjunction with any symbol, word, or abbreviation specified in Table 1 or Table 2.").

¹⁸⁵ We note that the proposed "clearly recognizable" language was identical to language currently found in S19.2.2 of FMVSS 208. That language was added to the standard in a 2022 final rule on Occupant Protection for Vehicles with Automated Driving Systems. In the preamble to that final rule, we explained that that provision would not permit a single telltale for both front outboard seating positions: "[t]he Alliance and GM requested allowing a single telltale for both front outboard seating positions. It is NHTSA's position that, while a single telltale unit that distinguishes both indicators would be acceptable, a single light indicating the suppression status of both air bag systems, but not distinguishing their individual state of suppression would not. Separate suppression telltales clarify which associated seating position is suppressed, allowing the corresponding passenger to respond to the information with appropriate action." 87 FR 18560. While NHTSA continues to believe that requiring separate telltales for two front seating positions was justified for the reasons given in that rulemaking, after considering the comments, we believe that it would be appropriate for this final rule to allow a single telltale for two seating positions, as long as the visual warning clearly identifies the seating position(s) for which the warning is intended.

¹⁸⁶ 88 FR 61674 61742–43 (Sept. 7, 2023) (proposed front and rear warnings at S7.5(b)(5) and S7.5(c)(5), respectively). Proposed S7.5(c)(1)(v), which also required that the rear seat belt visual warning not be overridden, was redundant. This issue is discussed later in this document.

consistent with the current requirements in FMVSS No. 101 for the driver's seat belt telltale which specify, among other things, that the seat belt telltale must displace any other symbol or message in that common space while the underlying condition for the telltale's activation exists.¹⁸⁷ We did not believe that the seat belt warning requirements would interfere with warnings for other safety systems because we believed that those other warnings have dedicated warning signals, and that manufacturers would have enough flexibility to determine the best way to implement the various warnings. For instance, warnings for another potential safety risk may be more aggressive than those for the seat belts. With regard to available space, we proposed that the visual signal might be displayed as a telltale on the instrument panel or on the vehicle's information display screen. We noted that manufacturers would also have to determine whether the driver and rear passenger seat belt visual warning would be treated the same. Neither ECE R16 nor Euro NCAP address interaction with other vehicle warnings.

Comments

A number of commenters expressed concern about the proposed requirement that the visual warning could not be overridden. HATCI, for example, commented that if manufacturers display the rear telltale in the visual information screen, they would display the rear seat pictogram in the same location often used to display advanced safety feature warnings such as Forward Collision Warning (FCW) or Automatic Emergency Braking (AEB) and may impede or prevent those warnings. Auto Innovators commented that several automakers currently have warning systems that use a contextual display diagram to provide the driver with information on the status of passenger belt use. However, they noted that these displays can be relatively large and necessitate sharing limited display space in the instrument panel, and therefore may need to be temporarily overridden to convey other safety urgent warnings.

To address this concern, Auto Innovators, NADA, Nissan, Rivian, Honda, and HATCI requested that NHTSA remove the proposed override requirements, or provide a general

¹⁸⁷ 49 CFR 571.101, S5.5.5. See also S5.5.2 ("The telltales for any brake system malfunction required by Table 1 to be red, air bag malfunction, low tire pressure, electronic stability control malfunction (as of September 1, 2011), passenger air bag off, high beam, turn signal, and seat belt must not be shown in the same common space.")

¹⁸³ Section 8.4.3.2.

exception that manufacturers have discretion to prioritize other safety relevant warnings as needed. Auto Innovators commented that NHTSA should harmonize with ECE R16 and remove the override requirements for both front and rear row seating positions to provide flexibility for manufacturers to implement in-vehicle displays such that important information can temporarily override the reminder alert on an as-needed basis.

Specific to the front reminder, HATCI recommended allowing a warning displayed in the vehicle's information display screen to be temporarily suppressed when it is necessary to alert or redirect the driver's attention to an advanced safety warning related to vehicle operation. On the other hand, Honda commented that the front seat belt unfastened telltale, as currently specified in FMVSS 101, should remain a dedicated warning that cannot be interrupted.

Auto Innovators supported providing manufacturers with the flexibility to prioritize safety alerts for the duration that other safety critical warnings may be required. Honda and Mercedes commented that it is not essential for the rear seat belt visual warning to be provided uninterrupted 100 percent of the time because it is supplemental to the audible warning. Because of this redundancy, in Auto Innovators' view, other critical information should be allowed to be presented to the driver.

Honda and Auto Innovators urged NHTSA to allow visual warnings, with the exception of the dedicated telltale currently specified in table 2 of FMVSS No. 101, to be temporarily overridden by system failure warnings and warnings requiring an urgent response. Honda stated that doing so would allow existing high-visibility display locations to convey the most urgent warning to the driver, while retaining a baseline warning that would convey whether there is an unbelted occupant. Honda and Auto Innovators argued that this approach would also align with the current FMVSS No. 101 requirements prescribed in section 5.5 where the seat belt unfastened symbol or text ("Fasten Seat Belts") must have a dedicated telltale, but other supplemental warnings may be displayed in a common display space. Auto Innovators requested additional clarification on the applicability of the override prohibition and whether it applies to suppression of the visual warning, audible warning, or both. It requested that both be able to be overridden.

Honda and Auto Innovators also commented that the proposal would necessitate several changes to systems

currently deployed without any substantiated benefit. First, Honda explained that the visible display space for the driver, particularly the instrument cluster, is already allocated. Therefore, the proposal would require either the implementation of a new standalone indicator, dedicated to only the rear seating positions, or repositioning the warning to a less ideal area of the instrument cluster. Honda indicated an example in which it may become necessary to minimize the seat belt warning size in order for the warning to have a dedicated space. Honda and Auto Innovators argued that these changes would require substantial redevelopment and that implementing such a system within the proposed time frame would be impractical.

Rivian commented that the proposal does not contain volume or tone requirements for the chime. Rivian inquired about whether a change in volume for the audible chimes during the required duration of the warning to increase the volume of a competing safety-critical warning would or would not constitute an override.

Finally, InterMotive commented that the proposed requirements should not create interaction issues between different vehicle systems. InterMotive noted that it has a product in the market that would comply with the proposed requirements and that there have been no issues with the product interacting with other warning systems.

Agency Response

NHTSA has decided to finalize the proposal that the visual seat belt warning not be overridden by other vehicle warnings. However, in response to the comments we have decided to modify the proposal and permit the audible component of the front and rear seat belt warnings to be overridden by certain safety-critical warnings that require the driver to take some immediate action.

Visual Warning

We are finalizing the proposal that the visual seat belt warnings not be overridden by other vehicle warnings. FMVSS No. 101 has long required that the driver's seat belt visual warning not be displaced by other warnings. We do not believe that these amendments to the seat belt warning requirements should lead us to alter this requirement.¹⁸⁸ There are several reasons for this conclusion.

¹⁸⁸ The final rule does not prohibit manufacturers from designing vehicles so that a crash-imminent visual warning, or other visual warning that alerts the driver to take some immediate action, is more prominent than the seat belt warning.

First, while the final rule requires an additional telltale for the rear seat belt warning, we believe that there is sufficient room on the vehicle's instrument panel or on the vehicle's information display screen. Most safety telltales have a dedicated icon and display space. In particular, we believe most critical safety warnings have dedicated space for their respective icons/symbols. NHTSA's understanding of contemporary vehicle designs is that they are more likely to feature a larger combined display instead of separate instrument panels and center stack displays, so there should be sufficient space to present two simultaneous visual warning signals separately. Whether prohibiting override of the seat belt warning would require redesign of the display area depends on whether the competing warnings are supplemental. If they are, then not allowing the seat belt warning to be overridden would not necessarily require redesign; while the supplemental warning could not be displayed in the space common to the seat belt warning, the primary warning could still be displayed. However, if the competing warning were not simply supplemental, then we acknowledge that redesign would be necessary. If an OEM chose to redesign in such a way as to have dedicated space for all the different warnings, we believe it would be possible, but acknowledge it might be burdensome. However, we believe the final rule provides manufacturers with ample flexibility in terms of what types of warnings are allowed and not dictating a specific location for the warning.¹⁸⁹

Second, it would likely be rare for the seat belt warning and other warnings to occur at the same time. With respect to the front seat belt warning, because these systems have been in place for decades, and because FMVSS No. 101 has long required that the driver's seat belt visual warning not be displaced by other warnings, we believe these visual warnings have their dedicated display space already and thus do not warrant allowing override for other safety critical warnings because the warnings can activate simultaneously. With respect to the rear seat belt start-of-trip warning, given the relatively short duration (30 seconds) and timing (ignition on or start), it should be relatively unlikely for another safety-critical warning to be necessary in that time. With respect to the rear seat belt change-of-status warning, because we are requiring that the start-of-trip visual

¹⁸⁹ With respect to InterMotive's comment, its aftermarket product has a separate display, so it is not relevant to this discussion.

warning not be overridden, we believe that although a safety critical warning may need to activate at the same time as the change-of-status warning, the warnings will have been designed to not be in the same space and they can both activate simultaneously.

Third, extinguishing the seat belt reminder visual warning during other warnings might confuse drivers. If they notice that the warning deactivates and then re-activates with no corresponding change in seat belt status, they may believe the system is malfunctioning.

We are also declining to adopt Honda's suggestion to allow override of the larger warning and rely on the use of the single FMVSS No. 101 front seat belt warning telltale for all seats. We believe that this would confuse the driver, because the driver would not know what seat the warning applies to. The current FMVSS No. 101 seat belt warning requirements apply only to the driver's seat belt warning (with this final rule extending them to the front outboard passenger's seat and the rear seats), and not to other seating positions.

Audible Warning

The final rule, however, does permit the audible component of the seat belt warnings to be overridden by certain safety-critical warnings that require the driver to take an immediate action. As an initial matter, we clarify that the proposal would have prohibited the audible component of the reminder from being overridden as well as the visual component.¹⁹⁰ The proposed regulatory text contained a redundant provision that required that the rear seat belt visual warning not be overridden by other visual warnings that was likely the source of confusion.¹⁹¹ However, in response to the comments, NHTSA has decided to permit the seat belt audible warning to be overridden by certain warnings. Specifically, NHTSA believes it is reasonable to allow a pause in the audible seat belt warning to allow for a safety critical warning that requires the driver to take some immediate action. This includes crash avoidance warnings that require immediate action by the driver, such as braking or steering. With respect to Rivian's comment, a change in volume of the chime would not constitute an override of the warning because the final rule does not regulate audible warning volume. See Section VI.C.5, Audible Warning Characteristics.

5. Audible Warning Characteristics (Other Than Duration)

The NPRM proposed a variety of specifications for the audible warnings. The proposed requirements were different for the front and rear audible warnings.

For the rear change-of-status warning (which had a minimum required duration of 30 seconds), we proposed that the audible signal could be intermittent or continuous and that if intermittent, inactive periods longer than 3 seconds would not be counted toward the total duration of the audible warning. We did not propose to specify minimum duty cycle, chime frequency, or warning cycle.

For the front seat belt audible component of the start-of-trip and change-of-status warnings, we proposed more detailed requirements than for the rear seat belt audible warning because the minimum duration was much longer (essentially until all front outboard occupants were belted, for both the start-of-trip and change-of-status warnings). We proposed that the front seat belt audible warning may be continuous or intermittent. If intermittent, we proposed that, when active, the audible warning must be continuous or have a chime frequency of at least 0.5 Hz and a duty cycle of at least 0.2. The proposal defined, for an intermittent audible warning, the terms warning cycle, chime frequency, and duty cycle. The proposal defined "warning cycle" as consisting of period(s) when the warning is active at the chime frequency or continuously, and inactive period(s). A warning cycle would begin with an active period and would be 30 seconds in duration. "Chime Frequency" meant the repetition rate for an intermittent audible warning when the warning is active. "Duty Cycle" meant the total amount of time an intermittent audible warning is active during a warning cycle at the chime frequency or continuously, divided by the total warning cycle duration (30 seconds). These requirements were largely based on the results of a 2012 IIHS study on duty cycles.¹⁹² IIHS test protocols do not specify a duty cycle. We proposed that the same audible warning may be used for all seats. We did not propose a limit on the maximum duration of audible gaps for the purposes of determining the warning's total duration because we did not propose a finite minimum duration.

These proposals deviated from Euro NCAP and ECE R16's specifications in some ways. Euro NCAP specifies that for the front seats the audible signal must not have gaps greater than 10 seconds, and that gaps longer than 3 seconds would not count toward the warning's total duration. The final audible signal must be "loud and clear" for the driver. The 10 second limit, in addition to its specification of a 3 second gap limit toward the calculation of the warning's total duration, would not be sufficient to ensure a 0.20 duty cycle warning. ECE R16 also does not count warning gaps longer than 3 seconds toward the required minimum warning duration requirement.

Comments

Auto Innovators and NADA requested that NHTSA harmonize with ECE R16, which provides increased flexibility for manufacturers determining the characteristics of both front and rear row belt reminder alerts.

Auto Innovators recommended that the agency avoid defining characteristics (such as the warning and duty cycles) that would prevent a manufacturer from implementing different alerts such as escalating alerts.

Mercedes commented that its current seat belt reminder system design starts a baseline alert once the criteria have been met; if the conditions of the seat belts at the occupied seats have not changed after 30 seconds, the system will escalate the warning. Mercedes stated that this approach does not cause excessive annoyance to drivers and does not negatively affect the efficacy of the warning system. Mercedes urged NHTSA to remove the continuous series requirement for manufacturers to develop systems with effective escalating alerts. Consumer Reports also commented that audible warnings should escalate.

Honda sought clarity on the "warning cycle" requirements as proposed. Additionally, it encouraged the agency to consider whether adopting a warning that is continuously active (*i.e.*, 100 percent duty cycle) for a definite duration of 90 seconds would be as effective as the proposal to require an indefinite warning with a minimum duty cycle of 20 percent. Honda explained that its experience is that a continuous 90-second chime is sufficiently persistent and might offer greater effectiveness compared to an indefinite warning that delivers only a 6-second chime followed by a 24-second pause between chimes. IIHS, identifying the same concern, urged NHTSA to require auditory signals to be separated by no more than 3 seconds in addition

¹⁹⁰ See 88 FR 61674, 61742 (Sept. 7, 2023) (Proposed S7.5(b)(5) and S7.5(c)(5)).

¹⁹¹ See 88 FR at pg. 61743 (Proposed S7.5(c)(v)).

¹⁹² Kidd, D.G. (2012). Response of part-time belt users to enhanced seat belt reminder systems of different duty cycles and duration. Transportation Research Part F, 15, 525–534.

to requiring a minimum 20 percent duty cycle.

IIHS, supported by MADD, Advocates and Public Citizen, and the National Association of Mutual Insurance Companies (NAMIC), requested that NHTSA set minimum requirements for the volume and fundamental frequency of an auditory reminder to ensure it is “loud and clear” and will be noticed by vehicle occupants. IIHS provided supporting materials for the volume and fundamental frequency minimums that it requires. It also commented that NHTSA should require the same auditory reminder characteristics (*e.g.*, volume, fundamental frequency, gap between signals, duty cycle) for the front and rear rows. It stated that consistency makes the requirements easier to implement for automakers, easier for consumers to understand, and would align with current practice.

Agency Response

After reviewing comments, we are finalizing the proposed audible warning requirements for both the front and the rear warnings with minor changes. The first change is that the front start-of-trip warning now must meet only the same minimum requirements as the rear change-of-status warning, because both are time-defined. The second change is that we are adding a 10-second maximum gap limitation, similar to Euro NCAP, to both of these warnings. Because this final rule requires that gaps longer than 3 seconds do not count toward the required duration for these two warnings, without a maximum gap limitation there would be no limit on the amount of time it would take for the warning to reach the 30 second minimum cumulative warning duration. Allowing audible warnings that take too long to meet the 30 second minimum cumulative warning duration could degrade the effectiveness of the warning. We also believe that this requirement will not impede the manufacturer's design flexibility significantly and that these parameters meet the need for safety, are objective, and are practicable, because they provide an acceptable minimum level of effectiveness while allowing manufacturers latitude to optimize the warning for effectiveness and vehicle occupant acceptance. We continue to believe that the parameters stated for the front second phase warning—warning cycle, duty cycle, and chime frequency—are essential for an indefinite warning to meet the need for safety. Similarly, we believe that the 30-second front start-of trip-warning and rear change-of-status warning will be

effective with the specified signal gap limitations.

We have concluded that specifying minimum requirements for chime frequency and duty cycle for the second phase front audible warning is critical for ensuring a minimum baseline of effectiveness. This approach is based on the existing research which suggests that warning signal characteristics—such as duty cycle, frequency, volume, or timbre—can be adjusted to balance effectiveness and consumer acceptance but also shows that there is a minimum level of effectiveness provided by requiring a 30-second repeating warning cycle, with a minimum 0.5 Hz chime frequency and a 20 percent duty cycle.¹⁹³ Because ECE R16 requires very short time-defined alerts for the front seat belt warning (30 seconds), a duty cycle requirement is not necessary. We are incorporating a duty cycle requirement because in the context of an indefinite warning this requirement ensures a minimum time that the audible warning chime will be active. Additionally, we are not incorporating one of the approaches taken by ECE R16 and Euro NCAP to limit gaps in the audible warning (that gaps longer than 3 seconds would not count toward the warning's total duration) because we do not have research suggesting that it would increase effectiveness. Additionally, a sole requirement that gaps longer than 3 seconds would not count toward the warning's total duration would be inadequate in the context of an indefinite warning. Therefore, at this time, the agency is making the judgement that specifying a maximum signal gap of 3 seconds, either with or without a duty cycle, unnecessarily limits manufacturer's flexibility for the speed-initiated warning. Finally, this final rule does not prevent the design of escalating alerts, as some manufacturers such as Mercedes suggested in their comments. The duty cycle and chime frequency are minimum requirements, and the warning cycle specification does not require each cycle to be identical. Manufacturers may design escalating alerts within the minimum requirements of this final rule.

Additionally, given the required duty cycle for the front indefinite warning, we do not need to incorporate a maximum signal gap (*i.e.*, no gaps longer than 10 seconds) like the one used by Euro NCAP. Some comments suggested that the proposal contained a flaw: that given the 20 percent duty cycle and 30 second warning cycle requirements, this rule would allow a

warning that was active for 6 seconds, with a 24-second gap. However, this was not an error. Commenters did not demonstrate that the proposed warning would be ineffective, and that notion is inconsistent with available data. Increasing the duty cycle would, after a point, cause a reduction in signal gaps, even if no specific signal gap limitation were required. Therefore, if those commenters were correct, and the gap in the signal were a meaningful characteristic, we would expect higher duty cycles to increase effectiveness. However, the 2012 IIHS study on duty cycles, referenced in the NPRM, indicated that there was not a statistically significant difference in effectiveness between the 20 percent, 50 percent, and 100 percent duty cycles, which cycled over 30 second warning periods. This suggests that beyond the maximum gap established by a 20 percent duty cycle, reducing the gap does not increase effectiveness. Without demonstrable safety benefits, such a limit would unnecessarily restrict manufacturers' design flexibility. Therefore, we are not specifying a maximum signal gap in this final rule for the front seat belt indefinite warning. Only the time-defined front start-of-trip warning and the rear change-of-status warning have a signal gap rule (that gaps longer than 3 seconds would not count toward the warning's total duration) and maximum signal gap requirement (10 seconds). Importantly, meeting the requirements of this rule does not preclude designing an alert that complies with the signal gap rules in ECE R16. As an example, with a 20 percent duty cycle requirement and a gap duration of 3 seconds, a compliant alert could be active for at least 0.75 seconds regardless of the chime frequency.¹⁹⁴

With regard to requests to harmonize the requirements for the front and rear audible alerts, we do not believe it is necessary to require that the alerts have the same minimum characteristics across seating positions. Instead, we structured this final rule so that manufacturers, if they choose, may design one audible alert that complies with the requirements for both the front and rear alerts. We also continue to believe that given the short duration of the rear change-of-status warning, it is not necessary to specify characteristics such as duty cycle, chime frequency, and warning cycle. As we stated in the

¹⁹⁴ This was calculated as follows: $(0.2 = 0.75 / (3 + 0.75))$ (duty cycle is the total amount of time an intermittent audible warning is active (.75 seconds) divided by the total warning cycle duration (time active plus the duration of the gap)).

¹⁹³ *Id.*

NPRM, we believe establishing minimums for these characteristics is primarily needed for longer or indefinite alerts to ensure that the warnings have at least a minimum level of persistence. As such, since we have revised the requirements for the front seats so that the start-of-trip warning is required only to be at least 30 seconds long, we have decided that the audible portion of the start-of-trip warning should be subject to the same characteristics as the rear change-of-status warning. Therefore, as mentioned above, for consistency we are finalizing for both the front start-of-trip warning and the rear change-of-status warning only that inactive periods longer than 3 seconds would not be counted toward the total duration of the audible warning and that there be no gaps in the warning greater than 10 seconds. The proposed minimum characteristics for the audible component of the front seat belt warning, as finalized, will now only apply to the audible front seat second phase warning.

Finally, we are not incorporating the specifications for volume and frequency IIHS suggested. We have designed the final requirements to give manufacturer the flexibility to design warnings that are both effective and acceptable to consumers. We believe that sound volume and frequency can be used by manufacturers to make their warnings more effective and/or more acceptable, which is particularly important for an indefinite warning. Similarly, we are skeptical that a volume specification is needed because it has never been needed in the past. Since the early 1970s, FMVSS No. 208 has required an audible driver's seat belt warning with no additional audible warning requirements and manufacturers have been designing and implementing warnings under that structure without issue. Additionally, regarding frequency, IIHS indicated that nearly all systems tested already meet their suggested specification, so a regulatory requirement may not be needed. Nonetheless, as the new requirements are implemented, the agency will monitor these characteristics and assess whether additional rulemaking action is warranted.¹⁹⁵

6. Warning Deactivation and Acknowledgement and Hardening

In the NPRM, we proposed not to allow features which would permit the driver to acknowledge the warning and

cancel it before the end of the required duration or to deactivate the warning for an entire trip or for a specified time period (thus preventing it from activating in the first place).¹⁹⁶ We also did not propose requiring features to harden the system against circumvention due to concerns about the cost and effectiveness of such features. We sought comment on both issues and whether these features would impact the effectiveness of the rule.

ECE R16 allows both short-term and long-term deactivation of the audible warning (with a variety of restrictions, such as that it be more difficult to effectuate a short-term deactivation than to buckle the belt). Euro NCAP does not provide any specifications for deactivation or acknowledgement of the warnings for the front seats; it allows acknowledgement only of warnings for rear seats, except for change-of-status warnings. Neither ECE R16 nor Euro NCAP requires hardening features.

Comments

Some commenters suggested making the visual warning, audible warning, or both dismissible, and presented a variety of approaches. For example, Auto Innovators and HATCI suggested harmonization with IIHS and ECE R16. HATCI specified making the dismissal procedure more complex than buckling the belt. NADA noted that dismissal or suppression would help address consumer acceptance concerns with the indefinite warning. Auto Innovators also suggested allowing deactivation of the audible rear seat warning. Auto Innovators believes that this approach would minimize potential consumer acceptance issue in circumstances where there may be a frequent change in the status of rear row occupancy and movement of occupants between seating positions such as ridesharing. Rivian recommended that NHTSA permit a reset or discontinue feature for instances in which a system with occupant detection detects that a seat becomes or is unoccupied to clear the audio-visual warning for front and rear occupants who exit the vehicle. Consumer Reports commented that it would be reasonable to allow drivers to “acknowledge and dismiss” warnings on a trip-by-trip basis to address drop-off situations, seat position changes, and situations involving fastening the wrong buckle.

Anonymous #24 and Anonymous #33 commented that a potential issue with the rear seat belt warning systems is the frequency with which individuals use rear seat space for storage or transportation of items large enough to

trigger a seat belt warning system. Accordingly, Anonymous #24 argued that there should be an option for the vehicle operator to dismiss the warning in situations in which the seat belt reminder system is triggered by items other than people in the rear seat.

Regarding hardening features, Auto Innovators and HATCI did not support additional hardening features due to the added technical complexity and implementation cost that would be required to reduce the potential for intentional and inadvertent defeat and activation.

On the other hand, Ms. Tombrello commented that it is important to address occupants who may intentionally try to circumvent seat belt reminder systems such as a scenario in which seat belts are buckled while passengers sit on top of the belt.

GM commented that NHTSA should also consider allowing suppression or dismissal of the front seat reminder audible warning in specialty vehicles such as police cars to allow for cases where the officer needs to communicate, whether with other law enforcement, first responders, or on radio devices, without the interference of background chimes in the vehicle.

Agency Response

The final rule does not allow deactivation or acknowledgement and dismissal of the front or rear seat belt warnings. As 87.7 percent of front seat occupants already always use their seat belts, the large majority of the overall population will not encounter the indefinite warning and, therefore, are unlikely to find it annoying. Furthermore, based on the Kidd and Chu study, we have at the very most only 8.4 percent (5.4 percent (never users) + 3.0 percent (44 percent × 6.9 percent of sometimes users)) of the total population that would not be accepting of this as a standard feature. Therefore, allowing deactivation or acknowledgement and dismissal, would reduce safety benefits of the final rule even though there is general acceptance of this feature. Even temporary dismissal can reduce effectiveness by increasing the time before a change-of-status situation is addressed. Additionally, warnings lose effectiveness if drivers regularly dismiss the warning. Instead of deactivation or dismissal, this final rule contains multiple provisions and changes from the NPRM designed to maximize consumer acceptance while retaining the effectiveness of the belt warnings. The alerts required are now either short duration (for which driver annoyance is low) or are active in situations where

¹⁹⁵ Accordingly, we explain in Section VI.C.4, Interaction with other vehicle warnings, that a change in the volume of the audible warning would not constitute an override of the warning.

¹⁹⁶ 88 FR 61674, 61704 (Sept. 7, 2023).

belt use is critical. For instance, the start-of-trip audible warning system for the front seats and the change-of-status audible warning system for the rear seats now only have a 30 second minimum duration, which is short enough to have only a limited consumer annoyance impact. An indefinite duration audible warning is required only for front seats for speeds at or over 10 km/h (6.2 mph), at which point allowing deactivation or dismissal not only reduces effectiveness but defeats the purpose of an indefinite alert. There is also a variety of research, cited throughout this document and in the NPRM, regarding the high level of consumer acceptance for seat belt warning systems.

Additionally, a few commenters such as Consumer Reports brought up scenarios that may generate false warnings, such as passenger pick-up and drop-off, or rear seat occupants switching seats during a trip, for which they argued that driver deactivation (or dismissal) is the appropriate response. This comment does not convince the agency that deactivation or dismissal is needed because in this final rule we have addressed many of these scenarios through other means. Regarding passenger pick-up and drop-off, this final rule allows systems to treat a door opening as the start of a new trip, resetting the change-of-status warning for the rear seats. For the front seats, the finalized requirements require only a visual change-of-status warning (assuming that, because the vehicle is stopped in a pick-up and drop-off scenario, the second phase warning would not activate), but the door reset provision would still apply to that visual change-of-status warning. For seat-switching in the rear, this final rule now contains a provision allowing a system to deactivate the warning if the system has determined that rear occupants have switched seats.

We also received comments regarding items placed on the rear seat, which is addressed elsewhere in this final rule. We note here that this rule does not preclude designs that do not activate a passenger seat belt warning if the seat belt is fastened and no one is in the seat. Thus, nuisance warnings due to cargo could be prevented by buckling the seat belt or placing the cargo somewhere else. NHTSA understands that these provisions may not account for all scenarios and warnings may still cause some unneeded annoyance. However, we believe that this rule properly balances effectiveness with consumer acceptance. Therefore, NHTSA is not going to allow deactivation or dismissal in this final rule.

We also note two items in response to some commenters' requests to harmonize with ECE R16 to allow deactivation and dismissal of front warnings. First, regarding the visual alert, this final rule is harmonized with ECE R16 in that it does not allow dismissal. This is in part because visual warnings cause little annoyance to the driver and have a low impact on consumer acceptance. Second, commenters such as NADA stated that their reasons for seeking harmonization on deactivation or dismissal centered on consumer acceptance grounds. As noted, these concerns have largely been addressed through other means. Additional harmonization may reduce this rule's effectiveness even if, as some commenters suggested and ECE R16 requires, the rule were to require a short-term deactivation to be more difficult than buckling the belt. Therefore, we have determined not to harmonize on deactivation or dismissal of the audible warnings.

We have also decided not to incorporate required hardening features or features to prevent circumvention of the system because, as some commenters pointed out, they increase the cost and complexity of warning systems without providing corresponding benefits. Although these requirements could increase benefits for the hardcore belt non-users, these benefits are unclear because most rear seat belt non-users are not hardcore and are less likely to intentionally circumvent the warning system.¹⁹⁷ We note that manufacturers do have the discretion to incorporate such features if they choose to. This decision harmonizes with ECE R16 and Euro NCAP, which do not require such features.

Finally, we are not including a deactivation provision for the front seat belt warning specific to law enforcement vehicles. FMVSS No. 208 has required a warning system for the driver's seat in law enforcement vehicles for many years without issue. Commenters did not suggest that extending the requirement to the front outboard passenger seat would create a concern. NHTSA understands that there may be additional considerations for law enforcement vehicles given some of the changes to the audible alert itself in this rule. However, currently NHTSA does not believe these considerations are sufficient to change the requirements specific to such vehicles.

¹⁹⁷ Highway Loss Data Inst., Ins. Inst. for Highway Safety, Unbelted: Adults Admit They Often Skip Belts in Rear Seat, 52 Status Rep. 1, 3 (Aug. 3, 2017).

Like emergency vehicles, these vehicles are often modified by the purchaser to accommodate specific concerns, and the FMVSS do not prohibit such purchaser modifications. As with emergency vehicles, NHTSA will also monitor the situation and can modify this approach in future rulemaking actions, if necessary.

7. Vehicles With Automated Driving Systems

In the NPRM, NHTSA proposed incorporating certain language to tailor aspects of this rule to vehicles with ADS, which may be designed differently, to maintain the same level of occupant protection in vehicles equipped with ADS as in conventional vehicles. For example, such vehicles may not have a driver's designated seating position or may have multiple front outboard passenger seating positions. Therefore, we proposed that the front passenger warning apply to "any" front outboard passenger. The addition of the term "any" makes it clear that, in some vehicles, there may be more than one front outboard passenger seating position. We also noted that in a dual-mode vehicle, the left front seat is still by definition a driver's seat, regardless of the operational status of the vehicle, so a provision to just have a warning for the driver and right outboard passenger would be sufficient to assure that all front seat outboard occupants receive a warning. Additionally, because some ADS-equipped vehicles have one or no front outboard passenger seats, we also proposed to align this final rule with the 2022 final rule updating occupant protection standards to incorporate considerations for vehicles with ADS and apply the same seat belt warnings for front inboard passenger seats as front outboard seats. Finally, we noted that NHTSA was not prepared to propose a solution for the visibility of rear seat belt warnings for ADS-equipped vehicles and that it was beyond the scope of the proposed rule.

Comments

AVIA commented that as NHTSA continues to promulgate safety standards to integrate emerging technologies into motor vehicles, AVIA encourages the agency to ensure that any new regulatory requirements include considerations for how autonomous vehicles can meet those standards.

Tesla supported the proposed warning on vehicle start up for front outboard passenger seats because it aligns with manually driven vehicles as well as partial and full automation, but

asked how the change-of-status warning for front seats requirement will be applied to autonomous vehicles.

Agency Response

We have added language to tailor aspects of the rule for vehicles with automated driving systems in order to maintain the same level of occupant protection as this final rule requires for conventional vehicles. Some of these elements are discussed in other sections of this document specific to aspects of the rule. For example, in Section VI.B.4 we discuss an exception to the front seat visual warning visibility requirement that is necessary for dual-mode ADS and in Section VI.B.5 we address occupant detection as it relates to dual-mode ADS. Here, we note a few additional items.

First, we are finalizing without change two items from the NPRM: one, to apply the front seat belt warning requirements to “any” front outboard designated seating position and two, to apply the same seat belt warnings for certain front inboard passenger seats as front outboard seat. We did not receive comment specific to these items intended to accommodate vehicles with ADS that may not have conventional seating configurations.

Second, to accommodate other changes in the final rule, we have included language regarding telltale visibility as applied to certain vehicles with ADS to maintain the same level of occupant protection as this rule requires for conventional vehicles. As noted in Section VI.B.4, this rule requires the front outboard passenger seat belt visual warning to be visible only to the driver. Additionally, this final rule requires that for telltales associated with multiple front outboard seats, the seat with which each telltale is associated must clearly identify the seating positions for which the warnings are intended. This requirement is discussed further in Section VI.C.3. As many commenters pointed out and we explained, in vehicles with a driver, the front outboard passenger can receive the audible signal and the driver can communicate the additional information provided by a visual signal to the front outboard passenger. However, in vehicles with ADS, there may not be a driver’s designated seating position with a human driver who can receive and communicate this information. Instead, as we noted in the NPRM, in a vehicle without manually operated driving controls, one of the front passengers may be performing the management role for the duration of a trip, such as in the case of a parent and children. In this circumstance, the most appropriate

recipient of the visual warning is likely to be a front passenger.

For these reasons, we are finalizing two provisions. First, we are finalizing as proposed that for vehicles that do not have a driver’s designated seating position, the visual warning for each front outboard passenger designated seating position must be visible from each front outboard passenger designated seating position. Second, we are now requiring that for vehicles without a driver’s designated seating position, for telltales associated with multiple front outboard seats, the seats with which each telltale is associated must clearly identify the seating positions for which the warnings are intended. These requirements maintain the same level of occupant protection as is required for conventional vehicles and is also consistent with the logic of the NPRM.¹⁹⁸

As we stated in the 2022 final rule on occupant protection for vehicles with ADS, these requirements are intended to apply only to ADS-equipped vehicles that have seating configurations similar to non-ADS vehicles, *i.e.*, forward-facing front seating positions (conventional seating). As we stated in the 2022 final rule, additional research is necessary (some of which is currently underway) to understand and address different safety risks posed by vehicles with unconventional seating arrangements (*e.g.*, rear-facing seats or campfire seating), including with regards to seat belt reminder systems.¹⁹⁹ Therefore, as we stated in Section VI.B.3 of this document in response to AVIA’s comment about front seat occupants exiting through a door not adjacent to their seat, considerations for vehicles with unconventional seating (and other related considerations, such as bi-directional vehicles) are out of scope of this final rule. Additionally, as noted in the NPRM, the visibility of rear seat belt warnings for ADS-equipped vehicles is also out of scope of this final rule because further research is needed before the agency proposes a solution. Research on this topic is underway.

Finally, we believe the final rule has addressed in prior sections Tesla’s concern about change-of-status warnings for front seats in vehicles operating in an automated state.

¹⁹⁸ As discussed in Section VI.B.4, many commenters expressed concerns with redesign costs associated with a requirement that the telltale be visible to the passenger. Although NHTSA sought comment on aspects of the NPRM regarding vehicles with ADS, commenters focused their concerns on conventional vehicles. Therefore, NHTSA does not believe that such concerns are present to the same degree with vehicles without a driver’s designated seating position.

¹⁹⁹ 87 FR 18560.

8. Test Procedures

In the NPRM, NHTSA proposed that NHTSA could test any system under any combination of seat occupancy or seat belt use status. The proposed test procedures also specified how the agency would test a seat belt warning system with a designated seating position that is occupied. The finalized occupancy criteria (the test dummies and the height and weight criteria for human beings, to be used instead of test dummies at the manufacturer’s option, that will be used to determine occupancy) are discussed in Sections VI.A.2.a.iv (rear) and VI.B.5 (front passenger). The NPRM also proposed that to pass the test, the human beings or test dummies used would be seated, the seat belt use and ignition conditions would be applied, and the required signals must operate (that is, either activate or not activate) accordingly. The test could be conducted with the seat and adjustable belt anchorages in any position. The NPRM also noted that for rear designated seating positions with occupant detection, the agency would perform the test with the seat in any position, the seat back in the manufacturer’s nominal design riding position, and any adjustable anchorages in any position.

Comments

Auto Innovators requested that NHTSA publish the proposed test procedures used to evaluate vehicle compliance before issuance of the final rule. Auto Innovators stated that this request is particularly relevant given the differences in the requirements in the NPRM when compared to the current requirements of ECE R16, and stakeholders’ desire for the opportunity to address any technical concerns before the rule or test procedure is finalized. In particular, Auto Innovators sought additional information regarding how NHTSA will evaluate the performance of an indefinite alert.

Auto Innovators also commented that the agency should more closely align its requirements with ECE R16 and Annex 18 to reduce test burden costs, in particular regarding the process for evaluating the conditions for warning activation. Auto Innovators also commented that the proposal increases the complexity of evaluating vehicle compliance and may require specialized equipment or similar measurement devices to verify the characteristics of the proposed audible warning.

Finally, Auto Innovators recommended that NHTSA ensure a technology neutral approach, both for performance requirements and test

procedures, towards the means used to determine occupant detection.

Agency Response

The final rule incorporates several changes to the proposed regulatory text for the test procedures:

- *Definition of “seat centerline”*—Both the proposed and finalized test procedures specify the seating of the test dummy by reference to the “seat centerline.” The final regulatory text includes a definition of this term.

- *Occupancy criteria*—The proposed regulatory text specified these in the definitions section. In the final rule these have been moved to the test procedures section and edited for clarity.

- *Test procedures*—The final rule clarifies several aspects of how the test may be carried out. The final rule does not include the proposed specification that if a human occupant is used for testing, that they be dressed in a cotton T-shirt, full length cotton trousers, and sneakers, instead we are specifying that the dummy or human occupant may be clothed in any manner because clothing should not change the performance of the system. With respect to carrying out testing, the proposed regulatory text simply stated, “Place the ignition switch in the “on” or “start” position and verify that the seat belt warnings function as specified in S7.5(b) and S7.5(c), for any combination of seat belt use or seat occupancy at any designated seating position(s).” The final rule clarifies that NHTSA could test any of a number of test parameters: “Verify that the seat belt warnings function as specified in S7.5(b) and S7.5(c), for any combination of seat belt use (at any seating position), seat occupancy (at any seating position), removable seat electrical connection status (connected or not connected, for any removable seat), vehicle speed, and door status (open or closed, for any door), except that the door shall not be opened when the vehicle is in motion.”

NHTSA is not publishing the compliance laboratory test procedures before publishing this final rule as requested by Auto Innovators. To investigate whether specific vehicles or products comply with the FMVSS, NHTSA’s Office of Vehicle Safety Compliance (OVSC) contracts with labs to conduct compliance testing. OVSC laboratory test procedures are prepared for the limited purpose of use by contracted independent laboratories conducting compliance tests for the OVSC. OVSC laboratory test procedures are distinct from regulatory test procedures that are included as part of most FMVSS. OVSC laboratory test

procedures are generally based off of the regulatory test procedures in specific FMVSS but are prepared by the agency to give contracted labs specific instructions on how to conduct a specific test. The OVSC laboratory test procedures are simply agency guidance for contracted labs and do not constitute official agency action (e.g., a rule). In some cases, the OVSC laboratory test procedure, or the report produced as a result of the work performed by the contracted laboratory, does not include all of the various FMVSS minimum performance requirements. Because the OVSC laboratory test procedures are not part of the regulation, NHTSA is not required to publish them prior to or with this final rule. Typically, NHTSA will publish the OVSC laboratory test procedures on its website for transparency. NHTSA plans to publish the OVSC test procedures for this rule in the future.

NHTSA also declines to specify in the FMVSS the exact amount of time that it will test the indefinite front outboard seat belt warnings. NHTSA believes that specifying a finite testing duration would weaken the rule by enabling systems that are not indefinite to meet the test. Manufacturers must certify that their products comply with all applicable FMVSS, and they determine what steps are necessary to ensure that every product manufactured meets the applicable requirements. The procedures in this rule are sufficiently detailed and objective for manufacturers to self-certify that their systems meet the indefinite warning requirement.

NHTSA agrees with Auto Innovators that this final rule should be technology neutral toward occupant detection, and this rule is technology neutral. As discussed in Section VI.B.5, this final rule does not require occupant detection capability for the driver’s designated seating position. It provides manufacturers the flexibility to optionally choose to certify compliance to the same occupant detection criteria applied to the outboard passenger seats. Additionally, while the final rule requires occupant detection capability for the front outboard passenger designated seating position and specifies seat occupancy criteria for testing front outboard passenger designated seating positions and rear designated seating positions, it does not specify the methods that must be used to detect occupancy. Manufacturers may choose occupant detection technologies at their discretion, so long as they can certify that the vehicle meets the requirements of this final rule and the test procedure it specifies. The same is true for the technology that OEMs may

use to detect whether the seat belt is in use.

Throughout this final rule NHTSA has considered harmonization and has taken care, where possible, to incorporate performance requirements and test procedures that can enable systems to also meet ECE R16 requirements to minimize testing and compliance costs for manufacturers. Therefore, while this final rule does not fully align with the test procedures in ECE R16 Annex 18, they are largely compatible. As noted in the NPRM, ECE R16 operates in a type approval regime, while the FMVSS use self-certification and must be objective. For this reason, the final rule departs from Annex 18 when necessary to ensure that it is objective. Because of these necessary differences to meet statutory obligations, full alignment of the test procedures is not achievable.²⁰⁰

Finally, with respect to Auto Innovators’ concern about specialized test equipment needed to verify compliance with the required audible warning characteristics, this final rule does not establish test procedures that necessitate specialty equipment that laboratory test facilities would not already have readily available (e.g., a stopwatch) to verify compliance of the audible warnings.

VII. Regulatory Alternatives

In the proposal, NHTSA considered several major alternatives: harmonizing with the standards set in ECE R16 and Euro NCAP; requiring occupant detection and enhanced warning signals for the rear seat belt warning; requiring a warning for the front center seat; requiring an audio-visual seat belt warning for the front outboard seating positions with a duration not less than 90 seconds; and a few non-regulatory alternatives. For three of these alternatives (rear-seat occupant detection, front center seat warning, and 90-second front warning), NHTSA quantified the costs and benefits (see Section VIII.B). Although the proposal followed ECE R16 and Euro NCAP in a variety of ways, it also deviated from them in some important respects. The NPRM explained this deviation in detail. The NPRM also explained NHTSA’s tentative reasoning for not

²⁰⁰ The Safety Act establishes a self-certification process in which vehicle and equipment manufacturers certify that their products comply with all applicable FMVSS, which establish minimum performance standards that the product must meet. It is up to manufacturers to determine what steps are necessary to ensure that every product manufactured meets or exceeds the applicable requirements before the products are imported, sold, offered for sale, or introduced into interstate commerce in the United States.

selecting the other regulatory alternatives.

Comments

NHTSA received many comments concerning the regulatory alternatives. Comments regarding alternatives for specific aspects of the proposal are discussed throughout the preceding sections of the preamble. Many of these comments concerned harmonization with the relevant provisions in ECE R16, Euro NCAP, and the IIHS protocol. Safety advocates in several instances favored final requirements that would be more stringent or demanding than those requirements or protocols. On the other hand, industry commenters generally—although not always—commented in support of greater alignment with them. In this section, NHTSA summarizes and addresses comments that concerned harmonization generally, as well as comments concerning non-regulatory alternatives.

In addition to the more specific comments already addressed in this document, several industry commenters commented more generally in favor of harmonization with ECE R16 and Euro NCAP. Auto Innovators, Hyundai, HATCI, IEE, NAMIC, and Nissan commented in support of harmonizing the requirements with ECE R16 and Euro NCAP. Auto Innovators commented that harmonization with ECE R16 provides the agency with the greatest opportunity to ensure an objective and practical approach that meets the need for safety, while also minimizing regulatory burden and corresponding delays associated with developing region-specific features for the U.S. market. Auto Innovators expressed concerns with several areas where the agency has proposed alternatives to the requirements of ECE R16, which have already been widely adopted and implemented in other global markets. Auto Innovators argued that several fundamental aspects of the proposal (such as the triggering conditions) differ from the systems that consumers may have experienced in both previous and current model year vehicles and would result in significant negative pushback from the public if the final rule is adopted without change.

Hyundai similarly commented that although it supported the proposal, its largest caveat to full support was the proposal's departure from ECE R16's requirements. Hyundai characterized these differences as minor in the sense that they do not represent any fundamental change to the core elements or safety benefits of NHTSA's proposal but stated that these "minor"

differences could have significant adverse implications with respect to safety benefits, customer acceptance, unnecessary country-specific designs, costs, and required lead times. Hyundai commented that the benefits of international regulatory harmonization have been recognized and espoused by government and industry organizations, including NHTSA, for many years. Hyundai argued that these benefits include improved regulatory and NCAP provisions that reflect the international consensus of leading government and industry experts, more efficient development and timely enactment of state-of-the-art vehicle safety provisions, enabling international trade and cooperation by reducing nontariff barriers, more effective use of finite government and industry resources, avoidance of country-specific requirements, and significantly reduced consumer costs.

HATCI also noted that the requirements that the agency has proposed would require significant interior redesign which would require longer design lead time. HATCI encouraged the agency to further harmonize with established international regulations and rating programs, allow for more flexible telltale design, and extend the effective dates.

GM, NSC, SRN, Hyundai, HATCI, and an individual commenter also supported the inclusion of seat belt reminder ratings in NCAP. Hyundai recommended that NHTSA coordinate its FMVSS and NCAP initiatives to pursue maximum safety benefits in the shortest feasible timeframes; by virtue of being voluntary, NCAP enables vehicle safety technology to be socialized in a non-compulsory way to enhance consumer acceptance. Hyundai suggested that a follow-on NCAP action might incentivize some form of a so-called "Seat Belt Assurance System" (e.g., limiting infotainment functionality or constraining vehicle speed when an occupant is unbuckled) to further motivate buckling up. Hyundai stated that this suggested NCAP update could also specify requirements regarding bypassing/disablement to obtain credit for the specified Seat Belt Assurance System. Hyundai argued that a timely progression of FMVSS and NCAP actions by NHTSA could appreciably improve seat belt use rates and consumer acceptance of these vehicle interventions. SRN commented that if NHTSA did not require the full-status rear seat warning system, it could reward vehicles with these more effective systems with NCAP points.

Consumer Reports agreed with NHTSA's decision not to pursue either of the non-regulatory alternatives presented in the ANPRM.

Agency Response

Because NHTSA is amending FMVSS No. 208 to include these new requirements, it is not necessary to incorporate these requirements into NCAP. To help consumers make purchasing decisions, NHTSA currently indicates on a vehicle's NCAP safety rating web page if the vehicle has a seat belt reminder system for the front and/or rear passengers. NHTSA may at a later date, as suggested by some commenters, consider using NCAP to incentivize enhanced rear seat belt reminder systems. NHTSA also concurs with Consumer Reports not to pursue either of the non-regulatory alternatives presented in the ANPRM.

In developing the requirements in this final rule, NHTSA considered the requirements in ECE R16, as well as materials published by Euro NCAP and IIHS. NHTSA agrees with the commenters that harmonization is an important goal and agrees that in some specific instances that the proposal should be modified to align more closely with ECE R16, Euro NCAP, and IIHS.

Executive Order 13609 provides that international regulatory cooperation can reduce, eliminate, or prevent unnecessary differences in regulatory requirements. Similarly, the Infrastructure, Investment, and Jobs Act directs that "[t]he Secretary [of Transportation] shall cooperate, to the maximum extent practicable, with foreign governments, nongovernmental stakeholder groups, the motor vehicle industry, and consumer groups with respect to global harmonization of vehicle regulations as a means for improving motor vehicle safety."²⁰¹ (These directives are also discussed in the Regulatory Analyses section.) At the same time, the Safety Act authorizes NHTSA to establish motor vehicle safety standards that, among other things, meet the need for safety and are practicable.

Consistent with these directives, and after NHTSA has carefully considered the comments, the final rule more closely aligns with those regulatory alternatives where warranted but continues to deviate from them where necessary. The preceding sections of this document discuss in detail the ways in which the final rule follows and differs from these regulatory alternatives and explains why we believe the

²⁰¹ H.R. 3684 (117th Congress) (2021) section 24211.

departures are justified. The major provisions in the final rule and the regulatory alternatives, including the differences between them, are summarized in table 10.

TABLE 10—COMPARISON OF FINAL RULE WITH REGULATORY ALTERNATIVES

Topic	Final rule	UN ECE R16	Euro NCAP	IIHS
Rear Seat Belt Warning Requirements				
Applicability	Excludes small school buses, law enforcement vehicles, and ambulances.	Excludes all small buses and more categories of special-purpose vehicles.	Excludes commercial vehicles and most vehicles over 3,500 kg.	N/A.
Occupant detection	Not required	Not required	Awards points only for systems with occupant detection.	Not required.
Visual Warning on vehicle start-up: Type of information conveyed by visual signal.	How many or which seat belts are in use and/or not in use.	Indicates at least all rear seats to allow the driver to identify any seat where the belt is not in use.	Indicates the rear seat belts in use and not in use.	Whether the seat belt at each rear seating position is in use or not in use.
Triggering Conditions	Ignition switch on/start or (for EVs) propulsion activation.	Master control switch activated	Ignition switch is engaged (engine running or not).	Engine/motor on; allows 10-second delay.
Seat Occupancy Criteria	6-year-old	5th percentile female	5th percentile female	Seated human or dummy in front passenger seat and human in rear seat (unspecified size).
Duration	60 seconds	60 seconds	60 seconds	60 seconds.
Audio-Visual Change-of-status warning: Duration	30 seconds	30 seconds	60 second visual warning; 30 second audible warning.	30 seconds.
Triggering Conditions	Fastened belt becomes unfastened, the vehicle is in forward or reverse, and all rear doors remain closed.	Fastened belt becomes unfastened and certain distance, time and/or speed threshold(s) are exceeded.	Fastened belt becomes unfastened, certain distance, time and/or speed threshold(s) are exceeded, and all rear doors remain closed.	Fastened belt becomes unfastened, certain distance, time and speed threshold(s) are exceeded, and all rear doors remain closed.
Front Seat Belt Warning Requirements				
Applicability	Excludes all heavy vehicles	Does not exclude heavy vehicles used for carrying goods.	N/A	N/A.
Front Seating Positions	Front outboard passenger and driver (not center seat).	All positions in the same row as the driver.	All front row positions	Front outboard.
Visual Warning—start-of-trip: ²⁰² Triggering Conditions	Seat occupied, belt unfastened, ignition on/start or (for EVs) propulsion activation.	Belt unfastened, ignition or master control switch engaged.	Belt unfastened, ignition switch engaged.	Concurrent with audible.
Duration	Until belt is fastened	30 seconds	Until belt is fastened	Concurrent with audible.
Visual Warning—Change-of-Status: Triggering Conditions	Seat occupied, belt unfastened, ignition on/start or (for EVs) propulsion activation.	If belt remains unfastened and certain distance, time, and/or speed threshold (25 km/h (15.5 mph)) are exceeded.	Belt unfastened, speed over 25 km/h (15.5 mph).	Concurrent with audible.
Duration	Until belt is Fastened	At least 30 seconds not counting gaps over 3 seconds.	Until belt is fastened	Concurrent with audible.
Audible Warning—First Phase: Triggering Conditions	Seat occupied, belt unfastened, ignition on/start or (for EVs) propulsion activation.	If belt remains unfastened and certain distance, time, and/or speed threshold (25 km/h (15.5 mph)) are exceeded.	Must be deployed before and certain distance, time, and/or speed threshold (25 km/h (15.5 mph)) are exceeded (“final” signal if other, higher thresholds are met).	Seat occupied, belt unfastened at ignition, continuous forward motion of at least 10 km/h (6.2 mph).
Duration	30 seconds	At least 30 seconds	May not exceed 30 seconds (“final” signal at least 90 seconds).	90 seconds.
Audible Warning—Second Phase: Triggering Conditions	Seat occupied, belt unfastened, and a speed ≥ 10 km/h (6.2 mph).	Fastened belt becomes unfastened and certain distance, time and/or speed threshold(s) (25 km/h (15.5 mph)) are exceeded.	Fastened belt becomes unfastened, vehicle speed over 25 km/h (15.5 mph) (“final audible signal” if over 40 km/h (24.9 mph)).	Occupied seat, belt unfastened, continuous forward motion of at least 10 km/h (6.2 mph).
Duration	Until belt is fastened or speed < 10 km/h.	At least 30 seconds	At least 90 seconds	90 seconds.

²⁰² The final rule makes no distinction between start-of-trip and change-of-status visual warnings. It

has been combined into one single visual warning requirement, so the triggering and duration

characteristics summarized here are for the single visual warning requirement.

TABLE 10—COMPARISON OF FINAL RULE WITH REGULATORY ALTERNATIVES—Continued

Topic	Final rule	UN ECE R16	Euro NCAP	IIHS
Visual Warning Characteristics	Must provide telltale specified in FMVSS No. 101, Table 2, the seat to which the telltale is associated must be clearly identified.	Specifies image identical to FMVSS No. 101, Table 2.	N/A	Indicate an outboard front-row seating position with an unfastened belt.
Other Requirements				
Audible Warning Characteristics: Cycle, Chime Frequency, Signal Gaps.	<i>Front First Phase and Rear:</i> Gap limitations. <i>Front Second Phase:</i> Specifies duty cycle, warning cycle, and chime frequency. No gap limitations.	Gap limitations	Gap limitations	Gap limitations.
Volume	No volume requirement	"easily recognizable by the driver".	Final audible warning must be "loud and clear".	Must be between 20 and 20,000 Hz and must include at least one dominant frequency between 500 and 2,250 Hz.
Warning Deactivation, Acknowledgement, and Dismissal.	Not permitted	Short and long-term deactivation of the audible warning with limitations, including that it must be more difficult to effectuate a short-term deactivation than to buckle the belt.	Acknowledgement allowed for rear seats but not for the change-of-status warning.	Rear visual signal may be cancelled by the driver.

VIII. Overview of Benefits and Costs

NHTSA has prepared a Final Regulatory Impact Analysis (FRIA) that assesses the benefits, costs, and other impacts of this final rule.²⁰³ For a more detailed discussion, please refer to the FRIA. The following sections present the benefits and costs of the final rule requirements for the rear and front SBWSs and the three major regulatory alternatives considered. It is important to note that the incremental benefits presented in the section stem not from the SBWS's function itself, but instead result from the increase in seat belt use brought about by the SBWS. Therefore, the incremental benefits associated with the final rule are comprised of the fatalities and non-fatal injuries prevented as a result of the increase in seat belt use from the SBWS.

A. Final Rule Requirements

NHTSA quantified the benefits and costs of the final rule requirements. This section presents a summary of the benefits and costs for the requirements on rear seat belt warning systems, front outboard seat belt warning systems, and the combined costs and benefits for both warning systems.

1. Rear Seat Belt Warning System

The September 2023 NPRM sought comment on the potential effectiveness,

benefits, and costs of a rear seat belt warning.

Comments

1. *Safety benefits for rear SBWS are underestimated:* Consumer Reports commented in support of the proposed rule stating that the preliminary regulatory impact analysis (PRIA) likely underestimates the safety benefits associated with the requirements for the rear seats. Consumer Reports commented that the analysis did not factor in the technological advancements of current vehicle fleets which will likely increase the rate of injury for unrestrained rear seat passengers. More specifically, Consumer Reports noted that crash avoidance systems that are associated with hard braking and pre-crash maneuvers may result in an increased rate of injury to unrestrained rear seat passengers.

Agency Response

Regarding Consumer Reports' comment on underestimating the benefits associated with rear SBWS, NHTSA has updated the target population in the final rule using the most recently available data along with adjustments to account for safety impacts of new required safety technologies that have yet to be applied to the fleet. These updates in the final rule correctly reflect the benefits for rear SBWS. This analysis does not project changes in ridership between front and rear seat occupants as such projections would introduce uncertainty into the

analysis. However, if ride sharing services increase rear seat occupancy, it is possible that benefits for rear seat occupants could be greater than those estimated in this FRIA.

2. *Require occupant detection for rear seats:* Commentors including Consumer Reports and NSC urged NHTSA to require SBWS with occupant detection for rear seats. These commenters also requested that the agency estimate benefits of the case that manufacturers would choose to implement negative-only or full-status warning system stating that the projected increases in seat belt use from the rule would likely be greater if NHTSA required the full-status compliance option for all applicable vehicles. Consumer Reports, citing findings of an IIHS study,²⁰⁴ noted that benefits for rear seat occupants may be underestimated as NHTSA did not account for increases in rear seat passengers resulting from consumers increasingly using ride sharing services in recent years.

Agency Response

The final rule does not require occupant detection for the rear SBWS but permits it. Based on comments received, the final rule differs from the proposed rear SBWS requirements by permitting positive-only, negative-only,

²⁰³ The FRIA is available in the docket for this final rule and may be obtained by downloading it or by contacting Docket Management at the address or telephone number provided in the ADDRESSES section of this document.

²⁰⁴ Kidd and O'Malley titled "Increasing seat belt use in the United States by promoting and requiring more effective seat belt reminder systems." <https://pubmed.ncbi.nlm.nih.gov/37267012/#:~:text=If%20every%20vehicle%20in%20the,85.9%25%20in%20the%20rear%20row.>

and full-status SBWS without the use of occupant detection. We believe that while the full-status system (with occupant detection) does provide the driver with the most information, as we explained in the NPRM, we continue to believe that the other allowable types of systems without occupant detection would provide the driver with sufficient information to easily determine whether and where there are any unbuckled occupants and request that they fasten their seat belts. Although some vehicle manufacturers may implement warning systems with occupant detection, NHTSA estimated benefits based on vehicle manufacturers meeting the minimum requirements. Therefore, NHTSA estimated the incremental benefits and costs associated with the least costly compliance option, which is a rear SBWS without occupant detection.

The study by Kidd and O'Malley, cited by Consumer Reports, compares the effectiveness of SBWS with different warning durations and system interlocks in increasing seat belt use. The study found that enhanced reminders, in particular more persistent reminders, are more effective in increasing seat belt use. Although system interlocks are effective in increasing seat belt use, they are found to be much less acceptable than audible reminders and more likely to be circumvented. The 2019 IIHS study by Kidd (used in the PRIA and in this final rule) found that moving from a 7-second warning to either a 90-second or indefinite duration warning increased seat belt use for part-time users by 30 percent and 34 percent respectively. Overall, these studies provide evidence that the relative annoyance or duration of a warning increases the effectiveness of a SBWS. However, they do not provide any data that can be used to estimate the increase in seat belt use generated by adding occupant detection to the rear seat SBWS.

Due to a lack of data, NHTSA is unable to estimate the increase in seat belt use for a SBWS with occupant detection compared with a SBWS without occupant detection. Therefore, the agency is unable to estimate incremental benefits for the regulatory alternative with occupant detection. Instead, NHTSA considered how much more effective a SBWS with occupant detection would need to be to generate the same net benefits as the final rule, which allows for a SBWS without occupant detection in the rear seat. Overall, a SBWS with occupant detection would need to increase seat belt use by approximately two to three times that of a SBWS without occupant

detection to generate the same level of net benefits. As it is not likely that a SBWS would be two or three times as effective as one without occupant detection, this regulatory alternative was not selected. However, while occupant detection was not included as a requirement in the final rule, the finalized requirements do allow systems that have occupant detection.

3. Cost burden for requiring SBWS on rear seats for high occupancy vehicles: Mercedes-Benz AG commented on the cost burden of implementing SBWS for rear seats in high occupancy vans. The commenter noted that for each removeable seat, an electronic control unit (ECU) would be required along with other hardware components and corresponding software. Additionally, one commenter indicated concern that the agency did not fully account for the potential burden on industry; in particular, in cases in which businesses will incur the cost of adding SBWS to vehicles with a large number of rear seats, such as vans and buses.

Agency Response

In estimating the costs associated with the final rule, the agency made use of end-user costs estimates from a teardown study. Those unit costs were then applied on a per-seat basis to the average number of seats per vehicle and average number of new light vehicles sold annually to estimate the total annual cost. NHTSA did not estimate costs on a per-manufacturer or per-business basis but instead provided the total annual cost to end users. This estimate reflects not only the cost of materials and labor incurred by manufacturers, but also non-production costs and profit reflected in the price passed down to consumers. Additionally, while the per-vehicle cost may vary based on the number of seats per vehicle, in vehicles with more rear seats, both costs and benefits will increase. While costs increase based on the number of seats in a vehicle, benefits increase not only based on both the number of restrained occupants that avoid injury due to their use of seat belts, but also due to the reduction in potential injuries from harmful interactions between unrestrained occupants.

4. Lack of harmonization with existing standards increases cost: Commenters, including Auto Innovators and Tesla, encouraged harmonizing with other regulatory and safety ratings requirements. More specifically, Auto Innovators stated that the agency should consider potential costs associated with redesign due to misalignment with ECE R16.

Agency Response: Throughout this final rule NHTSA has considered harmonization and has taken care to incorporate performance requirements and test procedures that can, in many cases, enable systems to also meet ECE R16 requirements to minimize testing and compliance costs for manufacturers. However, NHTSA declines to fully harmonize with the test procedures in ECE R16 Annex 18. Since NHTSA's regulations follow a self-certification approach, it is important to include certain information in the FMVSS test procedures to ensure that they are objective and properly test for compliance with this final rule, which may not be necessary for ECE R16 testing.

In general, the rear seat belt warning system requirements in this final rule are consistent with those in ECE R16 and Euro NCAP. One major difference is that ECE R16 evaluates occupant detection using the 5th percentile female dummy while the final rule specifies using a 50th percentile 6-year-old child or equivalent. For the reasons explained in a previous section, this final rule addresses a MAP-21 mandate and requires, if an occupant detection system is provided, that the system be able to detect children in the rear seats. The weight of a 5th percentile female dummy is greater than that of many children aged 6 to 16 years old and so it is not an appropriate surrogate for evaluating child occupancy.

Summary of Analysis and Results

Based on the Fatality Analysis Reporting System (FARS) and the Crash Investigation Sampling System (CISS) data from 2017 through 2021,²⁰⁵ on average 930 unrestrained rear seat occupants were killed in crashes and 15,380 were injured annually.²⁰⁶ After adjusting these to account for future decreases in fatalities and injuries projected to occur in the absence of the finalized requirements due to the introduction of other mandatory safety technologies (e.g., electronic stability control), the analysis estimates a baseline of, on average, 822 fatalities and 11,409 injuries to unrestrained rear seat occupants each year.²⁰⁷ This is the overall target population for rear seat occupants—the annual deaths and

²⁰⁵ The target population in the PRIA reflected the 2011–2015 FARS and 2011–2015 NASS/CDS data. The FRIA updated the target population to reflect more recent data. The NASS/CDS data previously used did not reflect injury data for vehicles older than ten years which may have underestimated injuries.

²⁰⁶ See FRIA, appendix A.7.

²⁰⁷ See FRIA, tables 25 and 26.

injuries that the final rule requirements are aimed at reducing.

We estimated the benefits resulting from the final rule rear seat belt warning requirements. The benefits are the fatalities and injuries that we estimate would be prevented by the finalized requirements. The benefits depend, principally, on the effectiveness of seat belts in preventing deaths and injuries and the expected increase in seat belt use due to the finalized rear seat belt warning system requirements. Seat belt effectiveness in mitigating fatalities for rear seat occupants 11 years of age and older is 56 percent for passenger cars and 74 percent for light trucks and vans.²⁰⁸

NHTSA believes that the minimum required warning signal characteristics would be effective at informing the driver of the use status of the rear seat belts and facilitating the driver to request that a rear passenger fasten an unfastened belt. A seat belt warning system can increase rear seat belt use in two ways: it can remind an occupant to fasten the occupant's belt, and it can inform the driver that a passenger is unbuckled, so that the driver can request the occupant fasten the occupant's belt.²⁰⁹ Without a rear seat belt warning, the driver must turn around to ascertain whether a rear seat occupant is using a seat belt (or ask the occupant); in some vehicles, belt use may not be evident to the driver, even if he or she turns around, due to line-of-sight limitations. As noted above, in NHTSA's 2015 survey, 65 percent of drivers of vehicles equipped with rear seat belt reminders reported that the rear seat belt reminder made it easier to

encourage the rear seat passengers to buckle up.²¹⁰ Also, as noted earlier, part-time seat belt users—the predominant non-user group—are amenable to seat belt warnings. In addition, children, who might be particularly compliant with driver requests, are proportionally much more likely to be rear seat passengers than are adults.²¹¹

We believe that any of the allowable rear seat belt reminder systems would be effective at accomplishing this goal. While some systems provide more information than others, and some would require the driver to fill in some informational gaps, even the most basic system (a RSBWS without occupant detection) would inform the driver about which belts are or are not fastened; the driver would readily be able to determine whether there were any unbelted occupants. We also believe that the 60-second visual warning would be effective. NHTSA could have proposed a more intrusive warning signal, such as an audible warning and/or a longer-duration visual warning. However, because such warnings necessitate occupant detection and we are not requiring occupant detection, we are also not requiring more aggressive warnings.

NHTSA estimated the effectiveness of the rear seat belt warnings. Available research regarding seat belt use indicates that seat belt warning systems are effective at increasing seat belt use; however, estimates of the amount of increased belt usage that can be attributed to warning systems vary. In arriving at our estimates of increased seat belt usage from SBWS for rear seats,

we examined current seat belt use rate in rear seats and the results of research conducted by NHTSA and others on percent increase in seat belt use for different types of warning systems for front seat occupants, as well as information submitted in response to the request for comments. For rear seat passengers 11 years old and older, we used a “low” estimate of 3.4 percent increase in seat belt use, and a “high” estimate of 5.1 percent increase in seat belt use. For rear seat passengers from six to ten years old, we used a low estimate of 0.27 percent and a high estimate of 0.41 percent. (The estimated increases for younger passengers are much lower because they already have high rates of seat belt use). For simplicity, we refer to these scenarios as “Low” and “High.”²¹²

Based on these belt and warning system effectiveness estimates, we estimate that the rear seat belt warning requirements would prevent 26 fatalities and 148 injuries annually under the “Low” scenario. Under the “High” scenario, we estimate that 39 fatalities and 221 injuries would be prevented annually.²¹³ See table 11. Another way to measure benefits is by calculating equivalent lives saved. Equivalent lives saved are the number of prevented fatalities added to the number of prevented injuries expressed in terms of equivalent fatalities (that is, with an injury expressed as a fraction of a fatality, so that the more serious the injury, the higher the fraction). The estimated equivalent lives saved are presented in table 12 at the 3 percent and 7 percent discount rate.²¹⁴

TABLE 11—ESTIMATED ANNUAL BENEFITS—LIVES SAVED AND INJURIES PREVENTED FOR SBWS WITHOUT OCCUPANT DETECTION (REAR SEATS), WITH ESTIMATED LOW AND HIGH PERCENTAGE POINT INCREASE IN BELT USE

Injury level	Low	High
MAIS 1	36	54
MAIS 2	80	120
MAIS 3	26	38
MAIS 4	4	6
MAIS 5	1	2
Total Injuries	148	221
Fatal	26	39

²⁰⁸ See FRIA, table 33.
²⁰⁹ Motoyuki Akamatsu et al., Assessment Method of Effectiveness of Passenger Seat Belt Reminder. 2012–01–0050, SAE International (2012).
²¹⁰ Survey of Principal Drivers of Vehicles with a Rear Seat Belt Reminder System at 47.

²¹¹ Matthew J. Trowbridge & Richard Kent, Rear-Seat Motor Vehicle Travel in the U.S.: Using National Data to Define a Population at Risk. Am. J. Prev. Med. 37(4), at 322 (2009).
²¹² See FRIA section 4.2, “Effect of SBWS on Seat Belt Use Rates for Rear Seat Occupants.”

²¹³ See FRIA table 47.
²¹⁴ The 3 percent and 7 percent discount rates are in accordance with OMB Circular A–4. <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf>.

TABLE 12—ESTIMATED ANNUAL BENEFITS—EQUIVALENT LIVES SAVED—SBWS WITHOUT OCCUPANT DETECTION (REAR SEATS)²¹⁵

Belt use increase	Undiscounted	3 Percent discount rate	7 Percent discount rate
Low	36.22	29.98	24.31
High	54.47	45.09	36.55

We also estimated the costs of the finalized requirements. To comply with the minimum requirements (a positive-only system or negative-only/full-status system without occupant detection), the system would need to have seat belt buckle sensors (to determine if the belt is fastened) and wiring and wire conduits to provide information on the belt buckle status from the rear seats to the computer processor controlling the warning system.²¹⁶ Based on the results

of NHTSA's teardown analysis, we estimate a cost of \$6.28 per seat. Given an average of 3.12 rear seats per vehicle, this yields a final cost of \$19.59 per vehicle. Based on this per-vehicle cost, the cost to the fleet to comply with the finalized minimum requirements is \$166.4 million.

Based on the forgoing, we performed benefit-cost and cost-effectiveness analyses. A benefit-cost analysis calculates net benefits, which is the

difference between the benefits flowing from injury and fatality reductions and the cost of the rule. Our net benefit estimates are presented in table 13. The cost-effectiveness analysis derives the cost per equivalent life saved, which is equal to the total cost of the rule divided by the total fatal equivalents that it prevents. These estimates are presented in table 14.

TABLE 13—ANNUAL MONETIZED BENEFITS, COSTS, AND NET BENEFITS—SBWS WITHOUT OCCUPANT DETECTION (REAR SEATS)²¹⁷

[2020 Dollars, in millions]

Seat belt use increase	3 percent discount rate			7 percent discount rate		
	Benefits	Cost	Net benefits	Benefits	Cost	Net benefits
Low	\$357.78	\$166.44	\$191.34	\$290.05	\$166.44	\$123.62
High	538.00	166.44	371.56	436.16	166.44	269.72

TABLE 14—COST-EFFECTIVENESS ANALYSIS (COST PER EQUIVALENT LIFE SAVED)—SBWS WITHOUT OCCUPANT DETECTION (REAR SEATS)²¹⁸

[2020 Dollars, in millions]

Seat position & belt use increase	ELS	Cost	Cost/ELS
3 Percent Discount Rate			
Low	29.98	\$166.4	\$5.55
High	45.09	166.4	3.69
7 Percent Discount Rate			
Low	24.31	\$166.4	\$6.85
High	36.55	166.4	4.55

2. Front Seat Belt Warning System

Based on FARS and CISS data from 2017 through 2021, on average 8,345 unrestrained drivers and 1,447 unrestrained front outboard passengers of passenger cars and light trucks were killed annually in traffic crashes. Additionally, 132,416 unrestrained drivers and 25,046 unrestrained front outboard passengers were, on average, injured annually. After adjusting these

to account for future decreases in fatalities and injuries projected to occur in the absence of the finalized requirements due to the introduction of other mandatory safety technologies (e.g., electronic stability control), the analysis estimates a baseline of, on average, 8,383 fatalities and 150,739 injuries to unrestrained front seat occupants each year. This is the overall target population—the annual deaths

and injuries that the final requirements are aimed at reducing.

According to the NOPUS, 90.6 percent of drivers used their seat belt in 2021, and 89.4 percent of passengers in the right-front seating position used their seat belt.²¹⁹ To estimate the percentage of drivers and front passengers who do not always use a seat belt, we used the results from a 2004 analysis using data from the Household

²¹⁵ See FRIA tables 68 and 70.

²¹⁶ The final rule is based on performance requirements, and as discussed previously, vehicle manufacturers are not restricted to using seat belt buckle sensors to determine belt usage. For example, spool-out sensors could be used instead of seat belt buckle sensors, but for the purposes of

its compliance test NHTSA will consider a belt to be “not in use” when the belt latch is not fastened. We assume most manufacturers will likely use buckle sensors and that the cost is the same for seat belt buckle sensors as for spool-out sensors.

²¹⁷ See FRIA table 82.

²¹⁸ See FRIA table 74.

²¹⁹ National Center for Statistics and Analysis. (2021, December). Seat belt use in 2021—Overall results (Traffic Safety Facts Research Note. Report No. DOT HS 813 241). National Highway Traffic Safety Administration.

Component of the 2002 Medical Expenditure Panel Survey (MEPS–HC)²²⁰ that found that among persons 16–64 years of age, 87.7 percent reported always or nearly always using seat belts when driving or riding in a car. Another 6.9 percent reported sometimes using seat belts, while 5.4 percent reported seldom or never using seat belts when driving or riding in a car. These results are summarized in table 15. This means, when an observation is made about the percentage of drivers who use the seat belts, the observed belt use rate is higher than 87.7 percent since the other groups

would contribute to the observed belt use rate although they are not always using the seat belts. NHTSA recognizes that driving habits may or may not have changed since 2002 as seat belt use rates have increased and as new generations of drivers and passengers are on the road. NHTSA considered, but tentatively decided not to use, the results of more recent studies, such as the (2016) Motor Vehicle Occupant Safety Survey (MVOSS)²²¹ to estimate the percentage of drivers and front passengers who do not always use a seat belt. While the 2016 MVOSS is more recent, we decided to use the 2004

study because we tentatively concluded that the data provided by the 2004 study best suited the needs of our analysis. Although most data on seat belt use is self-reported, including the data in the 2004 study, the 2004 study has a high sample size (approximately 25,000)²²² and provides robust categorizations of seat belt use that fit the needs of our analysis. Furthermore, when comparing this data to the findings of the 2016 MVOSS, we did not find evidence that seat belt use trends have significantly changed over time.²²³

TABLE 15—SEAT BELT USE CHARACTERISTICS

Belt user and related items	Rate (percent)
Reported “sometimes using seat belts”	6.9
Reported “seldom or never using seat belts when driving or riding in a car”	5.4
Reported always use seat belts	87.7
Total	100.0

As we did for the rear seats, NHTSA estimated the effectiveness and benefits associated with requiring a seat belt warning system that remains activated until the seat belts are buckled for the driver and front outboard passenger seats. In developing this estimate, NHTSA used the results of a 2019 study conducted by IIHS by Kidd et al.²²⁴ In the Kidd et al. (2019) study, part-time belt users (who had a recent seat belt citation and reported not always using a seat belt) drove two vehicles for a certain period of time, a Chevrolet with three intermittent 7-second audible warnings followed by either a BMW with a 100-second audible warning (n=17) or a Subaru with an audible

warning that continues until the seat belt is buckled (n=16). (All of the vehicles provided a visual warning that lasted until the seat belt was buckled.) Kidd et al. found that, relative to the intermittent reminder (*i.e.*, 7-second audible reminder), the BMW warning with the 100-second audible reminder increased seat belt use by 30 percent and the Subaru warning with the indefinite audible warning increased belt use by 34 percent.²²⁵ The Kidd Study also found that some participants circumvented the enhanced warning systems by misusing the seat belt (sitting on a buckled seat belt or routing the buckled seat belt behind their back). Hard core “never users” of seat belts

may similarly choose to circumvent the enhanced seat belt warning system. Therefore, NHTSA assumed that the “never and seldom users” of seat belts (5.4 percent from the Chu study) could potentially circumvent the enhanced SBWS, so the analysis conservatively assumes no increase in seat belt use with enhanced SBWS for “never and seldom users.”

NHTSA also reviewed manufacturer data for MY 2020 vehicles to determine the market penetration of seat belt warning systems of various durations in the front outboard seats and obtained the estimates in table 16.

TABLE 16—MARKET PENETRATION OF DIFFERENT DURATION SEAT BELT AUDIBLE WARNING SYSTEMS

SBWS system	Percentage of sales
<90 second warning	7.6
90 second and 90+ but not indefinite	85.2
Enhanced—Warning until seat belt is buckled	7.2

²²⁰ May Chu, “Statistical brief #62: Characteristics of Persons Who Seldom or Never Wear Seat Belts 2002.” https://meps.ahrq.gov/data_files/publications/st62/stat62.pdf.

²²¹ Spado, D., Schaad, A., & Block, A. (2019, December). *2016 motor vehicle occupant safety survey; Volume 2: Seat belt report* (Report No. DOT HS 812 727). National Highway Traffic Safety Administration.

²²² Compared to the 2016 MVOSS, which had, depending on the question, sample sizes of approximately 5,000 to 10,000.

²²³ For example, the 2016 MVOSS found that about 6 percent of drivers reported using their belt most of the time or some of the time. See pg. 7 (Fig. 5) in the MVOSS.

²²⁴ Kidd, D.G., and Singer, J. (2019, April) The effects of persistent audible seat belt reminders and a speed-limiting interlock on the seat belt use of drivers who do not always use a seat belt. Insurance Institute for Highway Safety, Westat, Inc.

²²⁵ There were several limitations in this study, the main one being that the number of study participants was small, and, consequently, there

was limited statistical power when comparing the change in rate of belt use between the different vehicle technology conditions. The study further discusses this and other limitations, such as how the demographics of the study sample differ from part-time belt users nationwide. See also the discussion *supra*, Section VI.B.3.

For drivers, seat belts reduce the risk of fatality by 48 percent (for passenger cars) and 61 percent (for light trucks and vans) and reduce the risk of moderate to greater severity injuries by up to 65 percent.²²⁶ For front outboard passengers, seat belts reduce the risk of fatality by 37 percent (for passenger cars) and by 58 percent (for light trucks and vans) and reduce the risk of

moderate to greater severity injuries by 65 percent.²²⁷

Based on the estimated seat belt warning system effectiveness in increasing seat belt use, the market penetration of different duration seat belt audible warning systems, and the effectiveness of seat belts in mitigating fatalities and injuries, NHTSA estimates that requiring an audio-visual seat belt warning²²⁸ that remains activated until

the seat belt is buckled (indefinite duration) would prevent 20 driver fatalities, 2 front outboard passenger fatalities, and a total of 395 injuries annually, as shown in table 17. This rule results in 46.7 undiscounted equivalent lives saved, as shown in table 18. The estimated discounted annual benefits in terms of equivalent lives saved are also shown in table 18.

TABLE 17—ESTIMATED ANNUAL BENEFITS—LIVES SAVED AND INJURIES PREVENTED—INDEFINITE SBWS (FRONT OUTBOARD SEATS)²²⁹

Injury level	Driver	Front passenger	Total
MAIS 1	129	14	143
MAIS 2	151	19	170
MAIS 3	62	8	69
MAIS 4	9	1	10
MAIS 5	3	0	3
Total Injuries	354	42	395
Fatal	20	2	22

Note: Values may not sum due to rounding.

TABLE 18—ESTIMATED ANNUAL BENEFITS—EQUIVALENT LIVES SAVED—INDEFINITE SBWS (FRONT OUTBOARD SEATS)²³⁰

	Undiscounted	3 Percent discount rate	7 Percent discount rate
Driver	42.26	34.98	28.36
Front Passenger	4.44	3.68	2.99
Total	46.70	38.66	31.35

We also estimated the costs of the finalized requirements. Since all driver seats are already required to have at least the basic warning system, the incremental cost of enhanced seat belt warning for the driver seat is zero. We assume there would be some labor costs associated with software updates needed to extend the warning. However, as this is a simple programming change, this cost would be amortized over each vehicle's production and is therefore

considered de minimis. Though there are no current requirements for a seat belt warning system for the front outboard passenger seat, NHTSA estimates that 96 percent of vehicles have seat belt warning systems on the front outboard passenger seat. NHTSA estimated the cost of equipping a seat belt warning system in the front outboard passenger seat to be \$2.13 per seat. Therefore, the cost of equipping the remaining 4 percent of the 16

million new vehicle fleet is \$1.36 million (= 16 million × 4 percent × \$2.13).

Based on the foregoing, we performed benefit-cost and cost-effectiveness analyses. The estimated net benefits, based on a 3 percent and 7 percent discount, are presented in table 19 and the cost-effectiveness estimates are presented in table 20.

TABLE 19—ANNUAL MONETIZED BENEFITS, COSTS AND NET BENEFITS—INDEFINITE SBWS (FRONT OUTBOARD SEATS)²³¹

[2020 Dollars, in millions]

	Driver		Front passenger		Driver and front passenger	
	3 Percent	7 Percent	3 Percent	7 Percent	3 Percent	7 Percent
Passenger car Benefits	\$188.89	\$154.12	\$22.86	\$18.65	\$211.75	\$172.77
Light Truck & Van Benefits	228.51	184.29	21.05	16.97	249.56	201.26

²²⁶ See FRIA table 31.

²²⁷ See FRIA table 32.

²²⁸ The final rule differs from the proposed indefinite audio-visual warning on vehicle start-up, because while the visual warning will be indefinite it is no longer specific to the "start-of-trip" and the

audible warning will only be required to activate for at least 30 seconds and after the 30 seconds it will be a speed-initiated indefinite audible warning. However, in the benefits and costs sections we will continue to refer to the front seat belt warning system as an indefinite warning because both the

audible and visual warnings will be required to be active until the seat belt is fastened, if the respective trigger criteria are met.

²²⁹ See FRIA table 60.

²³⁰ See FRIA table 73.

²³¹ See FRIA, tables 80, 81, and 82.

TABLE 19—ANNUAL MONETIZED BENEFITS, COSTS AND NET BENEFITS—INDEFINITE SBWS (FRONT OUTBOARD SEATS)²³¹—Continued
[2020 Dollars, in millions]

	Driver		Front passenger		Driver and front passenger	
	3 Percent	7 Percent	3 Percent	7 Percent	3 Percent	7 Percent
Total Benefits	417.41	338.41	43.90	35.62	461.31	374.03
Total Costs	0	0	1.36	1.36	1.36	1.36
Net Benefits	417.41	338.41	42.54	34.26	459.95	372.67

TABLE 20—COST-EFFECTIVENESS ANALYSIS (COST PER EQUIVALENT LIFE SAVED)—INDEFINITE SBWS (FRONT OUTBOARD SEATS)²³²
[2020 Dollars, in millions]

Discount rate	ELS	Cost	Cost/ELS
3 percent	38.66	\$1.36	\$0.04
7 percent	31.35	\$1.36	\$0.04

3. Overall Benefits and Costs of the Final Rule

In table 21, we combine the benefits and costs for the finalized rear and front seat belt warning requirements. We

estimate positive net benefits under all discount rates and effectiveness estimates.

TABLE 21—NET BENEFITS FROM THE FINAL RULE (SBWS FOR REAR SEATING POSITIONS AND INDEFINITE SBWS FOR FRONT OUTBOARD SEATING POSITIONS)
[2020 Dollars, in millions]²³³

	3 Percent discount rate	7 Percent discount rate
Front Outboard Seats	\$459.95	\$372.67
Rear Seats		
(low increase in rear seat belt use)	191.34	123.62
Rear Seats		
(high increase in rear seat belt use)	371.56	269.72
Total Net Benefits		
(low increase in rear belt use)	651.29	496.28
Total Net Benefits		
(high increase in rear belt use)	831.51	642.39

In table 22, we combine the equivalent lives saved and cost for the finalized rear and front seat belt

warning requirements to determine the cost per equivalent life saved.

TABLE 22—COST PER EQUIVALENT LIVES SAVED FROM THE FINAL RULE (SBWS FOR REAR SEATING POSITIONS AND INDEFINITE SBWS FOR FRONT OUTBOARD SEATING POSITIONS)²³⁴
[2020 Dollars, in millions]

Category	Discounted at 3 percent			Discounted at 7 percent		
	Equivalent Lives Saved	Cost	Cost per Equivalent Live Saved	Equivalent Lives Saved	Cost	Cost per Equivalent Live Saved
Rear Seat:						
Low	29.98	\$166.44	\$5.55	24.31	\$166.44	\$6.85
High	45.09		3.69	36.55		4.55
Front Seat	38.66	1.36	0.04	31.35	1.36	0.04
Total:						
Low	68.65	167.8	2.44	55.66	167.8	3.01
High	83.75		2.00	67.90		2.47

²³² See FRIA, table 74.

²³³ See FRIA, table 82.

²³⁴ See FRIA, table 74.

B. Regulatory Alternatives

In the preceding sections of this document, we discussed various alternatives for different aspects of the finalized requirements. We quantified the costs and benefits of three of these alternatives (rear-seat occupant detection, a 90-second front outboard seat belt warning, and front center seat belt warning). Below, we briefly summarize our results. For a more detailed discussion, the reader is referred to the Final Regulatory Impact Analysis in the docket for this rulemaking.

1. Occupant Detection in Rear Seats

For the rear seat belt reminder, NHTSA is not requiring occupant detection in the rear seats but permits occupant detection in rear seats. As a regulatory alternative, NHTSA estimated the costs and benefits of requiring a SBWS with occupant detection in the rear seats.

NHTSA's teardown analysis indicates that occupant detection components cost \$39.75 per vehicle, which, added to the \$19.59 per vehicle cost of the buckle sensor, results in a combined warning system cost of \$59.33 per vehicle (2020 \$). NHTSA estimates that about 47 percent of new vehicles have a SBWS for the rear seating positions and 7 percent of new vehicles have occupant detection in rear seats. If NHTSA selected the regulatory alternative that required occupant detection, this rule would result in a total cost of \$802 million. As with the final rule, this cost estimate assumed that 53 percent of new vehicles would need to install a seat belt sensor in the rear seats. And as discussed, rear seat occupant detection systems would need to be installed in all new vehicles. Although seven percent of light vehicles already have rear seat occupant detection, those SBWSs may not meet the requirements specified in this regulatory

alternative.²³⁵ As a result, this analysis accounts for the cost of adding occupant detection in the rear seats in all new light vehicles to comply with this regulatory alternative. The total cost for this regulatory alternative is about \$802 million.²³⁶

Because there is uncertainty in how much more effective a SBWS with occupant detection would be in increasing seat belt use compared to the already estimated increase in seat belt use with SBWSs without occupant detection, NHTSA did not conduct a cost-effectiveness and net benefits analysis. Instead, NHTSA estimated the minimum increase in seat belt use for this regulatory alternative that would result in overall benefits equal to the overall costs (zero net benefits). Furthermore, for a direct comparison to the final rule requirements, NHTSA also considered how much greater the benefits from this regulatory alternative would have to be for the net benefits to be equal to those from the final rule, which does not require occupant detection.

The agency estimated that seat belt use for rear seat occupants 11 years and older would have to increase by approximately 5.4 percent when discounted at 3 percent and 6.7 percent when discounted at 7 percent for this regulatory alternative to result in zero net benefits. Moreover, for this regulatory alternative to match the net benefits (taking into account the Low and High estimates of increased seat belt usage) from the final rule, seat belt use for rear seat occupants 11 years and older would have to increase by 7.8 to 9.0 percent when discounted at 3 percent, and by 9.1 to 10.2 percent when discounted at 7 percent.

Under the final rule, which does not require occupant detection, seat belt use for rear seat occupants 11 years and older is estimated to increase from 75.12 percent to approximately 76.93 percent

in the Low estimate and 77.84 percent in the High estimate. These increases reflect an approximately 2.4 percent and 3.6 percent increase in seat belt use under the final rule.

Therefore, in this regulatory alternative requiring occupant detection for the rear seats, SBWS for rear seat occupants would need to be approximately 2.5 to 3.8 times more effective than the final rule at increasing seat belt usage to generate the same level of net benefits as the final rule. The SBWSs considered under this regulatory alternative are capable of informing the driver either which occupants are not using their seat belts or how many of the rear seat occupants are not using their seat belts. While we would expect some possible increase in seat belt use from that specific functionality, it is doubtful that it would double to quadruple the increase in seat belt use estimated for SBWSs without occupant detection. Therefore, based on the available information, the agency did not choose this regulatory alternative.

2. 90-Second Front Outboard Seat Belt Warning

NHTSA also estimated the costs and benefits if it were to require a 90-second audio-visual warning for the front outboard seats instead of the finalized requirement for a warning that lasts until the belt and any occupied seat is buckled. NHTSA estimated the benefits in a similar manner as that for the finalized seat belt warning for front seat occupants where the warning remains on until the seat belt is buckled. The main difference is that this alternative only affects the 7.6 percent of the vehicle fleet with a front seat occupant seat belt warning with duration less than 90 seconds.

The benefits of this alternative are presented in table 23.²³⁷

TABLE 23—INJURIES PREVENTED, LIVES SAVED, AND EQUIVALENT LIVES SAVED IN FRONT OUTBOARD SEATS BY A 90 SECOND DURATION SBWS

Injury Level	Injuries and Fatalities Prevented		Equivalent Lives Saved	
	Driver	Front Passenger	Driver	Front Passenger
MAIS 1	43	4.7	0.19	0.02
MAIS 2	44	5.7	1.82	0.23
MAIS 3	18	2.3	3.26	0.41
MAIS 4	3	0.3	0.83	0.08
MAIS 5	1	0.1	0.47	0.05
Fatal	6	0.6	6.07	0.57
Total			12.66	1.37

²³⁵ The rear seat occupant detection in current vehicles is likely only able to detect a 5th percentile female and heavier occupants, but not children who

weigh less than the 5th percentile female as is required for rear seat occupant detection in this final rule.

²³⁶ See FRIA, table 119.

²³⁷ See FRIA, tables 134 and 138.

About 14 equivalent lives are saved by this alternative, which is significantly lower than the nearly 47 equivalent lives saved by a warning that remains on until the seat belt is buckled.

The cost of this alternative is the same as that for the warning required by this final rule. The only cost is that for the 4 percent of vehicles without a seat belt warning system in the front outboard

passenger seat (cost = \$1.36 million). The annual monetized benefits, costs, and net benefits of this alternative are shown in table 24.

TABLE 24—ANNUAL MONETIZED BENEFITS, COSTS AND NET BENEFITS FOR A 90 SECOND DURATION SBWS IN FRONT OUTBOARD SEATS ²³⁸
[2020 Dollars, in millions]

	Driver		Front Passenger		Driver and Front Passenger	
	3 Percent	7 Percent	3 Percent	7 Percent	3 Percent	7 Percent
Passenger car Benefits	\$58.69	\$47.89	\$7.25	\$5.92	\$65.94	\$53.81
Light Truck & Van Benefits	66.34	53.50	6.25	5.04	72.59	58.54
Total Benefits	125.03	101.39	13.50	10.96	138.54	112.35
Total Costs	0	0	1.36	1.36	1.36	1.36
Net Benefits	125.03	101.39	12.14	9.59	137.18	110.99

While this regulatory alternative has positive net benefits, the benefits and net benefits are significantly lower than the indefinite duration SBWS for front seat occupants in the final rule (net benefits of \$459.95 million and \$372.67

million when discounted to 3 and 7 percent, respectively).

3. Seat Belt Warning for Front Center Seat

The agency also considered requiring a seat belt warning system for the front center seating position. To estimate

incremental benefits, NHTSA used the 2017–2021 FARS data and CISS data, and the adjustment factors to account for safety impacts of new required safety technologies to establish the target population addressed by this regulatory alternative (Table 25).

TABLE 25—ANNUAL ADJUSTED FATALITIES AND NON-FATAL INJURIES TO FRONT CENTER SEAT PASSENGERS ²³⁹

Injury severity	Restrained	Unrestrained	Total
MAIS 1	190	100	290
MAIS 2	0	0	0
MAIS 3	0	0	0
MAIS 4	0	0	0
MAIS 5	0	0	0
Total Injuries (MAIS 1–5)	190	100	290
Fatal	6	13	19

Due to a lack of data, NHTSA is unable to establish the seat belt use rate for front center passengers under the baseline. As front center seat passengers are most similar to front outboard passengers, this analysis makes use of the established seat belt use rate for front outboard passengers to establish the baseline seat belt use rates for front center seat occupants. Based on the 2021 NOPUS data, the baseline seat belt use rate is 89.40 percent and the corresponding seat belt use rate in potentially fatal crashes is 76.88 percent.

In order to estimate the change in seat belt use for front center seat passengers

as a result of the SBWS, this analysis makes use of the linear regression model used to estimate the impact of the SBWS on the seat belt use rates of rear seat occupants. Under this regulatory alternative, the seat belt use rate for front center seat passengers using the high estimate is 91.58 percent and the corresponding seat belt use rate in potentially fatal crashes is 79.69 percent.

The cost for front center passenger seats would include the cost for a buckle sensor and occupant detection. Therefore, the cost per vehicle for this regulatory alternative is \$14.86 in 2020 dollars. This cost estimate reflects a cost

of \$2.13 to add a buckle sensor and the cost to add occupant detection of \$12.73.

In assessing the number of vehicles that would be impacted by this regulatory alternative, we consider that the front center seat is not a common feature in new light vehicles. Based on our engineering judgement, we expect that approximately 800,000 vehicles or 5 percent of the new vehicle fleet include a center seating position. Table 26 presents the total cost to meet the requirements under this regulatory alternative for an indefinite duration SBWS for front center passenger seats.

²³⁸ See FRIA, tables 142 and 143.

²³⁹ See FRIA, table 122.

TABLE 26—TOTAL COST OF INDEFINITE DURATION SBWS FOR FRONT CENTER PASSENGER SEATS ²⁴⁰

Number of vehicles impacted	Per vehicle cost	Total cost
800,000	\$14.86	\$11,888,000

Table 27 presents the of the cost-effectiveness analysis and table 28 presents the benefit-cost analysis for this regulatory alternative.²⁴¹ When discounted at three and seven percent,

the cost per ELS is approximately \$40.9 million and \$50.6 million, respectively and the net benefits are negative for this regulatory alternative. Because the cost per ELS is higher than the

comprehensive cost of a fatality and the net benefits are negative, this regulatory alternative is not cost-effective.

TABLE 27—COST-EFFECTIVENESS ANALYSIS FOR SBWS FRONT CENTER SEAT PASSENGERS
[Millions]

Category	Discounted at 3 percent			Discounted at 7 percent		
	Equivalent lives saved	Cost	Cost per equivalent live saved	Equivalent lives saved	Cost	Cost per equivalent live saved
Front Center Seat	0.29	\$11.89	\$40.91	0.23	\$11.89	\$50.63

TABLE 28—BENEFIT-COST ANALYSIS FOR SBWS FRONT CENTER SEAT PASSENGERS
[Millions]

Category	Discounted at 3 percent			Discounted at 7 percent		
	Monetized benefits	Cost	Net benefits	Monetized benefits	Cost	Net benefits
Front Center Seat	\$3.47	\$11.89	–\$8.42	\$2.80	\$11.89	–\$9.09

IX. Compliance Dates

NHTSA proposed that vehicles be required to comply with the requirements of this rule the first September 1 that is one year after the publication of the final rule for the front seat belt warning system requirements and the first September 1 that is two years after the publication of the final rule for the rear seat belt warning system requirements, with optional early compliance permitted. Consistent with 49 CFR 571.8(b), multi-stage manufacturers and alterers would have an additional year to comply.

We estimated it would take two years for manufacturers to equip their vehicles with the necessary technologies, redesign hardware and software components, and validate their systems to comply with the requirements for the rear seat belt reminder systems. Regarding front passenger outboard seat belt warning requirements, we noted that because of the market penetration of such systems (96 percent of new vehicles), the majority of vehicle manufacturers would simply have to make software

adjustments necessary to ensure they meet the proposed requirements.²⁴²

Comments

The National Transportation Safety Board (NTSB) supported the proposed lead time and emphasized the timeline of this rulemaking activity related to seat belt warning systems.

Several commenters suggested shorter lead times. MADD and Advocates and Public Citizen supported a compliance deadline as soon as is feasible. MADD stated that given the state and availability of current technology, a one-year deadline for compliance is likely reasonable. Advocates and Public Citizen stated that one year should be sufficient for rear systems, noting that IIHS testing has demonstrated that this deadline is achievable and that delaying will cost lives.

SRN commented that, depending on the date on which the final rule is published, the rear seat compliance deadline could be closer to 3 years, and urged NHTSA to ensure that compliance is required within close to a 2-year window.

IIHS and NAMIC commented that the requirements should be implemented

immediately. IIHS noted research suggesting that increasing seat belt use of unbuckled occupants throughout the vehicle by up to 34 percent would save about 1,600 lives each year (Kidd & O'Malley, 2023), and that delaying the implementation of the upgraded standard would unnecessarily delay its life-saving benefits. IIHS explained that according to its evaluations, since 2022 adoption of rear reminder systems has increased and manufacturers have responded quickly in the past to their requirements, suggesting that less lead time is needed.

Consumer Reports agreed with IIHS that manufacturers have demonstrated they can make improvements quickly and suggested that both rear and front reminders be required within 1 year. They also noted that in 2012, Congress mandated that NHTSA issue a final rule by 2015, and that the ANPRM for this rulemaking was published in 2019. They argued that given this timeline, compliance should be required sooner.

Other commenters requested that the compliance dates be extended. Auto Innovators contended that the proposed lead time is not reasonable or practical for implementing the proposed changes.

²⁴⁰ See FRIA, table 128.

²⁴¹ See FRIA, tables 129 and 130.

²⁴² 88 FR 61674. This figure is based on data on total projected vehicle sales in the United States for MY 2022 from the agency's New Car Assessment

Program *Purchasing with Safety in Mind: What to Look For When Buying a Vehicle* program.

In particular, they emphasized that the lack of harmonization with ECE R16 may result in design changes for vehicles that are in the final stages of preproduction and manufacturers may no longer be able to use hardware and software systems currently deployed in other markets. Honda provided a list of changes that it would undertake to meet the requirements proposed in the NPRM and suggested that the lead time proposed is inadequate to accomplish them.

Nissan also requested additional lead time, especially if it is necessary to relocate the front outboard passenger telltale. Auto Innovators and Honda noted that if NHTSA harmonized the rule further with ECE R16, less lead time would be needed to meet the requirements.

Auto Innovators, HATCI, Ford, and Honda requested a synchronized two-year phase-in for both the front and rear row seating position requirements that begins three years after publication of the final rule. In their proposal, a set percentage of vehicles would be required to meet the requirements of the rule beginning the first September 1st that is at least 3 years after publication of the final rule; a higher percentage by the first September 1st after 4 years; with full compliance by the first September 1st that is at least five years after publication of the final rule. HATCI specified that the first phase-in threshold should be no more than 50 percent of vehicles. Ford and Honda emphasized that this approach would allow manufacturers to account for differences in implementation across models with varied development cycles. Auto Innovators and Honda argued that this approach would unify the lead time for front and rear systems because there would not be a benefit to having different lead times for front and rear systems due to the limitations of production schedules. Auto Innovators commented that there is no benefit or regulatory relief provided by NHTSA's proposal for one year of lead time for the front and two years for the rear because it is both highly impractical and unlikely that manufacturers will be able to adjust production schedules to account for changes to the front row and rear row seating positions independently of each other, and only one year apart. Additionally, some commenters, such as Auto Innovators and Nissan, commented that if the rule does not allow for the reminder to be overridden, it will likely result in the need for significant changes to the instrument cluster that will require additional time and resources to implement. Nissan commented that

additional lead time becomes more critical if relocating the front outboard passenger telltale indicator beyond the vehicle's current meter display is required.

A few commenters, such as Auto Innovators and Consumer reports, requested that optional early compliance be allowed.

Auto Innovators urged the agency to announce whether the lead time will be changed through the docket, other such notice, or to publish a second NPRM within one year of its original filing, to ensure that manufacturers do not waste time, money, and effort to develop products that align with the proposal, but which need to be changed to meet the final rule.

Agency Response

NHTSA is finalizing the compliance dates as proposed in the NPRM. These dates properly balance the practical realities of bringing systems into compliance with maximizing the safety benefits of this rule. We are allowing optional early compliance.

NHTSA disagrees with commenters who argue that compliance can be required immediately or who seek to shorten the compliance timeline. NHTSA understands that any allowed time to bring systems into compliance risks reducing some of the benefits of the rule. However, we must balance maximizing effectiveness with considerations of feasibility and practicability. Although commenters correctly point out that the necessary technologies for both front and rear systems are available, they underestimate the time some manufacturers may need to integrate components into vehicles for the rear seat reminder as well as incorporate visual signals and validate system performance for both front and rear positions. Although some manufacturers may have been able to rapidly adapt their systems to changes in IIHS ratings, this fact does not support the notion that doing so would be practicable for the entire industry. For example, a small number of vehicles do not yet have voluntary front passenger seat belt warnings, and these vehicles would need hardware integration. We also disagree with NAMIC and Consumer Reports that the duration of this rulemaking effort warrants shortening the date schedule. Our determination regarding the proper compliance dates is based on current information and when the rule is finalized. The option of early compliance may realize earlier safety benefits for vehicles with earlier development schedules.

NHTSA also disagrees with commenters seeking to extend the dates. In particular, a three-year compliance date with a two-year phase-in, suggested by Auto Innovators, HATCI, Honda, and Ford, dramatically exceeds the amount of time that manufacturers should need to implement the changes required by this rule. As noted, the technology for these systems already exists. For front systems in particular, the vast majority of vehicles already incorporate the necessary technology, and only software changes will be needed to bring systems into compliance.

Additionally, we have made changes from the NPRM which should significantly reduce the time needed to bring systems into compliance. For example, this final rule no longer dictates specific compliance options for the information conveyed by the rear seat belt warning visual warning; the finalized requirements for the visual warning allow all of the systems that would have been allowed under the proposed rule, as well as additional systems that would not have been allowed under the proposed rule, such as a negative-only system without occupant detection and a full-status system without occupant detection. It also does not require the front passenger seat belt visual warning to be visible to the front passenger (except for certain ADS-equipped vehicles), which was an element of the proposal about which certain commenters, such as Nissan, expressed significant cost and time concerns. Indeed, in the NPRM we sought comment, and received no detailed comments, regarding which types of vehicles might need additional lead time to accommodate the proposed visibility requirement. Additionally, Auto Innovators noted that less time would be needed to implement requirements that harmonize with ECE R16. We have also incorporated changes from the NPRM which increase harmonization with ECE R16 significantly. Finally, we do not believe it is necessary to grant additional time to accommodate that warnings are not allowed to be overridden because this rule provides a large amount of flexibility for manufacturers to design and locate the visual alerts to resolve this issue.²⁴³ Because these elements resolve many of the concerns raised by

²⁴³ While the final rule requires that the visual warning must not be overridden by other visual warnings, it does allow the audible warning to be paused during the activation of another audible safety warning that is designed to alert the driver to take immediate action; in this case, however, the seat belt audible warning must be resumed for the remainder of the required duration after the other audible warning deactivates.

commenters about the compliance timeline, we are not extending the compliance dates.

We are also not implementing a unified lead time for front and rear systems. As we pointed out in the NPRM, 96 percent of vehicles already have a front outboard passenger seat belt warning system, while market penetration for rear systems is much lower. The acquisition and integration of additional hardware for rear seats, which is not needed for the vast majority of front passenger systems, warrants additional lead time for the rear systems.

Finally, because we are not changing the lead time from the proposal, we are not publishing the notice of changes regarding the lead time requested by Auto Innovators.

X. Regulatory Analyses

Executive Order 12866, Executive Order 14094, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rule under Executive Order 12866, Executive Order 14094, Executive Order 13563, DOT Order 2100.6A, and the Department of Transportation's regulatory policies and procedures.²⁴⁴ The Office of Management and Budget determined that this rule is a significant regulatory action and was reviewed under Section 3(f)(1) of E.O. 12866, as amended by E.O. 14094. Pursuant to E.O. 12866 and the Department's policies, we have identified the problem this rule addresses, assessed the benefits and costs, and considered alternatives. These analyses have been summarized in Section VII, Regulatory Alternatives and Section VIII, Overview of Benefits and Costs and are discussed in more detail in the docketed final regulatory impact analysis.

Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides that the regulatory approaches taken by foreign governments may differ from those taken by the United States to address similar issues, and that in some cases the differences between them might not be necessary and might impair the ability of American businesses to export and compete internationally. It further recognizes that in meeting shared challenges involving health, safety, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those

that are or would be adopted in the absence of such cooperation and can reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In addition, section 24211 of the Infrastructure, Investment, and Jobs Act (IIJA; Pub. L. 117–58), Global Harmonization, provides that DOT “shall cooperate, to the maximum extent practicable, with foreign governments, nongovernmental stakeholder groups, the motor vehicle industry, and consumer groups with respect to global harmonization of vehicle regulations as a means for improving motor vehicle safety.”²⁴⁵

As discussed in Section VII and through this preamble, this rule harmonizes with ECE R16, Euro NCAP, and the IIHS protocol as much as possible, but deviates where we believed it was justified with respect to the Safety Act criteria (need for safety, objectivity, and practicability). The reasons for following or deviating in any of these respects are explained in detail in the relevant section of the preamble. In general, we believe that although this rule deviates from these requirements or protocols in some ways, it is not incompatible with them, so that it is possible to design a seat belt reminder system that complies with both this rule and protocols such as R16. Further, almost all international NCAP programs, including those in Europe, Japan, China, Korea, Latin America, Southeast Asia, and Australia and New Zealand, award points to vehicles that are equipped with seat belt warning systems for passenger seating positions. Thus, the requirements in this rule are consistent with these international programs and complement those international efforts to increase seat belt use by all vehicle occupants.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish an NPRM or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity “which operates primarily within the United States.” 13 CFR 121.105(a). No regulatory flexibility analysis is

required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

I certify that this final rule would not have a significant economic impact on a substantial number of small entities. According to 13 CFR 121.201, the Small Business Administration's size standards regulations used to define small business concerns, manufacturers of the vehicles covered by this final rule would fall under North American Industry Classification System (NAICS) No. 336211, *Automobile Manufacturing*, which has a size standard of 1,000 employees or fewer.

NHTSA estimates that there are three small light vehicle manufacturers in the U.S. As noted in Section 11.1 of the docketed final regulatory impact analysis, the estimated annual vehicle sales for these three manufacturers range from 25 to 100 vehicles with a sales price range \$24,000 to \$750,000 and estimated annual revenue between \$2 million and \$4 million. We estimate that there are several hundred second-stage or final-stage manufacturers and alterers that could be impacted by this final rule. The agency has analyzed the economic impact on these entities. For the reasons discussed below and detailed in the final regulatory impact analysis, we conclude that this rule would not have a significant economic impact on a substantial number of small entities.

The rule would directly affect motor vehicle manufacturers, including small light vehicle manufacturers. However, we believe that the rule will not have a significant economic impact on these entities. Small manufacturers are already certifying their vehicle's compliance, for the driver position, with FMVSS No. 208's seat belt warning system requirements. The means they use to certify to the current requirements would be similar to or the same as those they would use to certify to the rear seat belt warning requirements and front outboard passenger seat belt warning requirements under the final rule.

Further, the compliance test is a relatively simple test, involving a test technician positioning a person or test dummy in a seat and checking if the requisite signals activate. Checking to see if visual and audible warnings activate for the driver seat belt warning

²⁴⁴ 49 CFR, Part 5, Subpart B; Department of Transportation Order 2100.6A, Rulemaking and Guidance Procedures, June 7, 2021.

²⁴⁵ H.R. 3684 (117th Congress) (2021).

system has been a part of FMVSS No. 208 compliance testing for many years, and manufacturers are knowledgeable about conducting such tests.

Small manufacturers have options available to certify compliance, none of which will result in a significant economic impact on these entities. The manufacturers can and do obtain seating systems from seat suppliers and install the seats on the body following the instructions of the seat supplier. Seat and seat belt suppliers are large entities with resources available to assist small manufacturers in incorporating the seat belt warning systems, if manufacturers need technical assistance (which we do not think they will need, given the simplicity of the systems, particularly those rear systems that do not involve occupant detection). We do not believe that current manufacturing practices will have to change significantly because of this rule.

In addition, we also believe that the rule will not have a significant impact on small and limited-line vehicle manufacturers because the market for the vehicles produced by these entities is highly inelastic. Purchasers of these vehicles are attracted by the desire to have an unusual vehicle. Further, all light vehicles would have to comply with the requirements. Since the price of complying with the rule will likely be passed on to the final consumer, the price of competitor's models would increase by similar amounts. Further, we do not believe that raising the price of a vehicle to account for the incremental costs estimated for this final rule (\$2.13 for the front outboard passenger seat and \$19.59 for the rear seats) would have much, if any, effect on vehicle sales.

There are a significant number (several hundred) of second-stage or final-stage manufacturers and alterers that would be impacted by a final rule. These manufacturers buy incomplete vehicles to finish as complete vehicles or modify previously certified vehicles. Many of these latter vehicles are van conversions; there are a variety of vehicles affected.

To produce a vehicle, a final-stage manufacturer can either stay within the incomplete vehicle document (IVD) furnished by the incomplete vehicle manufacturer (which are typically large vehicle manufacturers, such as GM or Ford), or the final-stage manufacturer can work with incomplete vehicle manufacturers to enable the final-stage manufacturer to certify to the new requirements.²⁴⁶ The final-stage

manufacturer can also certify to the standard using due care based on an assessment of the information available to the manufacturer.

While there are a substantial number of multi-stage manufacturers that could be impacted by the final rule, we believe that the impact on them would not be significant. We note that these manufacturers are already certifying their vehicles to FMVSS No. 208's seat belt warning system requirements that apply to the driver seating position. They are already familiar with the equipment and manufacturing processes involved to certify their vehicles to seat belt warning system requirements. Further, we anticipate that final-stage manufacturers will base their vehicles on incomplete vehicles that already have the seat belt reminder system installed rather than install the systems themselves.

For final-stage manufacturers working with incomplete vehicles that do not have rear seats or seat belt reminder systems already installed, we believe that completing vehicles to meet the requirements would be practicable. The manufacturers can obtain seats and seat belt systems (with seat belt warning system) from suppliers. NHTSA recognizes that the suppliers might be supplying larger vehicle manufacturers during the development and lead time period, and do not have the capabilities to handle all of the smaller manufacturers, including final-stage manufacturers. The rulemaking accounts for this limitation by allowing final-stage manufacturers an additional year to comply with the requirements, to provide flexibility to these small entities and reduce the economic impact of the rule on them. (See also 49 CFR 571.8(b).)

For an alterer (a person who alters by addition, substitution or removal of components, other than readily attachable components, a certified vehicle before the first purchase of the vehicle other than for resale), the impacts of the rule will not be significant. The final rule allows alterers an additional year to comply with the requirements. For example, if an alterer is removing rear seats, the person making the alteration would simply have to be careful not to render non-compliant the seat belt warning system for the remaining seats. (See 49 CFR 571.8(b).)

28168, May 15, 2006, Docket No. NHTSA-2006-24664, Response to petitions for reconsideration of a final rule implementing regulations pertaining to multi-stage vehicles and to altered vehicles. The Background section of that document provides concepts and terminology relating to the certification of multi-stage vehicles.

An alterer that is adding rear seats could obtain seating systems with seat belt warning systems from seat suppliers and install the seats on the body following the instructions of the seat supplier. Changes may have to be made to the instrument panel area to add the requisite visual signal, but the final rule provides flexibility to manufacturers in providing the visual signal.

Executive Order 13132 (Federalism)

NHTSA has examined this rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law address the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which "[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law." 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved.

NHTSA rules can also preempt State law if complying with the FMVSS would render the motor vehicle manufacturers liable under State tort law. Because most NHTSA standards established by an FMVSS are minimum

²⁴⁶ For a discussion of NHTSA's certification regulations for final stage manufacturers, see 71 FR

standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 13132, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (e.g., the language and structure of the regulatory text) and objectives of this rule and finds that this rule, like many NHTSA rules, would prescribe only a minimum safety standard. NHTSA does not intend that this rule preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by this rule. Establishment of a higher standard by means of State tort law would not conflict with the standards in this final rule. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. In accordance with 49 CFR 1.81, 42 U.S.C. 4336, and DOT NEPA Order 5610.1C, NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4) (planning and administrative activities, such as promulgation of rules, that do not involve or lead directly to construction). This rulemaking, which amends Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant crash protection," to require a seat belt use warning system for rear seats, updates and enhances the current seat belt warning requirements for the driver's seat belt, and extends these requirements to the front outboard passenger seat, is not anticipated to result in any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to Executive Order 12988, NHTSA notes as follows. The issue of preemption is discussed above in connection with Executive Order 13132. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), a Federal agency must request and receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, NHTSA is submitting an information collection request (ICR) to OMB for approval for modifications to a currently approved information collection titled "Consolidated Vehicle Owner's Manual Requirements for Motor Vehicles and Motor Vehicle Equipment" (OMB Control No. 2127–0541, Current Expiration Date: 03/31/2026).

This final rule amends 49 CFR 571.208 to, among other things, add new owner's manual requirements. NHTSA submitted an ICR to OMB for review when the NPRM was published.²⁴⁷ OMB deferred review until after receiving NHTSA's summary and response to all comments related to the information collection requirements contained in this rulemaking.

²⁴⁷ https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202308-2127-002#.

Accordingly, NHTSA is resubmitting the ICR for this final rule.

NHTSA's ICR describes the nature of the information collections and their expected burden. The ICR is for fifteen mandatory and voluntary disclosure requirements for manufacturers of motor vehicles and items of motor vehicle equipment. Pursuant to 49 U.S.C. 30117, the Secretary (NHTSA by delegation) is authorized to require manufacturers to provide information to first purchasers of motor vehicles or items of motor vehicle equipment related to performance and safety in printed materials that are attached to or accompany the motor vehicle or item of motor vehicle equipment. NHTSA has exercised this authority to require manufacturers to provide certain specified safety information to be readily available to consumers and purchasers of motor vehicles and items of motor vehicle equipment. This information is most often provided in vehicle owners' manuals and the requirements are found in 49 CFR parts 563, 571, and 575. Some of these requirements are contained in the Federal Motor Vehicle Safety Standards (FMVSS) that set performance requirements for motor vehicles and items of motor vehicle equipment. The other requirements are contained in separate regulations. Manufacturers must comply with these requirements whenever they manufacture a vehicle or equipment item that is subject to the requirements. The purpose of the required disclosures is to provide important safety information to vehicle owners.

This final rule makes changes to existing an information collection requiring that the owner's manual describe the vehicle's seat belt warning system features, including the location, format, and meaning of the visual warnings. It also requires that the owner's manual include instructions on how to make any manual electrical connections for readily removable seats. These changes are finalized without any substantive changes from those proposed in the NPRM.

We received comments on the proposed changes. ASC supported the proposed changes to the owner's manual requirements. NSC suggested standardizing generic nomenclature and warning and icon symbols to reduce driver confusion. Regarding installation of child restraint systems, Auto Innovators emphasized that additional information about system design can be included at the discretion of the manufacturer, and SRN suggested that instructions regarding how to interpret certain warnings should be included in

the child passenger section of the manual. These comments are discussed in Section VI.A.2.d.

As described in the NPRM, NHTSA estimates that the total burden of the ICR is approximately 10,172 hours and \$8,726,501 annually. This burden represents an increase in estimated burden hours of 1,544 hours (8,628 hours to 10,172 hours) and an increase in costs of \$755,040 (\$7,971,461 to \$8,726,501), compared with existing requirements. The change in burden reflects changes as a result of the rulemaking requiring the development and publication of new information for the owner's manual. Printing costs have increased due to accounting for the estimated number of vehicles that will be equipped with seat belt reminder systems and will therefore need to comply with the requirements to provide system information and operating instructions. We did not receive comments on these burden estimates or other aspects of the proposed revision to the information collection. These burden estimates did not change between the NPRM and final rule.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), “all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.” Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as SAE (formerly, the Society of Automotive Engineers). The NTTAA directs this agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

While the agency is not aware of any voluntary standards that exist regarding

the seat belt warnings contemplated in this rule, the agency has examined relevant regulations in other countries, such as the European Union standard ECE R16. As discussed above, although we are not aware of any foreign regulations that require seat belt warnings for the front outboard passenger or rear seat belts or for the driver seat on small buses, we believe that requiring seat belt warnings for these seating positions and for the driver seats on small buses meets a safety need and is practicable.

Severability

The issue of severability of FMVSS is addressed in 49 CFR 571.9. It provides that if any FMVSS or its application to any person or circumstance is held invalid, the remainder of the part and the application of that standard to other persons or circumstances is unaffected.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by States, local or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation with base year of 1995) in any one year. Adjusting this amount by the implicit gross domestic product price deflator for 2022 results in \$177 million (111.416/75.324 = 1.48). The assessment may be included in conjunction with other assessments, as it is here.

UMRA requires the agency to select the “least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.” As discussed above, the agency considered alternatives to the final rule and has concluded that the requirements are the most cost-effective alternatives that achieve the objectives of the rule.

This rule on seat belt reminder systems is not likely to result in expenditures by State, local or tribal governments of more than \$177 million annually. However, it is estimated to result in the expenditure by automobile manufacturers and/or their suppliers by

approximately \$168 million annually. The estimated costs are discussed in Section VIII, Overview of Benefits and Costs, and the docketed final regulatory impact analysis.

We have concluded that the requirements in this rule are the most cost-effective alternatives that achieve the objectives of the rule.

Plain Language

Executive Order 12866 and E.O. 13563 require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public’s needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn’t clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

NHTSA has considered these questions and attempted to use plain language in writing this rule. Please inform the agency if you can suggest how NHTSA can improve its use of plain language.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A. List of Comments Cited in Preamble

Commenter	Comment ID
Advocates for Highway and Auto Safety and Public Citizen (Advocates and Public Citizen)	NHTSA–2023–0032–0040
Alliance for Automotive Innovation (Auto Innovators)	NHTSA–2023–0032–0048
Automotive Safety Council (ASC)	NHTSA–2023–0032–0015
Autonomous Vehicle Industry Association (AVIA)	NHTSA–2023–0032–0029
Braun Northwest, Inc. (BNW)	NHTSA–2023–0032–0050
Consumer Reports	NHTSA–2023–0032–0049
Cross, Karleigh	NHTSA–2023–0032–0013
Dorey, Rivers	NHTSA–2023–0032–0008

Commenter	Comment ID
Ford Motor Company (Ford)	NHTSA-2023-0032-0045
Freedman Seating Company (Freedman)	NHTSA-2023-0032-0041
Freeman, Paige	NHTSA-2023-0032-0017
Gaal, Edward	NHTSA-2023-0032-0010
General Motors (GM)	NHTSA-2023-0032-0026
American Honda Motor Co. (Honda)	NHTSA-2023-0032-0039
Hyundai America Technical Center, Inc. (HATCI)	NHTSA-2023-0032-0053
Hyundai Motor Company (Hyundai)	NHTSA-2023-0032-0047
IEE	NHTSA-2023-0032-0032
Insurance Institute for Highway Safety (IIHS)	NHTSA-2023-0032-0020
InterMotive Vehicle Controls (InterMotive)	NHTSA-2023-0032-0016
Koo, John	NHTSA-2023-0032-0012
Mothers Against Drunk Driving (MADD)	NHTSA-2023-0032-0055
Mercedes-Benz and Mercedes-Benz Research and Development North America (Mercedes)	NHTSA-2023-0032-0025
National Association of Mutual Insurance Companies (NAMIC)	NHTSA-2023-0032-0034
National Automobile Dealers Association (NADA)	NHTSA-2023-0032-0042
National Safety Council (NSC)	NHTSA-2023-0032-0038
Nissan North America	NHTSA-2023-0032-0043
National Transportation Safety Board (NTSB)	NHTSA-2023-0032-0019
Paradise, John	NHTSA-2023-0032-0009
Recreational Vehicle Industry Association (RVIA)	NHTSA-2023-0032-0028
Rivian Automotive	NHTSA-2023-0032-0044
Safe Kids Worldwide (SKW)	NHTSA-2023-0032-0046
Safe Ride News (SRN)	NHTSA-2023-0032-0036
Stange, Trenton	NHTSA-2023-0032-0018
Tesla	NHTSA-2023-0032-0035
Tombrello, Stephanie	NHTSA-2023-0032-0030
Toyota Motor North America, Inc. and Toyota Motor Corporation (Toyota)	NHTSA-2023-0032-0054
Anonymous #5	NHTSA-2023-0032-0005
Anonymous #24	NHTSA-2023-0032-0024
Anonymous #33	NHTSA-2023-0032-0033

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 571.101 by revising paragraph S5.5.6 and tables 1 and 2 to read as follows.

§ 571.101 Standard No. 101; Controls and displays.

* * * * *

S5.5.6(a) Except as provided in S5.5.6(b) and (c), messages displayed in a common space may be cancelable automatically or by the driver.

(b) Telltales for high beams, turn signal, low tire pressure, and passenger air bag off, and telltales for which the color red is required in table 1 to this section must not be cancelable while the underlying condition for their activation exists.

(c) Telltales for the seat belts must not be cancelable by the driver before the minimum durations are satisfied but may be cancellable automatically as specified in FMVSS No. 208 (§ 571.208).

* * * * *

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Table 1 to § 571.101

**Controls, Telltales, and Indicators
With Illumination or Color Requirements¹**

Column 1 ITEM	Column 2 SYMBOL	Column 3 WORDS OR ABBRE- VIATIONS	Column 4 FUNCTION	Column 5 ILLUMIN- ATION	Column 6 COLOR
Highbeam ²	 3, 5	-----	Telltale	-----	Blue or Green ⁴
Turn signals ²	 3, 6	-----	Control	-----	-----
			Telltale	-----	Green ⁴
Hazard warning signal	 3	Hazard	Control	Yes	-----
		-----	Telltale ⁷	-----	-----
Position, side marker, end- outline marker, identification, or clearance lamps	 3, 8	Marker Lamps or MK Lps ⁸	Control	Yes	-----
Windshield wiping system		Wiper or Wipe	Control	Yes	-----
Windshield washing system		Washer or Wash	Control	Yes	-----
Windshield washing and wiping system combined		Washer-Wiper or Wash-Wipe	Control	Yes	-----
Windshield defrosting and defogging system		Defrost, Defog, or Def.	Control	Yes	-----
Rear window defrosting and defogging system		Rear Defrost, Rear Defog, Rear Def., or R-Def.	Control	Yes	-----
Brake system malfunction	-----	Brake	Telltale	-----	Red ⁴
Antilock brake system malfunction for vehicles subject to FMVSS 105 or 135	-----	Antilock, Anti-lock, or ABS ⁹	Telltale	-----	Yellow

Column 1 ITEM	Column 2 SYMBOL	Column 3 WORDS OR ABBRE- VIATIONS	Column 4 FUNCTION	Column 5 ILLUMIN- ATION	Column 6 COLOR
Malfunction in Variable Brake Proportioning System	-----	Brake Proportioning ⁹	Telltale	-----	Yellow
Regenerative brake system malfunction	-----	RBS or ABS/RBS ⁹	Telltale	-----	Yellow
Malfunction in antilock system for vehicles other than trailers subject to FMVSS 121	-----	ABS or Antilock ⁹	Telltale	-----	Yellow
Antilock brake system trailer fault for vehicles subject to FMVSS 121		Trailer ABS or Trailer Antilock	Telltale	-----	Yellow
Brake pressure (for vehicles subject to FMVSS 105 or 135)	-----	Brake Pressure ⁹	Telltale	-----	Red ⁴
Low brake fluid condition (for vehicles subject to FMVSS 105 or 135)	-----	Brake Fluid ⁹	Telltale	-----	Red ⁴
Parking brake applied (for vehicles subject to FMVSS 105 or 135)	-----	Park or Parking Brake ⁹	Telltale	-----	Red ⁴
Brake lining wear-out condition (for vehicles subject to FMVSS 135)	-----	Brake Wear ⁹	Telltale	-----	Red ⁴
Electronic Stability Control System Malfunction (for vehicles subject to FMVSS 126) ^{10, 11}		ESC ¹²	Telltale	-----	Yellow
Electronic Stability Control System "OFF" (for vehicles subject to FMVSS 126) ¹⁰		ESC OFF	Control	Yes	-----
			Telltale	-----	Yellow

Column 1 ITEM	Column 2 SYMBOL	Column 3 WORDS OR ABBRE- VIATIONS	Column 4 FUNCTION	Column 5 ILLUMIN- ATION	Column 6 COLOR
Electronic Stability Control System Malfunction (for vehicles subject to FMVSS 136) ¹¹	 or  or 	ESC	Telltale	-----	Yellow
Fuel Level	 or 	Fuel	Telltale	-----	-----
			Indicator	Yes	-----
Engine oil pressure	 ¹³	Oil	Telltale	-----	-----
			Indicator	Yes	-----
Engine coolant temperature	 ¹³	Temp	Telltale	-----	-----
			Indicator	Yes	-----
Electrical charge		Volts or Charge or Amp	Telltale	-----	-----
			Indicator	Yes	-----
Engine stop	-----	Engine Stop ¹⁴	Control	Yes	-----
Automatic vehicle speed (cruise control)	-----	-----	Control	Yes	-----
Speedometer	-----	MPH, or MPH and km/h ¹⁵	Indicator	Yes	-----
Heating and Air conditioning system	-----	-----	Control	Yes	-----

Column 1 ITEM	Column 2 SYMBOL	Column 3 WORDS OR ABBRE- VIATIONS	Column 4 FUNCTION	Column 5 ILLUMIN- ATION	Column 6 COLOR
Automatic (<i>park</i>) transmission (<i>reverse</i>) control (<i>neutral</i>) position (<i>drive</i>)	-----	P R N D 16	Indicator	Yes	-----
Heating and/or air conditioning fan	 or 	Fan	Control	Yes	-----
Low Tire Pressure (including malfunction) (See FMVSS 138)	 17	Low Tire 17	Telltale	-----	Yellow
Low Tire Pressure (including malfunction that identifies involved tire) (See FMVSS 138)	 17	Low Tire 17	Telltale	-----	Yellow
Tire Pressure Monitoring System Malfunction (See FMVSS 138) 18	-----	TPMS 17, 19	Telltale	-----	Yellow
Rear Seat Belt Warning ²⁰	-----	-----	Telltale	-----	Green or Red ²¹

Notes to table 1 to § 571.101:

¹ An identifier is shown in this table if it is required for a control for which an illumination requirement exists or if it is used for a telltale for which a color requirement exists. If a line appears in column 2 and column 3, the control, telltale, or indicator is required to be identified, however the form of the identification is the manufacturer's option. Telltales are not considered to have an illumination requirement, because by definition the telltale must light when the condition for its activation exists.

² Additional requirements in FMVSS 108.

³ Framed areas of the symbol may be solid; solid areas may be framed.

⁴ Blue may be blue-green. Red may be red-orange.

⁵ Symbols employing four lines instead of five may also be used.

⁶ The pair of arrows is a single symbol. When the controls or telltales for left and right turn operate independently, however, the two arrows may be considered separate symbols and be spaced accordingly.

⁷ Not required when arrows of turn signal telltales that otherwise operate independently flash simultaneously as hazard warning telltale.

⁸ Separate identification is not required if function is combined with master lighting switch.

⁹ Refer to FMVSS 105 or FMVSS 135, as appropriate, for additional specific requirements for brake telltale labeling and color. If a single telltale is used to indicate more than one brake system condition, the brake system malfunction identifier must be used.

¹⁰ Requirement effective September 1, 2011.

¹¹ A manufacturer may use this telltale in flashing mode to indicate ESC operation.

¹² This symbol may also be used to indicate the malfunction of related systems/functions, including traction control, trailer stability assist, corner brake control, and other similar functions that use throttle and/or individual wheel torque control to operate and share common components with ESC.

¹³ Combination of the engine oil pressure symbol and the engine coolant temperature symbol in a single telltale is permitted.

¹⁴ Use when engine control is separate from the key locking system.

¹⁵ If the speedometer is graduated in both miles per hour and in kilometers per hour, the scales must be identified "MPH" and "km/h", respectively, in any combination of upper- and lowercase letters.

¹⁶ The letters 'P', 'R', 'N', and 'D' are considered separate identifiers for the individual gear positions. Their locations within the vehicle, and with respect to each other, are governed by FMVSS 102. The letter 'D' may be replaced by another alphanumeric character or symbol chosen by the manufacturer.

¹⁷ Required only for FMVSS 138 compliant vehicles.

¹⁸ Alternatively, either low tire pressure telltale may be used to indicate a TPMS malfunction. See FMVSS 138.

¹⁹ Required only for vehicles manufactured on or after September 1, 2007.

²⁰ Refer to FMVSS 208 for additional requirements.

²¹ These are the colors if symbols or numbers are chosen. If a symbol or number is used to indicate to the driver how many or which rear seat belts are in use, the color of the illuminated symbol or number must be green. If a symbol or number is used to indicate to the driver how many or which rear seat belts are not in use, or how many or which rear seat belts have undergone a change of status from in use to not in use, the color of the illuminated symbol or number must be red. See FMVSS 208 S7.5(c)(3).

Table 2 to § 571.101

**Identifiers for
Controls, Telltales, and Indicators with
No Color or Illumination Requirements**

Column 1 ITEM	Column 2 SYMBOL	Column 3 WORD(S) OR ABBREVIATION
Hand Throttle Control	-	Throttle
Engine Start Control	-	Engine Start ₁
Manual Choke Control	-	Choke
Odometer	-	Kilometers or km, if kilometers are shown. Otherwise, no identifier is required. ₂
Horn		Horn
Master Lighting Switch		Lights
Headlamps and Taillamps Control	-	- 4,5
Low Brake Air Pressure Telltale (for vehicles subject to FMVSS 121)	-	Brake Air
Front Seat Belt Unfastened Telltale		Fasten Belts or Fasten Seat Belts

Notes to table 2 to § 571.101:1. Use when engine control is separate from the key locking system.

2. Any combination of upper- or lowercase letters may be used.

3. Framed areas may be filled.

4. If a line appears in Column 2 and Column 3, the Control, Telltale or Indicator is required to be identified, however the form of the identification is the manufacturer's option.

5. Separate identification not required if function is combined with Master Lighting Switch.

BILLING CODE 4910-59-C

■ 3. Amend § 571.208 by:

■ a. Adding paragraphs S4.1.5.7, S4.1.5.7.1, S4.1.5.8, S4.1.5.8.1, S4.2.8, S4.2.8.1, S4.2.9, S4.2.9.1, S4.4.3.4, S4.4.3.4.1, S4.4.3.5, S4.4.3.5.1, and S4.5.1.(f)(3);

■ b. Revising paragraph S4.5.3.3(b); and

■ c. Adding paragraph S7.5.

The additions and revisions read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S4.1.5.7. Front seat belt warnings for passenger cars manufactured on or after September 1, 2026.

S4.1.5.7.1 Any front outboard designated seating position and any inboard designated seating position for which a seat belt warning is required in S4.1.5.6 shall comply with S7.5 of this standard.

S4.1.5.8. Rear seat belt warnings for passenger cars manufactured on or after September 1, 2027.

S4.1.5.8.1. All rear designated seating positions, except in law enforcement

vehicles, shall comply with S7.5 of this standard.

* * * * *

S4.2.8 Front seat belt warnings for trucks and multipurpose passenger vehicles manufactured on or after September 1, 2026 with a GVWR of 4,536 kg (10,000 lb) or less.

S4.2.8.1. Any front outboard designated seating position certified to a compliance option requiring a seat belt and any inboard designated seating position for which a seat belt warning is required by S4.2.6.4 shall comply with S7.5 of this standard.

S4.2.9 *Rear seat belt warnings for trucks and multipurpose passenger vehicles manufactured on or after September 1, 2027 with a GVWR of 4,536 kg (10,000 lb) or less.*

S4.2.9.1. All rear designated seating positions certified to a compliance option requiring a seat belt, except ambulances, as defined by FMVSS No. 201 (§ 571.201), and law enforcement vehicles, shall comply with S7.5 of this standard.

* * * * *

S4.4.3.4 *Front seat belt warnings for buses manufactured on or after September 1, 2026 with a GVWR of 4,536 kg (10,000 lb) or less.*

S4.4.3.4.1 All front outboard designated seating positions and any inboard designated seating position for which a seat belt warning is required by S4.2.6.4 shall comply with S7.5 of this standard.

S4.4.3.5 *Rear seat belt warnings for buses manufactured on or after September 1, 2027 with a GVWR of 4,536 kg (10,000 lb) or less.*

S4.4.3.5.1 All rear designated seating positions certified to a compliance option requiring a seat belt, except for school buses and law enforcement vehicles, shall comply with S7.5 of this standard.

* * * * *

S4.5.1 * * *

(f) * * *

(3) The owner's manual (which includes information provided by the vehicle manufacturer to the consumer, whether in digital or printed form) for any vehicle equipped with a seat belt warning system must include an accurate description of the system features and warning signals, including the location and format of the visual warnings, in an easily understandable format. The description shall include information on when the different features of the warning system will activate and how to interpret the visual warnings. For vehicles with any rear designated seating position that is a readily-removable seat (a seat designed to be easily removed and replaced by means installed by the manufacturer for that purpose) equipped with manual electrical connections that are utilized by the rear seat belt warning system, the owner's manual must include a description of the purpose of the connection, instructions on how to achieve a proper connection, and a description of how not achieving a proper connection may affect the proper functioning of the system.

* * * * *

S4.5.3.3 * * *

(b) Conform to the seat belt warning system requirements of S7.3 or S7.5 of this standard, as applicable.

* * * * *

S7.5 *Seat belt warning systems for front outboard seat belt assemblies in vehicles manufactured on or after September 1, 2026 provided in accordance with the requirements of S4.1.5.7, S4.2.8, S4.4.3.4, and S4.5.3.3 of this standard, and rear seat belt assemblies in vehicles manufactured on or after September 1, 2027 provided in accordance with the requirements of S4.1.5.8, S4.2.9, S4.4.3.5, and S4.5.3.3 of this standard.*

(a) *Definitions for S7.5.* (1) A manual seat belt is *not in use* when the seat belt latch mechanism is not fastened. A seat belt is *in use* when the seat belt latch mechanism is fastened. An automatic seat belt is *not in use* when the seat belt latch mechanism is not fastened or, if the automatic belt is non-detachable, the emergency release mechanism is in the released position. If the automatic seat belt is motorized, whether the seat belt is in use is determined when the seat belt webbing is in its locked protective mode at the anchorage point.

(2) A *warning cycle for an intermittent audible warning* consists of period(s) when the warning is active at the chime frequency or continuously, and of inactive period(s). A warning cycle begins with an active period and is 30 seconds in duration.

(3) *Chime frequency* means the repetition rate for an intermittent audible warning when the warning is active.

(4) *Duty cycle* means the total amount of time an intermittent audible warning is active during a warning cycle at the chime frequency or continuously, divided by the total warning cycle duration (30 seconds).

(5) A *readily-removable seat* means a seat designed to be easily removed and replaced by means installed by the manufacturer for that purpose.

(6) *Seat centerline* means the line formed by the intersection of the seating surface and the vertical plane that passes through the "seating reference point" (as defined at 49 CFR 571.3) and is parallel to the direction that the seat faces.

(b) *Front seat belt warning system.* A driver's designated seating position and any front outboard passenger designating seating position must be equipped with an audio-visual seat belt warning meeting the requirements of S7.5(b)(1) through (4) when tested in accordance with S7.5(d).

(1) *Visual warning.* (i) A visual warning must activate and remain active

whenever the ignition switch is in the "on" or "start" position (or the propulsion system is activated), the seat is occupied, and the seat belt is not in use.

(ii) *Vehicles with a driver's designated seating position.* The visual warning for the driver's seat belt and the visual warning for the front outboard passenger seat belt must be visible from the driver's seat. If the vehicle has a mode of driverless operation, the visual warning for the front outboard passenger seat belt must also be visible from the front outboard passenger seat.

(iii) *Vehicles without a driver's designated seating position.* The visual warning for each outboard passenger designated seating position must be visible from each outboard passenger designated seating position.

(iv) The visual warning may be continuous or intermittent and must display the identifying symbol or the words specified in table 2 of FMVSS No. 101 (§ 571.101).

(v) For a visual warning associated with multiple front outboard seats, the visual warning must clearly identify the seating positions for which the warnings are intended.

(vi) The visual warning must not be overridden by other warnings.

(2) *Audible warning—first phase.* (i) An audible warning must activate when the ignition switch is placed in the "on" or "start" position (or upon manual activation of the propulsion system, but prior to the vehicle being placed in "possible active driving mode" as defined by FMVSS No. 305 (§ 571.305)), the seat is occupied, and the seat belt is not in use.

(ii) The audible warning must continue for 30 seconds, until the seat belt that triggered the warning is in use, until the seat is no longer occupied, or until the second-phase warning activates, whichever comes first. The audible warning may be paused during the activation of another audible safety warning that is designed to alert the driver to take immediate action, but the seat belt audible warning must be resumed for the remainder of the required duration after the other audible warning deactivates.

(iii) The audible warning may be continuous or intermittent. If intermittent, inactive periods longer than 3 seconds will not be counted toward the total duration of the audible warning, and there must be no inactive periods greater than 10 seconds. The same audible warning may be used for all front and rear seats.

(3) *Audible warning—second phase.*

(i) The audible warning must activate and remain active when the vehicle

speed is equal to or greater than 10 km/h (6.2 mph), the seat is occupied, and the seat belt is not in use. The audible warning may be paused during the activation of another audible safety warning that is designed to alert the driver to take immediate action, but the seat belt audible warning must be resumed after the other audible warning deactivates.

(ii) The audible warning may be continuous or intermittent. If intermittent, the audible warning when active must be continuous or have a chime frequency of at least 0.5 Hz and a duty cycle of at least 0.2. The same audible warning may be used for all front and rear seats.

(4) *Cancellation.* The warning must not be able to be canceled or deactivated.

(c) *Rear passenger seat belt warning system.* All rear designated seating positions must be equipped with a warning system meeting the requirements of S7.5(c)(1) through (7) when tested in accordance with S7.5(d).

(1) *Start-of-trip warning.* A visual warning indicating how many or which rear seat belts are in use and/or not in use must activate when the ignition switch is placed in the “on” or “start” position (or upon manual activation of the propulsion system, but prior to the vehicle being placed in “possible active driving mode” as defined by FMVSS No. 305 (§ 571.305)) and continue for at least 60 seconds.

(i) No visual warning is required for:

(A) an unoccupied seat if the system is able to determine whether or not a seat is occupied;

(B) a seat belt that is in use in a system designed to indicate to the driver how many or which rear seat belts are not in use; and

(C) a seat belt that is not in use in a system designed to indicate to the driver how many or which rear seat belts are in use.

(2) *Change-of-status warning.* An audio-visual warning indicating how many or which rear seat belts have undergone a change of status from in use to not in use must activate when the status of any rear seat belt changes from in use to not in use and the vehicle is in forward or reverse drive mode, unless any rear door is open. The warning must continue for at least 30 seconds or until the seat belt that triggered the warning is in use. The warning may deactivate if the system is able to determine that the number of seat belts in use is restored and all the doors remained closed.

(3) *Additional visual warning requirements.* (i) The warning may be continuous or intermittent and may

consist of text, symbols, and/or numbers.

(ii) The warning must be visible from the driver's seat.

(iii) If the warning is designed to indicate how many or which rear seat belts are in use, the color of the symbols or numbers indicating seat belts in use must be green. If the warning is designed to indicate to the driver how many or which rear seat belts are not in use, the color of the symbols or numbers indicating seat belts not in use must be red.

(iv) The change-of-status visual warning may use the same telltale as the start of trip warning, provided that the color of an illuminated symbol or number used to indicate to the driver how many or which rear seat belts have undergone a change of status from in use to not in use is red.

(v) The warning must not be overridden by other visual warnings for the required duration.

(4) *Audible warning requirements.* (i) The audible warning may be continuous or intermittent. If intermittent, inactive periods longer than 3 seconds will not be counted toward the total duration of the warning, and there must be no inactive periods greater than 10 seconds.

(ii) The audible warning may be paused during the activation of another audible safety warning that is designed to alert the driver to take immediate action, but the seat belt audible warning must be resumed for the remainder of the required duration after the other audible warning deactivates.

(iii) The same audible warning may be used for all front and rear seats.

(5) *Cancellation.* The warning must not be able to be canceled or deactivated.

(6) *Seat electrical connection requirements.* Any rear designated seating position consisting of a readily-removable seat that is equipped with electrical connections utilized by the rear seat belt warning system must either—

(i) Automatically connect the electrical connections when the seat is put in place; or

(ii) If a manual electrical connection is required, the connectors must be readily accessible.

(7) *Electrical connection warning signal.* Vehicles that provide a visual warning designed to indicate to the driver how many or which rear seat belts are not in use and are equipped with any readily removable rear seats must, when the ignition switch is placed in the “on” or “start” position (or upon manual activation of the propulsion system, but prior to the

vehicle being placed in “possible active driving mode” as defined by FMVSS No. 305 (§ 571.305)) provide a visual warning visible from the driver's seat if a seat has been installed and a proper electrical connection has not been made. The visual warning may be intermittent but must remain active until all rear seat electrical connections are properly made.

(d) *Test procedures.* (1) *Occupied designated seating positions.* If testing with a designated seating position occupied, the following apply, at the option of the manufacturer:

(i) *Front outboard seating positions.*

(A) Seat the 5th percentile female test dummy described in part 572, subpart O of this chapter, as well as any larger dummy described in part 572 of this chapter; or

(B) Seat any human occupant that weighs 46.7 kg (103 lb) or more and is 139.7 cm (55 inches) tall or taller.

(ii) *Driver's seating position.* (A) Seat the 5th percentile female test dummy described in part 572, subpart O of this chapter, as well as any larger dummy described in part 572 of this chapter;

(B) Seat any human occupant that weighs 46.7 kg (103 lb) or more and is 139.7 cm (55 inches) tall or taller; or

(C) The seat may be considered occupied when the ignition switch is in the “on” or “start” position (or the propulsion system is activated).

(iii) *Rear seating positions.* (A) Seat the 6-year-old child dummy described in part 572, subpart N of this chapter, as well as any larger dummy described in part 572 of this chapter; or

(B) Seat any human occupant that weighs 21 kg (46.5 lb) or more and is 114 cm (45 inches) tall or taller.

(iv) *Compliance option selection.* The manufacturer shall select a compliance option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle. Each manufacturer shall provide information to NHTSA regarding which of the compliance options it has selected for a particular vehicle or make/model upon request.

(2) *Seating procedures—(i) Seat adjustment.* If adjustable, the seat back shall be placed in the manufacturer's nominal design riding position, with any other seat adjustments in any position, and any adjustable seat belt anchorages in any position.

(ii) *Test dummy.* Seat the test dummy such that the midsagittal plane of the dummy is vertical and within ± 10 mm of the seat centerline, with the torso and pelvis in contact with the seat back. The dummy may be clothed in any manner.

(iii) *Human occupant.* The occupant shall assume, to the extent possible, the

final physical position specified for the test dummy. The occupant may be clothed in any manner.

(3) Verify that the seat belt warnings function as specified in S7.5(b) and (c) for any combination of seat belt use (at any seating position), seat occupancy (at

any seating position), removable seat electrical connection status (connected or not connected, for any removable seat), vehicle speed, and door status (open or closed, for any door), except that the door shall not be opened when the vehicle is in motion.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and part 501.

Adam Raviv,
Chief Counsel.

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Part III

Department of Education

34 CFR Parts 600, 643, 644, et al.

Program Integrity and Institutional Quality: Distance Education and Return of Title IV, HEA Funds; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 643, 644, 645, 647, and 668

[Docket ED–2024–OPE–0050]

RIN 1840–AD85 and 1840–AD92

Program Integrity and Institutional Quality: Distance Education and Return of Title IV, HEA Funds

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations governing participation in the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), to promote program integrity and institutional quality. These regulations clarify, update, and consolidate certain provisions that apply to distance education and the return of title IV, HEA funds. They also make technical changes to the TRIO program regulations to reflect the current status of the Republic of Palau as a member of the Freely Associated States. This document provides notice that the Department fully closes out the Program Integrity and Institutional Quality: Distance Education and Return of Title IV, HEA Funds notice of proposed rulemaking. That is, we will not be finalizing the remainder of the Federal TRIO program provisions but may promulgate through future rulemaking efforts.

DATES: The regulations are effective July 1, 2026. For the implementation dates of the regulatory provisions, see the Implementation Date of These Regulations in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: For distance education: Brian Schelling. Telephone: (202) 987–0443. Email: Brian.Schelling@ed.gov. For return of title IV funds: Aaron Washington. Telephone: (202) 987–0911. Email: Aaron.Washington@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.

A brief summary of these final regulations are available at www.regulations.gov/docket/ED-2024-OPE-0050.

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I. Abbreviations

CFR: Code of Federal Regulations
 CIP Code: Classification of Instructional Programs Code
 DEOA: Department of Education Organization Act
 EOC: Educational Opportunity Centers
 FFEL: Federal Family Education Loan program
 FSA: Federal Student Aid
 Freely Associated States: the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands
 HEA: Higher Education Act of 1965, as amended
 McNair: Ronald E. McNair Postbaccalaureate Achievement Program
 PEP: Eligible prison education program
 PRWORA: Personal Responsibility and Work Opportunity Reconciliation Act
 R2T4: Return of title IV funds
 RIA: Regulatory Impact Analysis
 SSS: Student Support Services Program
 Title IV, HEA Programs: Student financial assistance programs authorized under title IV of the HEA
 TRIO: Federal outreach and student services programs designed to identify and provide services for individuals from disadvantaged backgrounds
 TS: Talent Search
 UB: Upward Bound

II. Executive Summary**1. Purpose of This Regulatory Action**

These final regulations address two substantive areas: distance education and return of title IV funds (R2T4). Additionally, this document makes technical changes to the TRIO program regulations to reflect the current status of the Republic of Palau as a member of the Freely Associated States and removes references to the Trust Territory of the Pacific Islands. As noted above, we will not be finalizing the remainder Federal TRIO provisions but may consider them in a future rulemaking efforts.

The Department is addressing these areas to help ensure students are well served by the eligible institutions they attend and ensure that Federal Student Aid (FSA) programs work in the best interests of students. As the two distinct topics are structured and addressed independently in this final rule, the Department generally intends the rule's provisions to be severable from each other. If any provision of a particular subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any other person, act, or practice will not be affected thereby.

The distance education final regulations help the Department improve its oversight of distance education and correspondence programs. To accomplish this, the distance education regulations improve the information available about students in such programs who receive title IV, HEA funds by adding a definition of *distance education course*, and requiring institutions to report their students' distance education status.

The R2T4 final regulations increase the accuracy and simplicity of performing R2T4 calculations; address unique circumstances for what constitutes a withdrawal; and codify longstanding policies into regulation.

The July 24, 2024, Notice of Proposed Rulemaking (NPRM), 89 FR 60256, for the Federal TRIO programs proposed to expand student eligibility under certain TRIO programs for students who have enrolled in or who seek to enroll in a high school in the United States, territories, or Freely Associated States. After reviewing comments received on the proposed rulemaking for TRIO, the Department has decided not to finalize the Federal TRIO provisions other than the technical change mentioned above, to reconsider how best to ensure that the TRIO programs are able to reach all populations of disadvantaged students. The Department may consider the remaining Federal TRIO provisions in a future rulemaking effort.

2. Authority for This Regulatory Action

The legal basis for these final regulations is title IV of the Higher Education Act of 1965, as amended (HEA), which authorizes the Federal government's major student financial aid programs that are the primary source of direct Federal support to students pursuing postsecondary education. 20 U.S.C. 1070–1099d (sections 400–499 of the HEA). Institutions participating in the title IV, HEA programs must satisfy certain threshold and ongoing requirements, *see id.*, and the Secretary

is given broad authority to carry out program requirements. 20 U.S.C. 1070(b) (section 400(b) of the HEA). As part of its oversight responsibilities under title IV, the Department seeks to promote program integrity and institutional quality. *See generally* 20 U.S.C. 1099c, 1099c–1, 1099c–2 (sections 498, 498A, and 498B of the HEA). To this end, the Department's Student Assistance General Provisions regulations establish threshold requirements for institutions to participate and to continue participation in student financial assistance programs. *See generally* 34 CFR parts 600–603, 642–647, 668, 673–676, 682–694. These final regulations update, consolidate, and revise requirements in two distinct title IV areas: distance education and the return of title IV, HEA funds, impacting 34 CFR parts 600 and 668. The Department's specific legal authority in these areas is set forth below.

Distance Education. Section 103(7) of the HEA defines “distance education,” and section 484(l) sets forth rules relating to courses offered through distance education.

Return of Title IV, HEA Funds. Section 484B of the HEA outlines the process that an institution must follow if a title IV, HEA aid recipient withdraws from the institution during a payment period or period of enrollment (also known as R2T4). The Department's various changes to the R2T4 regulations benefit both institutions and students.

III. Summary of the Major Provisions of This Regulatory Action

These final regulations make the following changes.

Distance Education (§§ 600.2, 668.3, 668.41)

- Amend § 600.2 to add a definition for *distance education course*.
- Add § 668.41(h) to require institutions to report student enrollment in distance education or correspondence courses using a procedure that would be determined by the Department.

Return of Title IV Funds (§§ 668.21, 668.22)

- Amend § 668.22(a)(2)(ii)(A)(6) to exempt institutions from performing an R2T4 calculation if: (1) a student is treated as never having begun attendance; (2) the institution returns all title IV, HEA assistance disbursed to the student for that payment period or period of enrollment; (3) the institution refunds all institutional charges to the student for that payment period or period of enrollment; and (4) the institution writes off or cancels any

payment period or period of enrollment balance owed by the student to the institution due to the institution's returning of title IV, HEA funds to the Department.

- Amend § 668.22(b)(2) to codify longstanding guidance (since the 2005–06 award year¹) that an institution that is required to take attendance must document the date of the institution's determination that the student withdrew no later than 14 days after the student's last date of attendance as determined by the institution from its attendance records.
- Amend § 668.22(d)(1)(vii) to allow a confined or incarcerated individual, in a term-based setting, to return at a different point in their eligible prison education program (PEP) than the point at which the student left off.
- Amend § 668.22(f)(1)(ii)(A) to streamline and make consistent institutions' calculation of the percentage of the payment period completed for a clock-hour program.
- Amend § 668.22(l)(9) to consider a module part of the payment period used in the denominator of the R2T4 calculation only when a student begins attendance in the module.

IV. Summary of Costs and Benefits

As further detailed in the *Regulatory Impact Analysis*, the Department estimates net present value costs of \$27,349,749 over ten years at a 2 percent discount rate. This is equivalent to an annualized cost of \$3,044,753 over ten years. Additionally, we estimate annualized quantified costs of \$9,423,657 related to paperwork burden.

As also further detailed in the RIA, these final regulations will have benefits, including, ensuring students are well served by the institutions of higher education they attend and that Federal Student Aid programs work in the best interests of students. New regulations for distance education will help the Department better measure and account for student outcomes, improve oversight over distance education, and ensure students are receiving effective education by requiring students' distance education enrollment status. The R2T4 final regulations will increase the accuracy and simplicity of performing R2TV calculations, add additional clarity to institutions on reporting, and codify longstanding policies.

¹ 2005–06 FSA Handbook—(page 5–32)—chrome—<https://fsapartners.ed.gov/sites/default/files/2021-03/2005-2006%20Volume%205%20Master%20File.pdf>.

V. Implementation Date of These Regulations

These regulations are effective on July 1, 2026. Section 482(c)(1)² of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. HEA section 482(c)(2)³ also permits the Secretary to designate any regulation as one that an entity subject to the regulations may choose to implement earlier and outline the conditions for early implementation.

The Secretary is exercising his authority under HEA section 482(c) to designate certain regulatory changes to part 668 in this document for early implementation beginning February 3, 2025. The Secretary has designated the following provisions for early implementation: allow an incarcerated student enrolled in a term-based program who takes a leave of absence to return without resuming coursework at the same point, and exempting institutions from performing an R2T4 calculation under the withdrawal exemption in § 668.22(a)(2)(ii)(A)(6).

VI. The NPRM and Public Comments

On July 24, 2024, the Secretary published a NPRM for these regulations in the **Federal Register**. These final regulations contain changes from the NPRM, which we explain in the *Analysis of Comments and Changes* section of this document. The NPRM included proposed regulations on three topics: distance education, R2T4, and the Federal TRIO programs.

We developed these regulations through negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. The Department negotiated in good faith with all parties with the goal of reaching consensus. The Committee reached consensus on TRIO but did not reach consensus on the provisions under Distance Education and R2T4. However, after reviewing the comments received on the NPRM, the Department has determined not to finalize the Federal TRIO provisions other than the technical change mentioned above, to reconsider how best to ensure that the TRIO programs are able to reach all

² 20 U.S.C. 1089(c)(1).

³ 20 U.S.C. 1089(c)(2).

populations of disadvantaged students. The Department may consider the remainder of the Federal TRIO provisions in future rulemaking efforts.

In response to our invitation in the NPRM, 454 parties submitted comments. We discuss substantive issues under the sections of the regulations to which they pertain.

VII. Analysis of Public Comment and Changes

In this section, we have grouped issues according to subject, with appropriate sections of the regulations referenced. We discuss other substantive issues under the sections of the regulations to which they pertain. In instances where individual submissions appeared to be duplicates or near duplicates of comments prepared as part of a write-in campaign, the Department posted one representative sample comment along with the total comment count for that campaign to *Regulations.gov*. We considered these comments along with all other comments received. In instances where individual submissions were bundled together (submitted as a single document or packaged together), the Department posted all the substantive comments included in the submissions along with the total comment count for that document or package to *Regulations.gov*. Generally, we do not address minor, non-substantive changes (such as renumbering paragraphs, adding a word, or typographical errors). Additionally, we generally do not address changes recommended by commenters that the statute does not authorize the Secretary to make or comments pertaining to operational processes.

1. Process for Out-of-Scope Comments

We do not address comments that are out of scope. For purposes of this NFR, out-of-scope comments are those that are beyond the scope of the NPRM altogether. Generally, comments that are outside of the scope of the NPRM are comments that do not discuss the content or impact of the proposed regulations or the Department's evidence or reasons for the proposed regulations. Analysis of the comments and of any changes in the regulations since publication of the NPRM follows.

2. Public Comment Period

Comments: Several commenters argued that the 30-day comment period denied the public their right to provide adequate comment. These commenters recommend extending the comment period for an additional 30 days for what they said would be a more

comprehensive and thoughtful review of the proposed rulemaking. A few commenters mentioned that institutions have several tasks to balance, including challenges related to the FAFSA simplification rollout, the beginning of the semester, new regulations, and increased reporting requirements. One commenter noted that while they understand that a final rule must be published by November 1 for the rule to take effect the following academic year, they are frustrated that 30 days has become a routine timeframe at the Department because it is generally insufficient time to prepare a response reflective of the regulation's impact. One commenter stated that there was no reason for the Department to give this rule a shorter comment period compared to other NPRMs and that doing so goes against the Administrative Procedure Act. One commenter asserts that Executive Orders (E.O.) 12866 and 13563 support their claims of a 30-day comment period being too short. The commenter states that E.O. 13563 instructs every agency to provide the public with a meaningful opportunity to comment on a proposed regulation and the comment period should generally be at least 60 days. The commenter points out that E.O. 12866 includes similar language.

Discussion: The public comment period is consistent with the Department's obligations under the Administrative Procedure Act and the Executive Orders cited by the commenters, and, given the extensive opportunity for comment provided over the course of the negotiated rulemaking process, the Department declines the suggestion to extend the public comment period for another 30 days. Contrary to the commenter's assertion, the comment period for this NPRM is not shorter compared to other recent NPRMs, and the Department believes 30 days gave the public sufficient time to prepare a response to the proposed regulations. Over 450 individuals and entities commented on the NPRM, and many provided detailed and lengthy comments. Those comments have helped the Department identify areas for improvements and clarification that have resulted in improved final regulations.

Additionally, the negotiated rulemaking process, which began in the Spring of 2023, provided significantly more opportunity for public engagement and feedback than standard notice-and-comment rulemaking, which does not include multiple negotiation sessions. For example:

- The Department began the rulemaking process by inviting public

input over 3 days of public hearings from April 11–13, 2023; all who requested to speak were accommodated during the hearings on April 11 and 12, which led the Department to cancel the hearing scheduled for April 13. We received 60 public comments as part of the public hearing process.

- Following the public hearings, the Department sought non-Federal negotiators for the negotiated rulemaking committee who represented constituencies that would be affected by our rules. As part of these non-Federal negotiators' work on the rulemaking committee, the Department asked that they reach out to their broader constituencies for feedback during the negotiation process.

- During each of the three negotiated rulemaking sessions, we provided opportunities for the public to comment, including after seeing draft regulatory text, which was available prior to the first, second, and third sessions. The Department and the non-Federal negotiators considered those comments to inform further discussion at the negotiating sessions, and we used the information to create our proposed rules.

Furthermore, while the Executive Orders cited by the commenter recommend an appropriate time for public comment, they do not require more than 30 days, nor do they take into account the significant additional public input garnered through the mandated negotiated rulemaking process under the HEA.

Changes: None.

3. Distance Education (§§ 600.2, 668.3, 668.41)

General Support

Comments: There were several commenters who supported the Department's proposed rules on distance education. They cited the increasing role of distance education in higher education and the associated need for better measurement of the effectiveness of that instruction by looking at student outcomes. They agreed that the new definitions and reporting requirements will make such oversight easier through the collection of needed data.

Discussion: The Department appreciates the feedback from commenters.

Changes: None.

General Opposition

Comments: Many commenters expressed concern that the new regulations would impose an administrative burden on institutions.

Some felt that the proposed rules evinced a bias against distance education as being of inferior quality to traditional in-person education.

Discussion: In general, we believe that the administrative burden will be less than some commenters raised, both due to clarifying some areas of confusion as well as the decision to not finalize some proposals that were in the NPRM. The benefit from the remaining burden is acceptable because it will help the Department in its administration of the title IV, HEA programs. We provide greater detail on the provisions that are not being finalized in the relevant sections that discuss comments related to those provisions.

Changes: None.

Comments: A few commenters suggested the proposed regulations will stifle innovation in distance education that has occurred in the wake of the pandemic. The commenters stated that, in their view, the distance education practices established during that national emergency are not what prevails now; rather, according to the commenters, distance education has only improved and is constantly becoming more rigorous, and therefore the Department should be more restrained in writing new rules.

Discussion: While the Department agrees that distance education has continued to expand since the pandemic, we disagree that the final regulations will hamper its development. Additionally, rather than limiting innovation and improvement in the distance education sector, the Department's efforts to improve data-gathering related to distance education will eventually result in improved research on outcomes for students enrolled in distance education programs and provide new data for institutions to use to improve their programs. To the extent this comment was referring to proposals related to the treatment of asynchronous clock hours, we note that proposal will not be finalized but may be addressed through future rulemaking efforts.

Changes: None.

Comments: Some commenters noted that the timeline for implementation is too short and that institutions will need more time to be able to incorporate the changes. A couple requested that the Department set aside the current rulemaking and instead continue with negotiations on distance education topics with more qualified negotiators who have sufficient background to adequately advise on and advocate for distance education.

Discussion: The Department acknowledges commenters' concerns

that additional time will be needed for institutions to adapt their systems and procedures to implement these new regulations. Since these rules are being published after November 1, 2024, the effective date will not be until July 1, 2026, with the provision on distance education reporting extended to July 1, 2027. This provides the institutions a full additional year to make any adjustments that are necessary for implementation than if the rules had been finalized prior to November 1, 2024. Given the approximately 18 months afforded to institutions to implement these provisions, the Department does not believe further adjustments to the implementation date are necessary.

We do not agree with the commenters who suggested that the negotiated rulemaking committee lacked appropriate expertise, and we decline the suggestion to restart rulemaking with a differently constituted committee. The primary negotiator from the for-profit sector has extensive experience in online education and also participated on the committee for the Distance Education and Innovation regulations published in 2020. The primary negotiator for school business officers is from an institution that has robust and well-regarded distance education coursework and has been offering online bachelor's degree programs since 2003–2004.⁴ The alternate negotiator for private nonprofit institutions, who was active during negotiations, is from a distance learning school that was among the first to offer online courses in the 2000's.⁵ The primary negotiator for financial aid administrators is from a college that offers 26 associate degrees and 34 certificates 100 percent online in a variety of disciplines.⁶ This is only a partial list of negotiators with experience with distance education. Contrary to the commentor's suggestion, there was clearly sufficient experience on the panel for negotiators to put forth informed opinions and suggestions regarding the Department's distance education proposals.

Changes: None.

Comments: Commenters contended that various parts of the distance education provisions violate the Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), which they claim affirms that agencies are not at liberty to

expound via regulation where the law is already clear.

Discussion: As a general matter, the Department notes that the *Loper Bright* decision does not preclude an agency from regulating where statutory language is clear. Rather, the decision requires an agency's regulation to be consistent with the plain language and best reading of an authorizing statute. See, e.g., *Loper Bright*, 144 S. Ct. at 2266, 2271. As addressed in the specific sections below, the revised regulations satisfy that standard.

Establishment of Virtual Locations

Comments: Several commenters agreed with the Department's proposed definition of virtual location in § 600.2 because it will allow for better tracking and oversight of distance education as well as loan discharges when a virtual location closes. The commenters indicated that such oversight would permit comparison of student outcomes in programs using different modalities within institutions as well as programs across institutions. One commenter also noted that it may increase the demand for online education because, the commenter stated, schools could formally expand and market their virtual campuses and possibly reduce the operating costs of maintaining physical locations.

Discussion: The Department appreciates the commenters' support.

Changes: None.

Comments: Commenters raised a number of concerns about the new virtual location definition, including about its scope, the additional administrative costs of coordination across programs, the impact of the residency requirement on low-residency programs, and the potential burden on accreditors to "visit" such programs. Others requested delayed implementation of this provision or delay until other independent accreditation regulations go into effect. Still others asserted that the Department did not have the authority to treat a virtual location as a completely separate entity for purposes of loan discharge.

Some commenters stated that the data the Department seeks can be effectively collected through existing reporting systems such as the National Student Loan Data System (NSLDS) and the Common Origination and Disbursement (COD) system or the Integrated Postsecondary Education Data System (IPEDS). The commenters assert that it is redundant and impractical to redefine a modality as a location.

Discussion: As noted in the NPRM, the Department proposed the addition of a virtual location because we have

⁴ <https://www.usnews.com/education/online-education/marist-college-2765/bachelors>.

⁵ <https://www.excelior.edu/about/>.

⁶ <https://www.sanjac.edu/programs/online>.

been hampered in the ability to fully understand students' participation in distance education, account for differences in outcomes and conduct oversight, accurately measure taxpayer expenditures on distance education programs, and gauge the success of such education (89 FR 60256). The Department had initially proposed the creation of a virtual additional location because we believed that would accomplish our goals at a lower burden to institutions. Under this proposal, institutions would report only programs that were fully distance-based at a single virtual location.

During negotiated rulemaking, the Department agreed to collect distance education enrollment information for students receiving title IV, HEA assistance through NSLDS. Non-Federal negotiators believed that such information would permit a more granular understanding of outcomes for students enrolled in distance education or correspondence courses.

In considering both the virtual location proposal and the proposal for NSLDS reporting, we have determined that it is not necessary to include both proposals. Given the greater support from institutions for the NSLDS reporting, as well as concerns about potential implications for site visits and other issues identified above, we have decided to not move forward with the proposal for a virtual location. We will instead collect the relevant information through NSLDS. The NSLDS data collection does not have any effect on closed school loan discharges.

Changes: We have removed the definition of a virtual additional location from § 600.2.

Asynchronous Instruction and Clock Hours (Definition of "Clock Hour" in § 600.2)

Comments: There were several commenters who supported the Department's proposal to prevent completion of asynchronous distance education coursework from counting as clock hours in clock-hour programs, by modifying the definition of "clock hour" in § 600.2, even though this change will remove some options from affected schools and students. They agreed with the Department's rationale for making this change. One commenter pointed to how, during the open comment periods of the negotiated rulemaking sessions, multiple students testified about using their financial aid to pay for expensive clock-hour programs that consisted solely of YouTube videos that were free to the public, with little to no interaction with instructors, and that none of these

students received any hands-on training, typically required by clock-hour programs, and none of them learned the skills necessary to succeed in the professions for which they trained.

Discussion: The Department appreciates the support from commenters. As discussed in the NPRM (89 FR 60259), the Department has heard similar concerns from students through complaints and in program reviews.

Changes: None.

Comments: Several commenters suggested that the Department's proposal exceeds its authority, asserting that it completely removes a form of education delivery provided in the HEA and ignores the Department of Education Organization Act (DEOA). Commenters asserted that the HEA does not give the Department the authority to treat asynchronous clock- and credit-hour programs differently, and that the HEA definition of distance education in section 103(7) specifically allows for this mode of instruction when it states that distance technologies are "to support regular and substantive interaction between the students and the instructor, synchronously or asynchronously." One commenter observed that there is no statutory distinction between clock- and credit-hour programs in distance education, that section 481(b)(3) of the HEA (20 U.S.C. 1088) only requires an "eligible program" to have the capability to effectively deliver distance education, and that section 481(b)(4) of the HEA acknowledges that an "eligible program" can include credit hours or clock hours. One commenter asserted that the Department's citation of section 400(b) of the HEA for the broad authority to regulate in this area is unwarranted, especially in the wake of the Supreme Court's recent *Loper Bright* decision, which removed the *Chevron* deference that previously was accorded to Federal agencies (section 400(b) of the HEA states that the Department will "carry out programs to achieve the purposes of this part.") The commenter noted that section 400(b) of the HEA is about title IV grant and benefit programs, not asynchronous instruction, and asserted that the Department is trying to assume authority it no longer has.

Commenters also asserted that the Department did not sufficiently explain why it reversed the stance it took in the 2020 final rule, which the commenters believed was the product of rulemaking consensus, and that the proposed regulation was thus in violation of the Administrative Procedure Act. One

commenter asserted that the 2024 proposed regulation moves backward what the commenter believed was a consensus position in 2020. Another commenter pointed out that the Department agreed with the testimonials of commenters in 2020 about the efficacy of asynchronous delivery and confirmed in the final rule that it was acceptable. The commenter also asserted that most schools did not start using asynchronous delivery until 2022, so it is too soon to determine that it is ineffective.

Discussion: The *Loper Bright* decision does not prohibit an agency from regulating; rather, it requires the rules to be consistent with the plain language and best reading of the authorizing statute.

Congress authorized the Department to promulgate regulations governing applicable programs and gave the Department broad authority to carry out the purposes of the various title IV programs. See 20 U.S.C. 1070(b)(HEA section 400(b)); 1082(a)(1)(HEA section 432(a)); 1087a(b)(HEA section 451(b)).⁷ Contrary to the commenters' claim, these general provisions provide the Department the ability to ensure that any general provisions, such as those related to distance education, are promulgated fulfill the purpose of the grant and loan programs, which is to meet the needs of the student beneficiaries.

In defining an eligible title IV program, Congress recognized that clock hours and credit hours are two separate and distinct forms of instruction. See 20 U.S.C. 1088(b). While the HEA does not define a clock hour, the regulatory definition of a clock hour was first adopted in November 1974 (39 FR 39412). That definition stated that a clock hour was measured based upon spending 50 to 60 minutes in direct instruction or in a faculty-supervised learning opportunity such as a laboratory, shop, or internship. Until 2020, that definition went largely unchanged except for the inclusion of a definition for correspondence courses.

The longstanding interpretation of a clock hour also followed the plain meaning of the term—it is an hour as measured by the 60 minutes displayed for one rotation of the minute hand on a clock. In contrast, the concept of a credit hour is based on a combination of both learning with an instructor and learning outside of the classroom, as

⁷ In outlining its legal authority for the rules set forth in the NPRM, the Department inadvertently omitted the general authority provision at 20 USCS 1221e-3, and the general loan provisions at 20 USCS 1082(a)(1), 1087a(b). The Department is rectifying those omissions here.

described in the definition of a credit hour in § 600.2.⁸ Nothing in these regulations affects an institution's ability to offer asynchronous instruction as part of a credit-hour program.

The decades-long definition of a clock hour never included the concept of out-of-class work. It also does not turn on whether a program is offered virtually. This definition predated the creation of the internet, and it remained in place for nearly 15 years after fully online programs were allowed in the title IV HEA programs. Congress also did not change this interpretation in the last full reauthorization of the Higher Education Act in 2008.

The distinct nature of clock-hour programs and the Department's longstanding interpretation of the term must be considered when interpreting the statutory language providing that distance education can be provided synchronously or asynchronously. The concepts of credit hours and clock hours had been well-established for many years when Congress amended the law to create the definition of "distance education" providing for both synchronous and asynchronous online education.¹⁰ There is no reason to believe that Congress intended to overturn the traditional concept of a clock hour as an hour of supervised instruction because of the addition of the word "asynchronous" in that new definition. At that time, the vast majority of programs using distance education were offered through credit hours, especially given the hands-on nature of clock hour programs. The revised regulation preserves the unique nature of clock-hour programs and ensures the requirement for 50–60 minutes of supervised instruction is met. Moreover, there is no statutory prohibition against treating the two differently for specified purposes.

In an effort to clarify the definition of a clock hour and allow for greater innovation in clock-hour programs, the Department included changes to the definition in negotiated rulemaking in 2019. During negotiated rulemaking, the Distance Learning and Educational Innovation subcommittee raised concerns about allowing clock hours to count toward title IV, HEA eligibility if they did not involve direct synchronous instruction. The subcommittee specifically noted that asynchronous clock hours would be more akin to homework, which cannot be counted

toward title IV, HEA eligibility in brick-and-mortar clock-hour programs, which would create an unfair inconsistency between programs using different modalities. Commenters are thus mistaken that the provision in the final 2020 rule was the product of consensus. In fact, in 2020, the change to asynchronous learning for clock-hour programs was not part of that consensus language. Rather, consensus was reached on a version of the rule in which asynchronous clock hours were not permitted for title IV, HEA purposes, the same principle the Department proposed in 2024, and that consensus version was in the 2020 NPRM. The final 2020 rule departed from such consensus in response to public comments, largely from cosmetology schools. The adoption of this changed position was not motivated by an underlying change in the statute. Nor did the final rule include any analysis or research of the specific innovations that merited the upending of more than four decades of agency precedent.

In the preamble to those regulations (85 FR 54752), we specifically noted our continued concern that clock hours offered asynchronously could be used as a means to complete unsupervised homework. The Department was attempting to allow for alternative educational approaches while attempting to maintain the longstanding position that, aside from correspondence courses, clock hours may only be counted for coursework that occurs in the classroom or through clinical or hands-on activities, whereas time spent outside of the classroom with supporting materials, including reading or passive consumption of videos, cannot be counted toward a student's title IV, HEA eligibility. See, e.g., paragraphs (1)(i) and (ii) of the definition of a clock hour in § 600.2, both of which predate the distance education definition established in 2020.⁹ Specifically, in the 2020 final rule we stated that: "The Department remains concerned about the possibility that clock hours offered asynchronously could be used as a means to complete unsupervised homework assignments rather than coursework that otherwise would have occurred in the classroom, which is prohibited under the Department's longstanding policy for clock-hour programs" (85 FR 54742).

However, in light of the range of public comments, the Department revisited this provision in the 2024 NPRM and ultimately has decided to

not finalize it. We will continue to conduct oversight on how institutions offer any asynchronous clock hour programs and may revisit this issue at a later date through a future rulemaking effort if we find continued evidence of widespread problems.

Because we are not finalizing this proposal, the Department maintains the position taken in 2020 that any distance education clock hour program delivered in whole or in part through asynchronous methods must involve regular and substantive interaction with an instructor, as defined in the definition of "distance education" in 34 CFR 600.2. Ensuring regular and substantive interaction includes continuous and active monitoring of student academic engagement. Additionally, these programs cannot count toward a student's title IV, HEA eligibility time that is more comparable to homework, such as reading or watching videos, and they must ensure that active engagement occurs during hours that are included in a student's eligibility. Institutions wishing to offer asynchronous clock hour programs must ensure they have the technological solutions in place necessary to make these kinds of assessments. Failure to do so could result in institutions owing liabilities to the Department or facing other administrative actions. If the Department continues to encounter non-compliance with these requirements, we may propose additional protective or restrictive measures on clock hours offered asynchronously, or once again propose a full ban as proposed in the NPRM.

With respect to the assertion that the Department ignored the DEOA, the commenter did not indicate how or why they felt the DEOA was ignored, and therefore the Department is unable to respond to that comment.

Changes: We have removed the changes to § 668.3(b)(2)(ii)(A) and (B) that would have limited asynchronous coursework that can count toward an institution's definition of an academic year to coursework offered in credit-hour programs.

Comments: Multiple commenters asserted that the Department did not provide sufficient evidence that asynchronous instruction is a problem. According to the commenters, it was not sufficient for the Department to rely on its stated experience in program reviews as well as student complaints when it has not made such documents public. One commenter went on to state that unspecified and unexplained reasoning does not satisfy the Supreme Court's standard for an examination of the relevant data and a reliance upon

⁸ In these regulations a credit hour is defined as one that reasonably approximates one hour of "classroom or direct faculty instruction" and two hours of "out-of-class student work" per week, or an equivalent amount of work for other academic activities.

⁹ [https://www.ecfr.gov/current/title-34/part-600/section-600.2#p-600.2\(Clock%20hour\)](https://www.ecfr.gov/current/title-34/part-600/section-600.2#p-600.2(Clock%20hour)).

factual findings and thus renders the regulation arbitrary and capricious. Commenters also felt it was overbroad to prohibit all asynchronous instruction in clock-hour courses and that it was inaccurate to imply that all synchronous and in-person classes are of higher quality.

Several commenters suggested there is research (in some instances providing citations) that demonstrates asynchronous learning is effective and therefore should be permitted to count as clock hours.

Discussion: As discussed above, the Department has decided to not finalize the proposed change to prohibit asynchronous clock hour programs.

In considering the decision to not finalize this provision the Department reviewed the studies cited by the commenters. We did not find any of them persuasive in the decision to not finalize this provision. We found that the studies cited have little to no bearing on asynchronous clock-hour programs offered by American institutions of higher education because they focus on international contexts, credit-hour programs, non-career and technical programs, graduate programs, comparisons to in-person as opposed to synchronous virtual instruction, or outcomes that are not tied to learning and course performance. We acknowledge that the literature on the specific question of the value of asynchronous clock hours is undeveloped, but that does not justify comparisons to unrelated contexts. We explain the limitations of specific studies cited by commenters below.

One study cited by commenters is a meta-analysis of 225 studies published in 2014.¹⁰ This study looked at other studies that examined the benefits of active learning versus lecture settings. However, it focused on undergraduate instruction in science, technology, engineering, and mathematics. Those are all historically credit-hour areas of learning, and there is no attempt in the study or by the commenters to connect these findings to clock-hour programs. Moreover, neither the commenters nor the study considers how clock-hour programs are already designed to be more hands-on than a traditional lecture-based format. We also note this piece was published prior to the 2020 rule that allowed for the offering of asynchronous learning in clock-hour programs and was never cited or considered as part of the decision to make that change, suggesting that its findings are not relevant to the specific issue at hand here: whether

asynchronous learning is appropriate in clock-hour programs.

Similar limitations exist for another study cited by commenters.¹¹ This study only considers 27 undergraduate and graduate students at a university, which has little bearing on clock-hour programs since they are not offered by this type of institution of higher education. The study also focuses on student satisfaction outcomes instead of the more relevant outcomes of student performance and learning.

Commenters also cited a study published in an Iranian medical journal in 2018.¹² It looks at students participating in a practical pathology program for one semester in 2016. It compared traditional lecture instruction to distance learning. A single semester's results from a foreign country's medical education is not informative on the question of whether clock hour programs in a U.S. setting can be offered asynchronously. Training medical doctors already entails expectations for significant out-of-class work and addresses a group of students very different from those generally pursuing clock hours.

Issues of comparability appeared in many of the other studies cited. For example, commenters pointed to a 2020 study looking at graduate medical education in the wake of the COVID-19 pandemic.¹³ Again, the level of education considered is significantly different from asynchronous clock-hour programs and already presumes significant work conducted by students outside of the classroom. It considers curricular design options for asynchronous learning as well as virtual learning. The study also notes "We do not recommend transitioning your entire curriculum to an asynchronous platform."¹⁴ The study did not consider any sort of trial to explore potential learning outcomes.

Many other studies cited ran into the same issue of focusing on instruction in foreign countries that does not appear to be based in clock hours. Commenters cited a 2021 meta-analysis of 36 studies published in an Indonesian journal that focused on the teaching of English as a foreign language.¹⁵ It considers the

relative merits of synchronous versus asynchronous learning for this specific subject matter. These are all distinct from what is offered through clock hours for title IV, HEA funds. While the conclusions are not relevant for the considerations of this final regulation, the study did find that, for asynchronous learning, "[t]he weaknesses involve lack of interaction, low mastery of content, dull class, connection issues, and network issues."¹⁶

A 2024 study cited by commenters considering virtual learning for training dentists in China faced similar issues.¹⁷ It asked 157 fourth-year students and 54 teachers their opinions on online learning using a questionnaire. The study found that the "skill operation score" of the students taught with some virtual learning was lower than that of those taught traditionally, though the difference was not statistically significant. As with other studies cited, the study looked at levels of education distinct from what the vast majority of asynchronous clock hour programs offer in the United States.

In some cases, the studies cited considered just a single meeting of a course. For instance, commenters cited a 2024 Taiwanese study that looked at 170 fourth-year students attending a single dermatology lecture.¹⁸ This is again an instance where students are already expected to conduct significant work out-of-class in a program that in the United States would be offered in credit hours. A study cited by commenters of 20 residents or orthopedic surgeons in Mexico taking an asynchronous course to diagnose ankle fractures has the same challenge—it is dealing with one lesson given to graduate level students who already have significant training in the given area.¹⁹ While a 2019 study cited by commenters did focus on second-year students, it related to 66 second-year students in an Indian university who were quizzed on what the authors describe as "low backache."²⁰ They looked at pre- and post-test scores on a multiple-choice quiz. While the Department does not think this study bears on this final regulation, we do note the authors stated: "Furthermore, since the undergraduates are introduced to new topics each day and have huge

¹¹ A Pilot Study Exploring Interaction and Student Satisfaction in Asynchronous Courses in Higher Education | TechTrends.

¹² <https://www.semanticscholar.org/reader/e12a9dfea127f0d7c287453a848ce2378ed28fdc>.

¹³ <https://pmc.ncbi.nlm.nih.gov/articles/PMC8043318/pdf/ats-scholar.2020-0046PS.pdf>.

¹⁴ See id.

¹⁵ https://www.researchgate.net/publication/356349861_BLENDED_ONLINE_LEARNING_COMBINING_THE_STRENGTHS_OF_SYNCHRONOUS_AND_ASYNCHRONOUS_ONLINE_LEARNING_IN_EFL_CONTEXT.

¹⁶ See id.

¹⁷ <https://link.springer.com/article/10.1186/s12909-024-05171-1>.

¹⁸ <https://pmc.ncbi.nlm.nih.gov/articles/PMC10960437/>.

¹⁹ <https://www.medigraphic.com/pdfs/ortope/or-2023/or232c.pdf>.

²⁰ <https://pmc.ncbi.nlm.nih.gov/articles/PMC6477961/>.

¹⁰ <https://pubmed.ncbi.nlm.nih.gov/24821756/>.

syllabi, they may get lost if live interactions are replaced with asynchronous teaching. There may be a gradual decline in motivation due to lack of active peer and student-teacher interactions.”

None of these studies looks at issues comparable to clock-hour programs in the United States that are eligible for title IV, HEA funds. Extending findings from one lecture, quiz, or portion of a course for a few dozen people in another country does not provide persuasive evidence to guide the potential awarding of millions if not billions of dollars in title IV, HEA funds.

Other studies did not involve formal postsecondary environments at all. Commenters cited a 2022 Argentinian study looking at the content of just under 300 posts on Facebook discussing diabetes self-care (the researchers excluded posts “based only on emoticons/GIFs, such as clapping hands or smiley faces expressing joy.”)²¹ This kind of analysis may be useful in the public health context, but it has little relevance to what criteria formal postsecondary programs should meet to be supported by taxpayer dollars. Similarly, a 2019 Nigerian study focused on the use of asynchronous learning to teach word processing skills to 70 secondary school students.²² Again, those types of skills can be valuable, but they are not relevant to title IV, HEA programs.

The studies cited that appeared in U.S. journals or publications generally were older, focused on a limited number of people, were only theoretical, or had some combination of those issues. For instance, commenters cited a 2008 piece in a quarterly publication from a U.S. nonprofit focused on the use of technology in higher education.²³ It focused on two online seminars of eight and 19 students, respectively. There are no other specifics provided around the level of postsecondary program, but the courses were taught by the author who in 2008 was focused on computer and systems sciences at a university in Sweden. Again, the comparison is not specific to clock-hour programs, and focusing on different types of credit-hour experiences fails to consider the

differences between that type of coursework and clock-hour programs.

A 2004 piece, meanwhile, looked at perceptions of the role of the instructor in online learning.²⁴ This study predates the ability of institutions to offer fully online courses that are eligible for title IV, HEA funds. This study looked at courses to help teachers or administrators with preparing for online learning, with almost two-thirds of participants holding a master’s degree. The age of the study, the fact that it was focused on professional development for students already with advanced degrees, and the lack of a connection to clock-hour programs all make it irrelevant for this final regulation. On a similarly theoretical basis is a 2009 study raised by commenters that looked at instructional design strategies.²⁵ It also was not used or cited by the Department in the 2020 policy change despite being available at that time, which suggests its limited relevance to the specific issue in both the 2020 and 2024 regulations: the appropriateness of asynchronous learning in clock-hour programs. Though more recent, a 2020 article cited by commenters considered how to handle emergency transitions to online learning due to the pandemic, without any evaluative component.²⁶ Those considerations are not relevant for the lasting policy change discussed in this final regulation.

The studies presented by commenters thus did not factor into our decision to not finalize the provision. Our reasons for not finalizing the provision are discussed elsewhere in this preamble.

Changes: We have removed the changes to § 668.3(b)(2)(ii)(A) and (B) that would have limited asynchronous coursework that can count toward an institution’s definition of an academic year to coursework offered in credit-hour programs.

Comments: Commenters did not feel that the two studies cited by the Department in support of the prohibition on asynchronous clock-hour learning were valid and relevant. One commenter noted that both studies occurred when remote learning was imposed during COVID, which the commenter characterized as an atypical remote learning experience. The commenter noted that one study was an analysis of another organization’s student satisfaction survey, which, according to the commenter, addressed student responses to programs that took

place during the time of remote learning due to COVID without a clear explanation of the educational experience. The commenter stated that it is not surprising that students forced into emergency remote learning during COVID would lament the lack of hands-on training, and that this experience does not reflect the planned online programs that keep tasks that require hands-on experience intact while using asynchronous learning only for didactic instruction. The commenter found the second study unreliable because it also occurred during COVID-era instruction. While the commenter acknowledged that this study focused on outcomes and not just student satisfaction, the commenter pointed out that it was of one class at one institution with only 33 students and that, according to the commenter, the asynchronous instructional methodology described in the study does not appear to be typical but rather something that may have been adapted for emergency remote COVID-era instruction, which does not represent the student experience in planned online instruction.

Discussion: As discussed above, the Department has decided to not finalize the proposal to prevent title IV aid at asynchronous clock-hour programs. We note the cited studies questioned by commenters were not the primary basis for the proposal in the NPRM nor the choice to not finalize this provision. That said, we do agree that the study that focused on delivering lectures both asynchronously and synchronously has many of the same issues with the reports cited by commenters—they focus on graduate-level education in a foreign setting and are thus not comparable to clock-hour offerings.²⁷

We note that the findings from student satisfaction surveys in the other study questioned by commenters highlight student concerns that they need hands-on training to succeed in certain environments and often do not receive it. While this survey also does not directly consider clock-hour programs in synchronous or asynchronous learning environments, it looks at a U.S. setting and considers types of workforce training that are more similar to U.S. clock-hour programs. We will continue to monitor the research in this area as we weigh options going forward.

Changes: We have removed the changes to § 668.3(b)(2)(ii)(A) and (B) that would have limited asynchronous coursework that can count toward an

²¹ <https://formative.jmir.org/2022/11/e38862>.

²² <https://www.sajournalofeducation.co.za/index.php/saje/article/view/1383/868>.

²³ [http://elearning.fit.hcmup.edu.vn/~longld/References%20for%20TeachingMethod&EduTechnology%20-%20Tai%20lieu%20PPDH%20-%20Cong%20Nghe%20Day%20Hoc%20\(Book\)%20-%20Sach%20tham%20khao%20-%20eLearning/e-Learning%20Concepts/Asynchronous%20-%20Synchronous%20e-Learning%20\(Hrastinski-2008\).pdf](http://elearning.fit.hcmup.edu.vn/~longld/References%20for%20TeachingMethod&EduTechnology%20-%20Tai%20lieu%20PPDH%20-%20Cong%20Nghe%20Day%20Hoc%20(Book)%20-%20Sach%20tham%20khao%20-%20eLearning/e-Learning%20Concepts/Asynchronous%20-%20Synchronous%20e-Learning%20(Hrastinski-2008).pdf).

²⁴ <https://www.ncolr.org/jiol/issues/pdf/3.1.5.pdf>.

²⁵ <https://www.tandfonline.com/doi/epdf/10.1080/08923649409526853?needAccess=true>.

²⁶ <https://er.educause.edu/articles/2020/3/the-difference-between-emergency-remote-teaching-and-online-learning>.

²⁷ https://journals.lww.com/jehp/fulltext/2021/10000/why_people_are_becoming_addicted_to_social_media_223.aspx#.

institution's definition of an academic year to coursework offered in credit-hour programs.

Comments: Commenters were concerned that removing asynchronous clock hours could remove flexibility for students who might have difficulty accessing synchronous instruction, such as those that must work or care for others, who are in rural areas, and students who cannot attend school synchronously, including veterans and those currently in the military. Others were concerned that disallowing asynchronous clock-hour learning would impact programs addressing shortage areas, such as nursing, EMT, or public safety.

Others asserted that some asynchronous learning works as well or better than synchronous learning. One association asserted that its member schools report higher levels of completion, licensure, and placement rates in programs using asynchronous distance learning. Commenters assured that schools are successfully using tracking technology, which can be very robust in its capabilities to monitor students, provide them with learning opportunities, and keep them on track. One commenter asserted that the Department acknowledged in 2020 that adequate technology existed, and it has only improved since then, and wondered what had changed to cause the Department to change its mind. One association commenter noted that investments by its members in the technology for asynchronous education are reported to be as much as \$450,000 to \$500,000 per institution and that these investments will be lost if the rule goes into effect as proposed. The association also asserted that institutional investments cannot simply be converted to synchronous learning. Others felt that the Department should have provided statistics on non-compliance as part of a comprehensive assessment of asynchronous learning. Commenters asserted that, instead of harming these institutions that have adequately provided asynchronous instruction combined with hands-on training as a part of clock-hour programs, the Department should focus on providing clearer guidance and standards for non-compliant schools and allow them time to come into compliance.

Some commenters suggested that, rather than completely removing asynchronous instruction from clock-hour programs, the Department should limit asynchronous education to a certain percentage (several suggested 50 percent) or number of hours of a program (one suggested a percentage of

the programs offered) or to didactic components of programs. Some commenters noted that many programs offering asynchronous instruction already limit the amount of the program that is offered asynchronously or have pared it back since the end of the COVID pandemic and have gone back to programs that consist primarily of in-person instruction with a smaller asynchronous component. One commenter posited that only about half of states have authorized asynchronous delivery and that in those States it has been limited to didactic portions and no more than 50 percent of all clock hours. That commenter suggested that the Department could require schools to demonstrate that the asynchronous methods are comparable to synchronous methods on "student engagement, objectives, effectiveness, and educational outcomes."

Some commenters noted that institutions are already required by the regulations to ensure regular and substantive interaction between students and faculty and that this is a sufficient check on substandard instruction. Some asserted that accreditors and State regulators are tasked with the job of assuring that programs provide adequate education, and those oversight bodies have accounted for asynchronous learning with adequate measures, such as by limiting the percentage of program hours of such learning that can occur. A few suggested that there be a specialized accreditation or that some existing oversight mechanism be used, such as the Peer Online Course Review, that would ensure the quality of asynchronous programs.

One commenter observed that in many States, career and technical education (CTE) accredited programs offered in clock hours provide the same content as nearby credit-hour programs but will be negatively affected solely because of their institutional structure. As a solution, one commenter suggested not eliminating such asynchronous education in clock-hour programs but treating it as correspondence coursework, which offers limited access to title IV, HEA funds.

Multiple commenters asked that the Department delay the implementation of the modification to the definition of "clock hour" in § 600.2, if it proceeds with the regulation change, with one asking for a delay until at least 2027. Commenters also sought clarity about the impact of the regulations on students who are already enrolled in affected programs.

A couple commenters noticed that, by specifying in the definition of a "week

of instructional time" in proposed § 668.3(b)(2) that asynchronous coursework occurs in credit-hour programs, we have, perhaps inadvertently, prevented direct assessment programs from using asynchronous coursework.

One community college system commenter anticipated that the colleges in its system will review their clock-hour programs with the intention of converting them to credit hours, which will be burdensome.

Discussion: As discussed above, the Department is not finalizing the provision to prevent asynchronous clock-hour programs from being eligible for title IV, HEA funds. Because this provision is not being finalized, the concerns from the commenters are no longer relevant.

Changes: We have removed the changes to § 668.3(b)(2)(ii)(A) and (B) that would have limited asynchronous coursework that can count toward an institution's definition of an academic year to coursework offered in credit-hour programs.

Comments: One community college commenter suggested the Department should permit clock-hour programs to be offered through distance education during periods of emergency situations, such as natural disasters.

Discussion: The Department does permit colleges to offer clock-hour programs via distance education during a federally declared emergency, such as a hurricane, fire, or pandemic, and still receive Federal student aid funding, but certain conditions must be met. For example, the Department provided guidance allowing institutions to transition clock-hour programs to distance education during the COVID-19 emergency under specific temporary waivers.

Changes: None.

Definition of Distance Education Course

Comments: Several commenters supported the definition of a *distance education course* as consisting entirely of distance instruction notwithstanding in-person non-instructional requirements because they stated it would clarify the scope of such courses, assess their effectiveness, and ensure consistency across institutions. The commenters also stated that it would, as noted in the NPRM (89 FR 60262), assist institutions considering when they need to seek additional accreditor approval for passing the 50 percent threshold for the number of distance education courses or number of students enrolled in distance education.

Discussion: The Department appreciates the commenters' support for

provisions we believe will help with consistency and oversight of such coursework.

Changes: None.

Comments: There were concerns from several commenters that the addition of a definition of *distance education course* and other reporting requirements would create a student unit record system, which is explicitly proscribed in the HEA.

Discussion: The commenter appears to be referring to section 134 of the HEA, which prohibits, with certain exceptions, the development of a database containing personally identifiable information on individuals receiving title IV Federal financial assistance. Section 134(b)(1) of the HEA specifically provides an exception for, among others, the title IV programs, so section 134 is inapplicable to these regulations.

Changes: None.

Comments: A few commenters observed that the proposed definition of *distance education course* includes residency experiences, which can vary greatly in length, or could allow for some in-person instruction. One commenter asked how long a residency experience could be while still meeting the new definition; for example, whether an offering would qualify as a distance education course if there were a single lecture or two and the balance of the class consists of online work. The commenter also asked whether there was a threshold for a hybrid class to be considered a distance education course. The commenter pointed out that the difference between the IPEDS definition of distance education course and the one in these regulations is the residency experience, and inquired as to how the Department would reconcile the two definitions. Another commenter asked that the Department add clarity pertaining to clinical rotations, which often occur away from the school's campus. The commenter stated, for example, that students complete some of their requirements virtually for the didactic components of the course but receive in-person instruction from preceptors during the hands-on part of their rotation; the commenter asserted that such rotations should not count as distance education courses. One commenter suggested that the definition of *distance education course* be further separated, such as by distinguishing between synchronous and asynchronous instruction.

Discussion: We have removed the phrase "residency experiences" from the definition of a *distance education course*, in part due to the concerns expressed by commenters regarding the

inconsistency of this definition with the IPEDS definition and the complexity created by an undefined period for in-person coursework that could be included in a particular class. This resolves most of the concerns presented by the commenters.

Regarding clinical rotations, if the hands-on portions count as essential parts of a course, such a course would not fall under the definition, but if no required part of a course is in-person, the course would fall under the definition of distance education. For example, if a student in a medical rotation takes one class that involved the actual praxis part of the rotation as well as one virtual class in biology that has no in-person component, the student is enrolled in one class that is not a distance education course (praxis) and one that is (biology). Also, hybrid courses in which any portion is in-person instruction, no matter how small, would not be distance education courses. Finally, there is no plan to distinguish between types of distance education courses because we believe that the categorization as proposed is sufficient.

Changes: The phrase "residency experiences" has been removed from the definition of *distance education course*.

Comments: Some commenters stated that the proposed addition of *distance education course* inaccurately characterizes residency experiences as non-instructional, but not only are residency experiences instructional and allow students to apply knowledge from their coursework, they are sometimes required to satisfy accreditation and state licensure standards. The commenter noted that during negotiations the Department supported moving the phrase "residency experiences" before "non-instructional" in the definition, but it did not do so in the NPRM.

Discussion: We agree with the commenter. However, as described above, we have eliminated the phrase "residency experiences" from the definition of *distance education course*.

Changes: The phrase "residency experiences" has been removed from the definition of *distance education course*.

Comments: Several commenters were concerned that the Department's proposed definition of a *distance education course* might not align with other definitions used by institutions and that the Department's changes may prompt unwarranted regulatory scrutiny of distance education programs. They suggested that any amended definitions or new reporting requirements should

consistently promote strong student outcomes across all modalities of learning.

Discussion: The Department considers the new definitions to be straightforward and disagrees that they will cause undue and unspecified regulatory misalignment or scrutiny of distance education programs. To the contrary, the changes will instead facilitate what the commenters are seeking: stronger student outcomes across all modalities of learning by providing necessary information pertaining to those modalities.

Changes: None.

Comments: One commenter felt that the Department's definition of *distance education course* conflicted with section 484(l)(1)(A) of the HEA. Specifically, the commenter asserted that there was a conflict between the HEA, which considers distance education to include courses offered "principally" through distance education, and the Department's proposed definition, which restricts the definition to courses offered "exclusively" through distance education.

Discussion: The commenter appears to have misunderstood the meaning of section 484(l)(1)(A) of the HEA. The two cited provisions serve different functions and are not in conflict. Unlike the regulation at issue here in § 600.2, the statutory text does not, and is not intended to, define distance education. Instead, it is designed to determine who is enrolled in correspondence courses, stating that a student in a "course of instruction" leading to a degree or certificate that occurs principally via distance education must not be considered enrolled in correspondence courses.

Changes: None.

Reporting Enrollment in Distance Education or Correspondence Courses (§ 668.41)

Comments: There were several commenters who supported the Department's intention to gather the enrollment status of students, whether they are fully in-person, fully online, or in a hybrid situation. They agreed with the Department that this will be useful data for better understanding the effectiveness of the instruction modalities and appreciated the extended time (which will be delayed further, until July 1, 2027) for implementation of this reporting.

Discussion: The Department thanks those commenters for their support.

Changes: None.

Comments: Numerous commenters thought that the collection of student

enrollment status would add too much burden on schools. In addition, the commenters indicated that some schools already collect data pertaining to how instruction is carried out, so the new requirement would be redundant for them. Commenters asserted that because students so often engage in different modalities, including within a term, collection of such data will be difficult and will lack utility. They queried how a student who is enrolled in 100% distance education courses in one semester and 100% in-person the following semester would be reported, and they asserted that, since the Department already collects distance education information via IPEDS, it should use that for its proposed purposes rather than add unnecessary requirements. Some predicted that while the Department is ostensibly only asking for limited enrollment information about students, this could lead to broader, more burdensome requests for data. Some expected that the proposal would entail the Department creating an ad hoc portal or a costly system for reporting the information, which would require more personnel by schools, and would be a problem for the Department and schools to implement. One group of schools estimated that the data reporting would cost approximately \$2 million for some of its colleges and requested that the requirement be delayed until 2027. One commenter suggested that the topic be discussed in further negotiations with negotiators who have the necessary experience.

Discussion: While individual institutions might collect such data, the new reporting will allow the Department to gather such data from all schools participating in the title IV, HEA programs. At least one commenter who supported the proposed change felt that institutions that do not already track and evaluate this data by modality will benefit from collecting and analyzing this data, which will help inform institutional decision-making about program offerings, allocation of resources, and selection of outside partners to develop and operate online programs. And as noted in the NPRM (89 FR 60263), although this will increase burden for institutions by requiring them to report an additional layer of enrollment information, we do not anticipate that this additional datum about a student's enrollment status will cause undue burden or require that institutions have to implement new systems of reporting because the Department is incorporating the change into its existing enrollment reporting

process in NSLDS. As to the choices students make with regard to modality, the reporting will capture that, whether they are enrolled in classes that offer mixed modality or those that are purely distance or in-person education, without the complication commenters envision. A student who is enrolled in 100% distance education courses in one semester and 100% in-person courses the following semester would be reported as distance education the first semester and in-person in the second. A student who is enrolled in even one class that allows for distance education, attending remotely as the student chooses throughout the semester for example, would be in a hybrid status. The IPEDS information collection does not provide student-level data and is therefore not sufficient for the Department's intended purposes. Also, the Department proposed only the stated request for student enrollment in distance education and correspondence courses, as requested by negotiators and institutions during negotiations. Any additional mandates for data would need to be negotiated in future rulemaking sessions and would be subject to public comment. Finally, we expect to incorporate the reporting of this information into an existing data stream; no additional portal or interface between schools and the Department will be needed, and the cost for such reporting will not be in the millions of dollars. In the interest of allowing institutions ample time for implementation, we have decided to delay this reporting requirement until 2027.

Changes: Institutions will not be required to report this information until July 1, 2027.

Comments: Some commenters suggested it would be unfair to compare distance education data with in-person instruction data because such a comparison would fail to account for differences in the student populations attending different modalities. The commenters felt that outcomes will be different for the distance education student population, which, they state, generally has less time and flexibility to devote to school.

Discussion: It is unclear from the comments whether the commenters are opposed to the collection of data or are concerned about the use of the data after collection. To the extent that the commenters are opposing the collection of the data because there may be differences in the demographics, life circumstances, and outcomes of students enrolled in distance education versus those enrolled in in-person instruction, the Department disagrees

that those potential differences should prevent the Department from collecting this important data. As set forth in the NPRM (89 FR 60263), the reporting provision was added at the request of negotiators and was intended to provide the Department and institutions, students, and the public expanded information necessary to make informed decisions when developing policies regarding distance education and to provide students additional information for enrollment choices. The concerns raised by the commenters regarding the differences in demographics of distance education students does not negate the need for the collection of the data.

With respect to the use after collection, the Department would not evaluate information about distance education in a vacuum. The Department maintains other data about recipients of title IV, HEA funds—such as their age, family size, marital status, employment status, and high school completion status, as well as whether students have dependents they are supporting. These factors would also be taken into account when developing policies around distance education. Although the Department cannot speak to how institutions will use the distance education data, it can note that during negotiations institutional representatives voiced a desire for the information in order to better develop distance education courses that meet student needs. It is the Department's belief that all parties—the Department, Congress, researchers, institutions, students, and the general public—can benefit when they have program outcome data by modality when making decisions.

Changes: None.

Comments: Several commenters pointed out that there is often no sharp distinction between distance and in-person education, that students often enroll in both at the same time, that such enrollment will be difficult to track, and that trying to make distinctions in such a blended environment will, in their view, lead to inaccurate assessments of students and programs. The commenters asserted that flexible instructional modality is beneficial to students because it allows them to enroll in coursework in the way that is most advantageous to them and singling out 100% distance education for tracking could create unintended consequences due to a false binary approach and be misleading at a time when the interaction between distance and in-person instruction is becoming more varied.

Discussion: Regarding commenters' concerns that the proposed data

requirements may be difficult to implement, given that some students enroll in courses offered in several different modalities, the Department notes that the level of detail required by § 668.41(h) of the final regulations was added in response to specific requests from non-Federal negotiators. The Department altered its proposed regulations during negotiated rulemaking to require institutions to report students' enrollment in distance, in-person, or hybrid education, in addition to requiring the reporting of virtual locations. The Department ultimately agreed with non-Federal negotiators that the benefits of collecting such additional data outweighed the costs and burdens for institutions.

The Department disagrees with the commenters who suggested that the data on distance education and correspondence course enrollment is misleading or creates a "false binary" approach. In fact, the Department accounts for the fact that students will be enrolled in various education modalities: in-person, distance, and hybrid. The changes will allow us to gather information on each modality and distinguish between them. The new information will not prohibit schools from combining and using the modalities as they currently do.

The Department also asserts that programs offered entirely or nearly entirely using distance education or correspondence courses have several unique characteristics that distinguish them from other programs, including the ability to enroll students from a significantly larger geographic area and a necessarily greater reliance on technology as the medium for instruction and coursework. These characteristics merit analyzing fully online programs separate from other types of programs.

Changes: None.

Comments: Some commenters remarked that combining distance education with correspondence coursework would not allow for accurate assessments given that these are distinct and separately regulated modalities. The commenters felt that data from the two should be separately collected. One suggested the following alternative regulatory language: "For each recipient of title IV, HEA assistance at the institution, the institution must report to the Secretary, in accordance with procedures established by the Secretary, the recipient's enrollment status as exclusively through distance education, exclusively through in-person instruction, or through a mix of distance education and in-person instruction."

The procedures established by the Secretary will distinguish between enrollment in distance education and enrollment in correspondence courses." Another commenter opined that the E-App system (which schools use to apply for designation as eligible title IV institutions and for recertification) is not designed for such reporting and should not be used for it.

Discussion: As noted in the NPRM (89 FR 60286), the system details for the reporting requirement we are establishing in § 668.41 will be clarified in future guidance and instructions, but we do anticipate distinguishing between the two modalities of distance education and correspondence courses to allow for a comparison between them. We thus decline as unnecessary the commenter's suggested alternative language. Also, unlike the virtual location requirement described elsewhere, we do not expect the E-App to be involved in this reporting process.

Changes: None.

Comments: A commenter suggested that the details of this reporting under § 668.41 should be at the student level, not at the course level. Currently enrollment reporting is done at the student and program level by campus via NSLDS, and, according to the commenter, continuing with this method would be the most efficient and effective way of reporting. This reporting occurs every 60 days, which schools are already required to follow and, according to the commenter, this should be frequent enough. The commenter noted that adding one field to the existing NSLDS enrollment reporting process would be efficient and not burdensome.

Discussion: While the Department has not yet determined the details of this reporting, we agree that the process described by the commenter appears to be an efficient method of implementing the reporting requirement and anticipate that the Department likely will adopt a process similar to the one described. We also agree that reporting should occur at the student level and will not be collecting data at the course level.

Changes: None.

Comments: One commenter suggested expanding the proposed status reporting categories in § 668.41 from three to four: fully in-person, and at a distance, as proposed, but then splitting hybrid status into majority distance and majority in-person.

Discussion: The Department believes that the three enrollment statuses will allow for easy classification of students and will provide adequate information for the intended purposes, so the

Department does not currently plan to expand that number to four.

Changes: None.

Comments: One commenter asked how often the new reporting will occur and what students will be involved.

Discussion: Modality of instruction will be reported for all students on whom the institution would otherwise be required to report enrollment. The Department intends to align the frequency of this reporting (though that has not yet been determined) with other existing reporting requirements, such as occurring every 60 days, which as noted above is already the interval for NSLDS enrollment reporting.

Changes: None.

4. Treatment of Title IV Funds When a Student Never Attends or Attends and Then Withdraws/Return of Title IV Funds (R2T4) (§§ 668.21 and 668.22)

General Support

Comments: Many commenters offered support for the Department's proposed regulations regarding the requirements applicable to the return of title IV, HEA funds (R2T4). Several of these commenters noted the rules received broad support during negotiated rulemaking and the regulations will result in better stewardship of taxpayer funds and the integrity of the title IV, HEA programs. As one commenter noted, the regulations collectively are logical and reasonable measures to ensure accuracy of R2T4 calculations.

Many commenters agreed the regulations will simplify the R2T4 process for institutions and provide positive benefits to their campus community. One commenter noted the R2T4 regulations are so complex for institutions to navigate that the regulations are consistently in the Department's top annual compliance findings. One commenter noted that simplification of R2T4 calculations will encourage students to re-enroll and reduce the burden on financial aid offices when supporting those students' re-engagement. Another commenter states the Department's proposal is an important step in modernizing financial aid policies to reflect the growing prevalence and success of distance education.

Many commenters agreed the proposed changes will benefit students, including incarcerated individuals and student loan borrowers. Several of these commenters noted allowing students to repay Direct Loan funds owed to the Department after withdrawing or not beginning attendance through the terms of their Master Promissory Note better recognizes the financial realities these

students face. Several commenters noted these borrowers often cannot pay the full amount owed immediately and faced penalties such as negative credit reporting and collections. Some of these commenters believe the proposed rules would incentivize institutions to voluntarily institute refund policies that will reduce the institutions' burden in performing R2T4 calculations, while at the same time making it easier for students to re-enroll in the future by reducing unpaid debts owed to either the institution or the Federal government. One commenter noted these changes will support student success regardless of their financial situation or academic challenges.

Some commenters supported changes that ensure fewer opportunities for institutions to retain title IV, HEA funds to which they are not entitled. One commenter noted attendance-taking requirements for the purposes of R2T4 for courses offered entirely through distance education will better support accurate withdrawal dates.

Discussion: We thank the many commenters for their support. We believe these final regulations will reduce burden on institutions and students while also providing reasonable and appropriate safeguards for taxpayer dollars. As explained in greater detail below, we have decided not to move forward with two proposals from the NRPM in this area.

Changes: None.

General Opposition

Comments: One commenter stated that the Department has not taken into account the U.S. Supreme Court's 2024 *Loper Bright* decision, which, according to the commenter, eliminated *Chevron* deference and discontinued judges' ability to defer to Federal agency interpretations of the statutes they enforce.

Discussion: These regulations do not run afoul of *Loper Bright*. The NPRM highlighted our direct statutory authority to make the regulatory changes, in section V—Authority for This Regulatory Action (89 FR 60258), and these regulations reflect the best reading of the plain text of that authority. We also note that, to the extent this comment was focused on concerns about the proposed changes to attendance taking requirements for distance education courses or the treatment of student aid funds if the recipient does not begin attendance at the institution, the Department has decided to not move forward with those proposals at this time. The final regulations thus increase the accuracy and simplicity of performing R2T4

calculations for institutions, address unique circumstances for what constitutes a withdrawal, and codify longstanding policies into regulation.

Changes: None.

Comments: Some commenters stated that the proposed changes to the R2T4 regulations may lead to stringent and inflexible institutional refund policies, which could disproportionately affect low-income and vulnerable students, making it more difficult for them to re-enroll and complete their education.

Discussion: The Department disagrees that the regulations will lead to more stringent and inflexible institutional refund policies that will harm students. In fact, the Department's focus for many of the changes was to provide flexibilities that would benefit students. For example, the Department provided flexibility to institutions to consider a student who stops attending very early in a term as never attending which would require the institution to refund charges and cancel any balances owed. Additionally, the leave of absence allowance for eligible prison education programs (PEPs) will offer greater flexibility to confined or incarcerated individuals when they are impacted by a situation in the correctional facility outside of their control. Lastly, as described elsewhere, the Department has decided to not finalize the requirement for institutions to take attendance in distance education courses, which was the primary source of concern for many commenters.

Changes: None.

Comments: Some commenters argued that the proposed R2T4 rules could force institutions to hire additional staff to manage the increased documentation and compliance workload and that institutional resources will be redirected from student support services to administration and data collection.

Discussion: We do not believe that the R2T4 regulatory changes will require significant institutional staffing changes or a redirection of substantial institutional resources from student services to administrative services. In fact, the regulations are designed to improve and simplify the process in some areas. For example, the changes to the R2T4 calculation for modules will eliminate the need for institutions to consider which types of aid a student received to determine the number of days in the R2T4 calculation. Additionally, the new R2T4 exemption for students who are treated as never having enrolled will reduce the number of R2T4 calculations that are performed at some institutions. Finally, we note that to the extent the comments were addressing potential increased costs to

implement the proposal requiring attendance taking in distance education courses, that provision is not being finalized. Institutions will thus not face any costs related to that provision.

Changes: The Department is not finalizing the proposal for attendance taking in distance education courses.

Comments: One commenter recommended that the Department not move forward with any of the changes and instead exempt any postsecondary institution from R2T4 that qualifies for Title III or Title V waivers, or if the institution is designated as a Minority Serving Institution. The commenter believes that their proposal would provide flexibility to utilize resources differently to marginalized populations.

Discussion: The Department lacks the statutory authority to exempt all or a subset of postsecondary institutions that participate in the title IV, HEA programs from the R2T4 requirements.

Changes: None.

Comments: One commenter asked that the Department delay implementation of these regulations until 2026 or 2027 to allow institutions time to work on internal systems, third party vendors, and administrative reporting mechanisms, train instructors, and make other logistical changes.

Discussion: The regulations will not be effective until July 1, 2026. We believe that provides sufficient time to make necessary adjustments.

Changes: None.

Comments: One commenter stated that the proposed changes will disrupt the timely delivery of title IV, HEA funding to all students. The commenter stated that institutions will break up disbursements as students' progress through the term to avoid overpayments, and that multiple disbursements hinder students from using their title IV, HEA credit balances for educationally related expenses such as housing and food, which are benefits that are intended to be available to students under current regulations.

Discussion: We appreciate the commenter's concern for students. However, nothing in this regulation requires an institution to break up a disbursement into smaller payments. That is simply an allowable option if the institution determines it best meets the needs of the students. Further, we do not believe that these regulations create any additional incentive for institutions to adopt that approach, primarily because the amount of effort needed to shift to a multiple disbursement model would significantly outweigh the increase in burden imposed by these regulations. This is especially true because, although shifting to such a

model might reduce the frequency of returns under the R2T4 regulations, it will not obviate the need to amend R2T4 policies and procedures in accordance with these new regulations. The regulations will still apply to all students who cease attendance during a payment period or period of enrollment even if a school makes multiple disbursements during a payment period.

Changes: None.

Comments: One commenter asked for the official definition of attendance for R2T4 purposes.

Discussion: For R2T4 purposes, under § 668.22(l)(7), “academic attendance” and “attendance at an academically related activity” must include “academic engagement,” as defined in § 600.2.

Treatment of Title IV Grant and Loan Funds if the Recipient Does Not Begin Attendance at the Institution (§ 668.21)

Comments: The Department received many comments supporting the proposal in § 668.21(a)(2)(ii) to allow a student who received a loan disbursement as part of a title IV credit balance, but never began attendance in a payment period or period of enrollment, to repay loan funds they received under the terms and conditions of their promissory note. Many commenters agreed the proposed changes better recognize the financial realities these students face. Several commenters noted the proposed rules will prevent borrowers from defaulting on their debts, as these borrowers often cannot pay the full amount owed immediately and would face penalties, such as negative credit reporting and collections. Others noted the proposed changes will help students who have likely already spent their credit balances on things like housing, childcare and other necessary expenses and therefore cannot make a lump sum payment. Others agreed the changes would strengthen the borrower’s financial health and could have positive economic impacts.

Discussion: We thank the commenters for their support. However, as explained below, we have decided to not move forward with this proposal.

Changes: None.

Comments: A few commenters stated that the rule will allow abuse because a borrower could have their loans forgiven under Public Service Loan Forgiveness (PSLF) or forgiven as a possible result of enrolling in an Income Driven Repayment (IDR) plan after having never participated in any postsecondary coursework. One commenter stated that the Department is creating a “perverse incentive” that will

encourage individuals to enroll in a program only to receive a credit balance, subsequently withdraw, and then allow them to pay the loan back over the course of many years.

One of the dissenting commenters offered several alternative solutions other than eliminating the proposed regulation: (1) the Department require that postsecondary institutions return all of the title IV, HEA funds for a period of non-attendance, and (2) require a 30-day delay in any subsequent disbursements to the borrower if the borrower seeks to enroll at a different institution.

Another alternative offered by a commenter is for the student to repay, upon demand, all funds except those already spent on necessary education-related expenses, which could be repaid under the terms and conditions of the promissory note or during a shortened yet adequate period of time.

Discussion: In the Department’s experience through interactions with institutions and program reviews, individuals seeking to abuse the title IV, HEA programs overwhelmingly target grant programs rather than loan programs. However, we do not want to create the perception of possible loopholes in the Federal aid programs. Accordingly, we will not move forward with this change at this point. The Department will continue to look carefully at the individuals who do not begin attendance to determine whether revisiting this policy in the future may be merited.

Regarding the alternate proposals, we believe adding a requirement that a postsecondary institution return all of the title IV, HEA funds for a period of non-attendance by a student is unreasonably burdensome. We also decline to incorporate a 30-day delay on subsequent disbursements to a student that sought to reenroll. The Department is not making changes to disbursement rules with these final regulations.

Regarding the final alternative offered by the commenters, requiring a student to immediately repay all funds except those already spent on necessary education-related expenses, the HEA requires that a student spend all of their title IV credit balance funds on allowable education related expenses. If this alternative, as suggested by the commenter, were implemented, institutions would be obligated to document the exact amount of funds a student spent, and categorize that spending, to determine compliance with the requirement. The additional burden placed on institutions to determine how the title IV, HEA credit balance funds

were spent would be extensive and unreasonable.

Changes: We have removed the proposed changes to § 668.21 to allow a student who received a loan disbursement as part of a title IV credit balance, but never began attendance in a payment period or period of enrollment, to repay loan funds they received under the terms of their promissory note.

Comments: One commenter requested that, in light of the new regulatory language, the Department update the language on the promissory note, which currently requires a student to agree to immediately repay any loan money that is not used for authorized educational expenses. The commenter also asked how to determine that a student ceased to be enrolled half-time if they never began attendance.

That commenter, and others, questioned the validity of providing a grace period for individuals who do not begin attendance, and suggested that the students should be required to request a forbearance. The commenter believes that allowing the borrower to retain funds for six months may do the borrower harm by encouraging the borrower to spend the funds.

One commenter believes that by not attending, the student broke their contract with the Department, and therefore, the Department should not maintain the broken contract through the terms of the promissory note. Another commenter similarly stated that the Department should not allow students to borrow without ever having attended and that this change could reduce resources available to fund other students’ educations.

Discussion: As described above, the Department is not moving forward with this proposal. However, we note that under § 668.164(i)(1), the regulations intentionally permit the disbursement of loans up to 10 days prior to the start of classes to allow students to cover necessary education expenses, such as housing and books. The Department’s longstanding position is that this policy is necessary so that students are fully prepared for the start of their programs. Permitting these disbursements does not reduce the amount of funding available to fund other students’ educations, because the HEA dictates the amount of title IV, HEA loan funds available to students on an individual basis, without a cap on the total amount that can be lent across all students, and the amount of loans received by one student does not affect the amounts a different student can receive.

Changes: We have removed the proposed changes to § 668.21 to allow

a student who received a loan disbursement as part of a title IV credit balance, but never began attendance in a payment period or period of enrollment, to repay loan funds they received under the terms of their promissory note.

Comments: One commenter stated that institutions must already confirm attendance before making loan disbursements.

Discussion: We remind the commenter that under § 668.164(i)(1), in certain situations, a postsecondary institution may be able to make an early disbursement of title IV, HEA aid up to 10 days before the first day of classes of a payment period and there would be no confirmation of attendance at that time. Ultimately, institutions must confirm attendance for students to retain eligibility for some or all of the title IV, HEA funds they received during the payment period, but attendance confirmation does not have to occur prior to this initial disbursement.

Changes: None.

Treatment of Title IV Funds When a Student Withdraws (§ 668.22)

Withdrawal Exemption (§ 668.22(a)(2)(ii)(A)(6))

Comments: Several commenters supported the optional withdrawal exemption under § 668.22(a)(2)(ii)(A)(6), stating that it will reduce administrative burden and prevent unnecessary financial penalties on students who withdraw early. Commenters also stated that it will decrease the institutional cost and complexity of compliance with title IV regulations, and it may also encourage institutions to adopt generous refund policies which will help students maintain financial stability.

Discussion: We thank the commenters for their support.

Changes: None.

Comments: One commenter asked how a student granted a withdrawal exemption be reflected in enrollment reporting, particularly regarding medical withdrawals. The commenter noted that often requests for medical withdrawals are granted late in the semester or well after the semester is over, and this likely means the student will already have been reported as being in attendance at least half-time. Where the school grants the medical withdrawal, the commenter sought clarification on how this “non-withdrawal” would be reported to NSLDS.

Discussion: The Department will issue guidance regarding the procedure for reporting students, who have been granted the withdrawal exemption in

§ 668.22(a)(2)(ii)(A)(6), to NSLDS as part of enrollment reporting. We will provide guidance on reporting statuses, reporting requirements, and any applicable dates (such as grace period dates) following the publication of these regulations.

Please note that, for institutions that utilize the withdrawal exemption, borrowers will be treated as having never attended and the grace period will begin the day after the last date of attendance in the prior payment period.

Changes: None.

Comments: One commenter stated that many community colleges cannot afford to implement the optional withdrawal exemption. The commenter offered several examples, including that most community colleges do not offer housing and have low tuition; therefore, many students receive larger title IV, HEA credit balances. The commenter stated that a community college would not be able to write off large amounts for multiple students.

Discussion: We reiterate that the withdrawal exemption is optional. This will permit institutions that wish to maintain or create generous tuition refund policies to be exempt from performing an R2T4 calculation in cases where students are made financially whole after withdrawing. Use of these generous tuition refund policies will be at the discretion of the institution. The Department hopes that the reduced burden resulting from this exemption from the R2T4 process encourages institutions to maintain or create these policies for their students.

Changes: None.

Comments: One commenter asked whether the optional withdrawal exemption could be applied on a case-by-case basis or whether institutions that choose to implement the withdrawal exemption must apply it to all students who withdraw. The commenter also expressed concern about the requirement that “the institution’s records treat a student as having never attended courses for that payment period or period of enrollment.” The commenter stated that their institution wants to retain a record of course attendance to justify title IV, HEA disbursements that were made during the payment period or period of enrollment.

Discussion: Institutions can implement the withdrawal exemption on a case-by-case basis according to the institution’s policy. We agree with the commenter that an institution must keep a record of a student’s eligibility to receive title IV, HEA funds. Additionally, the institution must document the use of the withdrawal

exemption for a particular student. The regulations do not require an institution to eliminate all record of a student’s attendance for a payment period in which they qualify for this exemption. Instead, they require the institution to document that the institution’s policies treat the student similarly to other students who did not attend, for example with regard to satisfactory academic progress or grading policies.

Changes: None.

Comments: A few commenters recommended that under paragraph § 668.22(a)(2)(ii)(A)(6)(iv) the Department change “current year” to “payment period.” The commenters noted that paragraphs (i)–(iii) of the withdrawal exemption are tied to the payment period or period of enrollment, while provision (iv) is not.

Discussion: The Department is persuaded by the commenters’ argument that the various subsections should contain identical language since that was the intended purpose of the regulatory change.

Changes: We have updated § 668.22(a)(2)(ii)(A)(6)(iv) to replace “any current year balance” with “any payment period or period of enrollment balance” owed by the student to the institution due to the institution’s returning of title IV, HEA funds to the Department.

Comments: One commenter requested that the regulation define institutional charges as exclusive of institutional housing and meals based on a direct proration of use for the payment period. The commenter stated that while tuition refund policies are under the institution’s purview, additional charges for the use of services such as housing are considered auxiliary and not at the discretion of the central campus to limit or control. Further, it places students who live in institutionally owned housing at a disadvantage as compared to students who may rent from a private third party. Though both are incurring living costs, the latter would be permitted the flexibility, assuming the campus reverses or writes off all other institutional charges, whereas the former would require an R2T4 calculation resulting in an outstanding debt.

Discussion: We decline to take the commenter’s suggestion. We acknowledge that students with institutionally provided food and housing may be treated differently from students with non-institutionally provided food and housing. Students without institutionally provided housing and food are more likely to have larger credit balances, which will make this a more challenging

requirement for some institutions, since the provision in (iv) requires that the institution not recoup or collect any title IV, HEA funds returned to the Department due to the implementation of this exemption. This exemption is an optional exemption to be used by institutions when they determine it is advantageous to do so. Further, we believe the commenter may have misinterpreted the optional withdrawal exemption. An R2T4 calculation is not required if the exemption is applied, since all title IV, HEA funds are returned in that instance.

We will amend the proposed regulation to clarify that this requirement includes title IV, HEA funds that were provided to the student or parent, that were disbursed for that payment period or period of enrollment.

Changes: We amended § 668.22(a)(2)(ii)(A)(6)(ii) to state that “The institution returns all the title IV grant or loan assistance, including all title IV credit balances provided to the student or parent, that were disbursed for that payment period or period of enrollment.”

Comments: One commenter asked the Department to extend the current withdrawal exemption for graduates/completers to students that are not enrolled in programs offered in modules.

Discussion: Currently a student meets the withdrawal exemption for graduates/completers in § 668.22(a)(2)(ii)(A)(1) if they complete all of the academic requirements for their program and are able to graduate before completing all of the days or clock hours in the period they were scheduled to complete. This withdrawal exemption can apply to any type of program, including those with or without modules. Since the exemption that the commenter suggests already applies to non-modular programs, the Department declines the proposed revision as unnecessary.

Changes: None.

Comments: One commenter stated that R2T4 calculations are for students who officially or unofficially fully withdraw. The commenter asserted that, if the student does not begin attendance, their aid must be cancelled for that course.

Discussion: It appears the commenter is not differentiating between students who may be eligible for the exemption described in § 668.22(a)(6) and are treated as if they never enrolled versus students who never begin attendance in any class (§ 668.21). We remind the commenter that § 668.22(a)(6) is an exemption from performing an R2T4 calculation that would otherwise apply.

By contrast, § 668.21 addresses the situation where a student never actually begins attendance in any class, which would not require an R2T4 calculation.

Changes: None.

Comments: One commenter asked that the Department confirm that the withdrawal exemption in § 668.22(a)(6) is optional.

Discussion: The withdrawal exemption in § 668.22(a)(6) is optional and applies to all types of programs, including those with or without modules.

Changes: None.

Determination of Withdrawal Status (§ 668.22(b)(2))

Comments: Several commenters expressed general support for the Department’s proposals to establish more timely and accurate data to complete R2T4 calculations, but most had reservations regarding certain elements of the proposed requirements. One specific commenter indicated that the proposed regulation aligned with their current process.

Discussion: We thank the commenters for their support and address their specific reservations in the discussions below.

Changes: None.

Comments: Many commenters opposed the provision that requires an institution that is required to take attendance to document the student’s withdrawal date within 14 days of a student’s last date of attendance. Many commenters suggested longer time frames, with several suggesting a 28-day period as a maximum timeframe in which to officially determine that a student who has not attended for some time is, in fact, a withdrawn student. This opposition included one commenter who believed that the Department’s primary motivation for this regulatory requirement was to prevent students from “cheating the system.” Other commenters interpreted the proposed provision to mean that a postsecondary institution must administratively withdraw a student after 14 days of nonattendance.

Discussion: We disagree with the commenter who stated that the provision was intended to prevent students from cheating the system. The primary motivation of this regulatory provision is to ensure timelier and more accurate R2T4 calculations. Further, as set forth in longstanding guidance, the Department does not require an institution to administratively withdraw a student on the 14th day, but to establish the date of determination for purposes of the R2T4 calculation. The institution then has an additional 45

days before any calculated return must be made to determine whether the student continues with his/her enrollment. If the student does return within the 45-day timeframe, then no further action is required. This 14-day time frame only applies to institutions required to take attendance under current § 668.22(b)(3).

Changes: None.

Comments: Several commenters opined that the Department is redefining the definition of distance education in § 600.2 by applying a de facto 14-day timeframe to regular and substantive interaction. Some commenters pointed out that the Department agreed in the preamble to the 2020 Distance Education and Innovation Final Rule²⁸ that a timeframe should not be mandated for regular and substantive interaction.

Discussion: We disagree with the commenters. The regulatory change in § 668.22(b)(2) establishes a regulatory timeframe to document a student’s withdrawal status for R2T4 purposes. The timeframe for assessing a student’s status, and for determining that the student has withdrawn, does not impose any timeframe for regular and substantive interaction. As noted in the Summary of the Major Provisions of this Regulatory Action, the Department is simply codifying into regulation what has been our guidance for institutions required to take attendance since the 2005–06 award year. The requirement also applies to all students for whom the institution is required to take attendance, which could include on campus students that are not subject to the definition of distance education.

Changes: None.

Comments: Several commenters were concerned that the requirement to determine a student’s withdrawal status within a set timeframe could negatively impact students who accelerate within their program by working ahead in one or more individual courses. The commenters were concerned that they might have to administratively withdraw a student who had 14 days of inactivity due to course acceleration. One commenter asked if this regulation eliminated the option for a student to accelerate in their coursework.

Discussion: As noted above, an institution is required to document its determination of a student’s withdrawal within 14 days of the student’s last date of attendance for purposes of the R2T4 calculation; however, the institution is not required to administratively

²⁸ Distance Education and Innovation—<https://www.federalregister.gov/documents/2020/09/02/2020-18636/distance-education-and-innovation>.

withdraw the student on that date and has an additional 45 days before it has to pay any return resulting from the withdrawal. It is unlikely that students who accelerate work will not resume activity within this time frame. Further, this additional time before payment provides ample opportunity for the institution to reach out to the student to ensure they plan to remain enrolled and to ensure the student continues academic engagement.

Where a student is enrolled in multiple courses in a program and has accelerated in one or more courses, the student will not be considered withdrawn as long as the institution has determined that the student is still attending coursework for that payment period or period of enrollment. The requirement to determine a withdrawal date for a student is when that student has completely withdrawn from the institution or otherwise stopped attending all coursework. Nothing in this regulatory provision eliminates an acceleration option for students.

Changes: None.

Comments: A few commenters asked if it is the Department's expectation that institutions will begin documenting all exceptions granted by individual faculty members to students if the exception allows for a temporary cessation of academic activity for a period that exceeds 14 days. In addition, commenters provided examples of extreme flexibility with student coursework without stating whether the programs were term based or nonterm based. In some of the examples, it appeared that nonterm flexibilities were being used in term-based academic calendars.

Discussion: For R2T4 purposes, the treatment of exceptions granted to students by individual faculty members depends on whether the exception is applied to all of the program's coursework in a payment period being pursued by the student or only applied to a portion of the student's coursework in a payment period. If the student has an exceptional situation that requires a complete cessation of all coursework in a payment period, the student will be withdrawn unless the institution grants an approved leave of absence. However, if the exceptional situation extends to only a portion of the student's coursework in a payment period, and the institution assesses that the student is still attending coursework in the payment period or period of enrollment, there is no requirement for the institution to withdraw the student at that time. In addition, nothing in this final regulation infringes on the institution's discretion under existing

policies and procedures to provide grades of incomplete to students when the institution determines that it is appropriate. Some of the commenters described existing situations that appeared to be extremely flexible without stating whether the programs being described were term-based or nonterm based. We remind the commenters that the use of a term-based academic calendar, standard or nonstandard, may limit coursework flexibility in ways that a nonterm calendar does not, because an academic term has a defined end date.

Changes: None.

Comments: Many commenters were concerned that an administrative withdrawal after 14 days of inactivity would not serve students enrolled in short nonstandard terms (e.g., 5, 6, or 8 weeks) or modules of a similar length that are part of a standard term. The commenters stated that the 14-day requirement appears to have the historic quarter or semester terms in mind. For periods of time that are less than standard terms, the commenters argued that 14 days is too long, and a shorter, proportional amount of time would be more appropriate.

Discussion: We disagree with the commenters. The commenters' concern appears to be based on the incorrect assumption that, under the regulations, an institution cannot administratively withdraw a student until after 14 days of nonattendance; however, nothing prohibits an institution from identifying a withdrawn student earlier than 14 days after the last date of attendance.

Changes: None.

Comments: Several commenters wondered if the 14-day timeframe in § 668.22(b)(2) includes calendar days, weekdays, holiday/spring breaks, single-day college or university holidays, or snow (or other emergency) days.

Discussion: The 14-day date of determination timeframe, which has been added to § 668.22(b)(2), counts all calendar days regardless if they are weekend days, holidays, or other scheduled breaks. For days that are associated with emergencies or disasters, institutions should refer to the guidance in Dear Colleague Letter GEN 17–08, *Guidance for Helping Title IV Participants Affected by a Major Disaster*.

Changes: None.

Comments: A few commenters asked what documentation is required for an approved leave of absence.

Discussion: The Department does not specify what documentation must be gathered to support an approved leave of absence at the institutional level. For a complete listing of the procedures and

necessary information for a leave of absence to be approved for title IV, HEA purposes, please see the requirements in § 668.22(d), which are further explained in the FSA Handbook, Volume 5.²⁹

Changes: None.

Comments: One commenter was concerned with how to deal with a student who was withdrawn for failing to engage in academic activity for 14 days and then sought reinstatement at some point following the withdrawal but within the same payment period. The commenter observed that these students often successfully complete the course following the reinstatement. The commenter believed that it is unclear from the proposed regulatory language whether reinstatement practices would be permissible moving forward, noting that it would be detrimental to students if they were prohibited from being reinstated.

Discussion: As we have outlined above, the institution has up to 14 days after the student's last date of attendance to document the student's withdrawal date, not necessarily to administratively withdraw the student, since the institution has time to determine a student's enrollment or withdrawal status. The institution ultimately must ensure that the R2T4 calculation be completed no later than 30 days following the date of determination and any funds be returned to the Department no later than 45 days following the date of determination.

If the institution must ultimately withdraw the student, there is nothing in this final regulation prohibiting the student from being reinstated according to the institution's reinstatement policies and procedures. We remind commenters that guidance regarding student reinstatements and the ability to undo an R2T4 can be found in the FSA Handbook Volume 5.³⁰

Changes: None.

Comments: Several commenters were concerned about students who may be in academic activities that, by design, do not include regular interaction between the student and instructor for more than 14 days. Commenters offered an example of instructors evaluating students' field work in the community through authentic assessment. Commenters requested clarification about the institutional requirements under § 668.22(b)(2) in these types of situations.

Discussion: Section 668.22(b)(2) requires an institution to document

²⁹ FSA Handbook—<https://fsapartners.ed.gov/knowledge-center/fsa-handbook>.

³⁰ FSA Handbook—<https://fsapartners.ed.gov/knowledge-center/fsa-handbook>.

whether a student should be withdrawn no later than 14 days after the student's last date of attendance. As we have stated, this is not a requirement that a student be withdrawn after 14 days of nonattendance. An institution must still comply with § 668.22(b)(2), even if it has chosen a method of academic engagement that, by design, creates periods where student activity is not being monitored/tracked at least every 14 days. Institutions might reach out to student in a variety of ways including, but not limited to, using text messages, emails, and telephone calls.

Changes: None.

Comment: One commenter believed that the Department did not have the authority to require that institutions determine a student's withdrawal status no later than 14 days after the last date of attendance (LDA) (§ 668.22(b)(2)). The commenter generally cited to the caselaw and factors that courts apply when assessing agency action, including that an agency must demonstrate that it has examined relevant data and articulated a satisfactory explanation for its action, and that an agency action is arbitrary and capricious if the agency fails to consider an important aspect of a problem or offers an explanation that runs counter to the evidence before the agency. The commenter did not specify how it thought the Department failed to satisfy this standard.

Discussion: Congress provided the general framework for title IV returns in 20 U.S.C. 1091b, and the Department is tasked with implementing those provisions. Among those provisions is the requirement that an institution "return no later than 45 days from the determination of withdrawal" the amount of unearned title IV funds disbursed to the student. 20 U.S.C. 1091b(b). Congress goes on to provide how that withdrawal date should be determined. 20 U.S.C. 1091b(c). The codification of the Department's longstanding guidance, for institutions that are required to take attendance, that the institution must determine the withdrawal date no later than 14 days after a student's last date of attendance, represents the Department's mechanism for ensuring that institutions meet the 45-day refund deadline set forth in the statute. With respect to the remaining arguments raised in the comment, the Department provided a detailed explanation in the NPRM (89 FR 60264) of the reasons for the provision.

Changes: None.

Attendance Taking in Distance Education Courses (§ 668.22(b)(3)(ii))

Comments: Several commenters agreed with the proposed requirement

that an institution take attendance for each course offered entirely through distance education, except for dissertation research courses that are part of a doctoral program. Comments of support include:

- The state of technology and learning management systems in online education allows for attendance to be taken;
- The rule reinforces the importance of providing regular and substantive interactions between students and faculty in online coursework;
- This regulation addresses longstanding inaccuracies in tracking withdrawals;
- The rule is an important backstop for vulnerable students who have been preyed upon by predatory schools;
- It will be more difficult for institutions to not properly perform R2T4 calculations for distance education students who withdraw and help ensure that borrowers have the documents necessary to prove their eligibility where they seek a loan discharge due to the institution not returning Direct Loan funds as required.

Discussion: The Department thanks the commenters for their support. As discussed further below, however, in this final regulation we will not be finalizing the proposal in § 668.22(b)(3)(ii) to require attendance taking in distance education courses.

Changes: None.

Comments: Several commenters opposed this provision. Objections included that the Department lacked legal authority to adopt the provision; the Department failed to provide data to support the change; that the provision would increase costs, take instructors away from teaching, and inhibit academic freedom; and that it would be difficult to implement for students taking asynchronous courses or those enrolled in competency-based programs. Commenters were worried about how the provision would be implemented and requested guidance on various aspects of the provision.

Discussion: The Department is statutorily required to ensure the proper return of title IV HEA funds when a student withdraws before completing a payment period or period of enrollment. Attendance taking is specifically provided for in the statute and is crucial for the Department to carry out its statutory responsibilities. We remain concerned about ensuring that withdrawals are properly tracked in a fully online environment, where we have observed that institutions have greater tools available to them for tracking student engagement than exist when offering in-person classes. An

accurate withdrawal date is critical to ensure that the right amount of unearned title IV aid is returned, and students' accounts are properly reduced. However, we are persuaded by concerns about the need for continued development in these tools to make them consistently effective for this purpose, including the need for system interoperability. As such, we will not be finalizing this provision to provide more time to evaluate technological changes that can better track student engagement. The Department will continue to monitor the state of this tracking and may revisit this issue at a later date. In the meantime, we remind institutions of their obligation to retain adequate documentation to support their R2T4 calculations when students withdraw, and we encourage institutions to continue enhancing their systems to capture accurate student engagement for the purposes of determining if students are continuing enrollment at the institution.

Changes: The Department removes the provision under § 668.22(b)(3)(ii) for required attendance taking in distance education courses.

Leave of Absence (§ 668.22(d)(1)(vii))

Comments: Several commenters supported the leave of absence provision in § 668.22(d)(1)(vii) that provides additional flexibility for students enrolled in eligible prison education programs and stated that that it will reduce barriers to reenrollment and college completion for students who are faced with withdrawals during their studies.

Discussion: We agree with the commenters and thank them for their support.

Changes: None.

Comments: One commenter opposed the leave of absence provision. The commenter stated that their institution participates in the Second Chance Pell experiment under the Experimental Sites Initiative³¹ and stated that the provision will create administrative burden and add more complexity. The commenter stated that if an institution offers a leave of absence, the confined or incarcerated student still may not be able to return within 180 days and would therefore need to be withdrawn in any event under the normal requirements for approved leaves of absence.

Discussion: We remind the commenter that § 668.22(d)(1)(vii) does not require an institution to grant a leave of absence to the confined or

³¹ Experimental Sites—<https://experimentalsites.ed.gov/exp/approved.html>.

incarcerated individual. If the institution determines that a leave of absence would not be appropriate, it may take a more immediate approach, including an administrative withdrawal.

Changes: None.

Comments: One commenter stated that involuntary transfers of confined or incarcerated individuals often happen with no warning, giving those students no opportunity to request a leave of absence in advance. Since leaves of absence are often granted on the reasonable expectation that the student will return, this makes it unlikely that many requests will be approved by the educational institution. For this and other reasons, the commenter suggested that the Department allow for an exemption to R2T4 for confined or incarcerated students that experience involuntary transfers to another facility that result in an interruption to their programs.

Discussion: The Department acknowledges that the leave of absence provision may not be able to be utilized by all confined or incarcerated students who need it. However, for those who meet the requirements for such leave, the regulation will provide additional flexibility for them to resume their academic program at any point upon their return from the leave of absence. During negotiated rulemaking, the Department initially discussed a proposal to exempt confined or incarcerated individuals from R2T4 if the students withdrew from a program due to circumstances outside of their control, such as a correctional facility-wide lockdown or an involuntary transfer to a different facility. Upon further review, we determined that we do not have the legal authority to waive R2T4 requirements for a targeted group of students. In addition to our lack of legal authority, the Department heard concerns from several negotiators opposed to such an exemption. They pointed out that such an exemption may cause confined or incarcerated individuals to reach their Pell grant lifetime eligibility used (LEU) threshold faster, without obtaining academic credit. Also, the Department heard from negotiators that some postsecondary institutions have already established policies that account for involuntary breaks in prison education programs, such as waiving all charges related to the affected payment period, and an exemption might cause institutions to revise or remove beneficial student policies already in place. We thus decline the commenter's suggestion to include an exemption to R2T4 for confined or incarcerated students in these regulations.

Changes: None.

Comments: One commenter stated that students in community colleges often work, have families and unexpected events are likely to occur, and therefore they may not be able to request a leave of absence in advance.

Discussion: The Department believes the commenter may have misinterpreted the proposed revisions to § 668.22(d)(1)(vii). The only change to this provision is that a confined or incarcerated individual, in a term-based setting, will not have to come back from a leave of absence and resume where the student left off, and instead, the individual will be allowed to return at a different point in their prison education program. No other leave of absence provisions in this regulation were modified.

Changes: None.

Clock-Hour Programs (§ 668.22(f)(1)(ii))

Comments: One commenter disagreed with the Department's proposal to streamline and make consistent an institution's calculation of the percentage of the payment period completed for a clock-hour program. The commenter requested that the Department retain the current regulatory language that allows for two distinct methodologies: the cumulative method and the payment period method.³²

Discussion: The Department declines to adopt the commenter's suggestion. We have observed that many times, when an institution uses the cumulative method, the percentage of funds earned by the institution is much larger than the time the student actually attended. This results in a much smaller return of title IV, HEA funds, which ultimately hurts a student who had to withdraw from a program. Less money returned to the Department means the student has used more of their lifetime Pell eligibility and allowable loan amounts without successfully completing coursework, see the example in Issue Paper 4: Withdrawals and Return of Title IV Funds,³³ and the Department does not believe this is a desirable result.

Because we determined that the payment period method leads to more accurate R2T4 calculations because it better aligns the R2T4 regulations with the regulatory definition of a clock-hour payment period under § 668.4(c), and

promotes consistency across all calculations, the Department chose in § 668.22(f)(1)(ii) to standardize how institutions determine the percentage of the payment period completed for a clock-hour program by using only the payment period method. Providing a single more accurate and consistent way to calculate the percentage of the payment period completed will simplify R2T4 policy, reduce complexity and confusion, ensure that students are treated consistently, and eliminate an area of potential abuse.

Changes: None.

Modules (§ 668.22(l)(9))

Comments: Several commenters supported the provision in § 668.22(l)(9) to consider a module part of the payment period used in the denominator of the R2T4 calculation only when a student begins attendance in the module. Commenters believed that the change simplifies the R2T4 calculation, reduces burden, and minimizes errors. A few commenters were also pleased that this change eliminates the complexity of the "freeze date" ³⁴ policy. One commenter requested that the Department early implement this change.

Discussion: We thank the commenters for their support. Any regulations eligible for early implementation are listed in the *Implementation Date of These Regulations* section of these final regulations.

Changes: None.

Comments: Several commenters stated that the change in how modules factor into the R2T4 calculation in § 668.22(l)(9) will make it easier for students to obtain and institutions to retain large amounts of student loans through minimal participation, which will result in a gaming of the system. Commenters stated that the change could artificially increase the "percentage earned" component of the R2T4 calculation, resulting in student over-borrowing and excessive student loan burdens.

Some commenters provided examples to support their claims:

- If a student successfully completes a module, but fails to begin attendance in the second module, the R2T4 calculation will result in 100% of aid earned; and
- If a student withdraws during the first module and does not attend the second module, the denominator is only the days contained in the first module.

³² NPRM—<https://www.federalregister.gov/documents/2024/07/24/2024-16102/program-integrity-and-institutional-quality-distance-education-return-of-title-iv-hea-funds-and>.

³³ Issue Paper 4—<https://www.ed.gov/sites/ed/files/policy/highered/reg/hearulemaking/2023/program-integrity-and-institutional-quality-session-1-issue-paper-r2t4-final.pdf>.

³⁴ For discussion of the "freeze date," see 89 FR 60265; <https://www.federalregister.gov/documents/2024/07/24/2024-16102/program-integrity-and-institutional-quality-distance-education-return-of-title-iv-hea-funds-and>.

The student attends 5 weeks (35 days) of the first 8-week module (56 days). The fraction 35/56 translates to 62.5%. As this is greater than 60%, the student is considered to have earned 100% of the Title IV aid for the full 16-week term.

The commenters provided several alternatives to the Department's proposal, including: (1) prohibiting institutions from making subsequent disbursements to students in modules within the same payment period if the student does not attend the module; (2) including in the R2T4 calculation denominator the days for all modules for which the student began attendance, and all modules the student did not attend in which the student enrolled before the date of withdrawal and did not withdraw before the date of withdrawal; or (3) rescinding the proposed regulation.

Discussion: We disagree with the commenters that the change will result in a gaming of title IV, HEA aid. We acknowledge that, in the examples shared by the commenters, this change will produce outcomes that may prove more beneficial to students than our current requirements. However, we believe the reduction in administrative burden created by this regulatory change will more than outweigh the potential for students to receive more Federal student aid than they would have under the previous requirements. We note that students enrolled in modular programs still are required to comply with title IV requirements that are not impacted by this regulatory change, such as mandatory Pell recalculations. For a more detailed discussion on the R2T4 process, please refer to Volume 5 of the 2024–25 Federal Student Aid Handbook.³⁵ We plan to release guidance to help institutions understand and implement these changes.

We remind institutions that it is possible for an institution to break up title IV, HEA disbursements into smaller increments (by module, for example) to best meet the needs of the student, as long as the disbursement practices do not violate § 668.16(s). In breaking up title IV, HEA disbursements into smaller increments, a student may not be eligible for a future disbursement for a module that the student did not attend because the student did not successfully complete the period for which the loan was intended. In such situations, the concerns raised by the commenter about

excessive awarding of aid relative to time spent attending would not occur.

We appreciate the commenters' alternative suggestions. We decline the first suggestion, because while these regulations modify how modules factor into the R2T4 calculation, the rulemaking did not extend to changing the manner in which title IV, HEA aid is disbursed within a payment period or period of enrollment. We decline the second suggested alternative, because it appears to restate existing requirements, which these final regulations seek to simplify. Finally, for all of the reasons set forth in the NPRM and in this preamble, see, e.g., 89 FR 60256, we have determined this new provision is appropriate and improves administration of the title IV, HEA programs, and we thus decline to rescind it.

Changes: None.

5. Federal TRIO Programs (§§ 643.3, 644.3, 645.3, 646.3, 647.3)

General Support and Requests for Expansion

Comments: Many commenters supported the proposed amendments to the TRIO regulations, and a group of commenters stated that there is substantial and enthusiastic support to expand eligibility among TRIO counselors and practitioners. These commenters believe that the proposed expansion of eligibility would help certain noncitizen students included within that proposed definition to access vital educational services, close the achievement gap, and promote equity in education.

However, the Department received additional, vocal feedback from several commenters who repeatedly emphasized that it is important that all students, notwithstanding their immigration status, have equitable access to education. Additionally, many commenters advocated for the Department to expand student eligibility across all TRIO programs, and not just those three TRIO programs included within the Department's proposed rule. These commenters note the importance of providing students with support while in college to increase the students' chances of graduating and gaining the skills necessary to be successful in the workforce, support which can be more directly provided by the SSS and McNair programs. Several of these commenters also argued that including the SSS and McNair programs would help undocumented students receive the support and services necessary to be successful in college and motivate more of these students to

pursue graduate education. Still other commenters provided suggested language for modifying the proposed regulatory changes to include other noncitizens who have previously attended high school in the U.S., territories, or Freely Associated States. Furthermore, the Department received feedback noting that there is no statutory restriction that requires TRIO providers to offer services only to students who are citizens, and that the HEA makes no mention of such a prohibition for the TRIO programs.

Discussion: We thank the commenters for their support. As these commenters have pointed out, many noncitizens (including undocumented students) would greatly benefit from TRIO services based on their status as a disadvantaged group facing challenges in postsecondary enrollment and completion. We are persuaded by commenters that the proposed expansion of student eligibility for TRIO programs under the NPRM, which was focused on noncitizen students enrolled or seeking to enroll in a high school under TS, UB and EOC, was too narrow both in scope of additional populations to be served, as well as in its omission of the SSS and McNair programs. We agree with those commenters who noted that the HEA does not limit participation in the TRIO programs based on immigration status and find that the proposed rule was restrictive in its continued consideration of immigration status as a barrier to participation in the TRIO programs. We are also persuaded that an expansion of student eligibility under only certain TRIO programs would create confusion, as many grantees administer grants under more than one TRIO program. Additionally, expanding student eligibility for only certain TRIO programs would increase administrative burden by requiring grantees to deny similarly situated noncitizens from participating under certain TRIO programs, but not others.

As the TRIO programs provide a pipeline of services for eligible participants, we believe it would frustrate the purpose of the TS, UB and EOC programs to not provide (at minimum) a correlating extension of student eligibility under the SSS and McNair programs. However, as noted above, the Department now recognizes that the proposed rule's focus on "disadvantaged students who have enrolled or seek to enroll in a high school in the United States, territories, or Freely Associated States" would continue to perpetuate consideration of immigration status as a barrier to participation in the TRIO programs in a

³⁵ Federal Student Aid Handbook—<https://fsapartners.ed.gov/knowledge-center/fsa-handbook/2024-2025/vol5>.

manner that is not supported by the text of the HEA itself. For the foregoing reasons, the Department has decided not to finalize the Federal TRIO provisions, to reconsider how best to ensure that the TRIO programs are able to reach all populations of disadvantaged students, irrespective of immigration status.

Changes: The Department is not finalizing the TRIO provisions except for the technical change mentioned above and may reconsider TRIO student eligibility through future rulemaking efforts.

Comments: Two commenters were supportive of the changes but were concerned that expanding eligibility could bring some political tension and put TRIO's funding in jeopardy.

Discussion: The TRIO programs have been around for over 60 years, making these programs one of the oldest grant programs authorized under the HEA. These programs continue to exist because they are still needed and must continue to evolve to meet the needs of those students that the Secretary identifies as disadvantaged in postsecondary access and attainment. We are confident that these programs will continue to serve students and adapt to serve new groups of qualified individuals from disadvantaged backgrounds.

Changes: The Department removes the TRIO provisions except for the technical change mentioned above and may reconsider TRIO student eligibility through future rulemaking efforts.

Requests To Remove the Proposed Prohibition on Direct Cash Stipends in the Upward Bound Program

Comments: A few commenters were disappointed that the NPRM limited the availability of cash stipends to UB participants by immigration status, noting that the limitation would run counter to the Department's stated goal of expanding access to higher education. Another commenter noted that these restrictions would place a burden on program administrators to track differences in eligibility among students within the program and create privacy concerns for students as they disclose their legal status to determine eligibility for the stipend.

Discussion: As noted in the proposed rule, PRWORA prohibits "Federal public benefits" from being awarded to persons who are not able to demonstrate certain types of eligible noncitizen statuses as a "qualified alien" under 8 U.S.C. 1641(b). The general definition of a "federal public benefit" is provided under U.S.C. 1611(c)(1). Federal agencies are generally responsible for identifying which of their programs

provide Federal public benefits. The Department stated its determination within the NPRM that the direct cash stipends provided under the UB program likely represent a "similar benefit" to those enumerated benefits under 8 U.S.C. 1611(c)(1)(B) for which, where payment is provided to an "individual, household, or family eligibility unit[,] falls under the restrictions of PRWORA. Therefore, while the Department is not finalizing this provision, compliance for PRWORA restrictions operates independent of these rulemaking efforts.

Changes: The Department is not finalizing the TRIO provisions and may reconsider TRIO student eligibility through future rulemaking efforts.

Clarifying Who Is Eligible for the TRIO Programs

Comments: Certain commenters sought clarity on which individuals would be eligible under the Department's proposed rule, including income requirements, potential eligibility of middle school students, and whether only a certain percentage of noncitizens would be eligible to participate under the proposed rule.

Discussion: Because the Department is not finalizing this provision, we decline to provide guidance as to how these changes would have been operationalized. However, we note that section 402A of the HEA outlines the documentation requirements for low-income individuals under the TRIO programs.

Changes: The Department does not finalize the TRIO provisions and may reconsider TRIO student eligibility through future rulemaking efforts.

Suggested Technical Edits for Students From Territories and Freely Associated States

Comments: One commenter points out that there are multiple instances in the proposed TRIO regulations where American Samoa is omitted while other Pacific territories are explicitly named. Additionally, the commenter notes that the regulatory text includes outdated references to the Republic of Palau, which is no longer part of the Pacific Trust Territory, but instead a Freely Associated State.

Discussion: The Department notes that Natives of American Samoa are eligible to participate in the TRIO sections as a "national of the United States." Therefore, no change is needed to ensure the continued TRIO program participation of these individuals.

The suggested change of listing the Republic of Palau as among the "Freely Associated States" in the EOC and TS

programs is well taken as the U.S.-Palau Compact of Free Association was ratified in 1993 and came into effect on October 1, 1994. In addition to listing the Republic of Palau among the "Freely Associated States" in the EOC and TS programs, we will also remove references to the "Trust Territory of the Pacific Islands" in the TRIO regulations, as this agreement dissolved in 1990. The Department considers these to be technical changes to update outdated language. Another technical change we will be making in the UB program is removing the periods at the end of paragraphs § 645.3 (a)(1) through (4) and adding, in each place, " ; or " for consistency purposes.

Changes: We have added "Republic of Palau" to the list of residents in the Freely Associated States that are currently eligible to participate under §§ 643.3(a)(1)(v) and 644.3(a)(1)(v). We have removed "Trust Territory of the Pacific Islands (Palau)" from §§ 643.3(a)(1)(iv) and 644.3(a)(1)(v). We have removed "Trust Territory of the Pacific Islands" from §§ 645.3(a)(4) and 647.3(a)(4). We have also removed the periods at the end of paragraphs § 645.3 (a)(1) through (4) and added, in each place, " ; or ".

Opposition to Expanding Eligibility

Comments: A group of commenters argued that the Department's proposed rule would be contrary to the legislative intent of the HEA, and that these changes would siphon resources away from currently eligible low-income American citizens. The commenters also asserted that the proposed rule incorrectly cited requirements under *Plyler v. Doe* and programs under the Elementary and Secondary Education Act (ESEA) as a parallel for TRIO programs. These commenters also expressed a concern that grantees in states with more newly eligible noncitizens would vie for a larger share of the existing TRIO funding, and thereby reduce available funding for grantees in other states.

An additional commenter believed the Department's proposal to make noncitizens who are enrolled in or seeking to enroll in a U.S. high school eligible for the TRIO programs would be in contrast with Federal immigration policy and certain statements of Congress in 8 U.S.C. 1601.

Finally, one commenter argued that the amendments to the Federal TRIO programs might undermine their flexibility and effectiveness. The commenter believes regulatory changes should be carefully considered to ensure they do not inadvertently reduce the

availability or effectiveness of services provided to TRIO program participants.

Discussion: Although the Department is not finalizing this provision to reconsider how best to ensure that the TRIO programs are able to reach all populations of disadvantaged students, the Department disagrees with the comments of opposition on several grounds. As a factual matter, the Department's NPRM did not state that TRIO is governed by ESEA, nor did the NPRM cite *Plyler v. Doe* in the Department's rationale for the proposed changes. Regarding the commenters' concerns about newly eligible noncitizens taking resources away from currently eligible low-income American citizens, the TRIO programs provide services to several groups from disadvantaged backgrounds and this work would continue in the event of an expansion of student eligibility. Additionally, we disagree with the commenters' concerns that TRIO funding could be diverted to grantees in states with a higher distribution of newly eligible students, as the existing procedures for selecting and distributing funding amongst eligible grantees help to safeguard against an inequitable distribution of resources across grantees.

In response to the commenter who raised concerns regarding noncitizens receiving any public resources under TRIO, the Department reiterates that not all benefits or services provided are the type of "Federal public benefits" Congress sought to restrict in enacting PRWORA. Indeed, Congress specifically exempted several Federal public benefit programs in PRWORA in order to allow these programs to provide services to all individuals regardless of their immigration status, thereby directly undercutting the commenter's position that certain noncitizens should be entirely deprived of aid and assistance of aid from the Federal government.³⁶ The fact that a Federal program was not specifically included amongst those specifically excluded benefit programs does not necessitate the conclusion that it provides "Federal public benefits" for purposes of PRWORA. Rather, providers of Federal benefits, such as the Department of Education, are required to "determine whether the particular program they are administering provides a 'federal public benefit[.]'"³⁷ Additionally, "[i]f one program provides several public benefits, [PRWORA's]

requirements apply only to those benefits that are non-exempted federal public benefits under [PRWORA]."³⁸ The Department also clarifies its stated reasoning, in the proposed rule, noting that the Department's stated position on 89 FR print page 60267 of the **Federal Register** should have read "the Department believes that TRIO grant programs providing student support services in the secondary context do not constitute the type of "incentive for illegal immigration provided by the availability of public benefits" that PRWORA was enacted to discourage." The Department believes this position would be consistent with the omission of other programs that provide non-postsecondary services from the requirements of PRWORA, such as Head Start and elementary and secondary education, as noted within the proposed rule. While the Department has determined not to finalize its proposed provisions, the Department nevertheless stands by its stated position that not all benefits and services provided under the TRIO programs are subject to restriction under PRWORA.

Changes: The Department does not finalize the proposed TRIO provisions and may reconsider TRIO student eligibility through future rulemaking efforts.

VIII. Regulatory Impact Analysis

Executive Orders 12866, 13563, and 14094

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$200 million or more (adjusted every three years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in the Executive Order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This final regulatory action is a significant regulatory action subject to review by OMB under section 3(f)(4) of Executive Order 12866, as amended by Executive Order 14094. The Department estimates present value net cost of \$27,349,749 over ten years at a 2 percent discount rate. This is equivalent to an annualized net cost of \$3,044,753 over ten years. Additionally, we estimate annualized quantified costs of \$9,423,657 related to paperwork burden. Notwithstanding this determination, based on our assessment of the potential costs and benefits (quantitative and qualitative), the Department has determined that the benefits of this final regulatory action would justify the costs.

The Department has also reviewed the regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

³⁶ 8 U.S.C. 1611(b).

³⁷ Department of Justice, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 FR 61344 (Nov. 17, 1997).

³⁸ *Id.* at 61346.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

The Department issues these final regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, the Department selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

The Department has also determined that this regulatory action does not unduly interfere with State, local, territorial, or Tribal governments in the exercise of their governmental functions.

As required by OMB Circular A–4, the Department compared the final regulations to the current regulations. In this regulatory impact analysis, the Department discusses the need for regulatory action, responds to comments related to the RIA in the NPRM, discusses the potential costs and benefits, and the regulatory alternatives we considered. Elsewhere in this section under Paperwork Reduction Act of 1995, the Department identifies and explains burdens specifically associated with information collection requirements.

1. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has found that this rule does not meet the criteria in 5 U.S.C. 804(2).

2. Need for Regulatory Action

The Department has identified a significant need for regulatory action to address inadequate protections for students and taxpayers in the current regulations.

Distance Education

The HEA and the Department’s regulations provide that institutions of higher education may offer programs through distance education. Currently, however, the Department has very limited data about students enrolled in distance education, which limits the Department’s ability to answer important questions about student pathways and outcomes through in-

person, distance, and hybrid education. For example, an institution may offer a program that is provided on campus and a related program of the same CIP code that is provided online. The Department is currently unable to distinguish between those two programs in the data it currently receives, which limits its capacity to provide helpful and reliable information to students, families, institutions, and the public. A notable example is the Department is unable to distinguish between two such programs for College Scorecard program-level data including debt, earnings, and completion. The Department is also unable to determine whether institutions have reached the 50 percent threshold for distance education enrollment announced in Dear Colleague Letter GEN–23–09.³⁹ This is important because institutions must obtain further accreditor approval beyond the initial approval to deliver distance education programs when they enroll at least 50 percent of their students in distance education or offer at least 50 percent of their courses (or 50 percent of a program) via distance education.

The final regulations for distance education change institutional reporting requirements to specify a student’s distance education enrollment status.

This change enables the Department to obtain better data and more meaningfully compare the outcomes of students, particularly for those who are enrolled in similar programs that are delivered using different modalities. It also allows the Department to better monitor and oversee the aid programs and institutional accrediting agencies by ensuring institutions are receiving appropriate review and approval of distance education offerings.⁴⁰

R2T4

The R2T4 regulations govern the process institutions must conduct when a title IV, HEA recipient ceases attendance during a payment period or a period of enrollment. An R2T4 calculation determines, based on the proportion of a payment period or period of enrollment a student completed, whether funds must be returned by the school and/or student, or whether the student is eligible for a post-withdrawal disbursement. R2T4 calculations differ based on academic

calendars and program format, including the use of clock hours or credit hours and the use of module courses within terms. R2T4 consistently ranks among the top ten compliance findings for institutions, is the subject of an entire volume of sub-regulatory guidance in the FSA Handbook and yields complex and challenging questions. Therefore, the Department believes that there is a need to take regulatory action immediately to update and clarify the regulations.

Withdrawal Exemption

For some institutions, the R2T4 process is complex, with a high likelihood of errors, including issues such as incorrectly determining the withdrawal date or the number of days in a payment period. To simplify the process for institutions, these regulations establish a withdrawal exemption in which an institution does not need to conduct an R2T4 calculation if the following conditions are met: (1) the student is treated as never having begun attendance; (2) the institution returns all title IV, HEA aid disbursed to the student including any title IV credit balance for that payment period or period of enrollment; (3) the institution refunds all institutional charges to the student for that payment period or period of enrollment; and (4) the institution writes off or cancels any payment period or period of enrollment balance owed by the student to the institution due to the institution’s returning of title IV funds to the Department.

The final withdrawal exemption reduces the likelihood that a student owes money back to the school, allows the student to not exhaust annual and aggregate subsidized aid, including Pell Grants, and reduces the likelihood the student will have a loan balance associated with a program they may not finish.

Determination of Withdrawal Status

This provision requires that an institution that is required to take attendance must, within 14 days of a student’s last date of attendance, document a student’s withdrawal date and maintain the documentation as of the date of the institution’s determination that the student withdrew. We reiterate that this is not a requirement that the student be administratively withdrawn or that an R2T4 calculation be completed at that time. If the student subsequently begins attendance within 30 days of the date of determination, then there is nothing further an institution must do as it relates to the R2T4 calculation (30 days)

³⁹ <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-05-18/accreditation-and-eligibility-requirements-distance-education>.

⁴⁰ <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-05-18/accreditation-and-eligibility-requirements-distance-education>.

or the return of funds to the Department (45 days).

Leave of Absence

On July 1, 2023, the Department published final regulations that detailed Pell Grant eligibility for confined or incarcerated individuals in PEPs.⁴¹ These regulations did not address students who are incarcerated and who face involuntary interruptions to their academic programs. For example, an entire correctional facility may be locked down due to a security issue, interrupting a student's progress in their PEP.

With these final regulations the Department makes changes to the regulations governing leave of absence to allow a student who is incarcerated to not have to return from the leave of absence where the student left off, and instead, the individual could return to a different point in their PEP. This applies to programs of any structure, including term-based programs. This change increases flexibility for

institutions and will help boost student retention in PEPs.

Clock-Hour Programs

As a part of the R2T4 calculation, institutions must determine the percentage of the payment period or period of enrollment the student completed based on scheduled clock hours if enrolled in a clock-hour program. There are currently two ways that institutions can make this determination: the payment period method and the cumulative method. The cumulative method (as described in the Analysis of Public Comment and Changes section) usually results in a significant amount of aid earned by the student compared to the actual time the student attended during the payment period. With these final regulations the Department has streamlined this calculation so that the payment period method is the single, standardized method across all clock-hour programs.

R2T4 and Modules

In 2021, the Department published final regulations outlining several changes to R2T4 and modules.⁴² The regulations immediately raised a question about how an institution determines whether the days in a module are included in the R2T4 calculation. The answer is complex and depends on several variables, including whether the institution uses an R2T4 freeze date and the type(s) of title IV, HEA aid for which the student was eligible during the payment period or period of enrollment.

With these final regulations the Department simplifies the determination by only including days in the module if the student actually attends the module. This change reduces complexity and errors as institutions will no longer need to use a freeze date or differentiate between Pell Grant and Direct Loan recipients.

3. Summary of Comments and Changes From the NPRM

TABLE 3.1—SUMMARY OF KEY CHANGES IN THE FINAL REGULATIONS

Provision	Regulatory section	Description of final provision
Distance education		
Definition of <i>distance education course</i>	600.2	Removes the phrase “residency experiences” from the definition.
Definition of <i>additional location</i>	600.2	Does not finalize the definition related to a virtual location.
Definition of a week of instructional time	668.3	Does not finalize the limitation on asynchronous clock-hour programs being offered through distance education.
Reporting enrollment in distance education or correspondence courses.	668.41	Updates the effective date from July 1, 2026, to July 1, 2027.
Return to title IV		
Treatment of Title IV Grant and Loan Funds if the Recipient does not Begin Attendance at the Institution (§ 668.21).	668.21	Does not finalize the provision to allow a student who received a loan disbursement as part of a title IV credit balance, but never began attendance in a payment period or period of enrollment, to repay loan funds they received under the terms of their promissory note.
Withdrawal Exemption	668.22	Updates § 668.22(a)(2)(ii)(A)(6)(iv) to replace “any current year balance” with “any payment period or period of enrollment balance” owed by the student to the institution due to the institution's returning of title IV, HEA funds to the Department. Also include references to funds received by a parent so they are covered by this exemption as well.
Required attendance taking in distance education courses.	668.22	Does not finalize the proposal require attendance taking in distance education courses.
Federal TRIO Programs		
Talent Search program	643.3	Does not finalize the proposed changes to this provision.
Educational Opportunity Centers program	644.3	Does not finalize the proposed changes to this provision.
Upward Bound programs (Regular, or Math and Science).	645.3	Does not finalize the proposed changes to this provision.

General Comments

Comments: One commenter claimed that the Department significantly

underestimated the compliance costs for this regulatory package, which will necessitate significant changes to

institutional policies and processes, will involve large-scale duplicative reporting, and will require

⁴¹ <https://www.federalregister.gov/documents/2022/10/28/2022-23078/pell-grants-for-prison-education-programs-determining-the-amount-of-federal-education-assistance>.

⁴² Distance Education and Innovation—final regulations: <https://www.federalregister.gov/documents/2020/09/02/2020-18636/distance-education-and-innovation>.

redevelopment of information systems to support the new requirements, all of which will ultimately increase costs for students.

Discussion: While the commenters did not provide any data to justify their assertions, after careful review of the final regulations, and based on the Department's administrative experience, the Department increased burden estimates as described in the Distance Education cost analysis section of the RIA. In the NPRM, we estimated a cost burden of \$381,560 in the first year across all impacted institutions under § 668.41 to require institutions to report the enrollment status of students in distance education or correspondence courses. In the NPRM, the Department did not estimate a cost for transitioning to synchronous instruction for affected clock-hour programs. In these final regulations, the Department has removed several provisions, which reduce levels of burden from what was included in the NPRM. This includes not finalizing the provision related to synchronous clock hour programs.

Additionally, the Department has not finalized the provision under § 668.22(b)(3)(ii) for required attendance taking in distance education courses, which reduces burden associated with that previously proposed requirement.

Changes: In total, the Department now estimates reviewing and revising these procedures will cost approximately \$10,057,889 in the first year across all impacted institutions.

Comments: One commenter noted that the proposed provisions could force institutions to hire additional staff to manage an increased documentation and compliance workload.

Discussion: The Department acknowledges that some institutions may need to increase or re-allocate staff duties and responsibilities to comply with these final regulations. The costs described in the RIA account for potential increased costs for institutions as a result of these final regulations. In the NPRM, we estimated a cost burden of \$381,560 in the first year across all impacted institutions under § 668.41 to require institutions to report the enrollment status of students in distance education or correspondence courses. In the NPRM, the Department did not estimate a cost for transitioning to synchronous instruction for affected clock-hour programs. In these final regulations, the Department has removed several provisions, which reduce levels of burden from what was included in the NPRM. This includes not finalizing the provision related to synchronous clock hour programs.

Changes: In total, the Department now estimates reviewing and revising these procedures will cost approximately \$10,057,889 in the first year across all impacted institutions.

Asynchronous Distance Education in Clock-Hour Programs

Comments: One commenter alleged that the Department has not sufficiently identified the proportion of asynchronous learning activities that do not meet the Department's standard. This commenter argued that a reasoned analysis must include an estimate of the cost to students and institutions of removing asynchronous distance education instruction in clock-hour programs and a comparison to any benefits from those proposed changes. The commenter further opined that failing to provide such an estimate would render the provision arbitrary and capricious. Another commenter opined that the proposed regulations would disproportionately increase administrative burden on institutions that serve students exclusively through distance education. One commenter estimated that at least 75 percent of asynchronous activities would be disallowed under the proposed regulations but are of sufficient quality to merit equal treatment with synchronous activities, forecasted that the value of asynchronous learning will increase over time, and predicted that the costs to institutions and students for disallowing asynchronous distance education in clock-hour programs would therefore also rise over time. One commenter noted that faculty offering asynchronous coursework via distance education in clock-hour programs may experience increased workload and potential dissatisfaction because of the need to redesign their courses.

One commenter noted that it is the responsibility of the Department, not public commenters, to provide reasoned burden and cost estimates for the Department's proposed regulatory provisions, and that it is inappropriate for the Department to avoid such necessary calculations merely because commenters have not offered their own calculations.

Discussion: When developing cost and benefit analysis of proposed rules, the Department relies on its own data sources, publicly available data sources, and the administrative experience of Department staff. In instances where there is a lack of certainty, the Department may rely, in part, on data or evidence provided to the Department through public comment on the NPRM. That is why, in section 3.A.3 of the NPRM, the Department invited

comments from the public on its estimates contained in the NPRM. The Department requested comments to ensure that the NPRM's estimates accurately reflected realistic assumptions about the average burdens that the regulations would impose on affected entities. The Department believes that the cost analysis included in the RIA fully considers the potential costs and benefits of the final regulations based on the Department's own data sources, publicly available data sources, and the administrative experience of Department staff. Additionally, for these final regulations, the Department revised its cost estimates upward partly in response to high-quality comments from the public. While these high-quality comments did not provide specific data, they did provide convincing qualitative information that led the Department to further consider potential costs, based on the Department's administrative experience, under the final regulations.

Changes: The Department removed limitations on asynchronous distance education in clock hour programs. In total, the Department now estimates reviewing and revising these procedures will cost approximately \$10,057,889 in the first year across all impacted institutions.

Comments: One commenter estimated costs between \$1.5 and \$2.4 million for 113 community colleges (\$12,500 to \$20,500 per institution) resulting from the proposed regulations because these institutions would need to review their clock-hour programs to determine which should be converted into credit-hour programs, as well as update relevant course assignments, classroom lectures, and learning materials. This commenter requested an implementation date no earlier than 2027, noting that curriculum changes require local faculty review, employer input, and statewide approval which can take approximately 18 months to complete.

One commenter predicted that cost and burden from the proposed elimination of asynchronous instruction for clock-hour programs would divert educational resources and disproportionately impact first-generation, adult, and marginalized students.

Discussion: When developing cost and benefit analysis of proposed rules, the Department relies on its own data sources, publicly available data sources, and the administrative experience of Department staff. In instances where there is a lack of certainty, the Department may rely, in part, on data or evidence provided to the Department

through public comment on the NPRM. That is why, in section 3.A.3 of the NPRM, the Department invited comments from the public on its estimates contained in the NPRM. The Department requested comments to ensure that the NPRM's estimates accurately reflected realistic assumptions about the average burdens that the regulations would impose on affected entities.

As described in the preamble to these final regulations, the Department has decided not to finalize the proposal to limit asynchronous clock hour programs from accessing title IV, HEA funds. By not finalizing this provision there is no longer any burden associated with this provision in the final rule. It also means the concerns brought up by the commenters are no longer relevant. The Department believes that the cost analysis included in the RIA fully considers the potential costs and benefits of the final regulations based on the Department's own data sources, publicly available data sources, and the administrative experience of Department staff.

Changes: None.

Attendance Taking for Distance Education Courses

Comments: We received many comments that stated the Department underestimated the administrative and financial burden to postsecondary institutions, including community colleges, by requiring attendance taking for distance education courses; including the significant investment in new technologies. Commenters believed that the analysis was not properly justified and also lacked reference to the negative impact this may have on other stakeholders like instructors and students.

Discussion: As discussed in the preamble, the Department is statutorily required to ensure the proper return of title IV, HEA funds when a student withdraws before completing a payment period or period of enrollment. Attendance taking is specifically provided for in the statute and is crucial for the Department to carry out its statutory responsibilities. We remain concerned about ensuring that withdrawals are properly tracked in a fully online environment, where we have observed that institutions have greater tools available to them for tracking student engagement than exist when offering in-person classes. An accurate withdrawal date is critical to ensure that the right amount of unearned title IV, HEA aid is returned, and students' accounts are properly reduced. However, we are persuaded by

concerns about the need for continued development in these tools to make them consistently effective for this purpose, including the need for system interoperability. As such, we are not finalizing this provision to provide more time to evaluate technological changes that can better track student engagement.

Because the Department is not finalizing the provision under § 668.22(b)(3)(ii), the concerns about burden raised by commenters are no longer relevant. Institutions will not be required to take attendance in a distance education course unless there are other existing reasons for why they must do so. As such, there are no added burden costs from this withdrawn provision. We have updated the relevant parts of the RIA to remove any burden estimates from this proposed provision.

Changes: The Department does not finalize the proposal under § 668.22(b)(3)(ii) for required attendance taking in distance education courses. We also removed the associated burden from the estimated costs of these final regulations.

Distance Education Reporting

Comments: A few commenters claimed that the Department understated the costs associated with the proposed reporting requirements for distance education. One commenter further observed that institutions would pass these costs along to students. One commenter estimated one-time costs in the low thousands of dollars for updating data collection procedures, which would amount to approximately \$2 million to \$2.5 million across their system of institutions. This commenter requested an implementation date no sooner than 2027 to provide institutions time to update their data collection systems.

Discussion: Upon further review, the Department agrees that the NPRM did not fully account for costs that may be expected to result from the distance education reporting requirements; however, the Department strongly disagrees that this final regulation would result in increased costs for students. The Department estimates that costs resulting from these requirements would primarily result from increased labor hours and would only occur in the first year after the promulgation of this final regulation. In light of comments received from the public on the cost estimates included in the NPRM, the Department reconsidered the potential burden of this final regulation, and after reviewing additional data submitted by commenters and data maintained by the Department, revised cost estimates for

this final regulation to more fully account for the cost of increased staff labor hours to update data collection policies and procedures. We were able to incorporate this additional information in this final regulation to update the estimated burden. As noted earlier, this provision will not begin until July 1, 2027. We believe this date provides institutions with sufficient time to prepare for implementation of this final regulation.

Changes: As described in the RIA, in the NPRM the Department initially estimated a cost burden for distance education reporting of \$381,560 in the first year across all impacted institutions. The Department estimates costs of \$10,057,889 in the first year for impacted institutions.

Comments: Several commenters raised concerns about the costs, in dollars and in administrative time, associated with reporting a virtual location for distance learning courses, particularly for students enrolled in a combination of in-person and distance-education courses, and that such reporting could potentially impact the quality of services available to students.

One commenter opined that the Department's analysis in the NPRM did not account for the costs associated with declaring a virtual location for all distance education courses. The commenter further noted that online learning is especially important in rural states, citing data from the New Mexico Legislative Finance Committee that Native Americans and Hispanics earn 43 and 49.6 percent of their credits, respectively, via distance education, and that these online students are predominantly women, older, and non-white, which suggests that the proposed changes would disproportionately impact these populations.

Discussion: As discussed in the preamble above, the Department has decided not to move forward with the reporting of a virtual location. There is thus no burden associated with this provision in the final regulations.

Changes: We have removed the burden associated with virtual location reporting.

Comments: One commenter observed that NSLDS enrollment reporting findings consistently rank among the top 10 audit and program review findings, with respective findings rates of 16.8 percent and 8.8 percent, which suggests that the Department underestimated the labor and costs of reporting given longstanding structural deficiencies with NSLDS that reflect a faulty and overly complex reporting process.

Discussion: Upon further review, the Department agrees that the NPRM cost estimates for Distance Education reporting underestimated burden for Distance Education reporting. The Department increased burden estimates as a result of further review.

Changes: The Department increased the burden estimate from \$381,560 to \$10,057,889 in the first year across all impacted institutions for distance education reporting.

Failure To Begin Attendance

Comments: One commenter noted that it is currently unclear which, if any, of the Department’s loan forgiveness initiatives will withstand litigation, casting uncertainty on the costs associated with allowing students who fail to begin attendance to repay loans under the terms and conditions of the promissory note as proposed at § 668.21(a)(2)(ii). This commenter further asserted that the estimates the Department included in the NPRM relative to this provision are no longer accurate, in part because the Saving Against a Valuable Education (SAVE) repayment plan will likely continue to fail in ongoing legal proceedings.

One commenter argued that the Department’s cost estimate for this provision, in only considering compliance costs for loan services, did not account for: (1) an increased number

of persons seeking loans; (2) the resulting increased costs and transfers; or (3) transfers from the government to borrowers for allowing these borrowers to repay over time rather than immediately upon demand. The commenter questioned whether the benefits of allowing repayment over time for students who legitimately planned to attend would justify the costs from those that would enroll only to obtain loans.

Discussion: As explained elsewhere, the Department has chosen not to move forward with this provision in these final regulations. As a result, there is no cost associated with this provision.

Changes: The Department removed the change in § 668.21 to allow a student who received a loan disbursement as part of a title IV credit balance, but never began attendance in a payment period or period of enrollment, to repay loan funds they received under the terms of their promissory note.

4. Discussion of Costs, Benefits, and Transfers

The Department has analyzed the costs and benefits of complying with these regulations. Although many of the associated costs and benefits are not easily quantifiable, the Department currently believes that the benefits derived from the regulations outweigh

the associated costs, as discussed in sections 4.B. and 4.C. below.

The regulations, which will apply to over 6,000 postsecondary institutions, will help ensure students are well served by the institutions of higher education they attend and ensure that the Federal Student Aid programs work in the best interests of students. These final regulations will also reduce the likelihood of reporting errors in R2T4 and will standardize and simplify related processes and calculations.

Due to the large number of affected recipients (5,898, as discussed more fully in the discussion of Establishing the Baseline (Section 4.A)), the variation in likely responses to any regulatory change, and the limited information available about current practices, the Department is not able to precisely estimate the likely costs, benefits, and other effects of the regulations. Despite these limitations and based on the best available evidence as explained in the discussion of Establishing a Baseline (Section 4.A), the Department estimates net present value costs of \$27,349,749 over ten years at a 2 percent discount rate. This is equivalent to an annualized cost of \$3,044,753 over ten years. The regulations are expected to result in estimated costs of \$27,896,744 in the first year following publication of these final regulations.

TABLE 4.1—NET ANNUAL COSTS, YEARS 1 THROUGH 10

Year	Net annual costs
Year 1	\$27,896,744
Year 2	0
Year 3	0
Year 4	0
Year 5	0
Year 6	0
Year 7	0
Year 8	0
Year 9	0
Year 10	0
Total Net Present Value (NPV), 2 percent	27,349,749
Annualized, 2 percent	3,044,753

As discussed in the Cost Estimates section (Section 4.B), the Year 1 costs include one-time costs associated with reviewing and making necessary changes to policies, procedures, and training to implement the regulations.

The assumptions, data, methodology, and other relevant materials, as applicable, on which the Department relied in developing its estimates are described throughout this Regulatory Impact Analysis (RIA).

4.A. Establishing a Baseline
4.A.1. Number of Affected Entities

Institutions of higher education will be subject to the final regulations. For purposes of establishing a baseline, this includes the number of institutions of higher education participating in programs under title IV of the HEA (such as Direct Loans, Federal Work Study, and Pell Grants).

For purposes of this analysis, the Department bases its analysis of

“postsecondary entities” on “institutions of higher education” as defined in section 102 of the HEA. It is assumed that 5,898 postsecondary institutions will be impacted by the regulations. Among postsecondary institutions, institutions range from small, private, professional schools with fewer than 5 students enrolled in the fall of 2023 to large, public research universities with enrollments of more than 71,000 students and institutions operating mostly virtually with

enrollments in excess of 156,000 students.

It is important to note that, across postsecondary institutions, there is wide variation in the number of students served, the number of employees, administrative structure, and annual revenue. This wide variation makes estimating the effects of the regulations challenging, and the Department notes that the estimates provided are intended to reflect the average burden across the full spectrum of affected entities. As a result, estimates may be lower than the actual burden realized by, for example, larger institutions or institutions with more complex administrative structures, and larger than those actually realized by smaller institutions with less complex administrative structures.

4.A.2. Wage Rates

Unless otherwise specified, the Department's model uses mean hourly wages for personnel employed in the education sector as reported by the Bureau of Labor Statistics (BLS)⁴³ and a loading factor of 2.0 to account for the employer cost of employee compensation and benefits and indirect costs (e.g., physical space, equipment, and technology costs). When appropriate, the Department identifies the specific occupation used by the BLS in its tables to support the reader's analysis. The Department assumes that inflation-adjusted wage rates remain constant for the duration of the time horizon.

4.A.3. Other Information

In addition, throughout this RIA, some described calculations have results that are fractions. To improve readability, the Department presents these results as rounded totals in the text (e.g., 1.95 or 3,450 instead of 1.9478 or 3,449.6786), but retains the unrounded value for purposes of its underlying calculations.

4.B. Costs of the Final Regulations

In this section, the Department estimates monetized cost burdens associated with the final regulations. To assist the public in reviewing these estimates, the Department has subdivided this analysis, when appropriate, into the relevant subparts. As described below, the Department estimates a first-year cost of \$27,896,744. The Department estimates the changes will result in a total annualized cost of \$3,044,753.

The Department estimates that, upon promulgation of the regulations, all affected entities will need time to read and understand the rule. Based on the Department's administrative experience, we assume this will require, on average, six hours from an education administrator (educational administrator (postsecondary), loaded wage rate of \$117.32/hour) and six hours from a lawyer (postsecondary, loaded wage rate of \$172.76/hour) for each of the 5,898 IHEs. In total, the Department estimates that reading and understanding the rule will have a one-time cumulative cost of approximately \$10,265,351 across all institutions of higher education.

Distance Education—Reporting and Disclosure of Information

As a result of changes to § 668.41 to require institutions to report the enrollment status of students in distance education or correspondence courses, the Department estimates that each IHE will need to review and revise reporting policies and procedures. In response to comments on this section of the NPRM RIA, we increase the number of hours it would take to review and revise reporting policies and procedures. We assume this will require 20 hours from an education administrator and 8 hours from an administrative assistant (loaded wage rate of \$43.58/hour) for each of the 3,732 IHEs⁴⁴ that reported offering at least one distance education course. In the NPRM we estimated a cost burden of \$381,560 in the first year across all impacted institutions. In total, the Department now estimates reviewing and revising these procedures will cost approximately \$10,057,889 in the first year across all impacted institutions.

Return of Title IV Funds—When Student Withdraws

The addition of § 668.22(a)(2)(ii)(A)(6) will exempt institutions from performing an R2T4 calculation resulting from a student withdrawal by providing flexibility in conducting R2T4 calculations when certain conditions are met. The Department assumes that institutions will need to review and revise their R2T4 policies and procedures. The Department estimates that the change will require eight hours from an education administrator and two hours from a lawyer for each IHE for a total first year cost of approximately \$7,573,504 across all 5,898 institutions.

4. C. Non-Monetized Benefits

Distance Education

Changes to provide better data on student outcomes for students enrolled in distance education will provide benefits for students in allowing reporting and evaluations of outcomes for students depending on their enrollment in distance education, traditional on-site instruction, or a combination of the two. Such analysis is increasingly advantageous to determine the educational and cost effectiveness of postsecondary instruction as it becomes more available at a distance.

R2T4

Benefits to Students

If institutions choose to implement the optional withdrawal exemption, students who withdraw will not owe any balance related to any returned title IV, HEA aid to the Department or the institution. This will alleviate students from the burden of having to repay title IV, HEA dollars or owing an institutional debt related to a payment period or period of enrollment that they did not complete.

Students who are incarcerated at times may need to (or be forced to) take a break in their PEP, including activities out of their control such as prison-wide lockdowns or involuntary transfers to other facilities. The regulations will benefit incarcerated students by allowing them to not have to come back from the leave of absence where they left off (as current regulations require), and instead, the student could come back at a different point in their eligible prison education program, affording greater flexibility in their academic progression.

Benefits to Institutions

Institutions will benefit under several of these final regulations. Currently, an institution offering clock-hour programs may use two methods to determine the percentage of the payment period completed: cumulative, and by payment period. These regulations will require institutions to use the payment period method when calculating the number of scheduled hours completed in clock-hour programs. This change will reduce the complexity of the R2T4 calculations and the inconsistency in the manner in which the calculation is done for clock-hour programs at different institutions.

Currently institutions implement complex sub-regulatory guidance to determine the number of days in the payment period for a program offered in modules, even if the student did not attend the module. These regulations will benefit institutions through the

⁴³ U.S. Bureau of Labor Statistics, *May 2023 National Industry-Specific Occupational Employment and Wage Estimates, Sector 61—Educational Services*, https://www.bls.gov/oes/current/oes_nat.htm (last modified Apr. 3, 2024).

⁴⁴ Based on internal data available to FSA.

requirement that the student actually attend the module for the days in the module to be included in the payment period. It will also eliminate the need for a “freeze date,” further reducing complexity.

Benefits to the Taxpayer

Overall, we believe that the more accurate calculations and reductions in complexity will benefit the taxpayer by reducing errors in R2T4 calculations, resulting in more accurate amounts

being returned to the Department and further supporting the integrity of the title IV, HEA programs. R2T4 consistently ranks in the Top 10 compliance findings,⁴⁵ costing the Federal government time and money to provide assistance through training and conducting program reviews in an effort to identify and correct R2T4 errors committed by institutions. We believe the changes will also help alleviate some compliance issues related to R2T4.

5. Accounting Statement

As required by OMB Circular A–4, in the following table, the Department has prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides the best estimate of the changes in annual monetized benefits and costs of these final regulations.

TABLE 5.1—ACCOUNTING STATEMENT ANNUALIZED COSTS

	Annualized costs 2% discount rate
Reading and Understanding the New Rule	\$1,120,398
Distance Education—Reporting and disclosure of information	1,097,755
R2T4—Student withdrawal	826,600
Total	3,044,753

6. Alternatives Considered

The Department considered the following items in response to public comments submitted on the NPRM. Many of these are also discussed in the preamble to these final regulations.

6.1 Distance Education

As already noted above, there were some requests for the Department to consider a limitation, such as a percentage of a program’s length, on the amount of asynchronous coursework that could count toward clock hours required in clock-hour programs, but for the reasons we adduced above, we decided to not finalize this proposal instead.

6.2 R2T4

The Department received a significant number of comments expressing concern regarding the administrative burden associated with the entire proposal on R2T4. The Department considered all comments and decided against abandoning the proposal altogether. We did amend this final regulation to not finalize the attendance taking requirement for distance education programs, to provide more time to evaluate technological changes that can better track student engagement. This is explained in greater detail in the preamble.

Several commenters had concerns with the provision under (§ 668.22(l)(9)) to consider a module part of the payment period used in the denominator of the R2T4 calculation

only when a student begins attendance in the module. Commentors stated that this change will make it easier to obtain and retain large amounts of student loans through minimal participation which will result in a gaming of the system. The Department considered the comments and ultimately determined that we do not believe that the change will result in a gaming of title IV, HEA aid. We believe the reduction in administrative burden created by this regulatory change will more than outweigh the potential for students to receive more federal student aid than they would have under the previous requirements. We note that students enrolled in modular programs still are required to comply with title IV requirements that are not impacted by this regulatory change such as mandatory Pell recalculations. Further, institutions may break up title IV disbursements into smaller increments (by module for example) to best meet the needs of the student, as long as the disbursement practices do not violate § 668.16(s).

During rulemaking the Department originally proposed to exempt confined or incarcerated individuals from R2T4 if the withdrawal were due to circumstances outside of their control, such as a prison-wide lock down. After further internal review, we determined that the Department does not have the authority under the HEA to exempt specific groups from R2T4. In the NPRM, we amended the proposal under § 668.22(d)(1)(vii) to provide more

flexibility to postsecondary institutions in their leave of absence policies for confined or incarcerated individuals. Several commenters had concerns with this proposal. For example, one commenter stated that incarcerated students still may not be able to return within 180 days and would therefore need to be withdrawn in any event under the normal requirements for approved leaves of absence. Another commenter requested that the Department return to its original proposal of exempting confined or incarcerated students from R2T4. We again discussed the legality of exempting confined or incarcerated students from R2T4 and determined that we do not have that authority under the HEA.

6.3 TRIO

We considered expanding TRIO student eligibility to all five TRIO student support programs as requested by many commenters, but ultimately decided to not finalize the proposed TRIO provisions to reconsider how best to ensure that the TRIO programs are able to reach all populations of disadvantaged students.

7. Regulatory Flexibility Act

This section considers the effects that the final regulations may have on small entities in the educational sector as required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* The purpose of the RFA is to establish as a principle of regulation that agencies

⁴⁵ Annual Top Ten School Findings and School Fine Reports: <https://studentaid.gov/data-center/school/fines-and-findings>.

should tailor regulatory and informational requirements to the size of entities, consistent with the objectives of a particular regulation and applicable statutes. The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a “significant impact on a substantial number of small entities.” As noted in the RIA, the Department does not expect that the regulatory action will have a significant budgetary impact, but there are some costs to small institutions that are described in this Final Regulatory Flexibility Analysis.

Description of the Reasons for Agency Action

The Secretary is implementing final regulations to ensure students are well served by the institutions of higher education they attend and ensure that Federal Student Aid programs work in the best interests of students. New regulations for distance education will help the Department better measure and account for student outcomes, improve oversight over distance education, and ensure students are receiving effective education by requiring students’ distance education enrollment status. The R2T4 final regulations will increase the accuracy and simplicity of performing R2T4 calculations, add additional clarity to institutions on reporting, and codify longstanding policies. The Department has also not finalized several proposals that were included in the NPRM related to distance education, R2T4, and TRIO. Not finalizing these provisions significantly reduces estimated burden on small institutions.

Succinct Statement of the Objectives of, and Legal Basis for, the Regulations

Through these final regulations, the Department aims to address inadequate protections for students to ensure the Federal Student Aid programs work to accomplish postsecondary access and completion. This includes ensuring the Department, students, and families have the information needed to answer important questions about enrollment in and success with distance education.

The Department’s authority to issue these regulations stems primarily from multiple statutory enactments: first, 20 U.S.C. 1070–1099d (sections 400–499 of the HEA), which authorize the Federal government’s major student financial aid programs; second, 20 U.S.C. 1070(b) (section 400(b) of the HEA), which

outlines the Secretary’s broad authority to carry out program requirements; third, the sections that govern the Department’s oversight responsibility under title IV 20 U.S.C. 1099c, 1099c–1, 1099c–2 (sections 498, 498A, and 498B of the HEA); fourth, 20 U.S.C. 1001–1003, which established higher education definitions under the HEA; and fifth, 20 U.S.C. 1221e–3 and 1231a, which establish the general authority and responsibilities of the Secretary of Education.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Regulations Will Apply

The SBA defines “small institution” using data on revenue, market dominance, tax filing status, governing body, and population. All entities to which the Office of Postsecondary Education’s regulations apply are postsecondary institutions, however, which do not report such data to the Department. As a result, for purposes of these final regulations, the Department continues to define “small entities” by reference to enrollment, as it has done in other rulemakings, to allow meaningful comparison of regulatory impact across all types of higher education institutions in the for-profit, non-profit, and public sectors.⁴⁶ The Department notes that enrollment and revenue are correlated for all IHES and that IHES with higher enrollment tend to have the resources and infrastructure in place to more easily comply with the Department’s regulations in general and these final regulations in particular. Since enrollment data are more readily available to the Department for all IHES, the Department has used enrollment as the basis to identify small IHES in prior rulemakings and continues to use enrollment to identify small IHES in these final regulations. This approach also allows the Department to use the same metric to identify small IHES across the for-profit, non-profit, and public sectors, and it treats public IHES operated at the behest of jurisdictions

⁴⁶ For additional background on the Department’s justification for using an enrollment-based size standard, see “Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program” proposed rule, published in the *Federal Register* on July 31, 2018, 83 FR 37242, and final rule, published in the *Federal Register* on September 23, 2019, 84 FR 49788; and “Gainful Employment” final rule published in the *Federal Register* on July 1, 2019, 84 FR 31392. The Department notes that the alternative size standards that are used in these final regulations are identical to the alternative size standards used in the GE regulations published in the *Federal Register* on October 10, 2023. See 88 FR 70175.

with a population of more than 50,000 but with low enrollment as small, which the SBA’s standard would not treat as small. Lastly, the North American Industry Classification System (NAICS), under which SBA’s revenue standards in 13 CFR 121.201 are generally established, set different revenue thresholds for IHES that provide different areas of instruction (e.g., cosmetology, computer training, and similar programs) and there is no existing data that aligns those different revenue standards to the different types of regulated institutions. Similarly, where an institution provides instruction in several of these areas, it is unclear which revenue threshold to apply for purposes of the Department’s RFA analysis.

As explained above, the enrollment-based size standard remains the most relevant standard for identifying all IHES subject to these regulations. Therefore, instead of the SBA’s revenue-based size standard, which applies only to proprietary IHES, the Department has defined “small IHE” as (1) a less-than-two-year institution with an enrollment of fewer than 750 students, or (2) an at-least two-year but less-than-four-year institution, or a four-year institution, with enrollment of fewer than 1,000 students.⁴⁷ As a result of discussions with the SBA Office of Advocacy, this is an update from the standard used in some prior rules, such as the “Financial Value Transparency and Gainful Employment (GE), Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit (ATB),” published in the *Federal Register* on May 19, 2023, 88 FR 32300, “Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program, published in the *Federal Register* on July 10, 2023, 88 FR 43820, and the final regulations, “Pell Grants

⁴⁷ In regulations prior to 2016, the Department categorized small businesses based on tax status. Those regulations defined “nonprofit organizations” as “small organizations” if they were independently owned and operated and not dominant in their field of operation, or as “small entities” if they were institutions controlled by governmental entities with populations below 50,000. Those definitions resulted in the categorization of all private nonprofit organizations as small and no public institutions as small. Under the previous definition, proprietary institutions were considered small if they are independently owned and operated and not dominant in their field of operation with total annual revenue below \$7,000,000. Using FY 2017 IPEDs finance data for proprietary institutions, 50 percent of 4-year and 90 percent of 2-year or less proprietary institutions would be considered small. By contrast, an enrollment-based definition applies the same metric to all types of institutions, allowing consistent comparison across all types.

for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control,” published in the **Federal Register** on October 28, 2022, 87 FR 65426. Those prior regulations applied an enrollment standard for a small two-year institution of less than 500 full-time-equivalent (FTE) students and for a small 4-year institution, less than 1,000 FTE students.⁴⁸ The Department

consulted with the SBA Office of Advocacy on the alternative standard for this rulemaking. The Department continues to believe this approach most accurately reflects a common basis for determining size categories that is linked to the provision of educational services and that it captures a similar universe of small entities as the SBA’s revenue standard.

We note that the Department’s revised alternative size standard and the SBA’s revenue standard identify a similar

number of total proprietary IHEs, with greater than 93 percent agreement between the two standards. Using the Department’s revised alternative size standard, approximately 61 percent of all IHEs would be classified as small for these purposes. Based on data from NCES, in 2022, small IHEs had an average enrollment of approximately 289 students. In contrast, all other IHEs had an average enrollment of approximately 5,509 students.

TABLE 1—NUMBER OF SMALL INSTITUTIONS UNDER ENROLLMENT-BASED DEFINITION

	Small	Total	Percent
Proprietary	2,072	2,285	91
2-year	1,835	1,951	94
4-year	237	334	71
Private not-for-profit	990	1,818	54
2-year	180	187	96
4-year	810	1,631	50
Public	535	1,933	28
2-year	453	1,128	40
4-year	82	805	10
Total	3,597	6,036	60

Source: 2022 IPEDS data reported to the Department.

In addition, the following tables show the breakdown of this 93 percent agreement, using institutional-level data relating to the 2,285 private for-profit IHEs that were identified using 2022 IPEDS data.⁴⁹ The enrollment size standard identifies 2,072 for-profit IHEs as small, and the revenue size standard identifies 2,043 for-profit IHEs as small, with a core of the same 1,917 for-profit

IHEs identified as small under both standards. There are 156 IHEs that are only identified as small under the enrollment standard and 126 IHEs that are only identified as small under the revenue standard. Below are descriptive statistics of those for-profit IHEs identified as small by only one of the measures.

Table 2 shows the distribution of revenues and the average enrollments of the 156 for-profit IHEs identified as small under only the enrollment size standard. A large majority of these for-profit IHEs do not have revenue data available in IPEDS. The average enrollment for this group with no revenue data available is 210 students.

TABLE 2—SMALL IHEs UNDER ENROLLMENT SIZE STANDARD ONLY

Revenue category	Number of IHEs	Average enrollment
No Data	149	210
\$35–40 million	4	580
\$41–55 million	2	696
Above \$55 million	1	320
Total	156	226

Table 3 shows the distribution of enrollments and the average revenues of the 127 for-profit IHEs identified as small under only the revenue size standard. Six of these 127 IHEs do not have enrollment data available through IPEDS. There are 57 IHEs in the bin of “1,000–1,249 students”, which is

closest to the enrollment threshold for for-profits, and average revenue for these IHEs is \$13.3 million. To the extent that the final alternative size standard covers for-profit IHEs that would not otherwise be covered (and the revenue standard covers for-profit IHEs that would not be covered by the

enrollment standard), the Department treats certain for-profit IHEs as small and others as not small because of the reasons for proposing an alternative size standard explained in this section above.

⁴⁸ In those prior rules, at least two-year but less-than-four-years institutions were considered in the broader two-year category. In this proposed rule, after consulting with the SBA Office of Advocacy, we separate this group into its own category. Based

on this consultation, we have also increased the enrollment threshold for less-than-two-year institutions from 500 to 750 in order to treat a similar number of institutions as small under the

alternative enrollment standard as would be captured under a revenue standard.

⁴⁹ 2022 IPEDS downloaded from <https://nces.ed.gov/ipeds/datacenter/DataFiles.aspx>.

TABLE 3—SMALL IHES UNDER REVENUE SIZE STANDARD ONLY

Enrollment category	Number of IHES	Average revenue
No Data	6	\$ 1,206,508
1,000–1,249 students	57	13,269,753
1,250–1,499 students	23	19,122,831
1,500–1,749 students	13	19,247,730
1,750–1,999 students	14	23,287,464
Above 2,000 students	14	23,527,952
Total	127	16,606,901

Tables 4 and 5 show the distribution of institution levels for for-profit IHES identified as small by the enrollment

size standard only and by the revenue size standard only, respectively.

TABLE 4—LEVEL OF FOR-PROFIT IHES IDENTIFIED AS SMALL UNDER THE ENROLLMENT SIZE STANDARD ONLY

Level	Number of IHES
Less than 2 years (below associate)	73
At least 2 but less than 4 years	45
Four or more years	38
Total	156

TABLE 5—LEVEL OF FOR-PROFIT IHES IDENTIFIED AS SMALL UNDER THE REVENUE SIZE STANDARD ONLY

Level	Number of IHES
Less than 2 years (below associate)	50
At least 2 but less than 4 years	47
Four or more years	29
Total	126

Notably, the five states with the most IHES that are identified as small under only the enrollment standard are California (34), Texas (15), Florida (13), New Jersey (7), and Puerto Rico (7). The five states with the most IHES that are identified as small under only the revenue standard are California (28), Florida (18), Texas (11), Arizona (8), and Illinois (6).

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Regulations, Including of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

Based on the model described in the discussion of RIA, an IHE will see a

minimum net increase in costs of approximately \$4,729 in year 1 for all IHES, as explained in more detail in the 4.B. COSTS OF THE FINAL REGULATIONS section of this Regulatory Impact Analysis and included in the table below. We note that all these amounts are reduced from the NPRM due to the decision not to finalize several provisions.

TABLE 6—ESTIMATED NET INCREASE IN COSTS

Category	Year 1	
Reading and Understanding the New Rule	\$1,740	Total cost of \$10,265,351 divided by the total institutions.
Distance Education—Reporting and Disclosure of Information	1,705	Total cost of \$10,057,889 divided by the total institutions.
Return of Title IV Funds When a Student Withdraws	1,284	Total cost of \$7,573,504 divided by the total institutions.
Total	4,729	

For purposes of assessing the impacts on small entities, the Department defines a “small IHE” as a less than two-year IHE with an enrollment of less than 750 FTE and two-year or four-year IHES

with an enrollment of less than 1,000 FTE, based on official 2022 FTE enrollment. According to data from the IPEDS, in FY 2022, small IHES had, on average, total revenues of approximately

\$8,691,634.⁵⁰ Therefore, the Department estimates that the regulations will generate a net cost for small IHES equal to approximately 0.5 percent of annual revenue.

⁵⁰ Based on data reported for FY 2022 for “total revenue and other additions” for public institutions

and “total revenues and investment return” for

private not-for-profit and private for-profit institutions.

TABLE 7—ESTIMATED NET INCREASE IN COSTS

Entities by sector	Number of institutions	Average total revenue	Net cost percentage
Private for-profit, 2-year	473	\$4,923,011	0.09
Private for-profit, 4-year or above	237	9,204,127	0.05
Private for-profit, less-than 2-year	1362	1,845,117	0.3
Private not-for-profit, 2-year	123	3,810,573	0.1
Private not-for-profit, 4-year or above	810	13,268,232	0.03
Private not-for-profit, less-than 2-year	57	2,030,589	0.2
Public, 2-year	234	14,804,670	0.03
Public, 4-year or above	82	26,692,438	0.02
Public, less-than 2-year	219	3,477,191	0.1
Grand Total	3,597	6,792,743	0.07

According to data from IPEDS, approximately 371 small IHEs had total reported annual revenues of less than \$472,900 for which the costs estimated above will potentially exceed 1 percent of total revenues. The average enrollment across these 371 small IHEs was 46 students.

Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap, or Conflict With the Regulations

The regulations will not conflict with or duplicate existing Federal regulations.

Alternatives Considered

As described in section 5 of the RIA above, in “Alternatives Considered”, the Department considered several alternative provisions and approaches but rejected those alternatives for the reasons considered above. Most relevant to small entities were the alternatives to limit regulatory changes. For example, under R2T4, the Department proposed removing the 49 percent withdrawal exemption, which would in part eliminate observed confusion between this figure and the 60 percent completion requirement under the R2T4 calculation and eliminate the continued need for significant guidance and training on how to determine whether a student qualifies for the exemption, thereby reducing institutional burden. Negotiators disagreed, however, stating that institutions had already updated systems and policies to account for the exemption and that it was serving students well. As a result, the Department eliminated the proposal.

IX. Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the

Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that the public understands the Department’s collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

With the decision to not finalize the proposed amendments to the Federal TRIO programs and the proposal for institutions to take attendance in their distance education courses from these final regulations, we have determined that there are no new PRA implications for those provisions.

Section 668.41 contains information collection requirements. Under the PRA, the Department has or will at the required time submit a copy of this section and Information Collection request to OMB for its review. A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. In these final regulations, we display the control numbers assigned by OMB to any information collection requirements proposed in the NPRM and adopted in these final regulations.

Section 668.22 Treatment of Title IV Funds When a Student Withdraws

As described in the preamble, § 668.22(b)(3)(ii) is not being finalized. There is no longer any burden associated with this regulation. The burden for the information collection

1845–0022 will not be changed based on these final regulations.

Section 668.41 Reporting and Disclosure of Information

Requirements: The Department added a new paragraph § 668.41(h) that requires institutions to report their enrollment in distance education or correspondence courses. The Department expects that this provision will be implemented July 1, 2027. This change will provide the Department with expanded information to better answer questions about college access, persistence, and success, and to better inform student-centered policies. This reporting requirement also improves the Department’s ability to determine whether institutions have reached the 50 percent threshold for distance education enrollment. When institutions enroll at least 50 percent of their students in distance education, offer at least 50 percent of their courses, or 50 percent of a program via distance education, they must obtain further accreditor approval beyond the initial approval to deliver distance education programs.

Burden Hours: The final regulatory change adds burden for institutions. Because we expect to delay implementation of this new requirement until July 1, 2027, we are not estimating the burden for implementation of these regulations at this time. As development of the reporting mechanism progresses, a separate information collection will be submitted for full public comment closer to implementation of the data collection, incorporating more useful and specific information.

Consistent with the discussions above, the following chart describes the sections of the final regulations involving information collections, the information being collected and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the

information collections. The monetized net cost of the increased burden for institutions, lenders, guaranty agencies and students, using wage data

developed using Bureau of Labor Statistics (BLS) data. For institutions the Department is using the median hourly wage for Education Administrators,

Postsecondary, \$49.33 per hour according to BLS. <https://www.bls.gov/oes/current/oes119033.htm>.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB control No. and estimated burden	Estimated cost \$49.33 per entity
§ 668.41	The Department adds a new paragraph (h) that requires institutions to report their enrollment in distance education or correspondence courses. The Department plans to implement this provision July 1, 2027.	None—will develop closer to implementation.	

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened Federalism. The Executive order relies on processes developed by State and local governments for coordination and review of final Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Education Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to provide meaningful and timely input by State and local elected officials in the development of regulatory policies that have Federalism implications. “Federalism implications” means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. These final regulations do not have Federalism implications.

Accessible Format: On request to one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document 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 in Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available at no cost to the user at the site.

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List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Parts 643 and 644

Colleges and universities, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 645

Colleges and universities, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Veterans.

34 CFR Parts 647

Colleges and universities, Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Miguel Cardona,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends parts 600, 643, 644, 645, 647, and 668 of title 34 of the *Code of Federal Regulations* as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Amend § 600.2 by adding, in alphabetical order, a definition of “Distance education course” to read as follows:

§ 600.2 Definitions.

* * * * *

Distance education course: A course in which instruction takes place exclusively as described in the definition of *distance education* in this section notwithstanding in-person non-instructional requirements, including orientation, testing, and academic support services.

* * * * *

PART 643—TALENT SEARCH

■ 3. The authority citation for part 643 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–12, unless otherwise noted.

■ 4. Amend § 643.3 by revising paragraphs (a)(1)(iv) and (v) to read as follows:

§ 643.3 Who is eligible to participate in a project?

(a) * * *

(1) * * *

(iv) Is a permanent resident of Guam, or the Northern Mariana Islands; or

(v) Is a resident of the Freely Associated States—the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau.

* * * * *

PART 644—EDUCATIONAL OPPORTUNITY CENTERS

■ 5. The authority citation for part 644 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–16, unless otherwise noted.

■ 6. Amend § 644.3 by revising paragraphs (a)(1)(iv) and (v) to read as follows:

§ 644.3 Who is eligible to participate in a project?

(a) * * *

(1) * * *

(iv) Is a permanent resident of Guam, or the Northern Mariana Islands; or

(v) Is a resident of the Freely Associated States—the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau.

* * * * *

PART 645—UPWARD BOUND PROGRAM

■ 7. The authority citation for part 645 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–13, unless otherwise noted.

■ 8. Amend § 645.3 by:

■ a. Removing the periods at the end of paragraphs (a)(1) through (3) and adding, in each place, “; or”.

■ b. Revising paragraph (a)(4).

The revision reads as follows:

§ 645.3 Who is eligible to participate in an Upward Bound project?

* * * * *

(a) * * *

(4) Is a permanent resident of Guam, or the Northern Mariana Islands; or

* * * * *

PART 647—RONALD E. MCNAIR POSTBACCALAUREATE ACHIEVEMENT PROGRAM

■ 9. The authority citation for part 647 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–15, unless otherwise noted.

■ 10. Amend § 647.3 by revising paragraph (a)(4) to read as follows:

§ 647.3 Who is eligible to participate in a McNair project?

* * * * *

(a) * * *

(4) Is a permanent resident of Guam, or the Northern Mariana Islands; or

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 11. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221e–3, and 1231a, unless otherwise noted.

■ 12. Amend § 668.22 by:

■ a. Removing “and” at the end of paragraph (a)(2)(ii)(A)(4).

■ b. Removing the period at the end of paragraph (a)(2)(ii)(A)(5) and adding, in its place, “; and”.

■ c. Adding new paragraph

(a)(2)(ii)(A)(6).

■ d. Revising paragraph (b)(2).

■ e. Revising paragraphs (d)(1)(vii) and (f)(1)(ii)(A).

■ f. Revising paragraph (l)(9).

The revisions and addition read as follows:

§ 668.22 Treatment of title IV funds when a student withdraws.

(a) * * *

(2) * * *

(ii) * * *

(A) * * *

(6) A student is not considered to have withdrawn if—

(i) The institution’s records treat a student as having never attended courses for that payment period or period of enrollment;

(ii) The institution returns all the title IV grant or loan assistance, including all title IV credit balances provided to the student or parent, that were disbursed for that payment period or period of enrollment;

(iii) The institution refunds all institutional charges to the student for the payment period or period of enrollment; and

(iv) The institution writes off or cancels any payment period or period of

enrollment balance owed by the student to the institution due to the institution’s returning of title IV funds to the Department.

* * * * *

(b) * * *

(2) An institution must, within 14 days of a student’s last date of attendance, document a student’s withdrawal date determined in accordance with paragraph (b)(1) of this section and maintain the documentation as of the date of the institution’s determination that the student withdrew.

* * * * *

(d) * * *

(1) * * *

(vii) Except for a clock-hour or non-term credit hour program, a subscription-based program, or an eligible prison education program, upon the student’s return from the leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence; and

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(A) In the case of a program that is measured in clock hours, by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed since the student began attendance in the payment period or period of enrollment as of the student’s withdrawal date.

* * * * *

(l) * * *

(9) A student in a program offered in modules is scheduled to complete the days in a module only when a student begins attendance in the module.

* * * * *

■ 13. Amend § 668.41 by adding paragraph (h) to read as follows:

§ 668.41 Reporting and disclosure of information.

* * * * *

(h) *Reporting of student enrollment in distance education or correspondence courses.* For each recipient of title IV, HEA assistance at the institution, the institution must report to the Secretary, in accordance with procedures established by the Secretary, the recipient’s enrollment in distance education or correspondence courses.

[FR Doc. 2024–31031 Filed 12–30–24; 8:45 am]

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General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations: Federal Acquisition Circular 2025–03; Introduction, Improving Consistency Between Procurement and Nonprocurement Procedures on Suspension and Debarment, Rerepresentation of Size and Socioeconomic Status, Subcontracting to Puerto Rican and Covered Territory Small Businesses, and Federal Acquisition Circular 2025–03; Small Entity Compliance Guide; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2024–0051, Sequence No. 8]

Federal Acquisition Regulation; Federal Acquisition Circular 2025–03; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2025–03. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective dates see the separate documents, which follow.

ADDRESSES: The FAC, including the SECG, is available at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov.

RULES LISTED IN FAC 2025–03

Item	Subject	FAR case	Analyst
I	Improving Consistency Between Procurement and Nonprocurement Procedures on Suspension and Debarment.	2019–015	Delgado.
II	Rerepresentation of Size and Socioeconomic Status	2020–016	Bowman.
III	Subcontracting to Puerto Rican And Covered Territory Small Businesses	2023–001	Moore.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2025–03 amends the FAR as follows:

Item I—Improving Consistency Between Procurement and Nonprocurement Procedures on Suspension and Debarment (FAR Case 2019–015)

This final rule amends the FAR to improve consistency between the procurement and nonprocurement procedures on suspension and debarment, based on recommendations of the Interagency Suspension and Debarment Committee. The changes in the FAR bring the two systems into closer alignment, enhancing transparency and consistency within the Government’s suspension and debarment procedures. This allows contractors a better understanding of how the two systems’ procedures relate to each other. The changes are not expected to have a significant economic impact on a substantial number of small entities. It is anticipated that this rule will have a positive impact on small businesses with increased transparency in the process.

Item II—Rerepresentation of Size and Socioeconomic Status (FAR Case 2020–016)

This final rule amends the FAR to implement regulatory changes made by the Small Business Administration to size and socioeconomic status rerepresentation requirements for orders placed against multiple-award contracts. Specifically, business concerns that represented their status as any of the small business concerns identified at FAR 19.000(a)(3) are required to rerepresent their size and/or socioeconomic status for orders set aside—

(1) Under unrestricted multiple-award contracts, unless the order is issued against a reserve for which size and/or status was required.

(2) Under a multiple-award contract that was totally or partially set aside for small businesses, and the order requires a different socioeconomic status.

Federal Supply Schedules (FSS) are exempt from these requirements.

The final rule will help to validate that small businesses qualify for the size and/or socioeconomic status associated with orders placed under certain multiple-award contracts. Also, entities that no longer qualify under the applicable North American Industry Classification System (NAICS) code or the socioeconomic status they claim may not qualify under the applicable NAICS code or socioeconomic status for set-aside orders under the multiple-award contracts subject to this rule.

The final rule is not expected to have a significant economic impact on a substantial number of small entities.

Item III—Subcontracting to Puerto Rican and Covered Territory Small Businesses (FAR Case 2023–001)

This final rule amends the FAR to implement regulatory changes made by the Small Business Administration to implement section 861 of Public Law 115–232 and section 866 of Public Law 116–283, which add incentives for certain U.S. territories under the Small Business Administration mentor-protégé program. This final rule also specifies the entities that are not required to submit subcontracting plans as subcontractors. This final rule is not expected to have a significant impact on a substantial number of small entities; however, it will impact small businesses whose principal office is in the Commonwealth of Puerto Rico or that are covered territory businesses that enter into SBA-approved mentor-protégé agreements.

William F. Clark,
Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2025–03 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other

directive material contained in FAC 2025–03 are effective January 17, 2025.

John M. Tenaglia,

*Principal Director, Defense Pricing,
Contracting, and Acquisition Policy,
Department of Defense.*

William F. Clark,

*Director, Office of Government-wide
Acquisition Policy, Office of Acquisition
Policy, Office of Government-wide Policy,
U.S. General Services Administration.*

Marvin L. Horne,

*Deputy Assistant Administrator for NASA
Procurement, National Aeronautics and
Space Administration.*

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 9, 22, 25, 26, 33, and 52

[FAC 2025–03; FAR Case 2019–015, Item
I; Docket No. FAR–2019–0015; Sequence
No. 1]

RIN 9000–AN98

Federal Acquisition Regulation: Improving Consistency Between Procurement and Nonprocurement Procedures on Suspension and Debarment

AGENCY: Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are
issuing a final rule amending the
Federal Acquisition Regulation (FAR) to
improve consistency between the
procurement and nonprocurement
procedures on suspension and
debarment, based on the
recommendations of the Interagency
Suspension and Debarment Committee.

DATES: Effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: For
clarification of content, contact Ms.
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information pertaining to status or
publication schedules contact the
Regulatory Secretariat Division at 202–
501–4755 or GSARegSec@gsa.gov.
Please cite FAC 2025–03, FAR Case
2019–015.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a
proposed rule at 89 FR 1043 on January
9, 2024, to improve consistency between
procurement and nonprocurement
procedures on suspension and
debarment, based on the
recommendations of the Interagency
Suspension and Debarment Committee
(ISDC). The procurement procedures on
suspension and debarment are covered
in the FAR. The nonprocurement
procedures on suspension and
debarment (*i.e.*, Nonprocurement
Common Rule (NCR)) are covered in 2
CFR part 180 and agency implementing
regulations. For further details please
see the proposed rule. Five respondents
submitted comments on the proposed
rule.

II. Discussion and Analysis

The Civilian Agency Acquisition
Council and the Defense Acquisition
Regulations Council (the Councils)
reviewed the public comments in the
development of the final rule. A
discussion of the comments and the
changes made to the rule as a result of
those comments are provided as
follows:

A. *Summary of significant changes:*
No changes to the FAR text have been
made from the proposed to final rule
that have a significant negative effect on
contractors. Minor changes and
clarifications have been made to the
final rule. These changes are outlined
below:

1. Revised FAR 9.406–1(a) to provide
clarification regarding which mitigating
and aggravating factors may apply to
individuals.

2. Revised FAR 9.406–3(b)(1) and
9.407–3(b)(1) to clarify that if the
suspending and debarring official (SDO)
extends the opportunity for the
contractor to submit material in
opposition, then the SDO should also
give a deadline for submission of
materials.

3. Revised FAR 9.406–3(c)(1)(i) to
allow the notice of proposed debarment,
or the notice of suspension, to be sent
by U.S. mail or private delivery service
to the last known street address, with
delivery notification service.

4. Revised FAR 9.406–3(c)(1)(ii) to
allow the notice of proposed debarment,
or the notice of suspension, to be sent
by email to the point of contact email
address in the contractor's registration
in the System for Award Management
(SAM), if any, or to the last known
email address as confirmed by the
agency.

5. Revised FAR 9.406–3(d)(1) to
clarify that the official record closes

upon the expiration of the contractor's
time to submit information and
argument in opposition, including any
extensions.

B. Analysis of Public Comments

1. Outside the Scope of the Rule

Comment: A respondent
recommended adding FAR language to
address applicability of the suspension
and debarment rules to Other
Transaction Authority (OTA)
Agreements and to grants.

Response: This comment is outside
the scope of this rule. Neither OTA
Agreements nor grants are covered in
the FAR.

Comment: A respondent
recommended adding a definition of
“present responsibility.”

Response: This issue was previously
considered in a notice issued by the
Office of Management and Budget
(OMB) regarding guidelines for
Nonprocurement Debarment and
Suspension at 52 FR 20360 on May 29,
1987, and it was concluded that the
definition is unnecessary. The
suggestion has been referred to the ISDC
for further consideration.

2. Immediate Exclusionary Effect of a Notice of Proposed Debarment Under the FAR

Comment: A respondent stated that
the term “notice of proposed
debarment” under the FAR is
misleading because the debarment is not
“proposed”—it is “imposed.” Most of
the respondents recommended that the
immediate exclusionary effect of
proposed debarment be removed from
the FAR to align better with the NCR,
and disagree with the Government's
rationale for retaining it in the FAR.
These respondents indicated that if the
risk to the Government in a specific case
requires immediate exclusion to protect
the Government's business interests, an
SDO can issue a notice of suspension
under FAR 9.407. Where immediate
exclusion is not necessary and the
Government would not choose to
suspend the contractor, the proposal for
debarment should not have an
exclusionary effect. Immediate
exclusion is particularly unwarranted in
cases where the proposed debarment is
not based on a conviction or civil
judgment, and fact-finding proceedings
are necessary. These respondents
indicated that there is no increased
business risk to the Government in the
procurement context than in
nonprocurement transactions. The
respondents stated that the Government
enters into procurement contracts for
public purposes of equal importance

and comparative risk as some nonprocurement transactions. The respondents also pointed out that the Appropriations Act language cited in the proposed rule does not require an SDO to issue an exclusionary notice as part of the assessment of whether suspension and debarment is appropriate. The respondents stated that those statutes simply require the official to have considered whether exclusion is necessary to protect the Government, which can be done without an immediate exclusion (e.g., with a pre-notice letter or proactive outreach by the contractor).

Response: DoD, GSA, and NASA acknowledge the comments but continue to think, after deliberation with the ISDC, that the policy reasons articulated in the preamble to the proposed rule for giving different effect to a proposed debarment when applied to a procurement contract versus a grant remain valid. These policy reasons are based on differences in the purpose of procurement contracts and grants, as well as occasional differences in comparative risk between these instruments. Equally important, neither the ISDC nor the Federal Acquisition Regulatory Council think that the application of a proposed debarment, long allowed by the FAR to protect the taxpayer from harm, leads to inappropriate use or overuse of immediate exclusions. In addition, the final FAR rule formally recognizes the use of pre-notice letters for the suspending and debarring official to consider as an alternative to an immediate exclusion. For these reasons, no changes have been made regarding the immediate exclusionary effect of a notice of proposed debarment.

3. Methods of Communication

Comment: A respondent expressed support for the amendments to FAR 9.406–3(b)(1) and 9.407–3(b)(1) to permit contractors and their representatives to present matters in opposition remotely. However, the respondent is concerned that permitting notices of proposed debarment, suspension, and the SDO decisions to be sent by standard U.S. mail (with no return receipt requested) or by email “[t]o the last known email address” may be inadequate to give contractors notice and an opportunity to respond. The respondent recommended aligning this provision with the NCR to require that any notice sent by U.S. mail be sent by certified mail or its equivalent to increase the likelihood that the notice will actually be received. The respondent pointed out that this recommendation is consistent with

notions of due process and fundamental fairness. It is also consistent with the purpose of the proposed rule: to better align the FAR and NCR.

Response: DoD, GSA, and NASA recognize the need for broad agency flexibility due to the variety of agency missions. FAR 9.406–3(c)(1)(i) was revised to allow the written notice to be sent by U.S. mail or private delivery service to the last known street address, with delivery notification service. FAR 9.406–3(c)(1)(ii) was revised to allow the written notice to be sent by email to the point of contact email address in the contractor’s SAM registration, if any, or to the last known email address as confirmed by the agency. These changes provide agencies additional tools beyond using U.S. certified mail with return receipt requested, and they are consistent with the flexibility provided by the NCR, see 2 CFR 180.975 and 180.615.

Comment: Regarding sending notices by email, a respondent recommended clarifying how SDOs will determine the “last known email address” for a contractor, its identified counsel, or agent for service of process. The respondent further recommended defining the contractor’s “last known email address” as the point of contact email address in the contractor’s SAM registration. Additionally, the respondent recommended requiring SDOs to take additional steps to confirm the contractor’s receipt of notices sent by email, such as requiring a response to confirm receipt, requesting a “read receipt” on the email, or following up by telephone to confirm that the email was received.

Response: The changes to FAR 9.406–3(c)(1)(i) and (ii) allow agencies the flexibility to rely on a variety of verification services and resources to confirm the last known street address or the last known email address. Requiring specific delivery confirmation practices is overly prescriptive.

Comment: A respondent recommended amending FAR 9.406–4 to add “demonstration of non-receipt of notice” as a reason for the SDO to reduce the period or extent of debarment. Another respondent recommended providing for immediate reinstatement of contractors debarred without receiving notice of a proposed debarment. The SDO could then reissue the notice of proposed debarment and provide the contractor an opportunity to respond before determining whether to continue the debarment for the remainder of the period of debarment. If the SDO determines that debarment is warranted, the contractor would be debarred only for the amount of time

remaining in the original period of debarment prior to reinstatement. If the SDO determines that debarment was not warranted, all records of the prior exclusion should be removed from SAM.gov and other applicable Government databases. And, if the SDO determines that an administrative agreement is appropriate, information in relevant Government databases should be amended to reflect that the contractor was proposed for debarment and an administrative agreement was executed but should not reflect that debarment was ever imposed.

Response: The FAR and the NCR describe how agencies achieve proper notice such that notice is considered to have been received by the contractor. The language in the preamble to the proposed rule (89 FR 1045) regarding nonreceipt of notice was not intended to create procedures for immediate reinstatement, but rather to provide an example of a reason under FAR 9.406–4(c)(5) that a debarring official may deem appropriate to reduce the period or extent of debarment. As FAR 9.406–4(c)(5) is a catch-all provision, the suggestion to add “demonstration of non-receipt of notice” is not adopted.

Comment: A respondent commended the decision to require that notices of proposed debarment be sent directly to the contractor, the contractor’s identified counsel for purposes of the administrative proceedings, or the contractor’s agent for service of process, rather than permitting notices to be sent to partners, officers, directors, owners, or joint venturers. The respondent also commended retaining the requirement that notices be sent directly to specifically named affiliates (and adding that such notices may be sent to the affiliate’s identified counsel for purposes of the administrative proceedings, or the affiliate’s agent for service of process). Requiring that notices be sent directly to the party named in the notice promotes due process by helping ensure that notices are actually received and that the cognizant party has an opportunity to respond.

Response: DoD, GSA, and NASA acknowledge the respondent’s support for the rule.

4. Administrative Agreement

Comment: A respondent recommended that the final rule clarify that “potential suspension proceeding” and “potential debarment proceedings” are those suspension or debarment proceedings initiated by, at a minimum, a pre-notice letter or other formal action and further clarify that an administrative agreement resulting from

a contractor's proactive outreach, as opposed to resulting from a "potential proceeding," need not be publicly posted to the Federal Awardee Performance and Integrity Information System (FAPIS).

Response: The statute (41 U.S.C. 2313) applies to any administrative agreement, making no exceptions for how the agreement came about. The applicable requirement mandates FAPIS include information regarding "[e]ach Federal administrative agreement entered into by the person and the Federal Government in the period to resolve a suspension or debarment proceeding." 41 U.S.C. 2313(c)(4). An administrative agreement restricting the Government's ability to seek suspension or debarment necessarily resolves suspension and debarment proceedings. Any such agreement forecloses the opportunity to pursue those remedies on the facts of the existing administrative agreement.

5. Administrative Record

Comment: A respondent recommended including language in the final rule that requires all agencies to (i) provide as part of the notice initiating a proposed debarment or suspension, or with a pre-notice letter, a copy of the relevant administrative record or other compiled information, in the case of a pre-notice letter, and (ii) distribute, upon receipt of a request from a contractor for the administrative record or information supporting a pre-notice letter, a copy of the administrative record or compiled information to the contractor within five days of receipt of the written request. These recommended changes promote a decision-making process that is "as informal as is practicable, consistent with principles of fundamental fairness," see FAR 9.406–3(b), and serve to standardize practices across all Federal SDO activities. The respondent recognized this recommendation falls outside the stated objective of improving the "consistency between the procurement and nonprocurement procedures on suspension and debarment." Nonetheless, the respondent encouraged consideration of this change to promote consistent standards of fundamental fairness. The respondent added that in an appropriate rulemaking, a similar change could be made to the NCR to achieve alignment.

Response: DoD, GSA, and NASA acknowledge the suggestion and decline to adopt it. This matter appropriately remains one of agency discretion.

Comment: A respondent recommended adding a definition of

"Administrative Record" (or "Official Record") to the FAR.

Response: The administrative record is the information the SDO has at the time that official makes a decision regarding a suspension or debarment proceeding. See FAR 9.406–3(d) and 9.407–3(d). In the context provided by the FAR, a formal definition is not necessary.

Comment: Under the NCR, SDOs are required to include in the administrative record for proposed debarments and suspensions "[a]ny further information and argument presented in support of, or opposition to, the [action]." See 2 CFR 180.750(a)(2) and 180.845(b)(2). The respondent recommended that the FAR require a copy of all supplemental materials not provided by the contractor be distributed to the contractor within five days of the SDO's decision to include the materials in the administrative record. This change promotes consistent standards across agencies as well as fundamental fairness.

Response: DoD, GSA, and NASA acknowledge the suggestion and decline to adopt it. Rather than representing what to include in the administrative record for proposed debarments and suspensions, 2 CFR 180.750(a)(2) and 180.845(b)(2) represent what to include in the administrative record after the SDO suspends or proposes the contractor for debarment. The administrative record is typically given to a contractor after a decision has been made; however, in the time between notices agencies have the discretion to provide documents to the contractor upon request. This flexibility is commensurate with FAR 9.406–3(b)(1).

Comment: A respondent expressed support for the FAR revision to require that an SDO make a debarment decision within 45 days after the "the official administrative record is closed." 89 FR 1049. Given the significance of closing the "official administrative record," the respondent recommended also requiring that the contractor be notified of the date when the official administrative record is to close. This revision promotes transparency and orderly process in the debarment proceedings, allows the contractor to add any additional information to the record before its closure, and allows the contractor to assert procedural rights relating to the timing of the debarment decision. The recommended change would also ensure that the agency and the contractor are on the same footing for purposes of measuring the time given for the SDO's decision making. The respondent asserts that this change

would also promote consistent standards across agencies and is consistent with notions of fundamental fairness.

Response: DOD, GSA, and NASA recognize the importance of transparency in the Government's suspension and debarment procedures. The Councils considered the respondent's suggestion and made edits at FAR 9.406–3(d)(1) to clarify that the official record closes upon the expiration of the contractor's time to submit information and argument in opposition, including any extensions. If a contractor is unsure whether the administrative record has been closed, they should ask the SDO to clarify.

6. Mitigating and Aggravating Factors That Could Apply to an Individual Person Proposed for Exclusion

Comment: A respondent stated that even with the proposed inclusion of additional aggravating or mitigating factors from the NCR in the FAR, under both the FAR and the NCR, the factors that an SDO considers when evaluating whether exclusion is necessary apply most directly to organizations, not people. The respondent stated that this gap is significant given that the majority of suspension and debarment actions appear to be brought against individuals, as opposed to organizations. Moreover, unlike an organization, an individual proposed for exclusion may not be able to afford counsel to represent him or her in a suspension or debarment proceeding. As these factors are currently drafted, and without the means to secure experienced counsel, an individual may not even realize that the mitigating and aggravating factors are a consideration that could apply in the situation of an individual facing potential exclusion. Fundamental fairness, transparency, informality, and due process counsel in favor of developing factors that the average person can understand. The respondent provided examples of potential factors that could apply to an individual person proposed for exclusion. The respondent recognized that this suggestion extends beyond mere alignment of the FAR with the NCR but encouraged consideration of adding these additional factors to promote fundamental fairness in the treatment of individuals proposed for suspension or debarment.

Response: DOD, GSA, and NASA have considered the recommendation to include mitigating and aggravating factors for individuals. As set forth in FAR 9.406–1(a), such factors apply to a "contractor." Pursuant to FAR 9.403, the definition of "contractor"

specifically includes both individuals and other legal entities. The Councils recognize that clarifying the mitigating and aggravating factors that are applicable to individuals may increase transparency. Consequently, FAR 9.406–1(a) is modified to provide clarification regarding which factors may apply to individuals. Other mitigating or aggravating factors proposed by the respondent are more suitably considered at the SDO’s discretion under the catch-all factor at FAR 9.406–1(a)(17).

C. Other Changes

The term “sanctions” is replaced with “remedies” at FAR 9.402(b) for consistency with the FAR language in part 9. Language was added at FAR 9.406–3(f)(1) and 9.407–3(e)(1) for parallel construction with FAR 9.406–3(f)(2) and 9.407–3(e)(2), respectively. Minor edits were made to the final rule to update text for current FAR drafting conventions and to improve readability.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or for Commercial Services

This rule does not create new solicitation provisions or contract clauses, nor does it change the applicability or burden of any existing provisions or clauses included in solicitations and contracts valued at or below the SAT, or for commercial products, including COTS items, or for commercial services.

IV. Expected Impact of the Rule

This rule improves consistency between the procurement and nonprocurement procedures on suspension and debarment. These changes in the FAR bring the two

systems into closer alignment, which will enhance transparency and consistency within the Government’s suspension and debarment procedures. This will allow contractors a better understanding of how the two systems’ procedures relate to each other.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

Pursuant to the Congressional Review Act, DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2).

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612.

1. Statement of the need for, and the objectives of, the rule.

DoD, GSA, and NASA are amending the FAR to improve consistency between the

procurement and nonprocurement procedures on suspension and debarment, based on recommendations of the Interagency Suspension and Debarment Committee.

The objective of this rule is to change the FAR so that the two systems of procurement and nonprocurement suspension and debarment will be in closer alignment where appropriate, to enhance transparency and consistency within the FAR system.

2. Statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made to the rules as a result of such comments.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

3. Description of and an estimate of the number of small entities to which the rule will apply.

The final rule applies to all entities that do business with the Federal Government.

The exclusions section of SAM does not contain data on the size of an excluded party as size is only specifically determined contract by contract based on the North American Industry Classification System (NAICS) code. When the entity is recorded in SAM as an excluded party, the SDO identifies the entity as either (1) an individual, (2) firm, (3) vessel, or (4) special entity designation. Collection of unique identification numbers are on “firms” and optionally on “special entity designations”.

Data was analyzed by obtaining the list of entities that were excluded in fiscal years 2021, 2022, and 2023. Next, the entities on that list were compared with unique identification numbers against the SAM data to see if any were actively registered in those fiscal years for all awards. Lastly, the entities that would be considered small businesses were identified based on their primary NAICS code.

The following is a breakdown of those distinct entities, which had an entity registration in active status and concurrent active exclusion record per fiscal year (FY):

Suspension and debarment-SAM exclusions	FY 2021	FY 2022	FY 2023	Median
	SB/total exclusions	SB/total exclusions	SB/total exclusions	SB percent
Small Business/Total Exclusions.	273/429	251/417	241/392.	
Small Business Percentage	64 percent	60 percent	61 percent	61 percent.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule.

The rule does not include any reporting or recordkeeping requirements. The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35) or other compliance requirements for small entities.

44 U.S.C. 3518 and 5 CFR 1320.4(a)(2) give an exception for the collection of information

during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities.

5. Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes.

The FAR changes are not expected to have a significant economic impact on a substantial number of small entities. The rule imposes minor procedural changes in compliance requirements on contractors and

minor process procedures for the Government. However, this alignment enhances transparency and consistency within the Government’s suspension and debarment procedures, reducing the complexities in understanding of the two distinct processes and procedural requirements for suspension and debarment Governmentwide. It is anticipated that this rule will have a positive impact on small businesses with increased transparency in the process. DoD, GSA, and NASA were unable to identify any significant alternatives

to accomplish the desired objective of the rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 48 CFR Parts 2, 3, 9, 22, 25, 26, 33, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are amending 48 CFR parts 2, 3, 9, 22, 25, 26, 33, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 3, 9, 22, 25, 26, 33, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 by—

■ a. Revising the definition of “Conviction”;

■ b. In the definition of “Debarment”, removing “a debarment” and “is excluded is “debarred.”” and adding “a suspending and debarment” and “is “debarred” is excluded.” in their places, respectively;

■ c. Adding in alphabetical order the definition of “Suspending and debarment official”; and

■ d. In the definition of “Suspension”, removing “suspending official” and “disqualified is “suspended.”” and adding “suspending and debarment official” and ““suspended” is disqualified.” in their places, respectively.

The revision and addition read as follows:

2.101 Definitions.

* * * * *

Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a

plea of nolo contendere. For use in subpart 9.4, see the definition at 9.403. For use in subpart 26.5, see the definition at 26.503.

* * * * *

Suspending and debarment official means—

(1) An agency head; or

(2) A designee authorized by the agency head to impose a suspension and/or a debarment.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.104–7 [Amended]

■ 3. Amend section 3.104–7 by removing from paragraph (d)(3) “suspending or” and adding “suspending and” in its place.

PART 9—CONTRACTOR QUALIFICATIONS

9.104–5 [Amended]

■ 4. Amend section 9.104–5 by removing from paragraph (b)(3) “suspending or” and adding “suspending and” in its place.

■ 5. Amend section 9.104–6 by—

■ a. Revising paragraph (b)(4); and

■ b. Removing from paragraph (c) introductory text “debarred or suspended” and adding “debarred, suspended, or has agreed to a voluntary exclusion” in its place.

The revision reads as follows:

9.104–6 Federal Awardee Performance and Integrity Information System.

* * * * *

(b) * * *

(4) Since FAPIIS may contain information on any of the offeror’s previous contracts and information covering a 5-year period, some of that information may not be relevant to a determination of present responsibility, e.g., a prior administrative action such as debarment, suspension, voluntary exclusion, or administrative agreement, that has expired or otherwise been resolved, or information relating to contracts for completely different products or services.

* * * * *

9.402 [Amended]

■ 6. Amend section 9.402 by—

■ a. In paragraph (b):

■ i. Removing “sanctions” and adding “remedies” in its place; and

■ ii. Removing “set forth”; and

■ b. Removing from paragraph (d) “Interagency Committee on Debarment and Suspension” and “Section 873” and adding “Interagency Suspension and

Debarment Committee” and “section 873” in their places, respectively.

■ 7. Amend section 9.403 by—

■ a. Adding in alphabetical order the definition of “Administrative agreement”;

■ b. Revising the definition of “Civil judgment”;

■ c. Adding in alphabetical order the definition of “Conviction”;

■ d. Removing the definition of “Debarment official”;

■ e. Adding a sentence to the end of the definition of “Nonprocurement Common Rule”;

■ f. Adding in alphabetical order the definition of “Pre-notice letter”;

■ g. Removing the definition of “Suspending official”; and

■ h. Adding in alphabetical order the definition of “Voluntary exclusion”.

The additions and revision read as follows:

9.403 Definitions.

* * * * *

Administrative agreement means an agreement between an agency suspending and debarment official and the contractor used to resolve a suspension or debarment proceeding, or a potential suspension or debarment proceeding.

* * * * *

Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition that creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

* * * * *

Conviction means—

(1) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or

(2) Any other resolution that is the functional equivalent of a judgment establishing a criminal offense by a court of competent jurisdiction, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

* * * * *

Nonprocurement Common Rule

* * * See 2 CFR part 180 and agency enacting regulations in 2 CFR subtitle B.

Pre-notice letter means a written correspondence issued to a contractor in a suspension or debarment matter,

which does not immediately result in an exclusion or ineligibility. The letter is issued at the discretion of the suspending and debarring official. The letter is not a mandatory step in the suspension or debarment process.

* * * * *

Voluntary exclusion means a contractor's written agreement to be excluded for a period under the terms of a settlement between the contractor and the suspending and debarring official of one or more agencies. A voluntary exclusion must have Governmentwide effect.

9.404 [Amended]

- 8. Amend section 9.404 by—
- a. Removing from paragraph (b)(1) “debarment, declared ineligible,” and adding “debarment, voluntarily excluded, declared ineligible,” in its place;
- b. Removing from paragraph (c)(3) introductory text “exclusion accomplished by the Agency” and adding “exclusion, including each voluntary exclusion, accomplished by the agency” in its place; and
- c. Removing from paragraph (c)(4) “or proposed debarment taken by” and adding “proposed debarment, or voluntary exclusion taken or entered into by” in its place.
- 9. Amend section 9.405 by—
- a. Revising paragraph (a); and
- b. Removing from paragraph (d) “or proposed for debarment are” and adding “proposed for debarment, or voluntarily excluded, are” in its place.

The revision reads as follows:

9.405 Effect of listing.

(a) Contractors debarred, suspended, proposed for debarment, or voluntarily excluded, are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action (see 9.405–1(a)(2), 9.405–2, 9.406–1(d), 9.407–1(d), and 26.505(e)). Contractors debarred, suspended, proposed for debarment, or voluntarily excluded, are also excluded from conducting business with the Government as agents or representatives of other contractors.

* * * * *

9.405–1 [Amended]

- 10. Amend section 9.405–1 by—
- a. Removing from paragraph (a) heading “*or proposed for debarment*” and adding “*proposed for debarment, or voluntarily excluded*” in its place;
- b. Removing from paragraph (a)(1) “or proposed debarment of” and “or

proposed for debarment unless” and adding “proposed debarment, or voluntary exclusion, of” and “proposed for debarment, or voluntarily excluded, unless” in their places, respectively; and

- c. Removing from paragraph (a)(2) introductory text “or proposed for debarment, unless” and adding “proposed for debarment, or voluntarily excluded, unless” in its place.

9.405–2 [Amended]

- 11. Amend section 9.405–2 by—
- a. Removing from paragraph (a) “or proposed for debarment is” and adding “proposed for debarment, or voluntarily excluded, is” in its place;
- b. Removing from paragraph (b) introductory text “or proposed for debarment, unless”, “or proposed for debarment as”, “Protecting the Government’s Interests”, and “or Proposed for Debarment, to” and adding “proposed for debarment, or voluntarily excluded, unless”, “proposed for debarment, or voluntarily excluded, as”, “Protecting the Government’s Interest”, and “Proposed for Debarment, or Voluntarily Excluded, to” in their places, respectively; and
- c. Removing from paragraph (b)(4) “or proposed debarment” and adding “proposed debarment, or voluntary exclusion” in its place.
- 12. Revise section 9.406–1 to read as follows:

9.406–1 General.

(a) It is the suspending and debarring official’s responsibility to determine whether debarment is in the Government’s interest. The suspending and debarring official may, in the public interest, debar a contractor for any of the causes in 9.406–2, using the procedures in 9.406–3. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor’s acts or omissions and any remedial measures, mitigating factors, or aggravating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the suspending and debarring official should consider factors such as the following (some of the factors below could apply to individuals such as contractors that are individuals, and are so marked):

- (1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.

(2) Whether the contractor (including an individual) brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment (or the individual cooperated with the investigation) and, if so, made the result of the investigation available to the suspending and debarring official.

(4) Whether the contractor (including an individual) cooperated fully with Government agencies during the investigation and any court or administrative action.

(5) Whether the contractor (including an individual) has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

(7) Whether the contractor (including an individual) has implemented or agreed to implement remedial measures, including any identified by the Government.

(8)(i) Whether the contractor has instituted or agreed to institute new or revised review and control procedures, ethics training, or other relevant training programs.

(ii) For an individual, whether the individual has attended relevant remediation training.

(9) Whether the contractor (including an individual) has had adequate time to eliminate the circumstances that led to the cause for debarment.

(10)(i) Whether the contractor’s management recognizes, accepts, and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

(ii) For an individual, whether the individual recognizes, accepts, and understands the seriousness of the misconduct giving rise to the cause for debarment and has adopted practices to prevent recurrence.

(11) Whether the contractor (including an individual) has a pattern or prior history of wrongdoing, the frequency of incidents and/or duration of the wrongdoing, and the actual or potential harm or impact that results, or may result, from the wrongdoing.

(12) Whether and to what extent the contractor (including an individual) planned, initiated, or carried out the

wrongdoing, and the kind of positions within the contractor's organization held by the individual involved in the wrongdoing.

(13) Whether the wrongdoing was pervasive within the contractor's organization.

(14) Whether the individual or the contractor's principals tolerated the offense.

(15) Whether the contractor (including an individual) is or has been excluded or disqualified by an agency of the Federal Government or has not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this subpart.

(16) Whether the contractor (including an individual) has entered into an administrative agreement with a Federal agency or a similar agreement with a State or local government that is not Governmentwide but is based on conduct similar to one or more of the causes for debarment specified in this subpart.

(17) Whether there are any other factors to consider for the contractor (including an individual) appropriate to the circumstances of a particular case.

(b) The existence or nonexistence of any aggravating or mitigating factors or remedial measures such as set forth in paragraph (a) of this section is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the suspending and debarring official, its present responsibility and that debarment is not necessary.

(c) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending and debarring official may extend the debarment decision to include any affiliates of the contractor if they are—

(1) Specifically named; and

(2) Given written notice of the proposed debarment and an opportunity to respond (see 9.406–3(c)).

(d) A contractor's debarment, or proposed debarment, shall be effective throughout the executive branch of the Government, unless the agency head or a designee (except see 26.505(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(e)(1) When the suspending and debarring official has authority to debar contractors from both contracts

pursuant to the Federal Acquisition Regulation in this chapter and contracts for the purchase of Federal personal property pursuant to the Federal Management Regulation (FMR) in 41 CFR part 102–38, that official shall consider simultaneously debarring the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When debarring a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the debarment notice shall so indicate and the appropriate FAR and FMR citations shall be included.

9.406–2 [Amended]

■ 13. Amend section 9.406–2 by removing from the introductory text “The debarring” and adding “The suspending and debarring” in its place.

■ 14. Amend section 9.406–3 by—

■ a. Removing from paragraph (a) “the debarring official” and adding “the suspending and debarring official” in its place;

■ b. Revising the heading of paragraph (b), paragraphs (b)(1) and (c), the heading of paragraph (d), and paragraph (d)(1);

■ c. Removing from paragraph (d)(2)(i) “The debarring official” and adding “The suspending and debarring official” in its place;

■ d. Removing from paragraph (d)(2)(ii) “The debarring official” wherever it appears and adding “The suspending and debarring official” in its place;

■ e. Removing from paragraph (d)(2)(iii) “The debarring official's” and adding “The suspending and debarring official's” in its place;

■ f. Revising the heading of paragraph (e) and paragraph (e)(1) introductory text;

■ g. Removing from paragraph (e)(1)(iv) “9.406–1(c)” and adding “9.406–1(d)” in its place;

■ h. Removing from paragraph (e)(2) “the debarring official” and “by certified mail, return receipt requested” and adding “the suspending and debarring official” and “using the procedures in paragraphs (c)(1) and (2) of this section” in their places, respectively;

■ i. Revising paragraph (f); and

■ j. Adding paragraphs (g) and (h).

The revisions and additions read as follows:

9.406–3 Procedures.

* * * * *

(b) *Decision-making process.* (1) Agencies shall establish procedures governing the debarment decision-making process that are as informal as is practicable, consistent with principles

of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment. If the suspending and debarring official extends the opportunity for the contractor to submit material in opposition, then the official should also give a deadline for submission of materials. The suspending and debarring official may use flexible procedures to allow a contractor to present matters in opposition in person or remotely through appropriate technology; if so, the suspending and debarring official should change the notice in paragraph (c)(3)(iv) of this section to include those flexible procedures.

* * * * *

(c) *Notice of proposal to debar.* A notice of proposed debarment shall be issued by the suspending and debarring official to the contractor and any specifically named affiliates.

(1) The written notice shall be sent—

(i) By U.S. mail or private delivery service to the last known street address, with delivery notification service;

(ii) By email to the point of contact email address in the contractor's SAM registration, if any, or to the last known email address as confirmed by the agency; or

(iii) By certified mail to the last known street address with return receipt requested.

(2) The notice shall be sent—

(i) To the contractor, the contractor's identified counsel for purposes of the administrative proceedings, or the contractor's agent for service of process; and

(ii) For each specifically named affiliate, to the affiliate itself, the affiliate's identified counsel for purposes of the administrative proceedings, or the affiliate's agent for service of process.

(3) The notice shall state—

(i) That debarment is being considered;

(ii) The reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

(iii) The cause(s) relied upon under 9.406–2 for proposing debarment;

(iv) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;

(v) The agency's procedures governing debarment decision making;

(vi) The effect of the issuance of the notice of proposed debarment;

(vii) The potential effect of an actual debarment;

(viii) That in addition to any information and argument in opposition to a proposed debarment, the contractor must identify—

(A) Specific facts that contradict the statements contained in the notice of proposed debarment. Include any information about any of the factors listed in 9.406–1(a). A general denial is insufficient to raise a genuine dispute over facts material to the proposed debarment;

(B) All existing, proposed, or prior exclusions and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(C) All criminal and civil proceedings not included in the notice of proposed debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(D) All of the contractor's affiliates; and

(ix) That if the contractor fails to disclose the information in paragraph (c)(3)(viii) of this section, or provides false information, the agency taking the action may seek further criminal, civil, or administrative action against the contractor, as appropriate.

(d) *Suspending and debarring official's decision.* (1) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the suspending and debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the contractor. If no suspension is in effect, the decision shall be made within 45 days from the date that the official administrative record is closed, unless the suspending and debarring official extends this period for good cause. The official record closes upon the expiration of the contractor's time to submit information and argument in opposition, including any extensions (see paragraph (b)(1) of this section).

(e) *Notice of suspending and debarring official's decision.* (1) If the suspending and debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice using the procedures in paragraphs (c)(1) and (2) of this section—

(f) *Administrative agreements.* (1) If the contractor enters into an

administrative agreement with the Government in order to resolve a debarment or potential debarment proceeding, the suspending and debarring official shall access the website (available at <https://www.cpars.gov>, then select FAPIIS), enter the requested information, and upload documentation reflecting the administrative agreement.

(2) The suspending and debarring official is responsible for the timely and accurate submission of documentation reflecting the administrative agreement. The submission should be made within 3 working days.

(3) With regard to information that may be covered by a disclosure exemption under the Freedom of Information Act, the suspending and debarring official shall follow the procedures at 9.105–2(b)(2)(iv).

(g) *Voluntary exclusions.* (1) If the contractor enters into a voluntary exclusion with the Government in order to resolve a debarment or potential debarment matter, the suspending and debarring official shall access the website (available at <https://www.sam.gov>) and enter the requested information into the exclusions section of SAM (see 9.404(c)(3)).

(2) The suspending and debarring official is responsible for the timely and accurate submission of documentation reflecting the voluntary exclusion. The submission should be made within 3 working days.

(3) Regarding information that may be covered by a disclosure exemption under the Freedom of Information Act, the suspending and debarring official shall follow the procedures at 9.105–2(b)(2)(iv).

(h) *Pre-notice letters.* Prior to initiating a proposed debarment, a pre-notice letter may be issued at the discretion of the agency suspending and debarring official. A pre-notice letter is not required to initiate debarment under this subpart. (See 9.403.)

9.406–4 [Amended]

■ 15. Amend section 9.406–4 by—

■ a. Removing from paragraph (b) and paragraph (c) introductory text “The debarring official” and adding “The suspending and debarring official” in their places; and

■ b. Removing from paragraph (c)(5) “the debarring official” and adding “the suspending and debarring official” in its place.

■ 16. Amend section 9.407–1 by—

■ a. Removing from paragraph (a) “suspending official” and adding “suspending and debarring official” in its place;

■ b. Revising paragraph (b);

■ c. Removing from paragraph (c) introductory text “suspending official” and adding “suspending and debarring official” in its place;

■ d. Revising paragraph (e)(1); and

■ e. Removing from paragraph (e)(2) “FAR and FPMR” and adding “FAR and FMR” in its place.

The revisions read as follows:

9.407–1 General.

* * * * *

(b)(1) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of an investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In deciding whether immediate action is necessary to protect the Government's interest, the suspending and debarring official has wide discretion. The suspending and debarring official may infer the necessity for immediate action to protect the Government's interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government. In assessing the adequacy of the evidence, agencies should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts, inspection reports, and correspondence. An indictment or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes adequate evidence for purposes of suspension actions.

(2) The existence of a cause for suspension does not necessarily require that the contractor be suspended. The suspending and debarring official should consider the seriousness of the contractor's acts or omissions and may, but is not required to, consider remedial measures, mitigating factors, or aggravating factors, such as those in 9.406–1(a). A contractor has the burden of promptly presenting to the suspending and debarring official evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists. The existence or nonexistence of any remedial measures or aggravating or mitigating factors is not necessarily determinative of a contractor's present responsibility.

* * * * *

(e)(1) When the suspending and debarring official has authority to suspend contractors from both contracts pursuant to the Federal Acquisition Regulation in this chapter and contracts for the purchase of Federal personal property pursuant to Federal Management Regulation (FMR) in 41 CFR part 102–38, that official shall consider simultaneously suspending the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

* * * * *

9.407–2 [Amended]

■ 17. Amend section 9.407–2 by removing from paragraphs (a) introductory text and (c) “The suspending official” and adding “The suspending and debarring official” in their places.

■ 18. Amend section 9.407–3 by—

■ a. Removing from paragraph (a) “suspending official” and adding “suspending and debarring official” in its place;

■ b. Revising the heading of paragraph (b) and paragraph (b)(1);

■ c. Removing from paragraph (b)(2) introductory text “of Department of Justice advice, that” and adding “of advice from the Department of Justice, a U.S. Attorney’s office, State attorney general’s office, or a State or local prosecutor’s office, that” in its place;

■ d. Removing from paragraph (c) introductory text “by certified mail, return receipt requested” and adding “using the procedures in 9.406–3(c)(1) and (2)” in its place;

■ e. Revising paragraph (c)(1);

■ f. Removing from the end of paragraph (c)(5) the word “and”;

■ g. Revising paragraph (c)(6);

■ h. Adding paragraphs (c)(7) and (8);

■ i. Revising paragraph (d) heading and paragraph (d)(1);

■ j. Removing from paragraph (d)(2)(i) “suspending official” and adding “suspending and debarring official” in its place;

■ k. Removing from paragraph (d)(2)(ii) “suspending official” wherever it appears and adding “suspending and debarring official” in its place;

■ l. Removing from paragraph (d)(2)(iii) “suspending official’s” and adding “suspending and debarring official’s” in its place;

■ m. Revising paragraphs (d)(3) and (4);

■ n. Adding a heading for paragraph (e);

■ o. Revising paragraphs (e)(1) and (2);

■ p. Removing from paragraph (e)(3) “suspending official” and adding “suspending and debarring official” in its place; and

■ q. Adding paragraphs (f) and (g).

The revisions and additions read as follows:

9.407–3 Procedures.

* * * * *

(b) *Decision-making process.* (1) Agencies shall establish procedures governing the suspension decision-making process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing, or through a representative, information and argument in opposition to the suspension. If the suspending and debarring official extends the opportunity for the contractor to submit material in opposition, then the official should also give a deadline for submission of materials. The suspending and debarring official may use the flexible procedures in 9.406–3(b)(1); if so, the suspending and debarring official should change the notice in paragraph (c)(5) of this section to include those flexible procedures.

* * * * *

(c) * * *

(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities—

(i) Of a serious nature in business dealings with the Government; or

(ii) Seriously reflecting on the propriety of further Government dealings with the contractor—any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government’s evidence;

* * * * *

(6) That additional proceedings to determine disputed material facts will be conducted unless—

(i) The action is based on an indictment; or

(ii) A determination is made, on the basis of advice by the Department of Justice, a U.S. Attorney’s office, State attorney general’s office, or a State or local prosecutor’s office, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced;

(7) That, in addition to any information and argument in opposition to a suspension, the contractor must identify—

(i) Specific facts that contradict the statements contained in the notice of suspension. Include any information

about any of the factors listed in 9.406–1(a). A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(ii) All existing, proposed, or prior exclusions and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(iii) All criminal and civil proceedings not included in the notice of suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(iv) All of the contractor’s affiliates; and

(8) That if the contractor fails to disclose the information in paragraph (c)(7) of this section or provides false information, the agency taking the action may seek further criminal, civil, or administrative action against the contractor, as appropriate.

(d) *Suspending and debarring official’s decision.* (1) The suspending and debarring official’s decision shall be based on all the information in the administrative record, including any submission made by the contractor, for actions—

(i) Based on an indictment;

(ii) In which the contractor’s submission does not raise a genuine dispute over material facts; or

(iii) In which additional proceedings to determine disputed material facts have been denied on the basis of advice from the Department of Justice, a U.S. Attorney’s office, State attorney general’s office, or a State or local prosecutor’s office.

* * * * *

(3) The suspending and debarring official may modify or terminate the suspension or leave it in force (for example, see 9.406–4(c) for the reasons for reducing the period or extent of debarment). However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of—

(i) Suspension by any other agency; or

(ii) Debarment by any agency.

(4) Prompt written notice of the suspending and debarring official’s decision shall be sent to the contractor and any affiliates involved, using the procedures in 9.406–3(c)(1) and (2).

(e) *Administrative agreement.* (1) If the contractor enters into an administrative agreement with the Government in order to resolve a suspension or potential suspension proceeding, the suspending and debarring official shall access the website (available at <https://www.cpars.gov>, then select FAPIIS), enter the requested information, and

upload documentation reflecting the administrative agreement.

(2) The suspending and debarring official is responsible for the timely and accurate submission of documentation reflecting the administrative agreement. The submission should be made within 3 working days.

* * * * *

(f) *Voluntary exclusion.* (1) If the contractor enters into a voluntary exclusion with the Government in order to resolve a suspension or potential suspension proceeding, the suspending and debarring official shall access the website (available at <https://www.sam.gov>) and enter the requested information into the exclusions section of SAM (see 9.404(c)(3)).

(2) The suspending and debarring official is responsible for the timely and accurate submission of documentation reflecting the voluntary exclusion. The submission should be made within 3 working days.

(3) Regarding information that may be covered by a disclosure exemption under the Freedom of Information Act, the suspending and debarring official shall follow the procedures at 9.105–2(b)(2)(iv).

(g) *Pre-notice letter.* Prior to initiating a suspension, a pre-notice letter may be issued at the discretion of the agency suspending and debarring official. A pre-notice letter is not required to initiate suspension under this subpart. (See 9.403.)

- 19. Amend section 9.407–4 by—
- a. Removing from paragraph (a) “of investigation”, “suspending official”, and “this subsection” and adding “of an investigation”, “suspending and debarring official”, and “this section” in their places, respectively;
- b. Removing from paragraph (b) “Assistant Attorney General requests” and adding “office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests” in its place; and
- c. Revising paragraph (c).

The revision reads as follows:

9.407–4 Period of suspension.

* * * * *

(c) The suspending and debarring official shall notify the Department of Justice or other responsible prosecuting official of the proposed termination of the suspension, at least 30 days before the 12-month period expires, to give that official an opportunity to request an extension on the Government’s behalf.

9.409 [Amended]

- 20. Amend section 9.409 by removing the text “Protecting the Government’s

Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in” and adding “Protecting the Government’s Interest when Subcontracting with Contractors Debarred, Suspended, Proposed for Debarment, or Voluntarily Excluded, in” in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1504 [Amended]

- 21. Amend section 22.1504 by—
- a. Removing from paragraph (b)(2) “The suspending official” and adding “The suspending and debarring official” in its place; and
- b. Removing from paragraph (b)(3) “The debarring official” and adding “The suspending and debarring official” in its place.

22.1704 [Amended]

- 22. Amend 22.1704 by removing from paragraph (c)(2)(i) introductory text “suspending or debarring” and adding “suspending and debarring” in its place.
- 23. Amend section 22.1802 by revising paragraph (e) to read as follows:

22.1802 Policy.

* * * * *

(e) DHS and the Social Security Administration (SSA) may terminate a contractor’s memorandum of understanding (MOU) and deny access to the E-Verify system in accordance with the terms of the MOU. If DHS or SSA terminates a contractor’s MOU, the terminating agency must refer the contractor to a suspending and debarring official for possible suspension or debarment action. During the period between termination of the MOU and a decision by the suspending and debarring official whether to suspend or debar, the contractor is excused from its obligations under paragraph (b) of the clause at 52.222–54. If the contractor is suspended, debarred, or subject to a voluntary exclusion as a result of the MOU termination, the contractor is not eligible to participate in E-Verify during the period of its suspension, debarment, or voluntary exclusion. If the contractor is not suspended, debarred, or subject to a voluntary exclusion, then the contractor must reenroll in E-Verify.

PART 25—FOREIGN ACQUISITION

25.206 [Amended]

- 24. Amend section 25.206 by removing from paragraph (c)(4) “suspending or debarring” and “Subpart 9.4” and adding “suspending

and debarring” and “subpart 9.4” in their places, respectively.

25.607 [Amended]

- 25. Amend section 25.607 by removing from paragraph (c)(4) “suspending or debarring” and adding “suspending and debarring” in its place.

25.702–3 [Amended]

- 26. Amend section 25.702–3 by—
- a. Removing from paragraph (b) “suspending official” and “Subpart” and adding “suspending and debarring official” and “subpart” in their places, respectively; and
- b. Removing from paragraph (c) “The debarring” and “Subpart” and adding “The suspending and debarring” and “subpart” in their places, respectively.

25.703–2 [Amended]

- 27. Amend section 25.703–2 by—
- a. Removing from paragraph (b)(1) “commercial services,” and adding “commercial services,” in its place;
- b. Removing from paragraph (b)(2) “suspending official” and adding “suspending and debarring official” in its place; and
- c. Removing from paragraph (b)(3) “The debarring official” and adding “The suspending and debarring official” in its place.

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.505 [Amended]

- 28. Amend section 26.505 by removing from paragraph (c) “suspension and debarment” and adding “suspending and debarring” in its place.

PART 33—PROTESTS, DISPUTES, AND APPEALS

33.102 [Amended]

- 29. Amend section 33.102 by removing from paragraph (b)(3)(iii) “debarment official” and “Subpart” and adding “suspending and debarring official” and “subpart” in their places, respectively.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 30. Amend section 52.209–6 by—
- a. Revising the section heading and clause title and date;
- b. Removing from paragraph (c) “suspended, or proposed for debarment by” and adding “suspended, proposed for debarment, or voluntarily excluded, by” in its place;
- c. Removing from paragraph (d) introductory text “or proposed for

debarment” and adding “proposed for debarment, or voluntarily excluded” in its place; and

■ d. Removing from paragraph (d)(4) “suspension, or proposed debarment” and adding “suspension, proposed debarment, or voluntary exclusion” in its place.

The revisions read as follows:

52.209–6 Protecting the Government’s Interest When Subcontracting With Contractors Debarred, Suspended, Proposed for Debarment, or Voluntarily Excluded.

* * * * *

Protecting the Government’s Interest When Subcontracting With Contractors Debarred, Suspended, Proposed for Debarment, or Voluntarily Excluded (JAN 2025)

* * * * *

■ 31. Amend section 52.212–5 by—

■ a. Revising paragraphs (b)(12), (32), and (40) and (e)(1)(xix); and

■ b. In Alternate II, revising the date of the alternate and paragraph (e)(1)(ii)(R).

The revisions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

(b) * * *

— (12) 52.209–6, Protecting the Government’s Interest When Subcontracting With Contractors Debarred, Suspended, Proposed for Debarment, or Voluntarily Excluded. (JAN 2025) (31 U.S.C. 6101 note).

* * * * *

— (32) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (JAN 2025) (E.O. 13126).

* * * * *

— (40) 52.222–54, Employment Eligibility Verification (JAN 2025) (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial products or commercial services as prescribed in FAR 22.1803.)

* * * * *

(e)(1) * * *

(xix) 52.222–54, Employment Eligibility Verification (JAN 2025) (E.O. 12989).

* * * * *

Alternate II (JAN 2025) * * *

(e)(1) * * *

(ii) * * *

(R) 52.222–54, Employment Eligibility Verification (JAN 2025) (Executive Order 12989).

* * * * *

■ 32. Amend section 52.213–4 by revising paragraphs (b)(1)(iii) and (b)(2)(ii) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

(b) * * *

(1) * * *

(iii) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (JAN 2025) (E.O. 13126) (Applies to contracts for supplies exceeding the micro-purchase threshold, as defined in FAR 2.101 on the date of award of this contract).

* * * * *

(2) * * *

(ii) 52.209–6, Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, Proposed for Debarment, or Voluntarily Excluded (JAN 2025) (Applies to contracts over the threshold specified in FAR 9.405–2(b) on the date of award of this contract).

* * * * *

■ 33. Amend section 52.222–19 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (d)(2) “suspending official” and “Subpart” and adding “suspending and debarring official” and “subpart” in their places, respectively; and

■ c. Removing from paragraph (d)(3) “The debarring” and “Subpart” and adding “The suspending and debarring” and “subpart” in their places, respectively.

The revision reads as follows:

52.222–19 Child Labor—Cooperation With Authorities and Remedies.

* * * * *

Child Labor—Cooperation With Authorities and Remedies (JAN 2025)

* * * * *

■ 34. Amend section 52.222–54 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (b)(5)(i) “suspension or debarment” and adding “suspending and debarring” in its place; and

■ c. Revising paragraph (b)(5)(ii).

The revisions read as follows:

52.222–54 Employment Eligibility Verification.

* * * * *

Employment Eligibility Verification (JAN 2025)

* * * * *

(b) * * *

(5) * * *

(ii) During the period between termination of the MOU and a decision by the suspending and debarring official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the Contractor is not suspended, debarred, or subject to a voluntary exclusion, then the Contractor must reenroll in E-Verify.

* * * * *

[FR Doc. 2024–31403 Filed 1–2–25; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 4, 8, 16, 19, and 52

[FAC 2025–03; FAR Case 2020–016, Item II; Docket No. FAR–2020–0016; Sequence No. 1]

RIN 9000–AO18

**Federal Acquisition Regulation:
Rerepresentation of Size and
Socioeconomic Status**

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration to order-level size and socioeconomic status rerepresentation requirements.

DATES: Effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Dana Bowman, Procurement Analyst, at 202–803–3188 or by email at Dana.Bowman@gsa.gov. For information pertaining to status, publication schedules contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2025–03, FAR Case 2020–016.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 88 FR 67189 on September 29, 2023, to implement regulatory changes made by the Small Business Administration (SBA) in its final rule published on October 16, 2020, at 85 FR 66146. For further details please see the proposed rule. Eight respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

There are no significant changes from the proposed rule.

B. Analysis of Public Comments

1. Exceptions to the Rule

Comment: A respondent expressed concerns that the rule requires too much work.

Response: FAR subpart 4.11, System for Award Management (SAM), establishes policies and procedures for requiring registration in SAM. FAR subpart 4.12, Representations and Certifications, establishes policies and procedures for requiring submission and maintenance of representations and certifications in SAM. Offerors and contractors are required to be registered in SAM in accordance with FAR 52.204–7, System for Award Management, and to complete electronic annual representations and certifications in SAM, as part of required registration in accordance with FAR 52.204–13, System for Award Management Maintenance. All registrants are required to review and update the representations and certifications in SAM as necessary, but at least annually, to ensure they are current, accurate, and complete. This rule modifies the clause at FAR 52.219–28, Post-award Small Business Program Rerepresentation, to require offerors to rerepresent their status for orders issued under multiple-award contracts under certain circumstances. Although this rule requires offerors to rerepresent, contractors are already required to ensure that their representations and certifications in SAM are current, accurate, and complete. Therefore, this rule only imposes an additional burden for orders requiring rerepresentation in accordance with paragraphs (c)(1) through (3) of the FAR clause at 52.219–28.

Comment: A respondent recommended that SBA create a database for small business certifications, which would allow for a check and balance of a contractor's self-certification and protect contracting officers in the event they are unable to verify a concern's status.

Response: SBA already maintains a database of certified small business concerns. Specifically, the Dynamic Small Business Search (DSBS) database is SBA's small business certification repository. Certifications in DSBS also appear in SAM, which is the Government's repository for prospective and current Federal awardee information, including representations and certifications. The FAR requires contracting officers to review SAM to verify the contractor's current size and socioeconomic status. If a concern's certification status is not reflected in SAM, contracting officers can verify a concern's status by checking DSBS at <https://dsbs.sba.gov>.

Comment: A respondent recommended that recertification for size or socioeconomic status for orders should not be required.

Response: This rule implements regulatory changes made by SBA in its final rule published on October 16, 2020, which requires rerepresentation for orders placed against multiple-award contracts under certain circumstances. The FAR currently requires contractors to rerepresent their status under certain circumstances. This rule expands the requirement for rerepresentation to verify orders that are set aside for small businesses under certain multiple-award contracts are awarded to qualified small businesses.

Comment: Some respondents indicated that the proposed rule does not consider the time it takes to award a task order. The respondents stated that the period of time from proposal submission to order award often takes 12 to 36 months. Due to the time it takes to award an order, some respondents expressed concerns that this may impact the Government's ability to award the order as the awardee's small business status could change during this period of time. A respondent stated that small businesses compete for and are awarded contracts for which they qualify at that time, and they should be afforded the opportunity to be awarded task orders under those contracts. The respondent indicated that a company's size can change periodically and that a business that was small at the time of proposal submission may be large at order award. The respondents also questioned if the selected awardee would be eligible for award if its size or socioeconomic status changed between proposal submission and order award.

Response: In accordance with SBA's final rule, size and socioeconomic status are determined at the time of initial offer (or other formal response to a solicitation), which includes price, for an order issued against a multiple-

award contract if the contracting officer requests rerepresentation for the order. Therefore, the offeror will remain qualified for the order if its status changes between offer submittal and award of the order.

Comment: A respondent asked how an offeror's eligibility would be affected if rerepresentation is required for an order that is set aside under a multiple-award contract and the offeror is no longer small for the North American Industry Classification System (NAICS) code associated with the contract or no longer qualifies under the socioeconomic category for which it initially qualified. The respondent also asked if a woman-owned small business would lose its small business status that it had at initial award if it rerepresented as large at a later date. Lastly, the respondent asked if the goal of this proposed rule is to require small businesses to certify their size and socioeconomic status for the life of the contract.

Response: A small business concern awarded a multiple-award contract that was set aside for small businesses may continue to perform under such a contract as a small business concern throughout for the life of those contracts (e.g., for the base period and up to four additional option years). However, if a contracting officer requires rerepresentation of size and/or socioeconomic status for a particular order, size and socioeconomic status is determined at the time of offer submission for the order. To clarify for the respondent, a woman-owned small business that represents as large for a particular order, under a multiple-award contract affected by this rule, would be considered large for that order.

Comment: One respondent recommended that implementation of this policy be applicable to new multiple-award contracts or, alternatively, apply the policy to orders issued under multiple-award contracts after January 1, 2025.

Response: In accordance with FAR 1.108(d), this policy applies to solicitations for contracts issued on or after the effective date of the final rule. The contracting officer also has the discretion to include the changes made in this final rule in solicitations for contracts issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date of the final rule. In addition, contracting officers may, at their discretion, include the changes made in this final rule in any existing contract with appropriate consideration. The final rule does not require that existing contracts be modified to add

the updated version of FAR clause 52.219–28.

Comment: A respondent recommended the rule be amended to clearly define the criteria and timelines for contracting officers requesting rerepresentation of size under existing multiple-award contracts.

Response: The final rule text at FAR 19.301–2(b)(2) specifies the new requirements for a contractor to rerepresent its status for orders placed against multiple-award contracts under certain circumstances in accordance with FAR clause 52.219–28. Contracting officers include FAR clause 52.219–28 in solicitations and contracts in accordance with the prescription at FAR 19.309(c)(1). The clause at FAR 52.219–28 provides instructions to offerors and contractors regarding when rerepresentation is required; therefore, it is not necessary to provide additional instructions to contracting officers.

2. Clarifications

Comment: A few respondents recommended removing “and whose socioeconomic status is not certified by the SBA”, from the proposed rule at FAR 19.301–2(b), and in FAR clause 52.219–28. A respondent stated that the proposed FAR text does not exist in the SBA rule and that including the text would make the FAR inconsistent with SBA regulations. The respondent stated that SBA regulations require representation even if the SBA certifies the concern’s socioeconomic status. The respondent stated the rule, as written, exempts small businesses whose socioeconomic status is certified by the SBA. A respondent stated that the proposed FAR text makes the requirement appear to only apply to small businesses that are not small disadvantaged businesses while exempting small disadvantaged businesses.

Response: The final rule FAR text at 19.301–2(b) and paragraph (c) of the clause at FAR 52.219–28 has been revised to adopt the recommendation.

Comment: A respondent recommended clarifying when recertification is required for orders issued under a Federal Supply Schedule (FSS) contract. The respondent recommended adding the following new paragraph (b)(2)(iv) at FAR 19.301–2: A contractor generally does not need to recertify its size eligibility for orders issued under a FSS contract unless the ordering contracting officer specifically requests such recertification for that order, under paragraph (b)(3) of this section.

Response: The final rule FAR text at 19.301–2(b)(3) and paragraph (c)(4) of

the clause at FAR 52.219–28 specifies that for the NAICS code assigned to an order under a multiple-award contract, rerepresentation is required if the contracting officer requires it for that order. This also applies to orders issued under an FSS contract. The final rule FAR text at 19.301–2(b)(2) and paragraph (c) of the clause at FAR 52.219–28 describes when a contractor must rerepresent for an order and also specifies “except for an order issued under a Federal Supply Schedule contract”; therefore, it is not necessary to add the recommended paragraph.

Comment: A respondent recommended revising the proposed rule FAR text at 19.301–2(b)(2)(i) to replace: “unless the order is issued under an unrestricted multiple-award contract with reserves” with “except for orders issued under a reserved portion of a multiple-award contract with reserves, in which case recertification is not required . . .” to clarify that recertification is not required for orders issued under the reserved portion of a multiple-award contract. The respondent recommended text they believed offered additional clarity that would assist industry in understanding recertification requirements.

Response: The final rule text at FAR 19.301–2(b)(2)(i) is revised to partially adopt the respondent’s recommendation.

Comment: A respondent stated that the scenario illustrated at FAR 19.301–2(b)(2)(ii) and (iii) incorrectly suggests that it is permitted by SBA regulations. The respondent recommends revising the proposed FAR text at 19.301–2(b)(2)(ii) and (iii) to make clear that they apply to socioeconomic category orders issued under multiple-award contracts that are set aside for small businesses. The respondent recommended editing the proposed rule FAR text at 19.301–2(b)(2)(ii) and (iii) to clarify that each paragraph is referring to a multiple-award contract that is set aside for small businesses.

Response: The examples included in the final rule FAR text at 19.301–2(b)(2)(ii) and (iii) and in paragraphs (c)(2) and (3) of the clause at FAR 52.219–28 are revised to adopt the recommendation to edit the examples for accuracy.

Comment: A respondent stated that, while the proposed rule helps to explain the different circumstances under which size and socioeconomic recertification is required, it does not address unique recertification issues that arise under sole-source orders placed under the 8(a) Business Development Program. The respondent recommended that the final rule be amended to add a new

paragraph at FAR 19.301–2(b) to explain SBA’s responsibility to determine eligibility for 8(a) sole-source orders. The respondent indicated that, absent additional clarity, some contracting officers might incorrectly believe that recertification is not required for 8(a) sole-source orders.

Response: This rule does not exempt contracting officers from complying with FAR subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program). Contracting officers are required to follow 8(a) offer and acceptance procedures at FAR 19.804–2 and 19.804–3 for competitive and sole-source 8(a) contracts and orders, respectively. SBA will determine an 8(a) participant’s eligibility during this process; therefore, it is not necessary to restate 8(a) Program requirements at FAR 19.301–2(b).

Comment: A respondent recommended correcting a typographical error that references paragraph “a” in the proposed revision to paragraph (c) of the clause at FAR 52.219–28.

Response: The final rule FAR text in paragraph (c) of the clause at FAR 52.219–28 has been revised to replace “a” with “c”.

3. Negative Impacts of the Rule

Comment: A few respondents indicated that the proposed rule will create an environment of reduced competition, lower quality bidders, and will force small businesses to compete on an uneven playing field.

Response: SBA’s final rule requires contractors to rerepresent their status for orders set aside for small businesses under an unrestricted multiple-award contract for which size and socioeconomic status were not relevant to the award of the underlying multiple-award contract. This distinction is important because the award of an order under such a multiple-award contract is the first time that size and socioeconomic status is relevant. Therefore, requiring a concern to represent its size and socioeconomic status encourages fair competition among small businesses.

Comment: A respondent stated that the proposed rule will impose an onerous burden of new recordkeeping, reporting, and other compliance requirements on small businesses. The respondent stated that this would require a significant increase in staff time and result in additional cost to those businesses and the Government.

Response: This rule revises an information collection currently approved under OMB Control Number 9000–0163. Accordingly, the Regulatory

Secretariat Division submitted to the Office of Management and Budget (OMB) a request for approval of a revised information collection requirement concerning 9000–0163, Rerepresentation of Size and Socioeconomic Status, that includes burden estimates for order-level rerepresentation requirements. In addition, FAR subpart 4.12, Representations and Certifications, establishes policies and procedures for requiring submission and maintenance of representations and certification via SAM. Offerors and quoters are required to complete electronic annual representations and certification in SAM, as part of required registration in accordance with FAR 4.1201. All registrants are required to review and update the representations and certifications submitted in SAM as necessary, but at least annually, to ensure they are current, accurate, and complete. Therefore, since contractors and offerors are already required to maintain and update their representations and certifications in SAM, this rule only imposes an additional burden for the orders requiring rerepresentation in accordance with paragraphs (c)(1) through (3) of the clause at FAR 52.219–28. The additional estimated total burden hours for all small businesses to rerepresent at the order level is approximately 534 hours annually.

Comment: A respondent asked if the Government has a process in place for managing inaccurate data and data reporting and, if not, recommended the issue be addressed prior to the implementation of this rule to ensure accurate data is available to all taxpayers.

Response: Section IV, Expected Impact of the Rule, in the preamble of the proposed rule indicated that the Federal Procurement Data System (FPDS) does not currently capture size and socioeconomic status at the order level; therefore, contracting officers will not be able to indicate the size or socioeconomic status of a small business concern at the order level. This may result in inaccurate data and data reporting. However, FPDS is anticipated to be updated to capture this data.

4. Outside the Scope of the Rule

Comment: A few respondents submitted comments that were unrelated to the scope of the rule.

A respondent asked for guidance on the certification for contractors under teaming arrangements and joint ventures. Another respondent recommended that the small business size standard be set at 500 employees

for both product and service contracts to prevent current small businesses with 250 to 300 personnel from graduating from small business status and ensuring their continued growth and development into large businesses. A respondent recommended creating a middle-market set-aside category for businesses exceeding 500 employees with an annual revenue less than \$250 million per year or five times the current size standard. Another respondent objected to bailouts.

Response: These comments are outside the scope of this rule. The FAR defers to SBA to establish small business size standards.

C. Other Changes

Conforming changes are made at FAR 4.604, 8.405–5(b), 16.505(b), 19.202–5(c), and 19.301–2. Paragraph headings are added at 19.301–2(b), (c), (d), and (e) to describe the contents of such paragraphs and to conform with FAR drafting convention. The text at FAR 19.301–2(d)(2)(i) and (ii) is amended for clarity.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products, (Including Commercially Available Off-the-Shelf (COTS) Items) and for Commercial Services

This final rule amends the clauses at FAR 52.219–28, Postaward Small Business Program Rerepresentation, and 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Products and Commercial Services. The clauses continue to apply to acquisitions at or below the SAT, acquisitions for commercial products (including COTS items), and acquisitions for commercial services.

IV. Expected Impact of the Rule

As a result of this final rule, a contractor that represented its status before contract award will be required to rerepresent its size and/or socioeconomic status for an order placed under a multiple-award contract, under certain circumstances and where rerepresentation was not previously required. The final rule validates that orders set aside for small businesses under certain multiple-award contracts are awarded to small businesses that qualify for the size and/or socioeconomic status associated with the orders. Therefore, an entity that no longer qualifies as small under the applicable NAICS code associated with an order, or that no longer qualifies for a particular socioeconomic category,

will not be eligible for orders placed under certain multiple-award contracts.

As a result of this final rule, contracting officers will be required to verify the size and/or socioeconomic status of a small business concern prior to issuing an order under multiple-award contracts subject to this rule.

Orders placed under an FSS contract are exempt from the mandatory rerepresentation requirement; however, contracting officers continue to have the discretion to require a rerepresentation for an order under an FSS contract.

This final rule is also expected to prevent agencies from receiving credit toward their small business goals for awards made to firms that no longer qualify as small under the applicable NAICS code or that no longer qualify as a small business concern identified at FAR 19.000(a)(3).

Existing e-business systems are impacted by this final rule as FPDS does not currently capture size and socioeconomic status at the order level; therefore, contracting officers will not be able to indicate the size or socioeconomic status of a small business concern at the order level. This may result in inaccurate data and data reporting. However, the Government anticipates that FPDS will be updated to capture this data.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

Pursuant to the Congressional Review Act, DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2).

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612.

1. *Statement of the need for, and the objectives of, the rule.*

DoD, GSA, and NASA are issuing a final rule to amend the FAR to update the rerepresentation of size and socioeconomic status requirements for set-aside orders issued under unrestricted multiple-award contracts to align with the regulatory changes made by the Small Business Administration (SBA) in its final rule dated October 16, 2020, at 85 FR 66146. This final rule requires a business concern to rerepresent its size and/or socioeconomic status for all set-aside orders under unrestricted multiple-award contracts, unless the contract authorized reserves of specific types of small business concerns for which size and/or socioeconomic status was required, and the order is issued against the reserved portion. Additionally, this rule requires a business concern to rerepresent its socioeconomic status for all set-aside orders for which the required socioeconomic status for the order differs from that of the underlying set-aside multiple-award contract. The updated requirements are made to clarify SBA's regulatory provisions and eliminate confusion among small businesses and contracting activities.

2. *Statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made to the rules as a result of such comments.*

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

Currently, contractors are required to rerepresent their size and socioeconomic status for orders under multiple-award contracts if the contracting officer requires rerepresentation for that order or as required by the clause at FAR 52.219–28. This rule requires contractors to rerepresent their size and/or socioeconomic status for all orders issued under unrestricted multiple-award contracts (except for orders issued under Federal Supply Schedule (FSS) contracts), and for set-aside orders for which the required socioeconomic status for the order differs from that of the underlying set-aside multiple-award contract.

3. *Description of and an estimate of the number of small entities to which the rule will apply.*

According to data from the Federal Procurement Data System (FPDS) for fiscal year (FY) 2021, FY 2022, and FY 2023, small businesses were required to rerepresent their socioeconomic status for modifications as follows: 2,006, 3,379, in and 2,842, respectively. This averages out to approximately 2,742 rerepresentation modifications per year. Additional data from FPDS indicates that agencies set aside orders under unrestricted multiple-award contracts, excluding reserve orders and orders under FSS contracts, as follows: 7,341 in FY 2021,

7,463 in FY 2022, and 8,336 in FY 2023, which averages out to 7,713 per year. Data from FPDS also indicates that agencies set aside orders under set-aside multiple-award contracts (other than FSS contracts) in the categories covered by this rule as follows: 2,060 in FY 2021, 1,977 in FY 2022, and 2,213 in FY 2023, which averages out to 2,083 per year. Therefore, the estimated number of small entities to which the rule will apply is 4,179.

4. *Description of projected reporting, recordkeeping, and other compliance requirements of the rule.*

This rule includes new reporting, recordkeeping, or other compliance requirements for small entities. The Regulatory Secretariat Division has submitted to OMB a request to review and approve revisions to previously approved information collection requirements in the clause at FAR 52.219–28, Post-Award Small Business Program Rerepresentation.

5. *Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes.*

There are no known significant alternative approaches that would accomplish the stated objectives.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3521) applies. The rule contains information collection requirements. The Regulatory Secretariat Division has submitted to OMB a request to review and approve revisions to previously approved information collection requirements in the FAR clause at 52.219–28.

A. *OMB Control Number, Title, and Any Associated Form(s)*

OMB control number and title: 9000–0163, Rerepresentation of Size and Socioeconomic Status.

B. *Need and Uses*

This rule amends FAR clause 52.219–28 to require concerns to also rerepresent their size and/or socioeconomic status for orders placed under multiple-award contracts under certain circumstances as described in paragraph (c) of the clause and this preamble.

The collected information is used by SBA, Congress, Federal agencies, and the public for various reasons such as market research, set-aside determinations, and determining if agencies are meeting statutory goals.

C. Annual Burden

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

The increase in the annual reporting burden, because of the final rule, is estimated as follows:

Respondents: 835.

Total annual responses: 1,069.

Total response burden hours: 534.

D. Public Comment to OMB on Information Collection

A 60-day notice was published in the **Federal Register** at 88 FR 67189, on September 29, 2023. A comment was received and addressed in section II. of this preamble; however, it did not change the estimate of the burden. Written comments and recommendations for this information collection revision should be sent within 30 days of publication of this rule to www.reginfo.gov/public/do/PRAMain. Find this information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

E. Obtaining Copies

Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing GSARegSec@gsa.gov. Please cite OMB Control Number 9000–0163, Small Business Rerepresentation.

List of Subjects in 48 CFR Parts 4, 8, 16, 19, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are amending 48 CFR parts 4, 8, 16, 19, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 8, 16, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

4.604 [Amended]

■ 2. Amend section 4.604 in paragraph (b)(4) by removing the text “contracting office” and “Post-Award” and adding

“contracting officer” and “Postaward” in their places, respectively.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.405–5 [Amended]

■ 3. Amend section 8.405–5 in paragraph (b) by removing the text “section 19.301–2(b)(2)” and adding “19.301–2(b)(3)” in its place.

PART 16—TYPES OF CONTRACTS

16.505 [Amended]

■ 4. Amend section 16.505 in paragraph (b)(9) by removing the text “section 19.301–2(b)(2)” and adding “19.301–2(b)(3)” in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.202–5 [Amended]

■ 5. Amend section 19.202–5 in paragraph (c) introductory text by removing “Post Award” and adding “Postaward” in its place.

■ 6. Amend section 19.301–2 by—

- a. Revising the section heading and paragraph (b) introductory text;
- b. Removing from paragraphs (b)(1)(i) and (ii) “Post-Award” and adding “Postaward” in its place;
- c. Redesignating paragraph (b)(2) as paragraph (b)(3);
- d. Adding a new paragraph (b)(2);
- e. Adding headings to paragraphs (c) and (d);
- f. Revising paragraphs (d)(2)(i) and (ii); and
- g. Adding a heading to paragraph (e).

The revisions and additions read as follows:

19.301–2 Rerepresentation by a contractor that represented its status as a small business concern.

* * * * *

(b) *Requirements.* A contractor that represented its status as any of the small business concerns identified at 19.000(a)(3) before contract award is required to rerepresent its size and socioeconomic status in accordance with the clause at 52.219–28, Postaward Small Business Program Rerepresentation—

* * * * *

(2) For the NAICS code assigned to an order (except for an order issued under a Federal Supply Schedule contract)—

(i) Set aside exclusively for a small business concern identified at 19.000(a)(3) that is issued under an unrestricted multiple-award contract, unless the order is issued under the reserved portion of an unrestricted multiple-award contract (e.g., an order

set aside for a woman-owned small business concern under a multiple-award contract that was not set-aside, unless the order is issued under the reserved portion of the multiple-award contract);

(ii) Issued under a multiple-award contract set aside for small businesses that is further set aside for a specific socioeconomic category that differs from the underlying multiple-award contract (e.g., an order set aside for a HUBZone small business concern under a multiple-award contract that is set-aside for small businesses); or

(iii) Issued under the part of the multiple-award contract that is set aside for small businesses that is further set aside for a specific socioeconomic category that differs from the underlying set-aside part of the multiple-award contract (e.g., an order set aside for a part of the multiple-award contract that is partially set-aside for small businesses); or

* * * * *

(c) *NAICS code size standard.* * * *

(d) *Procedures—* * * *

(2) * * *

(i) When an order is issued under an unrestricted multiple-award contract and the contractor’s rerepresentations no longer qualifies it as a small business concern identified at 19.000(a)(3), the agency can no longer include the value of the order in its small business prime contracting goal achievements. When a contractor’s rerepresentation for an order qualifies it as a different small business concern identified at 19.000(a)(3) than what it represented for contract award, the agency can include the value of the order in its small business prime contracting goal achievement, consistent with the rerepresentation.

(ii) A rerepresentation for an order issued under an unrestricted multiple-award contract does not change the size or socioeconomic status representation for the contract.

(e) *Size status change.* * * *

19.302 [Amended]

■ 7. Amend section 19.302 in paragraph (j) by removing “Post-Award” and adding “Postaward” in its place.

19.309 [Amended]

■ 8. Amend section 19.309 in paragraph (c)(1) by removing “Post-Award” and adding “Postaward” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

■ 9. Amend section 52.212–5 in paragraph (b)(26)(i) by removing “Post-

Award” and “(FEB 2024)” and adding “Postaward” and “(JAN 2025)” in their places, respectively.

■ 10. Amend section 52.219–28 by—

■ a. Revising the section heading, clause heading and date, and paragraph (c); and

■ b. Removing from paragraph (f) “paragraph (b) and (c)” and “office in” and adding “paragraphs (b) and (c)” and “officer in” in their places, respectively.

The revisions read as follows:

52.219–28 Postaward Small Business Program Rerepresentation.

* * * * *

Postaward Small Business Program Rerepresentation (JAN 2025)

* * * * *

(c) If the Contractor represented its status as any of the small business concerns identified at 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, for the NAICS code assigned to an order (except that paragraphs (c)(1) through (3) of this clause do not apply to an order issued under a Federal Supply Schedule contract at subpart 8.4)—

(1) Set aside exclusively for a small business concern identified at 19.000(a)(3) that is issued under an unrestricted multiple-award contract, unless the order is issued under the reserved portion of an unrestricted multiple-award contract (e.g., an order set aside for a woman-owned small business under a multiple-award contract that is not set-aside, unless the order is issued under the reserved portion of the multiple-award contract);

(2) Issued under a multiple-award contract set aside for small businesses that is further set aside for a specific socioeconomic category that differs from the underlying multiple-award contract (e.g., an order set aside for a HUBZone small business concern under a multiple-award contract that is set aside for small businesses);

(3) Issued under the part of the multiple-award contract that is set aside for small businesses that is further set aside for a specific socioeconomic category that differs from the underlying set-aside part of the multiple-award contract (e.g., an order set aside for a WOSB concern under the part of the multiple-award contract that is partially set aside for small businesses); and

(4) When the Contracting Officer explicitly requires it for an order issued under a multiple-award contract, including for an order issued under a Federal Supply Schedule contract (see 8.405–5(b) and 19.301–2(b)(2)).

* * * * *

[FR Doc. 2024–31404 Filed 1–2–25; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2, 19, 42, and 52**

[FAC 2025–03; FAR Case 2023–001, Item III; Docket No. FAR 2023–0001; Sequence No. 1]

RIN 9000–AO50

**Federal Acquisition Regulation:
Subcontracting to Puerto Rican and
Covered Territory Small Businesses**

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration to add incentives for certain United States territories under the Small Business Administration mentor-protégé program.

DATES: Effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Carrie Moore, Procurement Analyst, at 571–300–5917, or by email at carrie.moore@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2025–03, FAR Case 2023–001.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 89 FR 48540 on June 7, 2024, to implement regulatory changes made by the Small Business Administration (SBA) in its final rules published on October 16, 2020 (85 FR 66146) and on August 19, 2022 (87 FR 50925) to implement section 861 of Public Law 115–232 and section 866 of Public Law 116–283. For further details please see the proposed rule. Two respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments is provided

as follows; however, no changes were made to the rule as a result of those comments.

A. Summary of significant changes: There are no significant changes from the proposed rule.

B. Analysis of public comments:

Comment: The respondents expressed support for the rule.

Response: The Councils acknowledge the respondents' support for the rule.

Comment: The respondents expressed support for the change at 19.702, which specifies that subcontracting plans are not required from Alaska Native Corporations (ANCs).

Response: The Councils acknowledge the respondents' support for this change. SBA clarified that an ANC prime contractor is required to submit a subcontracting plan if they are large for the North American Industry Classification System (NAICS) code assigned to the contract. However, an ANC subcontractor is treated as a small business concern by statute and, therefore, cannot be required to submit a subcontracting plan (*see* 13 CFR 125.3(b)(2)).

Comment: The respondents recommended changes to the proposed rule text at FAR 19.703(2)(i) and (ii) and in the clauses at FAR 52.219–8, Utilization of Small Business Concerns, and 52.219–9, Small Business Subcontracting Plan, which specify that a contractor may rely on a subcontractor's representation unless it has reason to question it. A respondent recommended the word “question” be replaced with “doubt” to align with SBA's regulations at 13 CFR 121.404(e), indicating the word “doubt” means, in accordance with the Merriam-Webster Dictionary, to call into question the truth of, to lack confidence in, and to consider unlikely, whereas “question” simply means to ask a question. Another respondent recommended the text be amended to specify: “unless the contractor has an objective, evidence-based reason to question a representation for clarity”.

Response: In this context, SBA's term “doubt” has the same meaning as the FAR term “question”. The FAR consistently uses the term “question” when specifying that a contracting officer may rely on a representation or certification unless the contracting officer has a reason to question the representation or certification. Aligning the proposed rule text with text currently used in the FAR for other representations or certifications helps promote certainty and avoids confusion for the contracting community. Moreover, the FAR does not replicate terminology used in SBA's regulations;

instead SBA's regulations are translated into FAR terminology. This rule implements SBA's regulations at 13 CFR 121.404(e), which do not specify that the contractor is required to have an objective, evidence-based reason to question a representation. There are a variety of reasons why a contractor might question a subcontractor's representation and this text is written so as to not limit the basis on which a contractor may question such a representation.

C. Other changes. The proposed rule FAR text at 19.702(b)(1) is moved in the final rule to FAR 19.704(a)(9) and to paragraph (d)(9) of the clause at FAR 52.219–9 and its Alternate IV to specify for contractors that subcontracting plans are not required from their subcontractors that are treated as small business concerns by statute. Conforming changes are made to the clause at FAR 52.219–9 and its Alternates III and IV.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or for Commercial Services

This rule amends the clauses at FAR 52.212–5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services; 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services); 52.219–8, Utilization of Small Business Concerns; and 52.219–9, Small Business Subcontracting Plan. However, this rule does not change the applicability of these clauses, which continue to apply to contracts valued at or below the SAT, or on contracts for commercial products, including COTS items, or commercial services. This rule applies paragraphs (a) and (d) of section 861 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232), and paragraphs (a) and (c) of section 866 of the NDAA for FY 2021 (Pub. L. 116–283), to acquisitions at or below the SAT and to acquisitions for commercial products, including COTS items, and commercial services, as the two new incentives for SBA's mentor-protégé program are available to all contractors in the program, regardless of the dollar value of the contract awarded or the commercial nature of the products and services procured.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

The statute at 41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the Federal Acquisition Regulatory Council (FAR Council) makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law. The FAR Council has made a determination to apply this statute to acquisitions at or below the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Products and Commercial Services, Including Commercially Available Off-The-Shelf (COTS) Items

The statute at 41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial products and commercial services, and is intended to limit the applicability of laws to contracts for the acquisition of commercial products and commercial services. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial contracts, the provision of law will apply to contracts for the acquisition of commercial products and commercial services.

The statute at 41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from certain provisions of law unless the Administrator for Federal Procurement Policy makes a written determination and finds that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items.

The FAR Council has made a determination to apply this statute to acquisitions for commercial products and commercial services. The Administrator for Federal Procurement Policy has made a determination to apply this statute to acquisitions for COTS items.

IV. Expected Impact of the Rule

This rule is expected to benefit mentors with an SBA-approved mentor-protégé agreement that subcontract to covered territory small businesses and small businesses that have their principal office located in the

Commonwealth of Puerto Rico. These benefits are expected to extend to covered territory small businesses and small businesses located in the Commonwealth of Puerto Rico, as mentors may be incentivized to enter into SBA-approved mentor-protégé agreements with such small businesses and issue subcontracts to them.

This rule is expected to decrease the burden for certain entities that are treated as small business concerns by statute for certain purposes (e.g., ANCs), as these entities will not be required to submit subcontracting plans as subcontractors.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

Pursuant to the Congressional Review Act, DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2).

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA) in its final rule published on October 16, 2020, at 85 FR 66146, to implement section 861 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). The objective of this rule is to implement SBA's final rule and to implement section 861, which amended 15 U.S.C. 657r(a) to add Puerto Rico to the list of territories from which small businesses are eligible for preferential treatment under the

SBA mentor-protégé program. This rule also implements SBA's final rule published on August 19, 2022, at 87 FR 50925 to implement section 866 of the NDAA for FY 2021 (Pub. L. 116–283), which amended 15 U.S.C. 657r(a) and 15 U.S.C. 632(ff) to add the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) to the list of territories from which small businesses are eligible for preferential treatment under the SBA mentor-protégé programs. Section 866 also defines a "covered territory business" as a small business concern that has its principal office located in one of the following: (1) the U.S. Virgin Islands; (2) American Samoa; (3) Guam; and (4) CNMI. Sections 861 and 866 created two new incentives for SBA's small business mentor-protégé program for mentor-protégé pairs in which the protégé has its principal office located in the Commonwealth of Puerto Rico or is a covered territory business. Specifically, such a mentor that subcontracts to its protégé is able to receive positive consideration for the mentor's past performance evaluation and is able to apply the costs of training its protégé to its subcontracting plan goals. This rule also specifies the entities that are not required to submit subcontracting plans as subcontractors.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

This final rule will impact small businesses whose principal office is in the Commonwealth of Puerto Rico or that are covered territory businesses that enter into SBA-approved mentor-protégé agreements. According to data from the Federal Procurement Data System, in the last three fiscal years, the Government awarded contracts to small businesses in the covered territories and in the Commonwealth of Puerto Rico as follows: 506 in fiscal year (FY) 2021, 438 in FY 2022, and 435 in FY 2023, which averages out to approximately 460 contracts per year. Each of those awards was made to a unique small entity. In addition, and according to data from the System for Award Management (SAM), there are 6,318 small businesses in the Commonwealth of Puerto Rico that are currently registered in SAM. Although the Government awarded approximately 460 contracts to 460 unique small entities and there are 6,318 small entities in the Commonwealth of Puerto Rico, the number of small entities to which this rule will apply cannot be more precisely estimated as the number of entities that may enter into SBA-approved mentor-protégé agreements is unknown.

The Government does not collect data on subcontracts; therefore, the Government cannot estimate the number of small entities that will not be required to submit subcontracting plans.

The proposed rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known significant alternative approaches that would accomplish the stated objectives of the statutes.

Interested parties may obtain a copy of the FRFA from the Regulatory

Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 48 CFR Parts 2, 19, 42, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are amending 48 CFR parts 2, 19, 42, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 19, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 by adding in alphabetic order the definition “Covered territory business” to read as follows:

2.101 Definitions.

* * * * *

Covered territory business, as defined at 15 U.S.C. 632(ff) and 13 CFR 125.1, means a small business concern that has its principal office located in the United States Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands.

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

■ 3. Amend section 19.702 by adding paragraph (e) to read as follows:

19.702 Statutory requirements.

* * * * *

(e) In accordance with 15 U.S.C. 657r(a), a mentor with an SBA-approved mentor-protégé agreement (see 13 CFR 125.9) that provides a subcontract to its protégé may apply the costs incurred for training it provides to its protégé toward its subcontracting plan goals, provided that protégé is a covered territory business or that protégé has its principal office located in the Commonwealth of Puerto Rico.

■ 4. Amend section 19.703 by revising paragraph (a)(2)(i) and paragraph (a)(2)(ii) introductory text to read as follows:

19.703 Eligibility requirements for participating in the program.

(a) * * *

(2)(i) Unless the prime contractor has reason to question the representation, it may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, or a women-owned small business, if the subcontractor represents that the size and socioeconomic status representation with its offer are current, accurate, and complete as of the date of the offer for the subcontracts; or

(ii) Unless the prime contractor has reason to question the representation, it may accept a subcontractor's representation of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, or a women-owned small business in the System for Award Management (SAM) if—

* * * * *

■ 5. Amend section 19.704 by revising paragraph (a)(9) to read as follows:

19.704 Subcontracting plan requirements.

(a) * * *

(9) Assurances that the offeror will include the clause at 52.219–8, Utilization of Small Business Concerns (see 19.708(a)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns, including entities that are treated as small business concerns by statute for certain purposes (e.g., ANCs, see 13 CFR 125.3(b)(2))) that receive subcontracts in excess of \$750,000 (\$1.5 million for construction) to adopt a plan that complies with the requirements of the clause at 52.219–9, Small Business Subcontracting Plan (see 19.708(b));

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 6. Amend section 42.1501 by revising paragraph (a)(5) to read as follows:

42.1501 General.

(a) * * *

(5) Complying with the requirements of the small business subcontracting

plan (see 19.705–7(b)), including favorable consideration of a mentor with an SBA-approved mentor-protégé agreement (see 13 CFR 125.9) that subcontracts to its protégé, and that protégé is a covered territory business or that protégé's principal office is located in the Commonwealth of Puerto Rico (see 15 U.S.C. 657r(a));

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 52.212–5 by—

■ a. Removing from paragraph (b)(20) “(FEB 2024)” and adding “(JAN 2025)” in its place;

■ b. Removing from paragraphs (b)(21)(i) and (v) “(SEP 2023)” and adding “(JAN 2025)” in their places, respectively;

■ c. Removing from paragraph (e)(1)(viii) “(FEB 2024)” and adding “(JAN 2025)” in its place; and

■ d. In Alternate II:

■ i. Revising the date of the Alternate; and

■ ii. Removing from paragraph (e)(1)(ii)(H) “(FEB 2024)” and adding “(JAN 2025)” in its place.

The revision reads as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Alternate II (JAN 2025). * * *

* * * * *

■ 8. Amend section 52.213–4 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (a)(2)(vii) “(NOV 2024)” and adding “(JAN 2025)” in its place.

The revision reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (JAN 2025)

* * * * *

■ 9. Amend section 52.219–8 by revising the date of the clause and paragraph (e)(1) and paragraph (e)(2) introductory text to read as follows:

52.219–8 Utilization of Small Business Concerns.

* * * * *

Utilization of Small Business Concerns (JAN 2025)

* * * * *

(e)(1) Unless the Contractor has reason to question the representation, it may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(2) Unless the Contractor has reason to question the representation, it may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

* * * * *

■ 10. Amend section 52.219–9 by—

■ a. Revising the date of the clause and paragraphs (c)(2)(i), (c)(2)(ii) introductory text, (d)(1) introductory text, and (d)(9);

■ b. Removing from paragraph (d)(10)(ii) “Offeror” and adding “Contractor” in its place;

■ c. Removing from paragraph (d)(15) “offeror” and adding “Contractor” in its place;

■ d. In Alternate III:

■ i. Revising the date of the Alternate; and

■ ii. Removing from paragraph (d)(10)(ii) “Offeror” and adding “Contractor” in its place; and

■ e. In Alternate IV:

■ i. Revising the date of the Alternate and paragraphs (c)(2)(i), (c)(2)(ii) introductory text, (d)(1) introductory text, and (d)(9); and

■ ii. Removing from paragraph (d)(15) “offeror” and adding “Contractor” in its place.

The revisions read as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

Small Business Subcontracting Plan (JAN 2025)

* * * * *

(c) * * *

(2)(i) Unless the Contractor has reason to question the representations, it may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the

subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) Unless the Contractor has reason to question the representations, it may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

* * * * *

(d) * * *

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 15 U.S.C. 657r(a), an Offeror that is a mentor with an SBA-approved mentor-protégé agreement (see 13 CFR 125.9) that provides a subcontract to its protégé may apply the costs incurred for training it provides to its protégé toward its subcontracting plan goals, provided that protégé is a covered territory business or that protégé has its principal office located in the Commonwealth of Puerto Rico. In accordance with 43 U.S.C. 1626—

* * * * *

(9) Assurances that the Offeror will include the clause of this contract entitled “Utilization of Small Business Concerns” in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns, including entities that are treated as small business concerns by statute for certain purposes (e.g., ANCs, see 13 CFR 125.3(b)(2))) that receive subcontracts in excess of the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, with further subcontracting possibilities to adopt a subcontracting plan that

complies with the requirements of this clause.

* * * * *

Alternate III (JAN 2025). * * *

* * * * *

Alternate IV (JAN 2025). * * *

(c) * * *

(2)(i) Unless the Contractor has reason to question the representations, it may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) Unless the Contractor has reason to question the representations, it may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

* * * * *

(d) * * *

(1) Separate goals, expressed in terms of total dollars subcontracted and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Contractor shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 15 U.S.C. 657r(a), a Contractor that is a mentor with an SBA-approved mentor-protégé agreement (see 13 CFR 125.9) that provides a subcontract to its protégé may apply the costs incurred for training it provides to its protégé toward its subcontracting plan goals, provided that protégé is a covered territory business or that protégé has its principal office located in the Commonwealth of Puerto Rico. In accordance with 43 U.S.C. 1626—

* * * * *

(9) Assurances that the Contractor will include the clause of this contract entitled “Utilization of Small Business Concerns” in all subcontracts that offer further subcontracting opportunities, and that the Contractor will require all subcontractors (except small business concerns, including entities that are treated as small business concerns by statute for certain purposes (*e.g.*, ANCs, see 13 CFR 125.3(b)(2))) that receive subcontracts in excess of the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

* * * * *

- 11. Amend section 52.244–6 by—
- a. Revising the date of the clause; and
- b. Removing from paragraph (c)(1)(x) “(FEB 2024)” and adding “(JAN 2025)” in its place.

The revision reads as follows:

52.244–6 Subcontracts for Commercial Products and Commercial Services.

* * * * *

Subcontracts for Commercial Products and Commercial Services (JAN 2025)

* * * * *

[FR Doc. 2024–31407 Filed 1–2–25; 8:45 am]

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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

[Docket No. FAR–2024–0051, Sequence No. 8]

**Federal Acquisition Regulation;
Federal Acquisition Circular 2025–03;
Small Entity Compliance Guide**

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide (SECG).

SUMMARY: This document is issued under the joint authority of DoD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2025–03, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding these rules by referring to FAC 2025–03, which precedes this document.

DATES: January 3, 2025.

ADDRESSES: The FAC, including the SECG, is available at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2025–03 and the FAR Case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

RULES LISTED IN FAC 2025–03

Item	Subject	FAR case	Analyst
* I	Improving Consistency Between Procurement and Nonprocurement Procedures on Suspension and Debarment.	2019–015	Delgado.
* II	Rerepresentation of Size and Socioeconomic Status	2020–016	Bowman.
* III	Subcontracting to Puerto Rican And Covered Territory Small Businesses	2023–001	Moore.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2025–03 amends the FAR as follows:

Item I—Improving Consistency Between Procurement and Nonprocurement Procedures on Suspension and Debarment (FAR Case 2019–015)

This final rule amends the FAR to improve consistency between the procurement and nonprocurement procedures on suspension and debarment, based on recommendations of the Interagency Suspension and Debarment Committee. The changes in the FAR bring the two systems into closer alignment, enhancing transparency and consistency within the Government’s suspension and debarment procedures. This allows contractors a better understanding of

how the two systems’ procedures relate to each other. The changes are not expected to have a significant economic impact on a substantial number of small entities. It is anticipated that this rule will have a positive impact on small businesses with increased transparency in the process.

Item II—Rerepresentation of Size and Socioeconomic Status (FAR Case 2020–016)

This final rule amends the FAR to implement regulatory changes made by the Small Business Administration to size and socioeconomic status rerepresentation requirements for orders placed against multiple-award contracts. Specifically, business concerns that represented their status as any of the small business concerns identified at FAR 19.000(a)(3) are required to rerepresent their size and/or socioeconomic status for orders set aside—

(1) Under unrestricted multiple-award contracts, unless the order is issued

against a reserve for which size and/or status was required.

(2) Under a multiple-award contract that was totally or partially set aside for small businesses, and the order requires a different socioeconomic status.

Federal Supply Schedules (FSS) are exempt from these requirements.

The final rule will help to validate that small businesses qualify for the size and/or socioeconomic status associated with orders placed under certain multiple-award contracts. Also, entities that no longer qualify under the applicable North American Industry Classification System (NAICS) code or the socioeconomic status they claim may not qualify under the applicable NAICS code or socioeconomic status for set-aside orders under the multiple-award contracts subject to this rule.

The final rule is not expected to have a significant economic impact on a substantial number of small entities.

Item III—Subcontracting to Puerto Rican and Covered Territory Small Businesses (FAR Case 2023–001)

This final rule amends the FAR to implement regulatory changes made by the Small Business Administration to implement section 861 of Public Law 115–232 and section 866 of Public Law 116–283, which add incentives for certain U.S. territories under the Small

Business Administration mentor-protégé program. This final rule also specifies the entities that are not required to submit subcontracting plans as subcontractors. This final rule is not expected to have a significant impact on a substantial number of small entities; however, it will impact small businesses whose principal office is in the Commonwealth of Puerto Rico or that

are covered territory businesses that enter into SBA-approved mentor-protégé agreements.

William F. Clark,
Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.
[FR Doc. 2024–31408 Filed 1–2–25; 8:45 am]

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