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Federal Register

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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.

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1083

Civil Penalty Inflation Adjustments

AGENCY: Consumer Financial Protection Bureau.

ACTION: Final rule.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is adjusting for inflation the maximum amount of each civil penalty within the CFPB's jurisdiction. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The inflation adjustments mandated by the Inflation Adjustment Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law.

DATES: This final rule is effective January 15, 2025.

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

SUPPLEMENTARY INFORMATION:

I. Background

The Inflation Adjustment Act,¹ as amended by the Debt Collection Improvement Act of 1996² and further

amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,³ directs Federal agencies to adjust the civil penalty amounts within their jurisdictions for inflation not later than July 1, 2016, and then not later than January 15 every year thereafter.⁴ Each agency was required to make the 2016 one-time catch-up adjustments through an interim final rule published in the **Federal Register**. On June 14, 2016, the CFPB published its interim final rule (IFR) to make the initial catch-up adjustments to civil penalties within the CFPB's jurisdiction.⁵ The June 2016 IFR created a new part 1083 and in part 1083.1 established the inflation-adjusted maximum amounts for each civil penalty within the CFPB's jurisdiction.⁶ The CFPB finalized the IFR on January 31, 2019.⁷

The Inflation Adjustment Act also requires subsequent adjustments to be made annually, not later than January 15, and notwithstanding section 553 of the Administrative Procedure Act (APA).⁸ The CFPB annually adjusted its civil penalty amounts, as required by the Act.⁹

³ Public Law 114-74, sec. 701, 129 Stat. 584, 599.

⁴ Section 1301(a) of the Federal Reports Elimination Act of 1998, Public Law 105-362, 112 Stat. 3293, also amended the Inflation Adjustment Act by striking section 6, which contained annual reporting requirements, and redesignating section 7 as section 6, but did not alter the civil penalty adjustment requirements; 28 U.S.C. 2461 note.

⁵ 81 FR 38569 (June 14, 2016). Although the CFPB was not obligated to solicit comment for the interim final rule, the CFPB invited public comment and received none.

⁶ See 12 CFR 1083.1.

⁷ 84 FR 517 (Jan. 31, 2019).

⁸ Inflation Adjustment Act section 4, codified at 28 U.S.C. 2461 note. As discussed in guidance issued by the Director of the Office of Management and Budget (OMB), the APA generally requires notice, an opportunity for comment, and a delay in effective date for certain rulemakings, but the Inflation Adjustment Act provides that these procedures are not required for agencies to issue regulations implementing the annual adjustment. See Memorandum for the Heads of Exec. Dep'ts & Agencies from Shalanda D. Young, Director, Implementation of Penalty Inflation Adjustments for 2025, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Off. of Mgmt. & Budget (Dec. 17, 2024), <https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf> [hereinafter Young Memo].

⁹ See 82 FR 3601 (Jan. 12, 2017); 83 FR 1525 (Jan. 12, 2018); 84 FR 517 (Jan. 31, 2019); 85 FR 2012

Specifically, the Inflation Adjustment Act directs Federal agencies to adjust annually each civil penalty provided by law within the jurisdiction of each agency by the "cost-of-living adjustment."¹⁰ The "cost-of-living adjustment" is defined as the percentage (if any) by which the Consumer Price Index for All Urban Consumers (CPI-U) for the month of October preceding the date of the adjustment, exceeds the CPI-U for October of the prior year.¹¹ The Director of the Office of Management and Budget (OMB) is required to issue guidance (OMB Guidance) every year by December 15 to agencies on implementing the annual civil penalty inflation adjustments. Pursuant to the Inflation Adjustment Act and OMB Guidance, agencies must apply the multiplier reflecting the "cost-of-living adjustment" to the current penalty amount and then round that amount to the nearest dollar to determine the annual adjustments.¹² The adjustments are designed to keep pace with inflation so that civil penalties retain their deterrent effect and promote compliance with the law.¹³

For the 2025 annual adjustment, the multiplier reflecting the "cost-of-living adjustment" is 1.02598.

II. Adjustment

Pursuant to the Inflation Adjustment Act and OMB Guidance, the CFPB multiplied each of its civil penalty amounts by the "cost-of-living adjustment" multiplier and rounded to the nearest dollar.¹⁴ The new penalty amounts that apply to civil penalties assessed after January 15, 2025, are as follows:

(Jan. 14, 2020); 86 FR 3767 (Jan. 15, 2021); 87 FR 2314 (Jan. 14, 2022); 88 FR 1 (Jan. 3, 2023); 89 FR 1787 (Jan. 11, 2024).

¹⁰ Inflation Adjustment Act sections 4 and 5, codified at 28 U.S.C. 2461 note.

¹¹ Inflation Adjustment Act sections 3 and 5, codified at 28 U.S.C. 2461 note.

¹² Inflation Adjustment Act section 5, codified at 28 U.S.C. 2461 note; see also Young Memo.

¹³ See Inflation Adjustment Act section 2, codified at 28 U.S.C. 2461 note.

¹⁴ Inflation Adjustment Act section 4, codified at 28 U.S.C. 2461 note.

¹ Public Law 101-410, 104 Stat. 890.

² Public Law 104-134, sec. 31001(s)(1), 110 Stat. 1321, 1321-373.

Law	Penalty description	Penalty amounts established under 2024 final rule	OMB "cost-of-living adjustment" multiplier	New penalty amount ¹⁵
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(A)	Tier 1 penalty	\$7,034	1.02598	\$7,217
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(B)	Tier 2 penalty	35,169	1.02598	36,083
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(C)	Tier 3 penalty	1,406,728	1.02598	1,443,275
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2) ...	Per violation	2,451	1.02598	2,515
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2) ...	Annual cap	2,449,575	1.02598	2,513,215
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1)	Per failure	115	1.02598	118
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1)	Annual cap	230,464	1.02598	236,451
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(2)(A) ...	Per failure, where intentional.	230	1.02598	236
SAFE Act, 12 U.S.C. 5113(d)(2)	Per violation	35,516	1.02598	36,439
Truth in Lending Act, 15 U.S.C. 1639e(k)(1)	First violation	14,069	1.02598	14,435
Truth in Lending Act, 15 U.S.C. 1639e(k)(2)	Subsequent violations	28,135	1.02598	28,866

III. Procedural Requirements

A. Administrative Procedure Act

Under the APA, notice and opportunity for public comment are not required if the CFPB finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.¹⁶ The adjustments to the civil penalty amounts are technical and non-discretionary, and they merely apply the statutory method for adjusting civil penalty amounts. These adjustments are required by the Inflation Adjustment Act. Moreover, the Inflation Adjustment Act directs agencies to adjust civil penalties annually notwithstanding section 553 of the APA,¹⁷ and OMB Guidance reaffirms that agencies need not complete a notice-and-comment process before making the annual adjustments for inflation.¹⁸ For these reasons, the CFPB has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. The amendments therefore are adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.¹⁹ At minimum, the CFPB believes the annual adjustments to the civil penalty amounts in § 1083.1(a) fall under the third exception to section 553(d). The CFPB finds that there is good cause to make the amendments effective on January 15, 2025. The

amendments to § 1083.1(a) in this final rule are technical and non-discretionary, and they merely apply the statutory method for adjusting civil penalty amounts and follow the statutory directive to make annual adjustments each year. Moreover, the Inflation Adjustment Act directs agencies to adjust the civil penalties annually notwithstanding section 553 of the APA,²⁰ and OMB Guidance reaffirms that agencies need not provide a delay in effective date for the annual adjustments for inflation.²¹

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.²² As noted previously, the CFPB has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,²³ the CFPB reviewed this final rule. The CFPB has determined that this rule does not create any new information collections or substantially revise any existing collections.

D. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the CFPB will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller

General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 12 CFR Part 1083

Administrative practice and procedure, Consumer protection, Penalties.

Authority and Issuance

For the reasons set forth in the preamble, the CFPB amends 12 CFR part 1083, as set forth below:

PART 1083—CIVIL PENALTY ADJUSTMENTS

■ 1. The authority citation for part 1083 continues to read as follows:

Authority: 12 U.S.C. 2609(d); 12 U.S.C. 5113(d)(2); 12 U.S.C. 5565(c); 15 U.S.C. 1639e(k); 15 U.S.C. 1717a(a); 28 U.S.C. 2461 note.

■ 2. Section 1083.1 is revised to read as follows:

§ 1083.1 Adjustment of civil penalty amounts.

(a) The maximum amount of each civil penalty within the jurisdiction of the Consumer Financial Protection Bureau to impose is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. 2461 note), as follows:

¹⁵ Numbers may not multiply to totals shown because of rounding.

¹⁶ 5 U.S.C. 553(b)(B).

¹⁷ Inflation Adjustment Act section 4, codified at 28 U.S.C. 2461 note.

¹⁸ Young Memo.

¹⁹ 5 U.S.C. 553(d).

²⁰ Inflation Adjustment Act section 4, codified at 28 U.S.C. 2461 note.

²¹ Young Memo.

²² 5 U.S.C. 603(a), 604(a).

²³ 44 U.S.C. 3506; 5 CFR part 1320.

TABLE 1 TO PARAGRAPH (a)

Law	Penalty description	Adjusted maximum civil penalty amount
12 U.S.C. 5565(c)(2)(A)	Tier 1 penalty	\$7,217
12 U.S.C. 5565(c)(2)(B)	Tier 2 penalty	36,083
12 U.S.C. 5565(c)(2)(C)	Tier 3 penalty	1,443,275
15 U.S.C. 1717a(a)(2)	Per violation	2,515
15 U.S.C. 1717a(a)(2)	Annual cap	2,513,215
12 U.S.C. 2609(d)(1)	Per failure	118
12 U.S.C. 2609(d)(1)	Annual cap	236,451
12 U.S.C. 2609(d)(2)(A)	Per failure, where intentional	236
12 U.S.C. 5113(d)(2)	Per violation	36,439
15 U.S.C. 1639e(k)(1)	First violation	14,435
15 U.S.C. 1639e(k)(2)	Subsequent violations	28,866

(b) The adjustments in paragraph (a) of this section shall apply to civil penalties assessed after January 15, 2025, whose associated violations occurred on or after November 2, 2015.

Brian Shearer,

Assistant Director, Office of Policy Planning and Strategy, Consumer Financial Protection Bureau.

[FR Doc. 2025-00167 Filed 1-7-25; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-2021; Project Identifier AD-2023-01077-T; Amendment 39-22905; AD 2024-25-03]

RIN 2120-AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Gulfstream Aerospace Corporation Model GVII-G500 and GVII-G600 airplanes. This AD was prompted by a report of cracking in the electrical grounding receptacles located on the left and right wings. This AD requires inspecting the electrical grounding receptacles for cracks and corrosion, performing applicable on-condition actions, and sealing over the grounding receptacles on the top of the wings to permanently disable the receptacle. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 12, 2025.

The Director of the Federal Register approved the incorporation by reference

of certain publications listed in this AD as of February 12, 2025.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-2021; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Gulfstream material identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402-2206; telephone 800-810-4853; email pubs@gulfstream.com; website [gulfstream.com/en/customer-support](https://www.gulfstream.com/en/customer-support).
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-2021.

FOR FURTHER INFORMATION CONTACT: Brandon Ellis, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404-474-5535; email: 9-ASO-ATLACO-ADs@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Gulfstream Aerospace Corporation Model GVII-G500 and GVII-G600 airplanes. The NPRM published in the **Federal Register** on August 22, 2024 (89 FR 67913). The NPRM was prompted by a report of

cracking in the electrical grounding receptacles located on the left and right wings. In the NPRM, the FAA proposed to require inspecting the electrical grounding receptacles for cracks and corrosion, performing applicable on-condition actions, and sealing over the grounding receptacles on the top of the wings to permanently disable the receptacle. The FAA is issuing this AD to address cracks and corrosion of the electrical grounding receptacles. The unsafe condition, if not addressed, could result in fuel leaking from the electrical grounding receptacles.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from an individual and three anonymous commenters who supported the NPRM without change.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Gulfstream GVII-G500 Customer Bulletin No. 089, dated November 28, 2023; and Gulfstream GVII-G600 Customer Bulletin No. 058, dated November 28, 2023. This material specifies procedures for the following actions:

- Borescope inspections for cracking and corrosion of the interior walls of the grounding receptacle casing.

- Measurement of the inner diameter of the grounding receptacle if any Level 1 corrosion is found.
- Repair including cleaning and application of chemical conversion coating if any Level 1 corrosion within the specified tolerance (inner diameter) is found.
- Replacement of the grounding receptacle assembly if any crack, any Level 2 or Level 3 corrosion, or any

Level 1 corrosion outside of the specified tolerance is found.

- Removal of the “GROUND HERE” decal/stencil from the grounding receptacles, and application of epoxy over the ground receptacle area to permanently disable the receptacles.

These documents are distinct since they apply to different airplane models. This material is reasonably available because the interested parties have

access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 236 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspecting and disabling grounding receptacles	64 work-hours × \$85 per hour = \$5,440	\$83	\$5,523	\$1,303,428

The FAA estimates the following costs to do any necessary corrective actions that would be required based on

the results of the inspections. The agency has no way of determining the

number of aircraft that might need these actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair	12 work-hours × \$85 per hour = \$1,020	\$83	\$1,103
Replacement	35 work-hours × \$85 per hour = \$2,975	926	3,901

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

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on

the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–25–03 Gulfstream Aerospace Corporation: Amendment 39–22905; Docket No. FAA–2024–2021; Project Identifier AD–2023–01077–T.

(a) Effective Date

This airworthiness directive (AD) is effective February 12, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Gulfstream Aerospace Corporation airplanes, certificated in any category, identified in paragraphs (c)(1) and (2) of this AD.

(1) Model GVII–G500 airplanes, having serial numbers (S/Ns) 72001 through 72139 inclusive.

(2) Model GVII–G600 airplanes, having S/Ns 73001 through 73144 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by a report of cracking in the electrical receptacles located on left and right wings of certain Gulfstream Aerospace Corporation Model GVII airplanes. The FAA is issuing this AD to address cracks and corrosion of the electrical grounding receptacles. The unsafe condition, if not

addressed, could result in fuel leaking from the electrical grounding receptacles.

(f) Compliance

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

(g) Required Actions

Within 36 months after the effective date of this AD, do the actions specified in paragraphs (g)(1) and (2) of this AD, in accordance with Gulfstream GVII–G500 Customer Bulletin No. 089 or Gulfstream GVII–G600 Customer Bulletin No. 058, both dated November 28, 2023, as applicable.

(1) Do borescope inspections for cracking and corrosion of the interior walls of the grounding receptacle casing and do all applicable corrective actions before further flight.

(2) Remove the “GROUND HERE” decal/stencil from the grounding receptacles and apply epoxy over the ground receptacle area to permanently disable the grounding receptacles.

(h) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) For material that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (h)(3)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled “RC Exempt,” then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(i) Related Information

For more information about this AD, contact Brandon Ellis, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5535; email: 9-ASO-ATLACO-ADs@faa.gov.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of

the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

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

(i) Gulfstream GVII–G500 Customer Bulletin No. 089, dated November 28, 2023.

(ii) Gulfstream GVII–G600 Customer Bulletin No. 058, dated November 28, 2023.

(3) For Gulfstream material identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; email pubs@gulfstream.com; website gulfstream.com/en/customer-support.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on December 4, 2024.

Victor Wicklund,

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

[FR Doc. 2025–00138 Filed 1–7–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2024; Project Identifier MCAI–2024–00140–T; Amendment 39–22907; AD 2024–25–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Defense and Space S.A. (Formerly Known as Construcciones Aeronauticas, S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Defense and Space S.A. Model CN–235, CN–235–200, and CN–235–300 airplanes. This AD was prompted by a torn bulkhead seal found jamming the nose landing gear (NLG) emergency cable pulley. Due to the similarity of design, the main landing gear (MLG) emergency cable pulley could be exposed to the same failure mode. This AD requires repetitive inspections and corrective actions for damage of affected bulkhead seals and retainer rings, and repetitive replacement of affected parts, as specified in a European Union

Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 12, 2025.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 12, 2025.

ADDRESSES:

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

Material Incorporated by Reference:

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

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at regulations.gov under Docket No. FAA–2024–2024.

FOR FURTHER INFORMATION CONTACT:

Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3220; email: shahram.daneshmandi@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Defense and Space S.A. (formerly known as Construcciones Aeronauticas, S.A.) Model CN–235, CN–235–200, and CN–235–300 airplanes. The NPRM published in the **Federal Register** on August 20, 2024 (89 FR 67332). The NPRM was prompted by AD 2024–0054, dated February 26, 2024 (EASA AD 2024–0054) (also referred to as the MCAI) issued by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union.

The MCAI states a torn bulkhead seal was found jamming the NLG emergency cable pulley. Due to the similarity of design, the MLG emergency cable pulley could be exposed to the same failure mode.

In the NPRM, the FAA proposed to require repetitive inspections and corrective actions for damage of affected bulkhead seals and retainer rings, and repetitive replacement of affected parts, as specified in EASA AD 2024–0054. The FAA is issuing this AD to address a jammed emergency cable pulley, which could prevent the emergency extension of the landing gears when required, causing damage to the airplane and possible injury to occupants.

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

Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will

increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

EASA AD 2024–0054 specifies procedures for repetitive general visual inspections for any type of damage of the bulkhead seals and the retainer rings, and, depending on findings, replacement. EASA AD 2024–0054 also requires repetitive replacement of affected parts. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Costs of Compliance

The FAA estimates that this AD affects 10 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 7 work-hours × \$85 per hour = \$595 per inspection/replacement cycle.	\$365 per replacement cycle ...	Up to \$960 per inspection/replacement cycle.	Up to \$9,600 per inspection/replacement cycle.

The FAA estimates the following costs to do any necessary on-condition action that would be required based on

the results of any required actions. The FAA has no way of determining the

number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
2 work-hours × \$85 per hour = \$170	\$365	\$535

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–25–05 Airbus Defense and Space S.A. (Formerly Known as Construcciones Aeronauticas, S.A.): Amendment 39–

22907; Docket No. FAA–2024–2024;
Project Identifier MCAI–2024–00140–T.

(a) Effective Date

This airworthiness directive (AD) is effective February 12, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Defense and Space S.A. (formerly known as Construcciones Aeronauticas, S.A.) Model CN–235, CN–235–200, and CN–235–300 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by a torn bulkhead seal found jamming the nose landing gear emergency cable pulley. Due to the similarity of design, the main landing gear emergency cable pulley could be exposed to the same failure mode. The FAA is issuing this AD to address this potential unsafe condition, which could prevent the emergency extension of the landing gears when required, causing damage to the airplane and possible injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2024–0054, dated February 26, 2024 (EASA AD 2024–0054).

(h) Exceptions to EASA AD 2024–0054

(1) Where EASA AD 2024–0054 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph 3.1.1 of the Alert Operators Transmission (AOT) specified in EASA AD 2024–0054, states “each year (1 Year between 8 and 10 Years since component installation) since the inspection,” this AD requires replacing that text with “within one year after the last inspection”.

(3) This AD does not adopt the “Remarks” section of EASA AD 2024–0054.

(i) No Reporting Requirement

Although the material referenced in EASA AD 2024–0054 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (k) of this AD. Information may be emailed to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus Defense and Space S.A.’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Additional Information

For more information about this AD, contact Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3220; email: shahram.daneshmandi@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2024–0054, dated February 26, 2024.

(ii) [Reserved]

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

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on December 4, 2024.

Victor Wicklund,

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

[FR Doc. 2025–00146 Filed 1–7–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0755; Project Identifier AD–2023–00521–E; Amendment 39–22909; AD 2024–25–07]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain General Electric Company (GE) Model GENx–1B64, GENx–1B64/P1, GENx–1B64/P2, GENx–1B67, GENx–1B67/P1, GENx–1B67/P2, GENx–1B70, GENx–1B70/75/P1, GENx–1B70/75/P2, GENx–1B70/P1, GENx–1B70/P2, GENx–1B70C/P1, GENx–1B70C/P2, GENx–1B74/75/P1, GENx–1B74/75/P2, GENx–1B76/P2, GENx–1B76A/P2, GENx–2B67, GENx–2B67B, and GENx–2B67/P engines. This AD was prompted by a manufacturer evaluation that determined a lower life limit may be necessary for certain stages 6–10 compressor rotor spools than allowed by the engine shop manual (ESM). This AD requires a one-time inspection of the stages 6–10 spools for previously accomplished blend repairs, a one-time inspection of the blend repairs on the stages 6–10 spools for compliance with the updated allowable limits, and replacement if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 12, 2025.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 12, 2025.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2024–0755; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For GE material identified in this AD, contact GE, 1 Neumann Way, Cincinnati, OH 45215; phone: (513)

552-3272; email: aviation.fleetsupport@ge.com; website: ge.com.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at regulations.gov under Docket No. FAA-2024-0755.

FOR FURTHER INFORMATION CONTACT:

Alexei Marqueen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238-7178; email: alexei.t.marqueen@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain GE Model GENx-1B64/P1, GENx-1B64/P2, GENx-1B67, GENx-1B67/P1, GENx-1B67/P2, GENx-1B70, GENx-1B70/75/P1, GENx-1B70/75/P2, GENx-1B70/P1, GENx-1B70/P2, GENx-1B70C/P1, GENx-1B70C/P2, GENx-1B74/75/P1, GENx-1B74/75/P2, GENx-1B76/P2, GENx-1B76A/P2, GENx-2B67, GENx-2B67B, and GENx-2B67/P engines with certain stages 6-10 spool installed. The NPRM published in the **Federal Register** on March 25, 2024 (89 FR 20553). The NPRM was prompted by a manufacturer evaluation which determined that a lower life limit may be necessary for certain stages 6-10 spools than that allowed in the engine shop manual. In the NPRM, the FAA proposed to require accomplishing a one-time inspection of the stages 6-10 spools for previously accomplished blend repairs, a one-time inspection of the blend repairs on the stages 6-10 spools for compliance with the updated allowable limits, and replacement, if necessary, within compliance times specified in GE GENx-1B Service Bulletin 72-0525, R00, dated October 4, 2023 (GENx-1B SB 72-0525, R00), or GENx-2B Service Bulletin 72-0460, R00, dated October 4, 2023 (GENx-2B SB 72-0460, R00). Depending on the part numbers and serial numbers of the affected stages 6-10 spools, the NPRM proposed to require these actions to be accomplished at the next piece-part exposure after the effective date of the proposed AD, or before the affected stages 6-10 spool reaches the cyclic removal threshold of up to 11,894 cycles since new. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from eight commenters. The commenters were American Airlines, Air Line Pilots Association, International (ALPA), Boeing Commercial Airplanes (Boeing), GE, Japan Airlines, Qatar Airways, United Airlines, and United Parcel Service (UPS). ALPA and Boeing supported the NPRM without change. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request for Clarification of Compliance Time

Qatar Airways requested clarification of the compliance threshold specified in the NPRM. The commenter pointed out that the compliance thresholds in the service information specify that "at the next piece-part exposure of the affected 6-10 spools, but before the affected 6-10 spools reach the cycle since new threshold for inspection listed in paragraph 4., Appendix-A, Table 1," whereas the NPRM expressed the compliance time as "At the next piece-part exposure after the effective date of this AD or before the affected stages 6-10 spool reaches the cyclic removal threshold specified in paragraph 4., Appendix-A, Table 1 of GENx-1B 72-0525, R00 or GENx-2B SB 72-0460, R00, as applicable." The commentator stated that the compliance time as written, is unclear about when to take action and which takes priority (next piece part or cycle thresholds).

The FAA agrees that the compliance time is unclear. Paragraph (g) of this AD has been updated to state that the required action is to be performed at next piece part exposure or before the spool reaches the cycle removal thresholds, whichever occurs first.

Request To Update the Definition of "Part Eligible for Installation"

American Airlines and UPS requested that the FAA reword paragraph (h)(2) of the proposed AD to allow installation of an affected part, provided that the part passes the required inspections. UPS pointed out that in both paragraph (g) of the proposed AD and the service information, replacement of an affected part is only required if a previously accomplished blend repair is found and is also not within the allowable limits. However, the proposed definition would prohibit installation of any affected part, regardless of the inspection results. In addition, UPS requested that paragraph (h)(2) of the proposed AD be reworded to redefine a

"part eligible for installation" as a stages 6-10 spool that does not have a P/N and S/N defined in paragraph 4, Appendix A, Table 1 of GENx-1B 72-0525, R00 or GENx-2B 72-0460, R00, or a stages 6-10 spool with a P/N and S/N that is listed in paragraph 4, Appendix A, Table 1 of GENx-1B 72-0525, R00 or GENx-2B 72-0460 that has been inspected and found to be within the allowable limits.

The FAA agrees that a stages 6-10 spool that passes inspection does not need to be removed from service. Therefore, paragraph (h)(2) of this AD has been updated to reflect this change.

Request To Revise the Summary

GE requested that the FAA revise the **SUMMARY** of the NPRM to clarify that for certain stages 6-10 compressor rotor spools there is a potential life shortfall to that specified in the ESM, instead of an absolute or definite life shortfall. GE stated that the evaluation of the repair limits demonstrated that at the worst size and location a stages 6-10 spool would have an ultimate life lower than that published in the ESM. However, there is no evidence to show that any of the affected stages 6-10 spools have a repair at the worst size and location. GE pointed out that for this reason, an inspection is required to determine if there is a possibility of the ultimate life lower than that published in the ESM. GE recommended adding the terms "may be" to the **SUMMARY** to clarify that not all stages 6-10 spools will have a lower life limit.

The FAA agrees that clarification is necessary and has updated the **SUMMARY** of this AD accordingly.

Request To Update the Required Service Information

GE requested that the FAA update the NPRM to specify the latest revision of the service information. GE specified the intention to revise GE GENx-1B SB 72-0525, R00 and GENx-2B SB 72-0460, R00, and added that the updated revisions will not change actions or accomplishment instructions but will add wording indicating hardware that meets current ESM limits will not have a lower limit than published in CH05.

The FAA agrees and has revised this AD to refer to GE GENx-1B Service Bulletin 72-0525, R01, dated June 10, 2024 (GENx-1B SB 72-0525, R01), and GENx-2B Service Bulletin 72-0460, R01, dated June 10, 2024 (GENx-2B SB 72-0460, R01), as the appropriate source of service information. Additionally, the FAA has updated this AD to include credit for the actions required by paragraph (g) of this AD, if those actions were done prior to the effective date of

this AD using GE GENx-1B SB 72-0525, R00 and GENx-2B SB 72-0460, R00.

Request To Clarify the Applicability of ESM Life Limits

United Airlines requested that the FAA include additional verbiage in the service information and the proposed AD that, in the case of an affected part passing the inspection, that part retains the ultimate life limit specified in the ESM. United Airlines stated that paragraph (g) of the proposed AD was not specific about what actions to take if the affected part passed the inspection. However, the service information specifies that no further action is necessary. Also, paragraph 1.E.(3) of GENx-1B SB 72-0525, R00 and GENx-2B SB 72-0460, R00 states that “affected 6-10 spools were found to have life limit lower than ultimate life limit.”

The FAA disagrees with the request. The life limits listed in the ESM are mandatory and applicable regardless of the actions required by this AD. Should any affected part be found to have a blend repair that is not in compliance with the allowable limits specified in the applicable service information, then this AD requires removal from service and replacement of that specific part. However, this AD does not change the life limits of parts that pass the inspection. Therefore, the FAA has not changed this AD in this regard.

Request To Specify the Affected Engine Models in the Required Actions

Japan Airlines requested that the FAA revise paragraph (g) of the proposed AD

to specify the affected engine models at the beginning of each of the sentences, to provide better clarity. Japan Airlines referred to paragraph (g) of AD 2023-17-08 as an example.

The FAA disagrees with the request. AD 2023-17-08 specifies multiple affected parts on both the GENx-1B and GENx-2B Model engines, and therefore the FAA used multiple paragraphs for each affected part and each engine model. In this AD, the only affected parts are stages 6-10 spools, making it unnecessary to specify engine models in paragraph (g) of this AD.

Changes After the NPRM Was Published

After the NPRM was published, the FAA determined that Model GENx-1B64 engines were inadvertently left out of the applicability. None of these engines with the affected stages 6-10 spools are installed on airplanes on the U.S. registry. This model has been added to the applicability of the final rule in case one of these engines with affected 6-10 spools are installed on an airplane registered for operation in United States. Adding this model to the applicability does not increase the burden to U.S. operators over the already proposed requirements, so issuing a supplemental notice of proposed rulemaking is unnecessary.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD

to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed GE GENx-1B SB 72-0525, R01, and GENx-2B SB 72-0460, R01. This service information identifies the part numbers and serial numbers of affected stages 6-10 spools; and specifies instructions for a one-time inspection of the stages 6-10 spools for previously accomplished blend repairs, a one-time inspection of the blend repairs on the stages 6-10 spools for compliance with the updated allowable limits, and replacement if necessary. These documents are distinct since they apply to different engine models.

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

Costs of Compliance

The FAA estimates that this AD affects 6 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect stages 6-10 spools	8 work-hours × \$85 per hour = \$680	\$0	\$680	\$4,080
Inspect previous blend repairs	1 work-hours × \$85 per hour = \$85	0	85	510

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the inspections. The agency has no way of determining the number

of engines that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace stages 6-10 spool	8 work-hours × \$85 per hour = \$680	\$1,307,600	\$1,308,280

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in

Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and

procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–25–07 General Electric Company:

Amendment 39–22909; Docket No. FAA–2024–0755; Project Identifier AD–2023–00521–E.

(a) Effective Date

This airworthiness directive (AD) is effective February 12, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) Model GENx–1B64, GENx–1B64/P1, GENx–1B64/P2, GENx–1B67, GENx–1B67/P1, GENx–1B67/P2, GENx–1B70, GENx–1B70/P1, GENx–1B70/P2, GENx–1B70/P1, GENx–1B70/P2, GENx–1B70C/P1, GENx–

1B70C/P2, GENx–1B74/75/P1, GENx–1B74/75/P2, GENx–1B76/P2, GENx–1B76A/P2, GENx–2B67, GENx–2B67B, and GENx–2B67/P engines with an installed:

- (1) Stages 6–10 compressor rotor spool (stages 6–10 spool) having a part number (P/N) and serial number (S/N) listed in paragraph 4, Appendix—A, Table 1 of GE GENx–1B Service Bulletin 72–0525, R01, dated June 10, 2024 (GENx–1B SB 72–0525, R01); or
- (2) Stages 6–10 spool having a P/N and S/N listed in paragraph 4, Appendix—A, Table 1 of GE GENx–2B Service Bulletin 72–0460, R01, dated June 10, 2024 (GENx–2B SB 72–0460, R01).

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by a manufacturer evaluation which determined that a lower life limit may be necessary for certain stages 6–10 spools than that allowed in the engine shop manual. The FAA is issuing this AD to prevent fracture and potential uncontained failure of the stages 6–10 spools. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the aircraft.

(f) Compliance

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

(g) Required Actions

At the next piece-part exposure after the effective date of this AD or before the affected stages 6–10 spool reaches the cyclic removal threshold specified in paragraph 4., Appendix—A, Table 1 of GENx–1B 72–0525, R01 or GENx–2B SB 72–0460, R01, as applicable, whichever occurs first, do the following actions:

- (1) Inspect the stages 6–10 spool for previously accomplished blend repairs in accordance with the Accomplishment Instructions, paragraph 3.B.(1) of GENx–1B SB 72–0525, R01 or GENx–2B SB 72–0460, R01, as applicable.
- (2) If during any inspection required by paragraph (g)(1) of this AD, any stages 6–10 spool is found to have a previously accomplished blend repair, before further flight, inspect the blend repair for compliance with the allowable limits in accordance with the Accomplishment Instructions, paragraph 3.B.(2) of GENx–1B SB 72–0525, R01 or GENx–2B SB 72–0460, R01, as applicable.
- (3) If during any inspection required by paragraph (g)(2) of this AD, any stages 6–10 spool is found to have a previously accomplished blend repair that is not within the allowable limits, before further flight, remove the stages 6–10 spool from service and replace with a part eligible for installation in accordance with the Accomplishment Instructions, paragraph 3.B.(2)(a)1 or 3.B.(2)(b)1 of GENx–1B SB 72–0525, R01 or GENx–2B SB 72–0460, R01, as applicable.

(h) Definition

For the purposes of this AD:

- (1) A "piece-part exposure" is when the stages 6–10 spool is disassembled from the high-pressure compressor rotor assembly.
- (2) A "part eligible for installation" is either a stages 6–10 spool that does not have a P/N and S/N identified in paragraph 4, Appendix—A, Table 1 of GENx–1B 72–0525, R01 or GENx–2B 72–0460, R01, or a stages 6–10 spool that does have a P/N and S/N identified in paragraph 4, Appendix—A, Table 1 of GENx–1B 72–0525, R01 or GENx–2B 72–0460, R01, provided that the affected part is not removed in accordance with paragraph (g)(3) of this AD.

(i) Credit for Previous Actions

You may take credit for the actions required by paragraph (g) of this AD if you performed those actions before the effective date of this AD using GE GENx–1B Service Bulletin 72–0525, R00, dated October 4, 2023, or GENx–2B Service Bulletin 72–0460, R00, dated October 4, 2023.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the AIR–520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: ANE-AD-AMOC@faa.gov.

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

(k) Related Information

For more information about this AD, contact Alexei Marqueen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7178; email: alexei.t.marqueen@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) GE GENx–1B Service Bulletin 72–0525, R01, dated June 10, 2024.

(ii) GE GENx–2B Service Bulletin 72–0460, R01, dated June 10, 2024.

(3) For GE material identified in this AD, contact GE 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: aviation.fleetssupport@ge.com; website: ge.com.

(4) You may view this material at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on December 6, 2024.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2025–00208 Filed 1–7–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–1898; Project Identifier AD–2023–01013–E; Amendment 39–22904; AD 2024–25–02]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain CFM International, S.A. (CFM) Model LEAP–1B engines. This AD was prompted by a report of a quality escape involving certain high-pressure compressor (HPC) stage 2 seals manufactured without detailed finish machining, which could result in deeper rubs and mechanical damage to the seal teeth of the stage 3–4 compressor rotor blisk (stage 3–4 blisk) of the mating compressor rotor during initial operation. This AD requires a visual inspection of the HPC stage 2 seal, a visual inspection of the forward arm seal teeth of the stage 3–4 blisk, an eddy current inspection (ECI) of the forward arm seal teeth of the stage 3–4 blisk, and replacement of the HPC stage 2 seal and the stage 3–4 blisk, if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 12, 2025.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 12, 2025.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2024–1898; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For CFM material identified in this AD, contact CFM, GE Aviation Fleet Support, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45215; phone: (877) 432–3272; email: aviation.fleetsupport@ge.com.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at regulations.gov under Docket No. FAA–2024–1898.

FOR FURTHER INFORMATION CONTACT:

Mehdi Lamnyi, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7743; email: mehdi.lamnyi@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain CFM Model LEAP–1B engines. The NPRM published in the **Federal Register** on July 29, 2024 (89 FR 60838). The NPRM was prompted by a report of a quality escape involving certain HPC stage 2 seals manufactured without detailed finish machining, which could result in deeper rubs and mechanical damage to the seal teeth of the stage 3–4 blisk of the mating compressor rotor during initial operation. In the NPRM, the FAA proposed to require a visual inspection of the HPC stage 2 seal, a visual inspection of the forward arm seal teeth of the stage 3–4 blisk, an ECI of the forward arm seal teeth of the stage 3–4 blisk, and replacement of the HPC stage 2 seal and the stage 3–4 blisk, if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from six commenters. The commenters were The Boeing Company (Boeing), CFM, Ryanair, StandardAero, Southwest Airlines (SWA), and United Airlines

(UAL). Boeing concurred with the contents of the NPRM and StandardAero expressed support for the NPRM. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Remove Certain Engine Serial Numbers (ESNs) From the Applicability

CFM and Ryanair requested that the FAA remove certain ESNs from the applicability of the proposed AD or include replacement of the HPC stage 2 seal and the stage 3–4 blisk with new parts as an option for complying with the proposed AD. Both commenters stated that certain ESNs had already replaced the HPC stage 2 seal and the stage 3–4 blisk with new parts. Both commenters also pointed out that by replacing the HPC stage 2 seal and the stage 3–4 blisk with new parts, the unsafe condition is mitigated for those engines, but not as specified in the required actions of the proposed AD.

Since this is a quality escape issue and limited to the parts originally installed on the engine, the FAA agrees for the reasons provided and has removed ESNs 60A676 and 60A669 from the applicability of this AD.

Request for Clarification of Difference With the Service Information

StandardAero and UAL requested that the FAA provide clarification regarding why the borescope inspection (BSI) specified in the required service information is not required by the NPRM. StandardAero pointed out that the NPRM does not address why the BSI is not required. StandardAero also mentioned that the European Union Aviation Safety Agency (EASA) has a corresponding proposed AD (EASA PAD 24–108), which discussed and inferred that the BSIs have already been completed on all affected engines. StandardAero specifically requested that the FAA confirm that the BSIs have been completed on all the ESNs that are specified in the service information, and that the ESNs specified in the NPRM are those that require additional action due to the BSI results. UAL pointed out that the service information contains Required for Compliance (RC) steps for a BSI. UAL requested clarification of whether those steps are required by the NPRM and whether the BSI is acceptable for verifying the condition of the HPC stage 2 seal and the stage 3–4 blisk.

The FAA acknowledges the difference between the actions required by this AD and those specified in the service information. The engine manufacturer has provided the FAA with evidence

that all affected engines have completed the on-wing BSI, as well as the results of the on-wing BSI. Therefore, the FAA has determined that there is no need for the BSI to be completed as part of the actions required by this AD and that only the follow-on in-shop actions are necessary. The FAA has not changed this AD in this regard.

Request for Clarification of RC Steps

StandardAero requested that the FAA provide clarification regarding the RC steps specified in the required service information but are not required by the NPRM. StandardAero pointed out that the service information states that certain paragraphs are labeled as “RC,” and that if the service information is mandated by an AD, then those steps must be done to comply with the AD. StandardAero requested that the FAA coordinate with the engine manufacturer to prevent differences between and confusion regarding the service information and the requirements of the AD. StandardAero also stated its preference that OEMs and type certificate holders do not attempt to highlight required actions in their service information for an AD, especially those that do not yet exist, and allow the FAA to specify the required actions in the AD.

To clarify, the FAA does not make changes to the service information; such changes are implemented by the engine manufacturer. The FAA agrees with the concept of minimizing AD requirements when appropriate. The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (AD ARC), to enhance the AD system. One enhancement is a process for annotating which steps in the service information are “required for compliance” (RC) with an AD. Differentiating these steps from other tasks in the service information improves an owner’s/operator’s understanding of AD requirements and helps provide consistent judgment in AD compliance. However, even though the on-wing BSI is labeled RC in the service information, the FAA has been given evidence that all affected engines have completed this inspection. The FAA has chosen to limit the applicability of this AD based on the results of those inspections. Therefore, since the on-wing BSI would not be mandated by this AD and the applicability adjusted accordingly, the FAA has determined that it would be less confusing to call out the specific steps from the service bulletin to complete this action rather than utilize the RC concept. The FAA has

determined to include a “Differences Between this Final Rule and the Related Material” section in the preamble of this final rule to discuss the difference; however, no changes were made to the regulatory text of the AD.

Request To Include Credit for Previous Actions

SWA and UAL requested that the FAA include credit for previous actions accomplished using Issue 001–00 of the service information. SWA stated that the primary differences between Issue 001–00 and Issue 002–00 are reidentifying steps as RC steps. SWA also pointed out that Issue 001–00 was accomplished on SWA affected engines prior to publication of the NPRM.

The FAA disagrees with the request. Issue 001–00 of the service information was revised to include a new ECI tool part number for the module level inspection required for the stage 3–4 blisk. Any ECI completed in accordance with Issue 001–00 of the service information, was done without this tool, rendering the results of the ECI unacceptable. Therefore, the FAA is unable to include credit for previous actions. However, if the affected parts were removed from service and replaced before the effective date of this AD without performing the inspections required by this AD, and substantiating information can be provided, the operator may request an alternative method of compliance (AMOC) under the provisions of paragraph (h) of this AD. Additionally, regarding the RC label, this AD does not require the on-wing BSI since the manufacturer has already provided the FAA with evidence that all the affected engines have complied with the on-wing BSI, and the FAA has chosen to limit the applicability of this AD based on the results of those inspections. Therefore, since the on-wing BSI would not be mandated by this AD and the applicability adjusted accordingly, the FAA has determined that it would be less confusing to call out the specific steps from the service bulletin to complete this action rather than utilize the RC concept. Therefore, this AD only requires the subsequent in-shop inspections for those engines that failed the on-wing BSI, all of which are included in the applicability of this AD. The FAA has determined to include a “Differences Between this Final Rule and the Referenced Material” section in the preamble of this final rule to discuss this; however, no changes were made to the regulatory text.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed CFM Service Bulletin LEAP–1B–72–00–0394–01A–930A–D, Issue 002–00, dated January 23, 2024, which specifies procedures for an on-wing BSI of the honeycomb structure of the affected stage 2 seals and rotating seal teeth coating condition and provides instructions for determining the serviceability of affected components that fail the BSI. This material also specifies procedures for an in-shop visual inspection of the HPC stage 2 seal and the forward arm seal teeth of the stage 3–4 blisk, an ECI of the forward arm seal teeth of the stage 3–4 blisk, and replacement of the HPC stage 2 seal and the stage 3–4 blisk. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Differences Between This Final Rule and the Referenced Material

Where CFM Service Bulletin LEAP–1B–72–00–0394–01A–930A–D, Issue 002–00, dated January 23, 2024, includes RC steps that require a 360-degree BSI of the trail edge area of the stage 2 seals, this AD does not require those steps. Additionally, this AD does not require any RC steps. Instead, the FAA has chosen to limit the applicability of this AD based on the results of those inspections. Therefore, since the on-wing BSI would not be mandated by this AD and the applicability adjusted accordingly, the FAA has determined that it would be less confusing to call out the specific steps from the service bulletin to complete this action rather than utilize the RC concept.

Costs of Compliance

The FAA estimates that this AD affects 31 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Visual inspection of HPC stage 2 seal	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$2,635
Visual inspection of stage 3–4 blisk	1 work-hour × \$85 per hour = \$85	0	85	2,635
ECI of stage 3–4 blisk	4 work-hours × \$85 per hour = \$340	0	340	10,540

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the inspection. The agency has no way of determining the number of

engines that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace HPC stage 2 seal	8 work-hours × \$85 per hour = \$680	\$55,312	\$55,992
Replace HPC stage 3–4 blisk	8 work-hours × \$85 per hour = \$680	518,500	519,180

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on

the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–25–02 CFM International, S.A.:
Amendment 39–22904; Docket No. FAA–2024–1898; Project Identifier AD–2023–01013–E.

(a) Effective Date

This airworthiness directive (AD) is effective February 12, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFM International, S.A. (CFM) Model LEAP–1B21, LEAP–1B23, LEAP–1B25, LEAP–1B27, LEAP–1B28, LEAP–1B28B1, LEAP–1B28B2, LEAP–1B28B2C, LEAP–1B28B3, LEAP–1B28BBJ1, and LEAP–1B28BBJ2 engines having an engine serial number (ESN) identified in Table 1 to paragraph (c) of this AD.

TABLE 1 TO PARAGRAPH (c)—APPLICABLE ESNs

ESN	ESN	ESN	ESN	ESN
60A635	60A647	60A662	60A682	60A702
60A639	60A650	60A663	60A686	
60A642	60A653	60A670	60A687	
60A643	60A655	60A671	60A689	
60A644	60A656	60A673	60A690	
60A645	60A660	60A678	60A691	
60A646	60A661	60A679	60A696	

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by a report of a quality escape involving certain high-pressure compressor (HPC) stage 2 seals manufactured without detailed finish machining, which could result in deeper rubs and mechanical damage to the seal teeth of the stage 3–4 compressor rotor blisk (stage 3–4 blisk) of the mating compressor rotor during initial operation. The FAA is issuing this AD to prevent uncontained failure of the stage 3–4 blisk. The unsafe condition, if not addressed, could result in uncontained part release, damage to the engine, and damage to the aircraft.

(f) Compliance

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

(g) Required Actions

(1) Before accumulating 2,900 cycles since new (CSN) or within 10 flight cycles after the effective date of this AD, whichever occurs later, perform the following:

(i) A visual inspection of the HPC stage 2 seal in accordance with the Accomplishment Instructions, paragraph 5.B.(3) of CFM Service Bulletin LEAP–1B–72–00–0394–01A–930A–D, Issue 002–00, dated January 23, 2024 (CFM SB LEAP–1B–72–00–0394–01A–930A–D, Issue 002–00).

(ii) A visual inspection of the forward arm seal teeth of the stage 3–4 blisk in accordance with the Accomplishment Instructions, paragraph 5.B.(4) of CFM SB LEAP–1B–72–00–0394–01A–930A–D, Issue 002–00.

(iii) An eddy current inspection of the forward arm seal teeth of the stage 3–4 blisk in accordance with the Accomplishment Instructions, paragraph 5.B.(5) of CFM SB LEAP–1B–72–00–0394–01A–930A–D, Issue 002–00.

(2) If, during the inspection required by paragraph (g)(1)(i) of this AD, any of the HPC stage 2 seal segments fail to meet the serviceability criteria specified in the Accomplishment Instructions, paragraph 5.B.(3) of CFM SB LEAP–1B–72–00–0394–01A–930A–D, Issue 002–00, before further flight, remove the unserviceable HPC stage 2 seal segments from service.

(3) If, during the inspections required by paragraphs (g)(1)(ii) and (iii) of this AD, the stage 3–4 blisk fails to meet the serviceability criteria specified in the Accomplishment Instructions, paragraph 5.B.(6) of CFM SB LEAP–1B–72–00–0394–01A–930A–D, Issue 002–00, before further flight:

(i) Remove the stage 3–4 blisk from service;

(ii) Remove all four HPC stage 2 seal segments from service; and

(iii) Replace the stage 3–4 blisk in accordance with the Accomplishment Instructions, paragraph 5.B.(7)(a) of CFM SB LEAP–1B–72–00–0394–01A–930A–D, Issue 002–00.

(4) If, during the actions required by paragraphs (g)(2) and (3) of this AD, the HPC stage 2 seal is removed, before further flight,

replace the HPC stage 2 seal in accordance with the Accomplishment Instructions, paragraph 5.B.(7)(b) of CFM SB LEAP–1B–72–00–0394–01A–930A–D, Issue 002–00.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the AIR–520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (i) of this AD and email to: AMOC@faa.gov.

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

(i) Additional Information

For more information about this AD, contact Mehdi Lamnyi, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7743; email: mehdi.lamnyi@faa.gov.

(j) Material Incorporated by Reference

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

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

(i) CFM International, S.A. (CFM) Service Bulletin LEAP–1B–72–00–0394–01A–930A–D, Issue 002–00, dated January 23, 2024.

(ii) [Reserved]

(3) For CFM material identified in this AD, contact CFM, GE Aviation Fleet Support, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45215; phone: (877) 432–3272; email: aviation.fleetssupport@ge.com.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on December 3, 2024.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2025–00207 Filed 1–7–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2024–1689; Project Identifier AD–2024–00109–T; Amendment 39–22910; AD 2024–25–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 767–200, –300, and –300F airplanes. This AD was prompted by a report of a main landing gear (MLG) collapse event following maintenance where a grinder was operating outside of its input parameters, resulting in possible heat damage to the outer cylinder of the MLG. This AD requires replacing affected outer cylinders. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 12, 2025.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 12, 2025.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1689; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Boeing material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website myboeingfleet.com.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1689.

FOR FURTHER INFORMATION CONTACT:

Stefanie Roesli, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3964; email: *Stefanie.N.Roesli@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 767–200, –300, and –300F series airplanes. The NPRM published in the **Federal Register** on June 20, 2024 (89 FR 51856), corrected July 15, 2024 (89 FR 57377). The NPRM was prompted by a report of a MLG collapse event following maintenance where a grinder was operating outside of its input parameters, resulting in possible heat damage to the outer cylinder of the MLG. In the NPRM, the FAA proposed to require replacing any affected outer cylinders. The FAA is issuing this AD to address any heat damage to the outer cylinder of the landing gear, which could result in the inability of a principal structural element to sustain limit load, gear collapse resulting in loss of control of the airplane, and potential for off-runway excursion.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from Air Line Pilots Association, International, Aviation Partners Boeing, and an individual commenter, who supported the NPRM without change.

The FAA received an additional comment from The Boeing Company. The following presents the comment received on the NPRM and the FAA’s response.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing Supplemental Type Certificate (STC) ST01920SE does not

affect the actions specified in the proposed AD.

The FAA concurs with the commenter. The FAA has redesignated paragraph (c) of the proposed AD as paragraph (c)(1) of this AD and added paragraph (c)(2) to this AD to state that installation of STC ST01920SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a “change in product” alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Request for Parts Installation Prohibition Paragraph

Boeing requested the addition of a parts installation prohibition paragraph as of the effective date of this AD. Boeing stated that the parts prohibition paragraph should prohibit installation of any affected outer cylinders with part numbers and serial numbers listed in Appendix A, B, or C of Boeing Alert Requirements Bulletin 767–32A0253 RB, dated February 6, 2024, unless the parts have been inspected, applicable on-condition corrective actions have been done, and the parts have been part marked, in accordance with Appendix D of Boeing Alert Requirements Bulletin 767–32A0253 RB. The MLG outer cylinders are rotatable structural components (RSC) that may be moved from one airplane to another. Additionally, the commenter asserted that since the applicability of the proposed AD covers all Model 767–200, –300, and –300F series airplanes in service, the parts installation prohibition is needed to prevent the affected outer cylinders from being moved onto airplanes that have already complied with the required actions of the AD.

The FAA agrees to clarify. This AD applies to all The Boeing Company Model 767–200, –300, and –300F airplanes. 14 CFR 39.7 specifies that once an AD is issued, no person may operate a product to which the AD

applies except in accordance with the requirements of that AD. Further, 14 CFR 39.9 imposes a continuing obligation to maintain compliance with an AD by establishing a separate violation for each time an aircraft is operated that fails to meet AD requirements. Since this AD captures all possibly affected operators and requires replacement of the affected parts, and since those operators have an ongoing obligation to ensure that the AD-mandated configuration is maintained, a parts installation prohibition is unnecessary. The FAA has not changed this AD as a result of the request.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 767–32A0253 RB, dated February 6, 2024. This material specifies procedures for performing a check of maintenance records or performing an inspection of the left and right MLG outer cylinders for any affected part numbers and serial numbers and replacing affected cylinders.

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

Costs of Compliance

The FAA estimates that this AD affects 574 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection or maintenance records check for affected part numbers.	Up to 3 work-hours × \$85 per hour = \$255	\$0	Up to \$255	Up to \$146,370.

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the inspection or maintenance records check. The agency has no way

of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of MLG outer cylinder (83 affected parts).	189 work-hours * × \$85 per hour = \$16,065	* \$500,000	\$516,065

* Task work-hours and parts cost are based on one MLG outer cylinder replacement.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024-25-08 The Boeing Company:
Amendment 39-22910; Docket No. FAA-2024-1689; Project Identifier AD-2024-00109-T.

(a) Effective Date

This airworthiness directive (AD) is effective February 12, 2025.

(b) Affected ADs

None.

(c) Applicability

- (1) This AD applies to all The Boeing Company Model 767-200, -300, and -300F series airplanes, certificated in any category.
- (2) Installation of Supplemental Type Certificate (STC) ST01920SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a "change in product" alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by a report of a main landing gear (MLG) collapse event following maintenance where a grinder was operating outside of its input parameters, resulting in possible heat damage to the outer cylinder of the MLG. The FAA is issuing this AD to address any heat damage to the outer cylinder of the landing gear. The unsafe condition, if not addressed, could result in the inability of a principal structural element to sustain limit load, gear collapse resulting in loss of control of the airplane, and potential for off-runway excursion.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the "Compliance" paragraph of Boeing Alert

Requirements Bulletin 767-32A0253 RB, dated February 6, 2024, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 767-32A0253 RB, dated February 6, 2024.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 767-32A0253, dated February 6, 2024, which is referred to in Boeing Alert Requirements Bulletin 767-32A0253 RB, dated February 6, 2024.

(h) Exceptions to Service Information Specifications

Where the Boeing Recommended Compliance Time column of the table in the "Compliance" paragraph of Boeing Alert Requirements Bulletin 767-32A0253 RB, dated February 6, 2024, uses the phrase "the Original Issue date of Requirements Bulletin 767-32A0253 RB," this AD requires using the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR-520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR-520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Stefanie Roesli, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206-231-3964; email: Stefanie.N.Roesli@faa.gov.

(2) Service information identified in this AD that is not incorporated by reference is

available at the address specified in paragraph (k)(3) of this AD.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 767–32A0253 RB, dated February 6, 2024.

(ii) [Reserved]

(3) For Boeing material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website myboeingfleet.com.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on December 9, 2024.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2025–00144 Filed 1–7–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31582; Amdt. No. 4145]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe

and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 8, 2025. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2025.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC, 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

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

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Standards Section Manager, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Office of Safety Standards, Flight Standards Service, Aviation Safety, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg 26, Room 217, Oklahoma City, OK 73099. Telephone (405) 954–1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its

associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, pilots do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Air Missions (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures

(TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

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

Thomas J. Nichols,

Standards Section Manager, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Office of Safety Standards, Flight Standards Service, Aviation Safety, Federal Aviation Administration.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 23 January 2025

Ormond Beach, FL, OMN, RNAV (GPS) RWY 9, Amdt 1D

Ormond Beach, FL, OMN, RNAV (GPS) RWY 17, Amdt 1B

Effective 20 February 2025

Dillingham, AK, DLG/PADL, RNAV (RNP) Y RWY 19, Orig-A

Santa Barbara, CA, SBA, ILS OR LOC RWY 7, Amdt 6

Santa Barbara, CA, SBA, RNAV (GPS) RWY 7, Amdt 1

Santa Barbara, CA, SBA, VOR RWY 25, Amdt 7

Washington, DC, IAD, ILS OR LOC RWY 19L, ILS RWY 19L (SA CAT II), Amdt 16A

Washington, DC, IAD, RNAV (GPS) Y RWY 19L, Amdt 3A

Washington, DC, IAD, RNAV (RNP) Z RWY 19L, Amdt 1A

North Vernon, IN, OVO, RNAV (GPS) Z RWY 23, Orig-B

Hays, KS, HYS, RNAV (GPS) RWY 4, Orig-B

Hays, KS, HYS, Takeoff Minimums and Obstacle DP, Amdt 3

Smith Center, KS, K82, RNAV (GPS) RWY 14, Orig-E

Smith Center, KS, K82, RNAV (GPS) RWY 18, Amdt 1A, CANCELED

Smith Center, KS, K82, RNAV (GPS) RWY 32, Orig-E

Smith Center, KS, K82, RNAV (GPS) RWY 36, Amdt 1A, CANCELED

Madisonville, KY, 2I0, RNAV (GPS) RWY 5, Amdt 1A

Lake Charles, LA, LCH, VOR–A, Amdt 15A

Aitkin, MN, AIT, RNAV (GPS) RWY 34, Amdt 1A

Buffalo, MN, CFE, RNAV (GPS) RWY 36, Amdt 1A

Olivia, MN, OVL, RNAV (GPS) RWY 29, Orig-D

Athens/Albany, OH, UNI, NDB RWY 25, Amdt 9E

Giddings, TX, GYB, RNAV (GPS) RWY 17, Amdt 1

Giddings, TX, GYB, RNAV (GPS) RWY 35, Amdt 1

Culpeper, VA, CJR, LOC RWY 4, Orig-B

Culpeper, VA, CJR, NDB RWY 4, Orig-B

Culpeper, VA, CJR, RNAV (GPS) RWY 4, Orig-B

Culpeper, VA, CJR, RNAV (GPS) RWY 22, Orig-B

Culpeper, VA, CJR, VOR–A, Amdt 5B

Bluefield, WV, BLF, ILS OR LOC RWY 23, Amdt 15F

Bluefield, WV, BLF, VOR RWY 23, Amdt 5E

[FR Doc. 2025–00194 Filed 1–7–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31583; Amdt. No. 4146]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 8, 2025. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 2025.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Standards Section Manager, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Office of Safety Standards, Flight Standards Service, Aviation Safety, Federal Aviation Administration, Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone: (405) 954-1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Air Missions (P-NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, pilots do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

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

Thomas J. Nichols,

Standards Section Manager, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Office of Safety Standards, Flight Standards Service, Aviation Safety, Federal Aviation Administration.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

- 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

- 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * Effective Upon Publication

AIRAC date	State	City	Airport	FDC No.	FDC date	Procedure name
23-Jan-25 ...	MN	Rushford	Rushford Muni/Robert W Bunke Fld.	4/0018	12/2/2024	VOR-A, Amdt 2B.
23-Jan-25 ...	MN	Rushford	Rushford Muni/Robert W Bunke Fld.	4/0019	12/2/2024	RNAV (GPS) RWY 34, Orig-C.
23-Jan-25 ...	ND	Stanley	Stanley Muni	4/9345	12/3/2024	RNAV (GPS) RWY 28, Amdt 3.

[FR Doc. 2025–00195 Filed 1–7–25; 8:45 am]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION**29 CFR Parts 4071 and 4302**

RIN 1212–AB45

Adjustment of Civil Penalties for Inflation**AGENCY:** Pension Benefit Guaranty Corporation.**ACTION:** Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is required to amend its regulations annually to adjust for inflation the maximum civil penalty for failure to provide certain notices or other material information and for failure to provide certain multiemployer plan notices.

DATES:

Effective date: This rule is effective January 8, 2025.

Applicability date: The increases in the civil monetary penalties under sections 4071 and 4302 of the Employee Retirement Income Security Act provided for in this rule apply to such penalties assessed after January 8, 2025.

FOR FURTHER INFORMATION CONTACT:

Karen Levin (levin.karen@pbgc.gov), Attorney, Regulatory Affairs Division, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; 202–229–3559. If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:**Executive Summary***Purpose of the Regulatory Action*

This rule is needed to carry out the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget guidance M–25–02. The rule adjusts, as required for 2025, the maximum civil penalties under 29 CFR 4071 and 29 CFR 4302 that the Pension Benefit Guaranty Corporation (PBGC) may assess for failure to provide certain notices or other material information and certain multiemployer plan notices. PBGC's legal authority for this action comes from the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and from sections 4002(b)(3), 4071, and 4302 of the

Employee Retirement Income Security Act of 1974 (ERISA).

Major Provisions of the Regulatory Action

This rule adjusts as required by law the maximum civil penalties that PBGC may assess under sections 4071 and 4302 of ERISA. The new maximum amounts are \$2,739 for section 4071 penalties and \$365 for section 4302 penalties.

Background

PBGC administers title IV of ERISA. Title IV has two provisions that authorize PBGC to assess civil monetary penalties.¹ Section 4302, added to ERISA by the Multiemployer Pension Plan Amendments Act of 1980, authorizes PBGC to assess a civil penalty of up to \$100 a day for failure to provide a notice under subtitle E of title IV of ERISA (dealing with multiemployer plans). Section 4071, added to ERISA by the Omnibus Budget Reconciliation Act of 1987, authorizes PBGC to assess a civil penalty of up to \$1,000 a day for failure to provide a notice or other material information under subtitles A, B, and C of title IV and sections 303(k)(4) and 306(g)(4) of title I of ERISA.

Adjustment of Civil Penalties

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,² requires agencies to adjust civil monetary penalties for inflation and to publish the adjustments in the **Federal Register**. An initial adjustment was required to be made by interim final rule published by July 1, 2016, and effective by August 1, 2016. Subsequent adjustments must be published by January 15 each year after 2016.

On December 17, 2024, the Office of Management and Budget issued memorandum M–25–02 on implementation of the 2025 annual inflation adjustment.³ The memorandum provides agencies with the cost-of-living adjustment multiplier for 2025, which is based on the

¹ Under the Federal Civil Penalties Inflation Adjustment Act of 1990, a penalty is a civil monetary penalty if (among other things) it is for a specific monetary amount or has a maximum amount specified by Federal law. Title IV also provides (in section 4007) for penalties for late payment of premiums, but those penalties are neither in a specified amount nor subject to a specified maximum amount.

² Sec. 701, Public Law 114–74, 129 Stat. 599–601 (Bipartisan Budget Act of 2015).

³ See M–25–02, Implementation of Penalty Inflation Adjustments for 2025, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, <https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf>.

Consumer Price Index (CPI–U) for the month of October 2024, not seasonally adjusted. The multiplier for 2025 is 1.02598. The adjusted maximum amounts are \$2,739 for section 4071 penalties and \$365 for section 4302 penalties.

Compliance With Regulatory Requirements

The Office of Management and Budget has determined that this rule is not a “significant regulatory action” under Executive Order 12866 and therefore not subject to its review.

The Office of Management and Budget also has determined that notice and public comment on this final rule are unnecessary because the adjustment of civil penalties implemented in the rule is required by law. See 5 U.S.C. 553(b).

Because no general notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4071

Penalties.

29 CFR Part 4302

Penalties.

In consideration of the foregoing, PBGC amends 29 CFR parts 4071 and 4302 as follows:

PART 4071—PENALTIES FOR FAILURE TO PROVIDE CERTAIN NOTICES OR OTHER MATERIAL INFORMATION

■ 1. The authority citation for part 4071 continues to read as follows:

Authority: 28 U.S.C. 2461 note, as amended by sec. 701, Pub. L. 114–74, 129 Stat. 599–601; 29 U.S.C. 1302(b)(3), 1371.

§ 4071.34071.3 [Amended]

■ 2. In § 4071.3, remove the number “\$2,670” and add in its place the number “\$2,739”.

PART 4302—PENALTIES FOR FAILURE TO PROVIDE CERTAIN MULTIEMPLOYER PLAN NOTICES

■ 3. The authority citation for part 4302 continues to read as follows:

Authority: 28 U.S.C. 2461 note, as amended by sec. 701, Pub. L. 114–74, 129 Stat. 599–601; 29 U.S.C. 1302(b)(3), 1452.

§ 4302.34302.3 [Amended]

■ 4. In § 4302.3, remove the number “\$356” and add in its place the number “\$365”.

Issued in Washington, DC, by

Ann Y. Orr,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2025-00211 Filed 1-7-25; 8:45 am]

BILLING CODE 7709-02-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 19

[FRL-5906.9-01-OECA]

Civil Monetary Penalty Inflation Adjustment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating this final rule to adjust the level of the maximum and minimum statutory civil monetary penalty amounts under the statutes the EPA administers. This action is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“the 2015 Act”). The 2015 Act prescribes a formula for annually adjusting the statutory maximum and minimum amount of civil monetary penalties to reflect inflation, maintain the deterrent effect of statutory civil monetary penalties, and promote compliance with the law. The rule does not establish specific civil monetary penalty amounts the EPA may seek in particular cases. The EPA calculates those amounts, as appropriate, based on the facts of particular cases and applicable agency penalty policies. The EPA’s civil penalty policies, which guide enforcement personnel on how to exercise the EPA’s discretion within statutory penalty authorities, take into account a number of fact-specific considerations, *e.g.*, the seriousness of the violation, the violator’s good faith efforts to comply, any economic benefit gained by the violator as a result of its noncompliance, and the violator’s ability to pay.

DATES: This final rule is effective January 8, 2025.

FOR FURTHER INFORMATION CONTACT: David Smith-Watts, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, Mail Code 2241A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, telephone number: (202) 564-4083; *smith-watts.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The 2015 Act¹ requires each Federal agency to adjust the statutory civil monetary penalties under the laws implemented by that agency annually, to account for inflation. Section 4 of the 2015 Act requires each Federal agency to publish these adjustments by January 15 of each year. The purpose of the 2015 Act is to maintain the deterrent effect of civil monetary penalties by translating originally enacted statutory civil penalty amounts to today’s dollars and rounding statutory civil penalties to the nearest dollar.

Since January 15, 2017, the EPA has made eight annual adjustments: (1) on January 12, 2017, effective on January 15, 2017 (82 FR 3633); (2) on January 10, 2018, effective on January 15, 2018 (83 FR 1190); (3) on February 6, 2019, effective the same day (84 FR 2056), with a subsequent correction on February 25, 2019 (84 FR 5955); (4) on January 13, 2020, effective the same day (85 FR 1751); (5) on December 23, 2020, effective the same day (85 FR 83818); (6) on January 12, 2022, effective the same day (87 FR 1676); (7) on January 6, 2023, effective the same day (88 FR 986); and (8) on December 27, 2023, effective the same day (88 FR 89309). This rule implements the ninth annual adjustment mandated by the 2015 Act.

The 2015 Act provides a formula for calculating the adjustments. Each statutory maximum and minimum² civil monetary penalty, as currently adjusted, is multiplied by the cost-of-living adjustment multiplier, which is the percentage by which the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October 2024

exceeds the CPI-U for the month of October 2023.³

With this rule, the new statutory maximum and minimum penalty levels listed in the third column of Table 1 of 40 CFR 19.4 will apply to all civil monetary penalties assessed on or after January 8, 2025, for violations that occurred after November 2, 2015, the date the 2015 Act was enacted. The former maximum and minimum statutory civil monetary penalty levels, which are in the fourth column of Table 1 to 40 CFR 19.4, will now apply only to violations that occurred after November 2, 2015, where the penalties were assessed on or after December 27, 2023, but before January 8, 2025. The statutory civil monetary penalty levels that apply to violations that occurred on or before November 2, 2015, are codified at Table 2 to 40 CFR 19.4. The fifth column of Table 1 and the seventh column of Table 2 display the statutory civil monetary penalty levels as originally enacted.

The formula for determining the cost-of-living or inflation adjustment to statutory civil monetary penalties consists of the following steps:

Step 1: The cost-of-living adjustment multiplier for 2025 is the percentage by which the CPI-U of October 2024 (315.664) exceeds the CPI-U for the month of October 2023 (307.671), which is 1.02598.⁴ Multiply 1.02598 by the current penalty amount. This is the raw adjusted penalty value.

Step 2: Round the raw adjusted penalty value. Section 5 of the 2015 Act states that any adjustment shall be rounded to the nearest multiple of \$1. The result is the final penalty value for the year.

II. The 2015 Act Requires Federal Agencies To Publish Annual Penalty Inflation Adjustments Notwithstanding Section 553 of the Administrative Procedure Act

Pursuant to section 4 of the 2015 Act, each Federal agency is required to

¹ The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114-74) was signed into law on November 2, 2015, and amended the Federal Civil Penalties Inflation Adjustment Act of 1990.

² Under Section 3(2)(A) of the 2015 Act, a “civil monetary penalty” [is] any penalty, fine or other sanction that— is for a specific monetary amount as provided by Federal law; or has a maximum amount provided for by Federal law.” EPA-administered statutes generally refer to statutory maximum penalties, with the following exceptions: Section 311(b)(7)(D) of the Clean Water Act, 33 U.S.C. 1321(b)(7)(D), refers to a minimum penalty of “not less than \$100,000 . . .”; Section 104b(d)(1)(A) of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1414b(d)(1)(A), refers to an exact penalty of \$600 “[f]or each dry ton (or equivalent) of sewage sludge or industrial waste dumped or transported by the person in violation of this subsection in calendar year 1992 . . .”; and Section 325(d)(1) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11045(d)(1), refers to an exact civil penalty of \$25,000 for each frivolous trade secret claim.

³ Current and historical CPI-Us can be found on the Bureau of Labor Statistics’ websites here: <https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202410.pdf> and <https://www.bls.gov/news.release/cpi.nr0.htm>.

⁴ Section 5(b) of the 2015 Act provides that the term “cost-of-living adjustment” means the percentage (if any) for each civil monetary penalty by which—

(A) the Consumer Price Index for the month of October preceding the date of the adjustment, exceeds

(B) the Consumer Price Index for the month of October 1 year before the month of October referred to in subparagraph (A).

Because the CPI-U for October 2024 is 315.664 and the CPI-U for October 2023 is 307.671, the cost-of-living multiplier is 1.02598 (315.664 divided by 307.671).

publish adjustments no later than January 15 each year. In accordance with section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, most rules are subject to notice and comment and are effective no earlier than 30 days after publication in the **Federal Register**. However, section 4(b)(2) of the 2015 Act provides that each agency shall make the annual inflation adjustments “notwithstanding section 553” of the APA. Consistent with the language of the 2015 Act, this rule is not subject to notice and an opportunity for public comment and will be effective on January 8, 2025.

III. 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 action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule merely increases the level of statutory civil monetary penalties that can be imposed in the context of a Federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. Because the 2015 Act directs Federal agencies to publish this rule notwithstanding section 553 of the APA, this rule is not subject to notice and comment requirements or the RFA.

D. Unfunded Mandates Reform Act (UMRA)

This 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. This action implements mandates specifically and explicitly set forth in the 2015 Act without the exercise of any policy discretion by the

EPA. This action also imposes no enforceable duty on any state, local or tribal governments or the private sector. Because the calculation of any increase is formula-driven pursuant to the 2015 Act, the EPA has no policy discretion to vary the amount of the adjustment.

E. Executive Order 13132: Federalism

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

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

This action does not have Tribal implications as specified in Executive Order 13175. This rule merely reconciles the real value of current statutory civil monetary penalty levels to keep pace with the levels originally set by Congress when the statutes were enacted or amended. The calculation of the increases is formula-driven and prescribed by statute, and the EPA has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, this rule will not have a substantial direct effect on tribal governments, 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. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, the EPA’s Policy on Children’s Health also does not apply.

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

This action is not subject to Executive Order 13211, because it is not a

significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All

The EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on communities with environmental justice concerns. As mandated by the 2015 Act, this rule adjusts for inflation the statutory civil monetary penalty amounts of the statutes administered by the EPA.

The EPA acknowledges that the annual mandatory increase in civil penalty amounts to account for inflation may result in further deterrents of environmental violations that may trigger civil penalties. Deterring violations has the benefit of promoting the overarching purpose of environmental enforcement and may have a positive impact on the human health or environment of all populations including communities with environmental justice concerns.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA finds that the APA’s notice and comment rulemaking procedures are unnecessary because the 2015 Act directs Federal agencies to publish their annual penalty inflation adjustments “notwithstanding section 553 [of the APA].”

List of Subjects in 40 CFR Part 19

Environmental protection, Administrative practice and procedure, Penalties.

Jane Nishida,
Acting Administrator.

For the reasons set out in the preamble, the EPA amends title 40,

chapter I, part 19 of the Code of Federal Regulations as follows:

PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The authority citation for part 19 continues to read as follows:

Authority: Pub. L. 101–410, Oct. 5, 1990, 104 Stat. 890, as amended by Pub. L. 104–134, title III, sec. 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321–373; Pub. L. 105–362, title XIII, sec. 1301(a), Nov. 10, 1998, 112 Stat. 3293; Pub. L. 114–74, title VII, sec. 701(b), Nov. 2, 2015, 129 Stat. 599.

■ 2. Revise § 19.2 to read as follows:

§ 19.2 Effective date.

(a) The statutory civil monetary penalty levels set forth in the third column of Table 1 of § 19.4 apply to all violations which occur or occurred after November 2, 2015, where the penalties are assessed on or after January 8, 2025. The statutory civil monetary penalty levels set forth in the fourth column of table 1 of § 19.4 apply to all violations which occurred after November 2, 2015,

where the penalties were assessed on or after December 27, 2023, but before January 8, 2025.

(b) The statutory monetary penalty levels in the third column of table 2 to § 19.4 apply to all violations which occurred after December 6, 2013, through November 2, 2015, and to violations occurring after November 2, 2015, where penalties were assessed before August 1, 2016. The statutory civil monetary penalty levels set forth in the fourth column of table 2 of § 19.4 apply to all violations which occurred after January 12, 2009, through December 6, 2013. The statutory civil monetary penalty levels set forth in the fifth column of table 2 of § 19.4 apply to all violations which occurred after March 15, 2004, through January 12, 2009. The statutory civil monetary penalty levels set forth in the sixth column of table 2 of § 19.4 apply to all violations which occurred after January 30, 1997, through March 15, 2004.

■ 3. Revise the section heading, introductory text, and table 1 of § 19.4 to read as follows:

§ 19.4 Statutory civil monetary penalties, as adjusted for inflation, and tables.

Table 1 of this section sets out the statutory civil monetary penalty provisions of statutes administered by the EPA, with the third column setting out the latest operative statutory civil monetary penalty levels for violations that occur or occurred after November 2, 2015, where penalties are assessed on or after January 8, 2025. The fourth column displays the operative statutory civil monetary penalty levels where penalties were assessed on or after December 27, 2023, but before January 8, 2025. Table 2 of this section sets out the statutory civil monetary penalty provision of statutes administered by the EPA, with the operative statutory civil monetary penalty levels, as adjusted for inflation, for violations that occurred on or before November 2, 2015, and for violations that occurred after November 2, 2015, where penalties were assessed before August 1, 2016.

TABLE 1 OF § 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. code citation	Environmental statute	Statutory civil monetary penalties for violations that occur or occurred after November 2, 2015, where penalties are assessed on or after January 8, 2025	Statutory civil monetary penalties for violations that occurred after November 2, 2015, where penalties were assessed on or after December 27, 2023, but before January 8, 2025	Statutory civil monetary penalties, as enacted
7 U.S.C. 136(a)(1)	FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA).	\$24,885	\$24,255	\$5,000
7 U.S.C. 136(a)(2) ¹	FIFRA	3,650/2,353/3,650	3,558/2,293/3,558	1,000/500/1,000
15 U.S.C. 2615(a)(1)	TOXIC SUBSTANCES CONTROL ACT (TSCA).	49,772	48,512	37,500
15 U.S.C. 2647(a)	TSCA	14,308	13,946	5,000
15 U.S.C. 2647(g)	TSCA	11,823	11,524	5,000
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA).	14,308	13,946	5,000
31 U.S.C. 3802(a)(2)	PFCRA	14,308	13,946	5,000
33 U.S.C. 1319(d)	CLEAN WATER ACT (CWA)	68,445	66,712	25,000
33 U.S.C. 1319(g)(2)(A)	CWA	27,378/68,445	26,685/66,712	10,000/25,000
33 U.S.C. 1319(g)(2)(B)	CWA	27,378/342,218	26,685/333,552	10,000/125,000
33 U.S.C. 1321(b)(6)(B)(i)	CWA	23,647/59,114	23,048/57,617	10,000/25,000
33 U.S.C. 1321(b)(6)(B)(ii)	CWA	23,647/295,564	23,048/288,080	10,000/125,000
33 U.S.C. 1321(b)(7)(A)	CWA	59,114/2,364	57,617/2,304	25,000/1,000
33 U.S.C. 1321(b)(7)(B)	CWA	59,114	57,617	25,000
33 U.S.C. 1321(b)(7)(C)	CWA	59,114	57,617	25,000
33 U.S.C. 1321(b)(7)(D)	CWA	236,451/7,093	230,464/6,913	100,000/3,000
33 U.S.C. 1414b(d)(1)(A)	MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA).	1,575	1,535	600
33 U.S.C. 1415(a)	MPRSA	248,851/328,265	242,550/319,953	50,000/125,000
33 U.S.C. 1901 note (see 1409(a)(2)(A)).	CERTAIN ALASKAN CRUISE SHIP OPERATIONS (CACSO).	18,142/45,354	17,683/44,206	10,000/25,000
33 U.S.C. 1901 note (see 1409(a)(2)(B)).	CACSO	18,142/226,768	17,683/221,026	10,000/125,000
33 U.S.C. 1901 note (see 1409(b)(1)).	CACSO	45,354	44,206	25,000
33 U.S.C. 1908(b)(1)	ACT TO PREVENT POLLUTION FROM SHIPS (APPS).	93,058	90,702	25,000
33 U.S.C. 1908(b)(2)	APPS	18,610	18,139	5,000
42 U.S.C. 300g–3(b)	SAFE DRINKING WATER ACT (SDWA)	71,545	69,733	25,000
42 U.S.C. 300g–3(g)(3)(A)	SDWA	71,545	69,733	25,000
42 U.S.C. 300g–3(g)(3)(B)	SDWA	14,308/49,848	13,946/48,586	5,000/25,000
42 U.S.C. 300g–3(g)(3)(C)	SDWA	49,848	48,586	25,000
42 U.S.C. 300h–2(b)(1)	SDWA	71,545	69,733	25,000
42 U.S.C. 300h–2(c)(1)	SDWA	28,619/357,729	27,894/348,671	10,000/125,000
42 U.S.C. 300h–2(c)(2)	SDWA	14,308/357,729	13,946/348,671	5,000/125,000

TABLE 1 OF § 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. code citation	Environmental statute	Statutory civil monetary penalties for violations that occur or occurred after November 2, 2015, where penalties are assessed on or after January 8, 2025	Statutory civil monetary penalties for violations that occurred after November 2, 2015, where penalties were assessed on or after December 27, 2023, but before January 8, 2025	Statutory civil monetary penalties, as enacted
42 U.S.C. 300h–3(c)	SDWA	24,885/53,088	24,255/51,744	5,000/10,000
42 U.S.C. 300i(b)	SDWA	29,911	29,154	15,000
42 U.S.C. 300i–1(c)	SDWA	174,109/1,741,100	169,700/1,697,012	100,000/1,000,000
42 U.S.C. 300j(e)(2)	SDWA	12,442	12,127	2,500
42 U.S.C. 300j–4(c)	SDWA	71,545	69,733	25,000
42 U.S.C. 300j–6(b)(2)	SDWA	49,848	48,586	25,000
42 U.S.C. 300j–23(d)	SDWA	13,132/131,308	12,799/127,983	5,000/50,000
42 U.S.C. 4852d(b)(5)	RESIDENTIAL LEAD-BASED PAINT HAZ- ARD REDUCTION ACT OF 1992.	22,263	21,699	10,000
42 U.S.C. 4910(a)(2)	NOISE CONTROL ACT OF 1972	47,041	45,850	10,000
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION AND RE- COVERY ACT (RCRA).	124,426	121,275	25,000
42 U.S.C. 6928(c)	RCRA	74,943	73,045	25,000
42 U.S.C. 6928(g)	RCRA	93,058	90,702	25,000
42 U.S.C. 6928(h)(2)	RCRA	74,943	73,045	25,000
42 U.S.C. 6934(e)	RCRA	18,610	18,139	5,000
42 U.S.C. 6973(b)	RCRA	18,610	18,139	5,000
42 U.S.C. 6991e(a)(3)	RCRA	74,943	73,045	25,000
42 U.S.C. 6991e(d)(1)	RCRA	29,980	29,221	10,000
42 U.S.C. 6991e(d)(2)	RCRA	29,980	29,221	10,000
42 U.S.C. 7413(b)	CLEAN AIR ACT (CAA)	124,426	121,275	25,000
42 U.S.C. 7413(d)(1)	CAA	59,114/472,901	57,617/460,926	25,000/200,000
42 U.S.C. 7413(d)(3)	CAA	11,823	11,524	5,000
42 U.S.C. 7524(a)	CAA	59,114/5,911	57,617/5,761	25,000/2,500
42 U.S.C. 7524(c)(1)	CAA	472,901	460,926	200,000
42 U.S.C. 7545(d)(1)	CAA	59,114	57,617	25,000
42 U.S.C. 9604(e)(5)(B)	COMPREHENSIVE ENVIRONMENTAL RE- SPONSE, COMPENSATION, AND LIABIL- ITY ACT (CERCLA).	71,545	69,733	25,000
42 U.S.C. 9606(b)(1)	CERCLA	71,545	69,733	25,000
42 U.S.C. 9609(a)(1)	CERCLA	71,545	69,733	25,000
42 U.S.C. 9609(b)	CERCLA	71,545/214,637	69,733/209,202	25,000/75,000
42 U.S.C. 9609(c)	CERCLA	71,545/214,637	69,733/209,202	25,000/75,000
42 U.S.C. 11045(a)	EMERGENCY PLANNING AND COMMU- NITY RIGHT-TO-KNOW ACT (EPCRA).	71,545	69,733	25,000
42 U.S.C. 11045(b)(1)(A)	EPCRA	71,545	69,733	25,000
42 U.S.C. 11045(b)(2)	EPCRA	71,545/214,637	69,733/209,202	25,000/75,000
42 U.S.C. 11045(b)(3)	EPCRA	71,545/214,637	69,733/209,202	25,000/75,000
42 U.S.C. 11045(c)(1)	EPCRA	71,545	69,733	25,000
42 U.S.C. 11045(c)(2)	EPCRA	28,619	27,894	10,000
42 U.S.C. 11045(d)(1)	EPCRA	71,545	69,733	25,000
42 U.S.C. 14304(a)(1)	MERCURY-CONTAINING AND RE- CHARGEABLE BATTERY MANAGEMENT ACT (BATTERY ACT).	19,942	19,437	10,000
42 U.S.C. 14304(g)	BATTERY ACT	19,942	19,437	10,000

¹ Note that 7 U.S.C. 136(a)(2) contains three separate statutory maximum civil penalty provisions. The first mention of \$1,000 and the \$500 statutory maximum civil penalty amount were originally enacted in 1978 (Pub. L. 95–396), and the second mention of \$1,000 was enacted in 1972 (Pub. L. 92–516).

* * *

[FR Doc. 2025–00206 Filed 1–7–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2024–0595; FRL–12391–
03–R10]

Interim Final Determination To Defer Sanctions; AK, Fairbanks North Star Borough

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination that the State of Alaska has submitted state implementation plan (SIP) revisions that satisfy outstanding Clean Air Act requirements. This interim final determination defers the imposition of sanctions for the 2006 24-hour fine particulate matter (PM_{2.5}) Fairbanks North Star Borough PM_{2.5} nonattainment area. This determination is based on a proposed approval, published in the “Proposed Rules” section of this **Federal Register**, of the SIP revisions, submitted by the State of Alaska (Alaska or the State) on December 4, 2024, to address Clean Air Act requirements for the 2006 24-hour

PM_{2.5} national ambient air quality standards (NAAQS).

DATES: This interim final determination is effective January 8, 2025. However, comments will be accepted until February 7, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2024–0595, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is

restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Matthew Jentgen, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, (206) 553-0340, jentgen.matthew@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

I. Background

In 2009, the EPA designated a portion of the Fairbanks North Star Borough as “nonattainment” for the 2006 24-hour PM_{2.5} NAAQS, which is set at the level of 35 micrograms per cubic meter (µg/m³) (Fairbanks PM_{2.5} Nonattainment Area) (74 FR 58688, November 13, 2009). Effective July 2, 2014, the EPA classified the area as “Moderate” (79 FR 31566, June 2, 2014). Subsequently, Alaska submitted, and the EPA approved, a plan to meet the Moderate nonattainment area requirements (82 FR 42457, September 8, 2017) (Fairbanks Moderate Plan).

On May 10, 2017, the EPA determined that the Fairbanks PM_{2.5} Nonattainment Area failed to attain the 2006 24-hour PM_{2.5} NAAQS in the area by the outermost statutory Moderate area attainment date of December 31, 2015 (82 FR 21711). As a result, the Fairbanks PM_{2.5} Nonattainment Area was reclassified as a “Serious” nonattainment area by operation of law. On September 2, 2020, the EPA determined that the area failed to attain by the Serious area attainment date and denied the State’s Serious area attainment date extension request (85 FR 54509). As a result, Alaska was required to submit a revised SIP submission to meet both the Serious area attainment plan requirements and the additional requirements set forth in Clean Air Act (CAA or Act) section 189(d) by December 31, 2020.¹

On December 13, 2019, and December 15, 2020, Alaska submitted two state implementation plan (SIP) revisions to meet the CAA planning requirements for the Serious Fairbanks PM_{2.5} Nonattainment Area. On December 5, 2023, the EPA issued a final rule approving in part and disapproving in part these SIP submissions.² Pursuant to section 179 of the CAA and the EPA’s regulations in the Code of Federal Regulations (CFR) at 40 CFR 52.31, our partial disapproval action started an 18-month clock for the application of the offset sanction and a 24-month clock for the application of the highway sanction, beginning on the effective date of our December 5, 2023, action (*i.e.*, January 4, 2024), unless the State submits, and the EPA approves, a SIP revision or revisions that address the deficiencies that formed the basis for the disapproval prior to the expiration of the sanctions clocks.

On December 4, 2024, Alaska submitted SIP revisions to rectify the previously disapproved portions of its SIP submissions for the Fairbanks PM_{2.5} Nonattainment Area (Fairbanks Revised 189(d) Plan). In the Proposed Rules section of this **Federal Register**, we are proposing to approve the Fairbanks Revised 189(d) Plan as meeting the CAA Serious area and CAA section 189(d) requirements for the Fairbanks PM_{2.5} Nonattainment Area. Pursuant to 40 CFR 52.31(d)(2)(i), based on the proposed approval of previously deficient planning requirements, we are taking this interim final action to defer the imposition of the offset sanctions and the highway sanctions triggered by our December 5, 2023, disapproval.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If our assessment described in this interim final determination and the proposed approval of previously deficient planning requirements change on the basis of comments submitted, we will take subsequent final action to impose sanctions pursuant to 40 CFR 52.31(d). All sanctions and sanction clocks related to the December 5, 2023, disapproval will be permanently terminated on the effective date of a full final approval action.

II. EPA Action

We are making an interim final determination to defer the imposition of CAA section 179 sanctions associated with our December 5, 2023, final rule approving in part and disapproving in part the Fairbanks Serious Plan and

Fairbanks 189(d) Plan.³ This action is based on our concurrent proposed approval, in the “Proposed Rules” section of this **Federal Register**, of the SIP revisions submitted by Alaska on December 4, 2024.⁴

Because the EPA has preliminarily determined that Alaska has addressed the SIP deficiencies, relief from sanctions designed to compel submission of revised SIP elements, should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action the EPA is providing the public with a chance to comment on the EPA’s determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice and comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. As discussed in detail in the proposed approval of Alaska’s SIP revisions published in the “Proposed Rules” section of this **Federal Register**, the EPA has reviewed the State’s revisions and, through its proposed action, have proposed to find that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to apply sanctions. The EPA believes that it is necessary to use the interim final process to defer sanctions while the EPA completes its rulemaking process on the approvability of the SIP revisions. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. 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 as Amended by Executive Order 14094: Modernizing Regulatory Review

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

¹ 40 CFR 51.1003(c).

² 88 FR 84626, December 5, 2023.

³ 88 FR 84626, December 5, 2023.

⁴ See EPA–R10–OAR–2024–0595.

B. Paperwork Reduction Act (PRA) (44 U.S.C. 3401 et seq.)

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

C. Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.)

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

D. Unfunded Mandates Reform Act (UMRA) (Pub. L. 104–4)

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

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175. This action defers application of sanctions and imposes no new requirements. In addition, this action does not apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on Tribal governments or preempt Tribal law. Thus, Executive Order 13175 does not apply to this action.

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

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

because it does not concern an environmental health risk or safety.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. This action does not involve technical standards.

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

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation’s Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements Executive Order 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.”

The air agency did not evaluate EJ considerations as part of its SIP submission; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898/14096 of achieving EJ for communities with EJ concerns.

K. Congressional Review Act (CRA) (5 U.S.C. 801 et seq.)

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 10, 2025. Filing a petition for reconsideration by the EPA Administrator of this action does not affect the finality of this action for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: December 17, 2024.

Casey Sixkiller,

Regional Administrator, Region 10.

[FR Doc. 2024–30649 Filed 1–7–25; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 2, 87, 88 and 95

[WT Docket No. 22–323; FCC 24–91; FR ID 255475]

Spectrum Rules and Policies for the Operation of Unmanned Aircraft Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) enables Uncrewed Aircraft System (UAS) operators to access dedicated spectrum for control-related communications. Specifically, this

document adopts service rules under new rule part 88 that provide operators the ability to obtain direct frequency assignments in a portion of the 5030–5091 MHz band for non-networked operation. Under these rules, one or more dynamic frequency management systems (DFMSs) will manage and coordinate access to the spectrum and enable its safe and efficient use, by providing requesting operators with temporary frequency assignments to support UAS control link communications with a level of reliability suitable for operations in controlled airspace and other safety-critical circumstances. To address concerns regarding the impact of these aeronautical operations on adjacent services, this document locates these operations, for now, in the central part of the band, with substantial separation from the bands adjacent to the 5030–5091 MHz band.

DATES: The rules are effective February 7, 2025, except for §§ 88.27, 88.31, 88.33, 88.35, 88.111, 88.113, 88.115, 88.135, 88.137, and 88.141, which are delayed. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. The incorporation by reference of material listed in § 88.117 is approved by the Director of the Federal Register as of February 7, 2025.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Peter Trachtenberg of the Mobility Division, Wireless Telecommunications Bureau, at Peter.Trachtenberg@fcc.gov or (202) 418–7369. For information regarding the Paperwork Reduction Act of 1995 (PRA) information collection requirements contained in this document, contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in WT Docket No. 22–323; FCC 24–91, adopted on August 21, 2024, and released on August 29, 2024. The full text of this document is available for public inspection online at <https://docs.fcc.gov/public/attachments/FCC-24-91A1.pdf>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Synopsis

Achieving the extraordinary potential of UAS technology will require

integrating UAS operations into the National Airspace System (NAS), including in the controlled airspace in which commercial passenger flights operate and in circumstances with heightened risk, such as flights involving large aircraft or carrying passengers or flights beyond line of sight of the remote pilot. To ensure that these flights are sufficiently safe for routine operation, highly reliable wireless two-way communications for flight control and telemetry are required. In a Notice of Proposed Rulemaking, WT Docket No. 22–323, FCC 22–101, 88 FR 7910 (February 7, 2023) (*UAS NPRM*), the Commission proposed rules for the 5030–5091 MHz band to help address these spectrum needs.

Background

In the *Report and Order*, the Commission now takes an initial step to enable UAS operators to access dedicated spectrum in the 5030–5091 MHz band for control-related communications with the required reliability. Specifically, the Commission adopts new UAS service rules under new rule part 88 that provide operators the ability to obtain direct frequency assignments in a portion of the 5030–5091 MHz band for non-networked operation. The Commission finds wide support for enabling early, direct access to a portion of the band for protected assignments under DFMS coordination, and anticipates that such access will facilitate the safe integration of UAS operations into the NAS so that the United States can realize the enormous potential benefits that UAS operations can provide.

Discussion

A. Non-Networked Access (NNA) Service Rules

1. Definitions and Designation of Sub-Band for NNA Operations

In the *UAS NPRM*, the Commission proposed to adopt certain band and service rule definitions, including definitions for unmanned aircraft systems and unmanned aircraft, as well as other terms, including non-networked access operations, and control and non-payload communications. Noting consistency with FAA definitions, the Commission proposed to define an unmanned aircraft system as “an unmanned aircraft (UA) and its associated elements (including communication links and the components that control the UA) that are required for the safe and efficient operation of the UA in the airspace of the United States,” and an unmanned

aircraft as “an aircraft operated without the possibility of direct human intervention from within or on the aircraft.” The Commission adopts these definitions as proposed, but finds it in the public interest to revise the terminology. It finds that the term “uncrewed” is more inclusive and could better reflect future use cases for the spectrum, such as uncrewed passenger flights, and thus find that it is appropriate to substitute “uncrewed” in place of “unmanned.” Specifically, it adopts the use of “uncrewed aircraft system” and “uncrewed aircraft” in place of “unmanned aircraft system” and “unmanned aircraft,” respectively.

In the *UAS NPRM*, the Commission also identified two broad use cases for determining the appropriate band plan and service rules: non-networked operations, or those communications occurring within radio line of sight, and network-supported services, which rely on network infrastructure to go beyond radio line of sight of the operator. The Commission proposed establishing the term Non-Networked Access (NNA) to “indicate spectrum or licenses (e.g., NNA blocks) that would be governed by service rules appropriate to support non-networked communications.” The *UAS NPRM* further proposed the use of “Network-Supported Services” (NSS) to indicate that the relevant spectrum or licenses would be governed by service rules appropriate to support the provision of networked-based services. The Commission also proposed to use NNA and NSS in the rules to designate the spectrum allocated for non-networked and network-supported use cases, respectively. In the *Report and Order*, the Commission adopts the NNA and NSS terms as discussed above.

NNA Block Configuration. Although the Commission finds that it is premature to establish a permanent band plan in light of continuing developments and evolution of the industry, there is sufficient record support and basis to establish rules to allow early access for non-networked, direct link operations without compromising any future action the Commission may take with respect to UAS operations in the 5030–5091 MHz band. The Commission thus establishes a temporary placement for NNA operation—with a permanent band plan, including final locations for NNA and NSS as well as potential provisions for opportunistic use by NNA users or NSS licensees, to be resolved in the future.

Specifically, the Commission allots 10 megahertz for near-term NNA access. The Commission finds that, until it makes a determination regarding a permanent band plan, it is appropriate

to locate the 10 megahertz NNA block at 5040–5050 MHz. As discussed below, the Commission is adopting an interim access mechanism (IAM) to enable NNA entities to begin operations in the band during the interim period before a DFMS is operational. Because it will be challenging to effectively manage and coordinate operator use of the NNA spectrum during this period, the Commission will allow access to additional spectrum beyond the 10 megahertz to facilitate the management and deconfliction of NNA operations during this period. Accordingly, during the IAM period, NNA entities may access to 20 megahertz of the band, at 5040–5060 MHz. The Wireless Telecommunications Bureau (WTB) will announce the dates operators may begin to access the NNA block using the IAM process, as well as the date on which a DFMS becomes operational and the IAM period ends. Once a DFMS becomes operational, the NNA operations will be limited to the 10 megahertz at 5040–5050 MHz.

2. Scope of Permissible Uses

The Commission limits the scope of NNA communications in the 5030–5091 MHz band to Control and Non-payload Communications (CNPC), defined as any transmission that is sent between the UA component and the UAS ground station of the UAS and that supports the safety or regularity of the UA's flight. This approach is in the public interest and is well-supported by the record.

Mobile and fixed NNA operations. The Commission provides that the use of both fixed and mobile ground stations for NNA operations is permissible so long as they are not in motion during operation and operations are limited to the location associated with the specific frequency assignment. The adopted NNA rules do not set specific limits as to the use of multiple fixed stations to achieve a single NNA operation, and multi-station operations, whether involving multiple connected or non-connected stations, are permitted by the NNA rules. Thus, UAS operators might choose to access NNA spectrum using limited infrastructure deployment, such as a string of ground stations deployed over a particular and frequently used flight path.

3. Licensing Stations by Rule

The Commission adopts licensing-by-rule for both NNA ground and aircraft stations, pursuant to section 307(e) of the Act, as amended. *See* 47 U.S.C. 307(e). Section 307(e)(1) limits the Commission's authority to adopt a license-by-rule approach to certain specific categories of service, including

the “citizens band radio service.” Section 307(e)(3) in turn provides that “citizens band radio service” shall have the meaning given to it by the Commission by rule. As defined in the Commission's rules, the “citizens band radio service” encompasses “any radio service or other specific classification of radio stations used primarily for wireless telecommunications for which the FCC has determined that it serves the public interest, convenience, and necessity to authorize by rule the operation of radio stations in that service or class, without individual licenses, pursuant to 47 U.S.C. 307(e)(1).” The Commission finds that licensing NNA stations by rule will serve the public interest, convenience, and necessity.

Under the license-by-rule framework, to obtain Commission authorization to use the NNA spectrum, NNA users must use certified, Commission-approved NNA stations, and comply with the applicable NNA rules, but need not obtain individual spectrum licenses from the Commission. Because a license-by-rule approach will serve the public interest, convenience, and necessity, NNA stations are appropriately classified as part of the citizens band radio services. This classification reflects only the Commission's determination that the NNA service should be licensed by rule as the Commission has used that construct pursuant to its section 307(e)(1) authority, and not a determination that it should be more generally be regulated in similar fashion to other services that are classified under the citizens band radio services category, such as those in part 95 or part 96 of the Commission's rules.

4. Eligibility

Given the limited discussion of the issues raised by foreign ownership of stations in a license-by-rule service, the Commission is guided by the approach that it took in the 3.5 GHz Citizens Broadband Radio Service (CBRS) rules to eligibility for users of CBRS General Authorized Access (GAA) stations, which, like NNA stations, are licensed by rule. In relevant part, section 96.5 of the Commission's rules establishes that any entity, other than those precluded by section 310, that otherwise meets the technical, financial, character, and citizenship qualifications that the Commission may require in accordance with such Act, is eligible to be a General Authorized Access (GAA) user. The Commission finds that it will serve the public interest to adopt a similar eligibility rule for NNA users.

5. Creation of a New Part 88

The Commission will include UAS-related rules for the 5030–5091 MHz band in a single rule part and place such rules in a new part 88, rather than placing the new rules in part 87. Establishing a new part 88 will promote “clarity and ease of reference” regarding the rules applicable to UAS operations in the 5030–5091 MHz band. The Commission also makes the new part 88 subject to rules under part 1, subpart F of the Commission's rules governing “Wireless Radio Service” applications and proceedings.

6. Technical Requirements

The RTCA DO–362A Standard. The Commission finds it in the public interest to incorporate by reference the standard RTCA, Command and Control (C2) Data Link Minimum Operational Performance Standards (MOPS) (Terrestrial), RTCA–DO–362A (2020) (RTCA DO–362A) and to adopt certain technical requirements in our new UAS rules based on this standard. Taking this approach is appropriate at this time, particularly given today's incremental steps toward facilitating UAS operations, which provides a path in the 5030–5091 MHz band for authorization of NNA equipment and operations through shared use, while deferring for further consideration and study potential approaches to exclusive licensing for NSS operations.

The Commission will incorporate by reference into its technical rules the specific sections of the RTCA DO–362A standard applicable to transmitter output power, emissions bandwidth, out-of-band emission limits, emission mask and time division duplexing. To provide stakeholders increased flexibility, and in lieu of mandating use of specific emission designators, an applicant seeking equipment certification may specify the emission designator appropriate to its equipment design and proposed operation, provided it meets the technical requirements governing NNA equipment and operations.

To facilitate expedited updates to its technical rules based on evolving technical standards, the Commission delegates joint rulemaking authority to WTB and OET to incorporate into the Commission's rules, after notice and an opportunity for public comment if necessary or appropriate, any updated version of a previously incorporated technical standard applicable to UAS operations in the 5030–5091 MHz band. This delegation will help ensure that key technical updates relevant to requirements for authorization of UAS

equipment and operations can be incorporated without unnecessary administrative delay.

7. Equipment Authorization

To promote reliability and safety, the Commission will require transmitters to be certified for use in this new part 88 service through compliance with Office of Engineering and Technology (OET) procedures for equipment authorization under part 2, subpart J of the Commission's rules. The Commission will also require that the applicant, when filing the requisite application for equipment certification, notify the FAA of the identity of the equipment manufacturer. This approach will ensure that necessary coordination occurs with the FAA, given its responsibility for ensuring aviation safety in the NAS, and will prevent harmful interference through NNA equipment compliance with the relevant technical requirements.

B. Dynamic Frequency Management System

The Commission will require parties seeking to use or using the NNA spectrum to be registered with a DFMS and to transmit in the 5030–5091 MHz band only pursuant to and consistent with the terms of a frequency assignment from a Commission-approved DFMS. The Commission defines a DFMS as “a frequency coordination system operating in the 5030–5091 MHz band that (1) is highly automated and capable of providing rapid responses to frequency assignment requests from registered NNA operators, and (2) in response to such requests, is capable of assigning to the requesting operator temporary protected use of certain frequencies for a particular geographic area and time period tailored to the operator's submitted operation, to the extent such frequencies are available.”

The Commission will approve any DFMS that can meet its requirements, including approving multiple DFMSs if each of them meets the requirements. Each approved DFMS will be required to provide access to frequencies nationwide, and to communicate and coordinate with the other approved DFMSs as necessary to ensure that their assignments are consistent. Below, the Commission establishes requirements to govern the DFMS and DFMS administrator and the process by which DFMSs and DFMS administrators will be approved, as well as certain rules governing the request and assignment process.

1. DFMS Requirements

In the *UAS NPRM*, the Commission proposed certain high level requirements to be codified in proposed section 88.135 of the Commission's rules. Among these requirements, the Commission proposed that:

- A DFMS must provide a process for NNA users to register with the system for the purpose of submitting frequency assignment requests and obtaining frequency assignments.
- A DFMS must be capable of responding to frequency assignment requests nationwide and across the entire 5030–5091 MHz band. However, a DFMS may only make assignments for spectrum within those frequencies in which NNA operations are permitted.
- In response to frequency assignment requests from a registered NNA user, a DFMS shall determine and provide, through an automated (non-manual) process, a frequency assignment for a particular geographic area and time period tailored to the NNA user's submitted flight plan, to the extent that frequencies are available to meet the request and the assignment is otherwise consistent with this part. Assignments must provide protected access to frequencies over a duration and geographic area sufficient to cover the entire submitted flight plan.
- Assignments must account for the need to protect other authorized operations.

The Commission adopts these requirements largely as proposed, but modifies the proposed requirements to clarify that it will not mandate that NNA users submit a “flight plan” in connection with their requests. It will still require, however, that requests be for spectrum to support a single UAS flight, which should help to ensure that parties reserve spectrum only for those times that they actually need the assignment, and to maximize the usage of the NNA spectrum and the resulting benefits. To reflect these determinations, the Commission modifies the proposed requirements to use the term “UAS flight” instead of “flight plan” (e.g., requiring that a DFMS provide a frequency assignment for a particular geographic area and time period tailored to the NNA user's submitted UAS flight).

Interference modeling. While the Commission does not adopt any detailed requirements regarding the methodology or modeling for interference calculations, it agrees with commenters that models and methodologies for interference determinations should be both effective in avoiding harmful interference and

consistent between different DFMSs. Accordingly, it adopts these high level requirements.

FAA authorizations. The Commission will require a DFMS to confirm through certifications in the frequency assignment request process that the requesting party has flight authorization from the FAA to cover the flight associated with the assignment request, and that the flight will only be piloted by parties that have the necessary FAA remote pilot authorization. While the Commission will have primary responsibility for the enforcement of this Commission requirement, the Commission will coordinate with the FAA as necessary to ensure that oversight and enforcement is effective. In particular, compliance questions regarding the underlying FAA requirements should generally be determined with FAA input. Therefore, the Commission will require anyone challenging a DFMS action with regard to this requirement or otherwise seeking a Commission determination regarding a party's FAA authorization in this context to submit, with its filing to the Commission, a determination from the FAA regarding whether the party in question has the relevant authorization under FAA rules and requirements.

In-flight revisions. The Commission further adds a requirement that a DFMS be capable of responding to in-flight revision requests. The capacity to revise an assignment during a flight will help to address circumstances in which the planned area or duration of operations must be altered during the flight, including NPSTC's concern that, responding to an emergency, public safety operators will have difficulty predicting up front the duration of their need for the assignment.

Communications between DFMS and NNA stations. The Commission also adds certain requirements for communications between a DFMS and NNA stations to better ensure compliance with DFMS assignments. The Commission is concerned that an approach in which a DFMS merely reviews requests and transmits approved assignments to operators, without any further mechanism or requirement to promote user compliance, will lead to a higher probability of communications occurring outside of authorized parameters, either by intention or accident, and will not achieve the high level of safety and reliability intended for this band. Accordingly, a DFMS is required to be able to communicate directly with a ground station operating in the NNA spectrum, or proxy software acting on its behalf, to achieve the

following: (1) ensure that all NNA stations used in the operation, including any ground or airborne stations, are programmed to limit communications in the 5030–5091 MHz band, during the period of the frequency assignment, to the specific frequencies assigned by the DFMS and in accordance with the other terms of the assignment; and (2) receive updates on flight status when a UA has launched and when it has landed. NNA ground stations are similarly required to be capable of communicating with a DFMS as necessary to achieve these functions.

Limits on requests. The Commission generally provides flexibility to DFMSs to determine the parameters of the frequency assignment necessary to support the UAS flight, including specific frequencies, bandwidth, maximum transmit power, amount of time, and coverage area. As discussed above, DFMS assignments must provide protected access over a duration and geographic area sufficient to cover the entire submitted UAS flight, but the Commission does not mandate that a DFMS frequency assignment have the specific terms requested.

Two specific restrictions on permissible requests are warranted to prevent monopolization and facilitate broader access to NNA spectrum. First, requests may only be approved for an operation lasting no more than 24 hours. This restriction is consistent with the intention that assignments provide support for only a single flight. Second, requests may not be approved for periods commencing more than seven calendar days after the submission of the request, except to the extent that lack of frequency availability in that time frame justifies a later assignment. Seven calendar days strikes an appropriate balance between preventing parties from engaging in long term reservation of the spectrum and permitting reservations in advance to provide greater certainty to parties planning their operations. These two limitations are based on predictive judgments regarding the extent and nature of uses of the spectrum and the Commission may modify the specific values as it develops more experience. A DFMS should be capable of implementing such changes to the rules.

Coordination requirements. It will be critical, in the event there are multiple DFMSs, that they actively coordinate their assignments to avoid conflicts. Accordingly, the Commission adopts a requirement that a DFMS communicate and coordinate with other DFMSs as necessary to ensure consistent data and assignments, the safe and robust

operation of authorized services, and compliance with the rules.

Information submitted with registration and requests. Beyond requiring that registration information include the registrant's legal name and contact information, and that requests must address and be limited to the frequencies, duration, and geographic coverage necessary to support a single submitted UAS flight, the Commission does not define the specific information that a party must submit with a frequency assignment request or with registration. It delegates authority to WTB, however, to impose additional specific requirements, after notice and an opportunity for public comment if it deems necessary or appropriate, regarding information that a DFMS must collect regarding registrants or frequency requests, such as the manufacturer, producer, make, or model of the equipment used, that WTB determines will promote the robust and safe use of the band or otherwise address security concerns regarding the use of the band, and the DFMS must have the capability to collect such additional information if required by WTB or the Commission. Further, to facilitate inter-DFMS coordination, the Commission will mandate that each of the DFMSs require the same registration and request information, and will require that information submitted to the DFMS be accurate, complete, and made in good faith. In addition, consistent with determinations above, the Commission modifies the language in proposed section 88.31(a) to clarify that it does not mandate that assignment requests necessarily must include specific flight plans. It will further require operators to keep any registration information up to date and keep any request information up to date through the scheduled end of the assignment. It will also require that a DFMS maintain all records for at least 60 months.

Security. Given the limited record on specific security requirements, however, the Commission adopts a minimum set of high level requirements to address security concerns: (1) a DFMS must employ protocols and procedures to ensure that all communications between the DFMS and users or NNA stations in connection with a DFMS's NNA functions are secure and that unauthorized parties cannot access, shut down, or alter the DFMS or its stored information; (2) communications between users and a DFMS, and between different DFMSs, must be secure to prevent corruption or unauthorized interception of data, and a DFMS must be protected from

unauthorized data input or alteration of stored data; and (3) a DFMS must verify that the NNA stations to be used in operations are part 88 FCC-certified devices and must not provide assignments to any other device. In addition, similar to a measure adopted in connection with an internet-of-Things cybersecurity labeling program, the Commission delegates authority to WTB in coordination with, at a minimum, the Office of the Managing Director (OMD) (specifically the Office of the Chief Information Officer) and, to the extent necessary, the Office of General Counsel (OGC) (specifically the Senior Agency Official for Privacy) to identify and impose on the DFMS any applicable security or privacy requirements arising from Federal law or Federal guidance.

Protection of other services. The Commission includes certain requirements regarding the protection of certain non-UAS services, discussed further below. In addition to these, it adopts a general requirement that a DFMS be capable of receiving reports of interference and requests for additional protection from Microwave Landing System (MLS) users in the 5030–5091 MHz band or authorized users in adjacent bands and promptly address interference issues.

Non-discrimination. The Commission adopts a requirement that frequency assignment functions be performed in a non-discriminatory manner, and specifically requires that assignment requests generally be granted in a first-come-first-served manner subject only to the priorities specified in the rules.

Prioritization. The Commission adopts two high-level requirements regarding the prioritization of requests. First, in the event of emergencies, a DFMS should, to the extent feasible and consistent with the interests of aviation safety, prioritize requests from public safety entities. The Commission does not permit prioritization in a way that would terminate or modify an NNA user's assignment while the assignments are in use during a UAS flight. As between the many other important private sector uses and critical infrastructure, the non-discrimination principle should apply. Second, the Commission adopts a requirement that, in extended periods of congestion, the DFMS prioritize requests involving flights relying on a single ground station over requests that rely on multiple stations, to the extent feasible and consistent with the interests of aviation safety. This prioritization will still permit operations involving multiple ground stations, while ensuring that the NNA spectrum serves its intended

purpose. To the extent that both of the adopted priorities come into play, the public safety priority should take precedence.

2. DFMS Administrator Requirements

In the *UAS NPRM*, the Commission also proposed requirements for DFMS administrators. Specifically, it proposed to require that administrators:

- Operate a DFMS consistent with the rules.

- Establish and follow protocols and procedures to ensure compliance with the rules.

- Provide service for a ten-year term. This term may be renewed at the Commission's discretion.

- Securely transfer all the information in the DFMS to another approved entity in the event it does not continue as the DFMS Administrator at the end of its term. It may charge a reasonable price for such conveyance.

- Develop a standardized process with other DFMS Administrators for coordinating operations with other approved DFMSs, avoiding any conflicting assignments, and maximizing shared use of available frequencies.

- Coordinate with other DFMS Administrators including, to the extent possible, sharing assignment and other information, facilitating non-interference to and from operations relying on assignments from other DFMSs, and other functions necessary to ensure that use of available spectrum is safe and efficient and consistent with this part.

- Ensure that the DFMS shall be available at all times to immediately respond to requests from authorized Commission personnel for any and all information stored or retained by the DFMS.

- Establish and follow protocols to comply with enforcement instructions from the Commission.

The Commission largely adopts these as proposed. Given the critical importance of inter-DFMS coordination to the safety and reliability of the system, it modifies the coordination requirement to reflect that the specified coordination is mandatory rather than a "best efforts" requirement. Further, in addition to the limits it adopts above on requests to prevent monopolization of the NNA spectrum, the Commission also expressly authorizes DFMS administrators to adopt additional reasonable limits as necessary to address similar concerns. Specifically, it provides that the DFMS administrator may implement such reasonable limits on requests as are necessary to prevent the hoarding, warehousing,

monopolization, or otherwise excessive reservation of NNA spectrum by a particular party.

As an additional mechanism to assist the Commission in its enforcement responsibilities, DFMS administrators are required to establish and follow protocols to comply with enforcement instructions from the Commission. The Commission expects detailed enforcement mechanisms and procedures employed by DFMSs to be developed during the approval process described below, including mechanisms and procedures to address unauthorized use of the spectrum, and that most issues will be addressed through these mechanisms and procedures. However, the Commission retains the ultimate responsibility for and authority over NNA operations in the band. In the event that the DFMS is unable to resolve disputes or identify and address the sources of harmful interference or unauthorized or otherwise unlawful operations in the band, these issues may be addressed by the Commission.

The Commission requires a DFMS to immediately respond to requests from authorized Commission personnel for any and all information stored or retained by the DFMS. It also anticipates that other Federal agencies may have important interests in obtaining DFMS information, particularly related to the coordination and protection of Federal UAS operations in the band. Accordingly, it delegates authority to WTB, in consultation with NTIA, to establish a process, as needed, for direct access by Federal agencies to information stored or retained by the DFMS, including the scope and terms of such access, through regulation, guidance, or agreement, as appropriate.

Fees. The Commission authorizes administrators to charge reasonable fees for registration, assignments, and other services, including reasonable usage-based fees. DFMS fees will not only be necessary to fund the development and operation of a DFMS, but can provide UAS operators with important incentives to use the limited NNA spectrum efficiently and discourage monopolization, warehousing, or hoarding.

3. DFMS and DFMS Administrator Approval Process

The Commission adopts an approach for review and approval of DFMS and DFMS administrators similar to the Commission's process for selection of Spectrum Access Systems (SASs) and SAS administrators, and delegates authority jointly to WTB and OET to administer this process in close consultation at all stages of the process

with the FAA and NTIA, as well as other administrative authority over the DFMS comparable to the delegation granted to WTB and OET to administer the SASs. It further delegates authority jointly to WTB and the Office of the Managing Director (OMD) to determine fees, if any, in connection with the filing of a petition to be a DFMS administrator. It also directs WTB to obtain Office of Management and Budget review of all information collections associated with this process as required under the Paperwork Reduction Act.

4. Obtaining an Assignment From a DFMS

In the *UAS NPRM*, the Commission proposed rules governing the process by which parties would obtain an NNA frequency assignment from a DFMS. Among these, it proposed that NNA users registered with a DFMS may submit a request for temporary frequency assignment for CNPC limited to the duration and geographic coverage necessary to support a single submitted UAS flight plan. It further proposed that requests may be made either prior to an operation or submitted during the relevant operation to modify the assignment, and that modification requests must be made to the same DFMS responsible for the original assignment. In addition, it proposed that, if frequencies meeting the request are available, the DFMS would assign them on an exclusive but temporary basis, with the scope of the assignment tailored in both duration and geographic coverage to ensure interference-free communications for the entire submitted UAS flight plan. It also proposed that, when using the services of a DFMS, an NNA user shall comply with all instructions of the DFMS Administrator, including those regarding registration, requests and other submissions to the DFMS, and operational use of NNA assignments.

Consistent with actions discussed above, instead of requiring submission of a "flight plan," the Commission establishes a more flexible requirement to submit a "UAS flight." Otherwise, it adopts these provisions substantially as proposed.

5. Interim Access Mechanism

The Commission establishes an interim access mechanism (IAM) to provide access to the 5030–5091 MHz band during the provisional period before a DFMS is operational. Specifically, the IAM will be available to all eligible NNA operators licensed by rule, and will allow limited, short-term access to 20 megahertz of spectrum in

the 5040–5060 MHz band of frequencies. The initial access will only be suitable for NNA operations, which are typically single flights or events. In order for NNA operators to gain access and begin transmission in the 5040–5060 MHz block, they must complete a two-step process, including FAA coordination and FCC registration.

Transition to DFMS Management of NNA Spectrum. When a DFMS is first granted final approval, as discussed above, WTB will issue a public notice establishing the date on which the DFMS may begin operations, after which parties seeking access to NNA spectrum must request a frequency assignment from the DFMS. For the DFMS assignment process to reliably determine interference impacts, it is critical that all UAS operations have gone through a DFMS. Accordingly, after the date on which a DFMS first begins operation, parties may not seek or use assignments from the IAM. After such date, the spectrum available for NNA operations will be restricted to 10 megahertz, as discussed above. If WTB finds it appropriate to help ensure a smooth transition, it may establish and announce by public notice a date prior to final approval of a DFMS after which requests will no longer be processed through IAM, but no earlier than the date of the first DFMS conditional approval. Further, WTB is authorized to take any other necessary steps to ensure a smooth transition to the DFMS management of the NNA spectrum, including setting the date for a DFMS to begin operations a sufficient period after the date of final approval to permit all or most of the outstanding IAM approvals to expire.

C. Compatibility With Other Services

1. Microwave Landing Systems

Given that there are no non-Federal Microwave Landing System (MLS) stations in the band, and that the Commission does not anticipate licensing any future MLS systems, it adopts no measures to protect such operations. Because it anticipates continued use of Federal MLS by the Air Force, the Commission will establish exclusion zones to protect such systems. Further, it will require the DFMS to retain information on, and enforce, the zones sufficient to protect any Federal MLS stations in the 5030–5091 MHz band. The Commission will coordinate with NTIA to identify both the current locations of Federal MLS and the appropriate exclusion zones, after which the exclusion zones will be identified by Public Notice. To the extent that these locations change, such

changes can be addressed through a similar process. The Commission delegates authority to WTB to issue the public notice identifying any initial MLS exclusion zones as well and any subsequent public notices necessary to identify changes.

2. Radionavigation-Satellite Service and AeroMACS

The Commission concludes that the technical requirements applicable to NNA combined with the frequency separation between the NNA spectrum and the 5010–5030 MHz band will be sufficient to provide compatibility between NNA operations and Radionavigation-satellite Service (RNSS) in the 5010–5030 MHz band. The Commission similarly concludes that the adopted technical requirements, combined with the frequency separation, will be adequate regulatory measures to provide compatibility between NNA operations and AeroMACS in the upper and lower bands adjacent to the 5030–5091 MHz band.

3. Aeronautical Mobile Telemetry

The Commission finds that the limits adopted through incorporation by reference to provisions of RTCA DO-362A are also sufficient to protect Aeronautical Mobile Telemetry (AMT) in the 5091–5150 MHz band. Accordingly, it declines to require NNA operations to also comply with the criteria of ITU-R M.1459.

4. Mobile Satellite Service Feeder Links

The Commission does not anticipate that rule-compliant fixed earth stations in the 5091–5250 MHz band will cause harmful interference to NNA operations in the 5030–5091 MHz band. Nevertheless, to address the unlikely possibility of interference to UAS operations, the Commission clarifies that a Mobile Satellite Service (MSS) feeder link licensee in the 5091–5250 MHz band will only be responsible for curing harmful interference from its earth station to NNA operations in the neighboring 5030–5091 MHz band to the extent such interference is the result of the licensee's non-compliance with applicable license or regulatory requirements.

5. Radio Astronomy

National Radio Quiet Zone (NRQZ). The Commission requires coordination within the NRQZ. As described in detail below, the coordination requirements are modeled after the NRQZ coordination procedures applicable to other services under section 1.924(a) of the Commission's rules. Because these

procedures assume that a station license application is being submitted to the Commission, however, the Commission modifies them to work with the instant context in which a frequency assignment request will be submitted instead to a DFMS. Specifically, it provide that parties planning to operate an NNA station at locations within the NRQZ must notify the National Radio Quiet Zone Administrator (NRQZ Administrator) in writing in advance or simultaneously with the filing of the request. Although section 1.924(a) procedures are limited to fixed permanent stations, the Commission finds that procedures for NNA operations in the 5030–5091 MHz band should apply more broadly. Given the inherently short-term nature of NNA operations, such operations are likely to often rely on temporary stations. Limiting coordination to permanent stations, particularly with the aeronautical focus of the service, might therefore not provide adequate coordination. The Commission also adopts, however, two measures to reduce the burden of coordinating short term operations. First, it provides that the NRQZ Administrator may provide safe harbors for NNA operations in the NRQZ that do not require notification, but a party submitting a frequency assignment request under this exception must certify that their request meets the criteria for a safe harbor and provide any additional supporting documentation required by the DFMS. Further, if a party's operation or revision of an operation is within the scope of an approval previously granted to the party by the NRQZ Administrator, including any time limits on the approval, altitude limits, or other applicable conditions, the party need not provide notification of the operation or revision to the NRQZ Administrator, but must submit the approval with its assignment request.

CORF recommends that the coordination notice should be sent to nrqz@nrao.edu. The Commission adopts the same mailing address specified in section 1.924(a) and applicable to every other service as the initial point of contact, but also permits notification to be sent by electronic mail to nrqz@nrao.edu, which should facilitate a more rapid coordination. The coordination process based on this notification will largely follow the procedures under section 1.924(a), with appropriate changes made to reflect the role of the DFMS. Thus, when a request for frequency assignment is filed with the DFMS, the notification may be submitted prior to or simultaneously

with the request. After receipt, the DFMS will allow a period of 20 days for objections. If a DFMS determines that a request is subject to one of the two exceptions to notification discussed above, it shall process the request without waiting the 20-day period.

If a DFMS receives an NRQZ Administrator approval of operations that includes the operation associated with the request, if the request is within the scope of a safe harbor established by the NRQZ Administrator, or if the 20-day period passes without objection, the DFMS shall process the request under normal procedures, except with regard to the restriction established above that requests may not be granted more than seven calendar days in advance. To accommodate the 20-day period for objections, the Commission provides that, when this period is applicable, requests may be approved for periods commencing more than seven calendar days after the submission of the request, but no more than seven calendar days after the date of DFMS decision. If objections are received in the 20-day period, the DFMS administrator will forward the record, including the frequency request, to the Commission. After consideration of the record, the Commission will take whatever action is deemed appropriate, including, potentially, providing direction to the relevant DFMS administrator regarding resolution of the request.

RAS Outside the NRQZ. With regard to radio astronomy observations in the adjacent 4990–5000 MHz band, the Commission confirms, as recommended by NTIA and other commenters, that NNA operations remain subject to footnote US211 of the Table of Allocations. The Commission declines to adopt CORF's proposal for exclusion zones to protect observations at sites in both the 4990–5000 MHz band and inside the 5030–5091 MHz band. To facilitate operation of both UAS systems and radio astronomy systems, however, it will require a DFMS to immediately notify the National Science Foundation, Division of Astronomical Sciences, Electromagnetic Spectrum Management Unit, by email of any assignments that it approves for UAS operations in the vicinity of the radio astronomy facilities identified in footnote US385 of the Table of Allocations, which identifies the sites at which radio astronomy observations are performed in 4990–5000 MHz. Further, for clarity, the Commission will list these facilities in the relevant part 88 rule.

6. Canadian and Mexican Coordination

The Commission does not adopt any measure at this time to address

operations near the border. Instead, DFMS administrators will be required to demonstrate that their systems can and will enforce agreements between the U.S., Canadian, and Mexican governments regarding commercial operations in the 5030–5091 MHz Band. The specific methods of enforcement will be determined and implemented by DFMS administrators, with appropriate Commission oversight, after such agreements are in place.

Procedural Matters

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA), below, concerning rule and policy changes in the *Report and Order*.

Paperwork Reduction Act. The *Report and Order* contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. All such new requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. The Commission will publish a separate document in the **Federal Register** at a later date seeking these comments.

Congressional Review Act. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Accessing Materials. The Office of **Federal Register** (OFR) regulations require that agencies must discuss in the preamble to the **Federal Register** summary of a final rule the ways that the materials incorporated by reference are reasonably available to interested parties and that interested parties can obtain the materials. In addition, OFR regulations require that the preamble to the **Federal Register** summary of a final

rule summarize the material incorporated by reference.

Sections 88.101, 88.103, 88.105, 88.107, and 88.109 of the rules adopted herein incorporate by reference certain requirements in standards established by the RTCA Special Committee-228, referred to as RTCA, Inc. Command and Control (C2) Data Link Minimum Operational Performance Standards (MOPS) (Terrestrial), RTCA–DO–362A (December 17, 2020). These standards provide the technical requirements for equipment manufacturers and operators of equipment used for UAS NNA operations in the 5030–5091 MHz band. In particular, the standards provide information regarding the following technical parameters: transmitter output power, emissions bandwidth, out-of-band emissions, emission mask, and the applicable time division duplexing frame rate. The text of RTCA DO–362A is available online for a fee at <https://my.rtca.org/productdetails?id=a1B1R00000LoYFZUA3>.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Spectrum Rules and Policies for the Operation of Unmanned Aircraft Systems; Petition of AIA for Rulemaking to Adopt Service Rules for Unmanned Aircraft Systems Command and Control in the 5030–5091 MHz Band, Notice of Proposed Rulemaking (NPRM)* released in January 2023. The Federal Communications Commission (Commission) sought written public comment on the proposals in the *NPRM*, including comments on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

In the *Report and Order*, the Commission takes significant action to adopt initial service rules for uncrewed aircraft systems (UAS) in the 5030–5091 MHz band and enable UAS operators to access dedicated spectrum with the required reliability to support safety-of-flight, control-related communications while also allowing flexibility for the industry to further develop. Specifically, the Commission adopts service rules that provide operators the ability to obtain direct frequency assignments in a portion of the 5030–5091 MHz band. These service rules are necessary to provide a critical first step to promote access by UAS operators to dedicated spectrum while also allowing a consensus to emerge on key issues for

this industry. Achieving the extraordinary potential of UAS technology will require integrating UAS operations into the National Airspace System (NAS), including in the controlled airspace in which commercial passenger flights operate and in circumstances with heightened risk, such as flights involving large aircraft or carrying passengers or flights beyond line of sight of the remote pilot. To ensure that these flights are sufficiently safe for routine operation, highly reliable wireless two-way communications for flight control and telemetry are required. Therefore, the Commission adopts initial service rules for the 5030–5091 MHz band.

In furtherance of these objectives, the Commission adopts service rules where one or more dynamic frequency management systems (DFMSs) will manage and coordinate access to the spectrum and enable its safe and efficient use, by providing requesting operators with temporary frequency assignments to support UAS control link communications with a level of reliability suitable for operations in controlled airspace and other safety-critical circumstances. To provide this level of reliability, the Commission adopts technical requirements drawn from minimum operational performance standards that were developed by an aviation industry standards body specifically to support UAS control links in the 5030–5091 MHz band and were approved by the Federal Aviation Administration (FAA) for this purpose. To address concerns regarding the impact of these aeronautical operations on adjacent services, the Commission locates these operations, for now, in the central part of the band, with substantial separation from the bands adjacent to the 5030–5091 MHz band. The Commission finds wide support in the record for enabling early, direct access to a portion of the band for protected assignments under DFMS coordination and expects that such access will help to facilitate the safe integration of UAS operations into the NAS so that the United States can realize the enormous potential benefits that UAS operations can provide.

The Commission is addressing service rules for UAS operations in the 5030–5091 MHz band in phases. In this initial step, the Commission opens a portion of the band for NNA operations to enable early, low-cost access to the benefits of dedicated spectrum for UAS control communications. The Commission anticipates that subsequent phases will address broader use of the band, potentially with the assistance of a Federal Advisory Committee or other

efforts to further assess and engage stakeholders on the potential uses of the band and the appropriate regulatory measures to enable such uses, including but not limited to studies pursuant to the implementation of the National Spectrum Strategy. In subsequent phases, the Commission intends to resolve issues including (1) the final band plan for the 5030–5091 MHz band, which may include moving NNA operations to another location in the band; (2) measures to ensure compatibility between UAS stations operating at and near the edges of the 5030–5091 MHz band and services in adjacent spectrum; and (3) service rules for exclusive-use licenses enabling network-supported services in the band, including the scope of such services. The Commission further intends to continue close coordination with our Federal partners, including the FAA and the National Telecommunications and Information Administration (NTIA), to ensure that UAS operations supported by this band remain compatible with aviation safety and concerns, and to develop an appropriate long-term framework for the accommodation of Federal agencies seeking access to the Federal allocation in the band for their own UAS operations.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”

In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2022 Census of Governments indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,845 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts) with enrollment populations of less than 50,000. Accordingly, based on the 2022 U.S. Census of Governments data, the Commission estimates that at least

48,724 entities fall into the category of “small governmental jurisdictions.”

Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

Satellite Telecommunications. This industry comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$38.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than \$25 million. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees. Consequently, using the SBA’s small business size standard, a little more than half of these providers can be considered small entities.

All Other Telecommunications. This industry is comprised of establishments

primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (e.g., dial-up ISPs) or Voice over internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small. U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year. Of this number, 624 firms had fewer than 250 employees. Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

Uncrewed Aircraft Radio Equipment Manufacturers. Neither the SBA nor the Commission have developed a small business size standard specifically applicable to uncrewed aircraft radio equipment manufacturers. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing is the closest industry with an SBA small business size standard. The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small. U.S. Census Bureau data for 2017 show that there were 656 firms

in this industry that operated for the entire year. Of this number, 624 firms had fewer than 250 employees. In addition, the SBA provides a size standard for the Aircraft Manufacturing industry, which includes the manufacture of uncrewed and robotic aircraft. The SBA small business size standard for this industry classifies businesses having 1,500 employees or less as small. U.S. Census Bureau data for 2017 show that there were 254 firms in this industry that operated for the entire year. Of this number, 227 firms had fewer than 250 employees. Based on this data, the Commission concludes that a majority of manufacturers in this industry are small.

Uncrewed Aircraft System Operators. Neither the Commission nor the SBA have developed a small business size standard specifically applicable to UAS operators. The Commission lacks data on the number of operators in the United States that could be subject to the rules, therefore it is not possible to determine the number of affected small entity operators at this time. The Commission finds, however, that the Regulatory Flexibility Analysis of the FAA Remote ID rule is helpful. In this analysis, the FAA assessed the impact of the rule on small entity non-recreational UAS operators based on an analysis that the Association for Uncrewed Vehicle Systems International (AUVSI) performed relating to part 107 waivers. In the analysis, the AUVSI determined that 92 percent of the waivers were issued to entities with fewer than 100 employees. Based on this data, the FAA determined that a majority of entities currently operating uncrewed aircraft for other than recreational purposes are small. Accordingly, based on the FAA’s determination, the Commission concludes that a majority of uncrewed UAS operators are small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The rules adopted in the *Report and Order* will implement new reporting, recordkeeping, or other compliance requirements on certain small entities. These requirements, which are summarized below, were thoughtfully considered to minimize burdens to small businesses while also ensuring the level of reliability necessary to support safety-critical UAS communications. The Commission does not expect compliance with the rules adopted in the *Report and Order* to cause small entities to incur significant compliance costs. The Commission further notes that while it sought comment from concerned parties regarding costs

related to compliance requirements, the record did not include concerns raised by small entities about compliance costs.

Dynamic Frequency Management System. The *Report and Order* permits more than one DFMS administrator to operate a DFMS in the band, and each approved DFMS will be required to communicate and coordinate with other approved DFMSs as necessary to ensure that their assignments are consistent. It will be critical for DFMS administrators to agree on and implement appropriate DFMS-to-DFMS lines of communication, as well as protocols for coordination and common interference models, that ensure any inconsistencies in assignments are avoided or are otherwise very quickly identified and resolved. Furthermore, the Commission establishes requirements that are high-level guidelines that describe minimum requirements for DFMSs and DFMS administrators. A DFMS will require sufficient information regarding the time, relevant geographic area, and, potentially, altitude of a UAS operation to model potential interference impacts; however, the Commission does not intend to specify the particular content or format of that information, but to give stakeholders flexibility to develop standards to implement this requirement. The requests must be for spectrum to support a single UAS flight, which should help to ensure that parties reserve spectrum only for those times and frequencies that they actually need, and to maximize the usage of the NNA spectrum.

The *Report and Order* adopts the proposed section 88.135 requirements from the *NPRM*, which include that (1) a DFMS must provide a process for NNA users to register with the system for the purpose of submitting frequency assignment requests and obtaining frequency assignments; (2) a DFMS must be capable of processing frequency assignment requests nationwide and across the entire 5030–5091 MHz band; however, a DFMS may only make assignments for spectrum within those frequencies in which NNA operations are permitted; (3) a DFMS shall determine and provide, through an automated (non-manual) process, an assignment of frequencies for a particular geographic area and time period; and (4) assignments must account for the need to protect other authorized operations.

The Commission also incorporates a high-level requirement regarding the process of interference calculations. While the Commission does not adopt any detailed requirements regarding the methodology or modeling for

interference calculations, the Commission agrees that the models and methodologies for interference determinations should be both accurate and consistent between different DFMSs. The Commission envisions that stakeholders will establish detailed standards for specific models and methods that meet the Commission's requirements, but emphasizes that any standards established must be in compliance with the rules. Furthermore, the Commission includes a requirement to help ensure that parties requesting frequency assignments have the necessary FAA pilot and flight authorizations, obligating a DFMS to confirm through certifications that the party requesting a frequency assignment has flight authorization from the FAA to cover the flight associated with the assignment request, and that the flight will only be piloted by parties that have the necessary FAA remote pilot authorization. The Commission does not expect this requirement to be time-consuming because, while a DFMS may implement additional measures to obtain confirmation, the Commission only requires it to implement certifications. Further, the Commission finds that it will provide further assurance that the NNA spectrum is used for authorized purposes. Finally, the Commission adopts a requirement that a DFMS be capable of responding to in-flight revision requests.

Additionally, the Commission authorizes certain requirements for communications between DFMS and NNA stations to better ensure compliance with DFMS assignments, specifically that a DFMS be able to communicate directly with a ground station operating in the NNA spectrum, or proxy software acting on its behalf, to achieve the following: (1) ensure that all NNA stations used in the operation, including any ground or airborne stations, are programmed to limit communications in the 5030–5091 MHz band, during the period of the frequency assignment, to the specific frequencies assigned by the DFMS and in accordance with the other terms of the assignment; and (2) receive updates on flight status when an uncrewed aircraft has launched and when it has landed. The Commission will similarly require NNA ground stations to be capable of communicating with a DFMS as necessary to achieve these functions. These obligations will better ensure compliance with DFMS assignments.

In seeking to address concerns that a party may hoard or monopolize the limited spectrum available for NNA operations, the Commission adopts requirements that a DFMS grant

assignments sufficient to provide protected access over a duration and geographic area sufficient to cover the entire submitted UAS flight but does not mandate that a DFMS frequency assignment have the specific terms requested. These are solely high-level obligations, and the Commission does not wish to preclude administrators from developing common policies, standards, or approaches regarding the assessment and granting of requests to better meet the industry's collective need for this limited spectrum resource. To further ensure prevention of monopolization and facilitate broader access to NNA spectrum, the Commission provides that requests may only be approved for an operation lasting no more than 24 hours and provides that requests may not be approved for periods commencing eight or more calendar days after the submission of the request, except to the extent that lack of frequency availability in that time frame justifies a later assignment. The Commission also adopts a requirement that a DFMS communicate and coordinate with other DFMSs as necessary to ensure consistent data and assignments, the safe and robust operation of authorized services, and compliance with the rules to ensure the proper functioning of the DFMSs.

The Commission does not define the specific information that a party must submit with a frequency assignment request or with registration. To facilitate inter-DFMS coordination, the Commission will mandate that each DFMS require the same registration and request information, and that information submitted to a DFMS be true, complete, correct, and made in good faith. The Commission will further require operators to keep any registration information up to date and keep any request information up to date through the scheduled end of the assignment. Further, the Commission will require a DFMS to maintain all records for at least 60 months.

Regarding security, the Commission adopts high-level requirements that (1) a DFMS must employ protocols and procedures to ensure that all communications between the DFMS and users or NNA stations in connection with a DFMS's NNA functions are secure and that unauthorized parties cannot access, shut down, or alter the DFMS or its stored information; and (2) communications between users and a DFMS, and between different DFMSs, must be secure to prevent corruption or unauthorized interception of data, and a DFMS must be protected from unauthorized data input or alteration of

stored data; and (3) a DFMS must verify that the NNA stations to be used in operations are FCC-certified devices and must not provide assignments to an uncertified device.

Furthermore, the Commission adopts two high-level requirements regarding the prioritization of requests. While the Commission will generally require the DFMS to process requests in a non-discriminatory, first-come-first-served manner, the Commission finds that two priorities in the event of congestion are in the public interest. First, the Commission provides that, in the event of emergencies, a DFMS should, to the extent feasible and consistent with the interests of aviation safety, prioritize requests from public safety entities. The Commission expects that, as with other high-level requirements, stakeholders will develop common standards regarding who qualifies as public safety entities and other such questions. Second, the Commission adopts a requirement that, in extended periods of congestion, the DFMS prioritize requests involving flights relying on a single ground station over requests that rely on multiple stations, to the extent feasible and consistent with the interests of aviation safety. For both of these requirements, the Commission anticipates that stakeholders will work collaboratively to develop appropriate standards and practices to implement them.

The Commission also adopts several requirements for DFMS administrators. These obligations include: (1) operate a DFMS consistent with the rules; (2) establish and follow protocols and procedures to ensure compliance with the rules; (3) provide service for a ten-year term, which may be renewed at the Commission's discretion; (4) securely transfer all the information in the DFMS to another approved entity in the event it does not continue as the DFMS administrator at the end of its term; (5) develop a standardized process with other DFMS administrators for coordinating operations with other approved DFMSs, avoiding any conflicting assignments, and maximizing shared use of available frequencies; (6) coordinate with other DFMS administrators including sharing assignment and other information, facilitating non-interference to and from operations relying on assignments from other DFMSs, and other functions necessary to ensure that use of available spectrum is safe and efficient and consistent with the rules; (7) ensure that the DFMS shall be available at all times to immediately respond to requests from authorized Commission personnel for any and all information stored or

retained by the DFMS; (8) establish and follow protocols to comply with enforcement instructions from the Commission; and (9) implement such reasonable limits on requests as are necessary to prevent the hoarding, warehousing, monopolization, or otherwise excessive reservation of NNA spectrum by a particular party.

To assist in its enforcement responsibilities, the Commission adopts a requirement that DFMS administrators establish and follow protocols to comply with enforcement instructions from the Commission. The Commission expects detailed enforcement mechanisms and procedures employed by DFMSs to be developed during the approval process, including mechanisms and procedures to address unauthorized use of the spectrum, and the Commission anticipates that most issues will be addressed through these mechanisms.

Radionavigation-Satellite Service. The 5010–5030 MHz band includes an allocation for the radionavigation-satellite service (RNSS) (space-to-Earth) for potential future use. Footnote 5.443C of the Table of Frequency Allocations addresses requirements in the 5030–5091 MHz band for the protection of RNSS downlinks. Specifically, it provides that “[u]nwanted emissions from the aeronautical mobile (R) service in the frequency band 5030–5091 MHz shall be limited to protect RNSS system downlinks in the adjacent 5010–5030 MHz band” and that “[u]ntil such time that an appropriate value is established in a relevant International Telecommunication Union Radiocommunication Sector (ITU-R) Recommendation, the equivalent isotropic radiated power density limit of –75 dBW/MHz in the frequency band 5010–5030 MHz for any AM(R)S station unwanted emission should be used.” Footnote 5.443C further limits aeronautical mobile (route) service (AM(R)S) use of the 5030–5091 MHz band to “internationally standardized aeronautical systems.” As NNA operations services would be part of the AM(R)S allocation, the requirements of footnote 5.443C would apply to such operations in the 5030–5091 MHz band.

AeroMACS. AeroMACS is a wireless broadband aeronautical mobile (route) service system that will enable communications for surface operations at airports between aircraft and other vehicles and between other critical fixed assets. The Commission allocated both the 5000–5030 MHz and 5091–5150 MHz bands for such use but has not yet established service rules in either band. The AeroMACS allocation for 5010–5030 MHz further provides that in

making assignments for this band, attempts shall first be made to satisfy requirements in the bands 5000–5010 MHz and 5091–5150 MHz. The Commission concludes that the adopted technical requirements, combined with the frequency separation, will be adequate regulatory measures to provide compatibility between NNA operations and AeroMACS in the upper and lower band. These limits are drawn from the technical requirements of RTCA DO-362A, which are detailed below.

Aeronautical Mobile Telemetry. The 5091–5150 MHz band is also allocated for Federal and non-Federal aeronautical mobile telemetry (AMT) communications from aircraft stations, subject to the technical parameters in ITU Resolution 418 (WRC-12) intended to ensure compatibility with other services. According to the NTIA, Federal agencies currently use this allocation in the 5091–5150 MHz band to support flight testing. The band is similarly used for non-Federal flight-testing operations. As specified in footnote US111 of the Table of Allocations, flight testing in the 5091–5150 MHz band is conducted at seventeen locations, and additional locations may be authorized on a case-by-case basis. The Commission finds that the limits adopted today, drawn from RTCA DO-362A, are sufficient to protect AMT.

Mobile Satellite Service Earth Stations. As specified in the footnote US444A of the Table of Allocations, the 5091–5250 MHz band is also allocated to the fixed-satellite service (Earth-to-space) on a primary basis for non-Federal use, limited to feeder links of non-geostationary satellite systems in the Mobile Satellite Service (MSS). After January 1, 2016, the 5091–5150 MHz portion of this allocation permitted no new assignments. Globalstar operates gateway earth stations in the 5096–5250 MHz band under this allocation as part of its global mobile satellite service. To address the unlikely possibility of interference with UAS operations, the Commission clarifies that the responsibility to resolve interference between rule-compliant MSS earth stations and UAS is on the new UAS services. MSS earth station licensees in the 5091–5250 MHz band will only be responsible for curing harmful interference from its earth station to NNA operations in the neighboring 5030–5091 MHz band to the extent such interference is the result of the licensee's non-compliance with applicable license or regulatory requirements.

Radio Astronomy. In the *Report and Order*, the Commission requires

coordination within the National Radio Quiet Zone (NRQZ). The coordination requirements are modeled after the NRQZ coordination procedures applicable to other services under section 1.924(a) of the Commission's rules but modified to work with the instant context in which a frequency assignment request will be submitted instead to a DFMS. Specifically, the Commission provides that parties planning to operate an NNA station at locations within the NRQZ must notify the NRQZ Administrator in writing in advance or simultaneously with the filing of the request. To reduce the burden of coordinating short term operations, the Commission adopts two measures: a provision that the NRQZ Administrator may establish a safe harbor for NNA operations in the NRQZ that do not require notification and a measure that a party need not notify the NRQZ Administrator if the party's operation or revision of an operation is within the scope of an approval previously granted to the party by the NRQZ Administrator. Furthermore, the coordination process will largely follow the procedures under section 1.924(a), with appropriate changes made to reflect the role of the DFMS. Thus, when a request for frequency assignment is filed with the DFMS, the notification may be submitted prior to or simultaneously with the request. After receipt, the DFMS will allow a period of 20 days for objections. If a DFMS determines that a request is subject to one of the two exceptions to notification, it shall process the request without waiting the 20-day period. If the DFMS receives a NRQZ Administrator approval of operations that includes the operation associated with the request, if the request is within the scope of a safe harbor established by the NRQZ Administrator, or if the 20-day period passes without objection, the DFMS will process the request under normal procedures, except that requests may be approved for periods commencing more than seven calendar days after the submission of the request, but no more than seven calendar days after the date of decision. If objections are received in the 20-day period, the DFMS will forward the record, including the frequency request, to the Commission. After consideration of the record, the Commission will take whatever action is deemed appropriate, including, potentially, directions to the DFMS administrator regarding resolution of the request. Finally, to facilitate operation of both UAS systems and radio astronomy systems, the Commission requires a DFMS to immediately notify

the National Science Foundation, Division of Astronomical Sciences, Electromagnetic Spectrum Management Unit, by email of any assignments that it approves for UAS operations in the vicinity of the radio astronomy facilities identified in footnote US385 of the Table of Allocations, which identifies the sites at which radio astronomy observations are performed in 4990–5000 MHz.

Canadian and Mexican Coordination. International agreements with Mexico and Canada do not currently address the use of the 5030–5091 MHz band for UAS communications near the borders with those countries. DFMS administrators will be required to demonstrate that their systems can and will enforce agreements between the United States, Canadian, and Mexican governments regarding commercial operations in the 5030–5091 MHz Band. The specific methods of enforcement will be determined and implemented by DFMS administrators, with appropriate Commission oversight, after the agreements are in place.

Interim Access Mechanism Registration. The Commission adopts an interim access mechanism (IAM) to enable NNA entities to begin operations in the band during the interim period before the DFMS is operational. For IAM access, NNA operators holding an FAA authorization must subsequently complete an on-line NNA registration form with the Commission providing various basic information and certifications, including a company or individual name, email address, and the following certification statements: (1) they have complied with the FAA authorization process; (2) they have/will comply with the Commission's NNA rules and technical requirements; (3) all equipment utilized in NNA operations meets the equipment certification requirements; and (4) their authorization to use the IAM assignment terminates immediately in the event a DFMS becomes operational prior to the end of the IAM assignment. This registration process will not require a fee, or any subsequent review process. Once the registration form is completed and submitted, a confirmation number of their registration will be provided and NNA operations can commence immediately. During the IAM, the Commission will work with the FAA to resolve disputes or identify and address the sources of harmful interference or unauthorized operations in the 5030–5091 MHz band.

Compliance with RTCA DO-362A. In the *Report and Order*, the Commission adopts rules based on RTCA DO-362A, which contains Minimum Operational

Performance Standards for terrestrial-based control-and-non-payload communications (CNPC) point-to-point or point-to-multipoint links in the 5030–5091 MHz band, including power limits, emission limits, and frequency accuracy requirements. UAS entities are likely familiar with RTCA DO-362A as the FAA recently issued a Technical Standard Order (TSO) establishing minimum standards in the 5030–5091 MHz band based on the requirements in the RTCA DO-362A. It is appropriate to adopt technical requirements based on the RTCA DO-362A for governing the types of safety-of-flight UAS operations in the 5030–5091 MHz band as these requirements are consistent with the AM(R)S allocation for the band, the limitations associated with CNPC-only operations, and because they are consistent with FAA standards.

First, as recommended by RTCA, the Commission adopts the requirement of RTCA DO-362A standard related to Time Division Duplexing (TDD) for NNA equipment and operations in the band. To minimize the risk of interference and to achieve consistency with the FAA TSO based on the RTCA DO-362A standard, the Commission finds it appropriate at this time to incorporate into its rules the 50 ms TDD frame structure requirement for NNA equipment and operations for CNPC purposes in the 5030–5091 MHz band. Second, the Commission declines to follow the requirements of rule section 87.139(c) to avoid imposing potentially inconsistent out-of-band emissions requirements with the FAA, which mandates compliance with applicable emissions requirements in section 2 of the RTCA DO-362A standard. To provide stakeholders increased flexibility, and in lieu of mandating the use of specific emission designators, the Commission will permit an applicant seeking equipment certification to specify the emission designator appropriate to its equipment design and proposed operation, provided it meets the technical requirements adopted today governing NNA equipment and operations. Finally, the Commission delegates joint rulemaking authority to the Wireless Telecommunications Bureau (WTB) and the Office of Engineering and Technology (OET) to incorporate into the Commission's rules, after notice and an opportunity for public comment, any updated version of a previously incorporated technical standard applicable to UAS operations in the 5030–5091 MHz band. This delegation will facilitate expedited updates to the Commission's technical rules based on evolving technical

standards. The Commission seeks to expedite necessary future changes to accommodate updates in standards relevant to previously adopted technical requirements.

Equipment Authorization. The Commission adopts the *NPRM's* proposal to mandate equipment authorization requirements similar to those under sections 87.145 and 87.147 of the Commission's rules to all equipment intended for use in the 5030–5091 MHz band. Section 87.145 requires that each transmitter must be certified for use in the relevant service, and section 87.147 establishes a specific equipment authorization for part 87 equipment, which for the frequencies in the 5030–5091 MHz band, among others, requires coordination with the FAA. The *NPRM's* stated goal was to ensure that such equipment meets the level of reliability and safety necessary of aviation equipment. The Commission noted that 5030–5091 MHz UAS radio equipment must independently satisfy any applicable FAA requirements and anticipated that this coordination process would ensure that the 5030–5091 MHz equipment authorizations by the Commission and the FAA are consistent and that all equipment approved for use in the band will meet both agencies' requirements. The Commission adopts these requirements as well as requirements that transmitters be certified for use in the relevant service through compliance with OET procedures for equipment authorization under part 2, subpart J of the Commission's rules and provide notification to the FAA when filing the requisite application. This approach will ensure that necessary coordination occurs with the FAA, given its responsibility for ensuring aviation safety in the National Airspace System, and prevent harmful interference through NNA equipment compliance with the relevant technical requirements. The entities required to comply with equipment authorization will primarily be equipment manufacturers, some of which include small entities. Likewise, all entities—including small entities—will use this authorized equipment.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

In the discussion of the issues the *NPRM* sought comment on, the Commission raised alternatives and sought input such as technical studies and cost-benefit analyses from small and other entities. By requesting such information, the Commission gave small

entities the opportunity to broaden the scope of the Commission's understanding of impacts, which may be readily apparent, and offer alternatives not already considered that could minimize the economic impact on small entities. The Commission has adopted alternatives that will minimize compliance burdens on small entities, as described below.

Industry-focused, Multi-phase Rulemaking. In adopting these service rules, the Commission intends for rules and policies to be adopted in phases to ensure flexibility and innovation for this industry. This initial phase adopts high-level rules that describe minimum requirements for operation of the DFMS and encourages a multi-stakeholder group addressing issues in the band to work collaboratively to develop technical specifications and standards for DFMS operation, and to explore other issues related to the evolving demands in the band. This approach will allow small entities, to collaborate and reach a consensus on key issues and present innovative solutions satisfactory to the involved parties.

Although it imposes new requirements that could impact small entities, in establishing these rules, the Commission balances the administrative burden to entities with ensuring flight safety and protecting against interference in a manner that minimizes the impact to all UAS operators, including small entities. In this initial step, the Commission opens a portion of the band for NNA operations to enable early, low-cost access to dedicated spectrum for UAS control communications. By providing low-cost access, small entities will be able to utilize this spectrum without a significant financial cost.

Licensing Stations by Rule. In the *Report and Order*, the Commission adopts a licensing approach that would not require individual licensing, which will reduce the administrative burdens on small entities who are UAS operators and the Commission. The Commission implements a license-by-rule authorization for NNA operations, pursuant to section 307(e) of the Communications Act, as amended. Under this license-by-rule framework, parties using rule-compliant stations and operating in compliance with the rules would only need to obtain the requisite temporary frequency assignment from the DFMS in order to have Commission authorization to transmit in the band in the assigned location, frequency, and timeframe. To obtain Commission authorization to use the NNA spectrum, NNA users must use certified, Commission-approved NNA

stations, and comply with the applicable NNA rules, but need not obtain individual spectrum licenses from the Commission. A license-by-rule approach will minimize the administrative burdens on users and the Commission and facilitate use of NNA for exclusive, short-term assignments focused on specific needs and operations.

The Commission has found that a license-by-rule approach will also minimize the burden on small businesses and expedite the process for UAS operators. More specifically, the Commission finds that licensing by rule of NNA stations will serve the public interest, convenience, and necessity and promote the efficient and robust use of the NNA spectrum. A license-by-rule approach to use the NNA band will avoid the administrative burdens on users and the Commission that would be involved if NNA operations were licensed individually, facilitating the use of NNA for short-term (but exclusive) assignments focused on specific needs and operations rather than longer term authorizations used only intermittently. In addition, the uniform support in the record for this approach bolsters the Commission's confidence that this approach is in the public interest. Because of this licensing approach, the burden for small entities is minimized and provides them with more accessibility to participate in this industry.

Interim Access Mechanism Registration. The Commission adopts an IAM to enable NNA entities to begin operations in the band during the interim period before the DFMS is operational. IAM registration is accomplished by completing an on-line NNA registration form with the Commission, which requires basic information and certifications. The information required for registration is straightforward, which lessens the administrative burden on small entities. To further minimize the burden on registering entities, there will be no financial cost for this registration process. Once the registration form is completed and submitted, a confirmation number of their registration will be provided and NNA operations can commence immediately. Therefore, there is not a significant impact on small entities that seek to register. While there is an added administrative burden to register with the Commission during the IAM period, the cost of this added burden is balanced by the ability of UAS operators, including small entities, to gain immediate access to the 5030–5091 MHz band.

Equipment Authorization. The Commission adopts equipment authorization requirements similar to those under §§ 87.145 and 87.147 of the Commission's rules to all equipment intended for use in the 5030–5091 MHz band. Section 87.145 requires that each transmitter must be certified for use in the relevant service, and section 87.147 establishes a specific equipment authorization for part 87 equipment, which for the frequencies in the 5030–5091 MHz band among others, requires coordination with the FAA. The Commission adopts these requirements that transmitters be certified for use in the relevant service through compliance with OET procedures for equipment authorization under part 2, subpart J of the Commission's rules and that the FAA is notified when filing the requisite application. Applying this approach to UAS equipment will ensure that necessary coordination occurs with the FAA, and that equipment authorizations by the Commission and the FAA are consistent and that all equipment approved for use in the band meet both agencies' requirements. The entities required to comply with equipment authorization will primarily be equipment manufacturers, some of which include small entities. However, the Commission balances the regulatory burden imposed by these equipment authorization requirements with the importance of a process that will aid the FAA's aviation safety responsibilities and help protect against harmful interference and believes that these requirements do not impose a significant burden on small entities. Furthermore, all entities—including small entities—will use and, thus, need to certify that they are using authorized equipment, but most small UAS entities will not be directly affected by these requirements beyond using the equipment.

Ordering Clauses

Accordingly, *it is ordered*, pursuant to sections 1, 4, 301, 303, 307, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 303, 307, and 310, that the *Report and Order* is hereby adopted.

It is further ordered that the *Report and Order*, including the rules as set forth in Appendix A, *shall be effective* thirty (30) days after publication in the **Federal Register**, with the exception of §§ 88.27, 88.31, 88.33, 88.35, 88.111, 88.113, 88.115, 88.135, 88.137, and 88.141 of the Commission's rules, 47 CFR 88.27, 88.31, 88.33, 88.35, 88.111, 88.113, 88.115, 88.135, 88.137, 88.141, which may contain new or modified information collection requirements that

require review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and will take effect after the Wireless Telecommunications Bureau publishes a notice in the **Federal Register** announcing the completion of such review and the relevant effective date(s).

It is further ordered that the Office of the Secretary, Reference Information Center, *shall send* a copy of the *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered that the Commission *shall send* a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 0

Authority delegations (Government agencies), Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure, Communications, Communications equipment, Radio, Reporting and recordkeeping requirements, Wireless radio services.

47 CFR Part 2

Communications equipment.

47 CFR Part 87

Communications equipment, Radio.

47 CFR Part 88

Communications, Communications equipment, Incorporation by reference, Radio, Reporting and recordkeeping requirements, Unmanned aircraft.

47 CFR Part 95

Communications equipment, Incorporation by reference, Radio, Telecommunications.

Federal Communications Commission.

Marlene Dortch,
Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, 2, 87, 95, and adds part 88, as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 409, and 1754, unless otherwise noted.

■ 2. Amend § 0.241 by adding paragraphs (a)(1)(iii) and (m) to read as follows:

§ 0.241 Authority delegated.

(a) * * *

(1) * * *

(iii) The Chief of the Office of Engineering and Technology is delegated authority, along with the Chief of the Wireless Telecommunications Bureau, by notice-and-comment rulemaking if required by statute or in the public interest, to issue an order amending rules in part 88 of this chapter that reference industry standards to specify revised versions of the standards. These delegations are limited to modifying rules to reference revisions to standards that are already in the rules and not to incorporate a new standard into the rules, and are limited to the approval of changes that do not raise major compliance issues.

* * * * *

(m) The Chief of the Office of Engineering and Technology is delegated authority jointly with the Chief of the Wireless Telecommunications Bureau to administer the Dynamic Frequency Management System (DFMS) and DFMS Administrator functions set forth in part 88 of this chapter. The Chief is delegated authority to administer the process of DFMS Administrator approval in close consultation with the FAA and NTIA, including authority to develop specific methods that will be used to designate DFMS Administrators; to designate DFMS Administrators; to develop procedures that these DFMS Administrators will use to ensure compliance with the requirements for DFMS operation; and to make determinations regarding the continued acceptability of individual DFMS Administrators.

■ 3. Amend § 0.331 by revising the introductory text of paragraph (d) and adding paragraph (j) to read as follows:

§ 0.331 Authority delegated.

* * * * *

(d) *Authority concerning rulemaking proceedings.* The Chief, Wireless Telecommunications Bureau, shall not have the authority to act upon notices of proposed rulemaking and inquiry, final orders in rulemaking proceedings and inquiry proceedings, and reports arising from any of the foregoing except such orders involving ministerial conforming amendments to rule parts, or orders conforming any of the applicable rules to formally adopted international conventions or agreements where novel questions of fact, law, or policy are not involved. Orders

conforming any of the applicable rules in part 17 of this chapter to rules formally adopted by the Federal Aviation Administration also need not be referred to the Commission if they do not involve novel questions of fact, law, or policy. In addition, revisions to the airport terminal use list in § 90.35(c)(61) of this chapter and revisions to the Government Radiolocation list in § 90.371(b) of this chapter need not be referred to the Commission. Adoption of certain technical standards applicable to hearing aid compatibility under § 20.19 of this chapter made together with Chief of the Office of Engineering and Technology, as specified in § 20.19(k) of this chapter, also need not be referred to the Commission. Adoption of amendments to rules in part 88 of this chapter by notice-and-comment rulemaking, along with the Chief of the Office of Engineering and Technology as specified in § 0.241(a)(1)(iii), that reference industry standards to specify revised versions of the standards, need not be referred to the Commission, however, these delegations are limited to modifying rules to reference revisions to standards that are already in the rules and not to incorporate a new standard into the rules, and are limited to the approval of changes that do not raise major compliance issues. Also, the addition of new Marine VHF frequency coordination committee(s) to § 80.514 of this chapter need not be referred to the Commission if they do not involve novel questions of fact, policy or law, as well as requests by the United States Coast Guard to:

* * * *

(j) *Authority concerning the administration of dynamic frequency management systems.* The Chief of the Wireless Telecommunications Bureau is delegated authority jointly with the Chief of the Office of Engineering and Technology to administer the Dynamic Frequency Management System (DFMS) and DFMS Administrator functions set forth in part 88 of this chapter. The Chief is delegated authority to administer the process of DFMS Administrator approval in close consultation with the FAA and NTIA, including authority to develop specific methods that will be used to designate DFMS Administrators; to designate DFMS Administrators; to develop procedures that these DFMS Administrators will use to ensure compliance with the requirements for DFMS operation; and to make determinations regarding the continued acceptability of individual DFMS Administrators.

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754, unless otherwise noted.

- 5. Revise §§ 1.901 and 1.902 to read as follows:

§ 1.901 Basis and purpose.

The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.* The purpose of the rules in this subpart is to establish the requirements and conditions under which entities may be licensed in the Wireless Radio Services as described in this part and in parts 13, 20, 22, 24, 27, 30, 74, 80, 87, 88, 90, 95, 96, 97, and 101 of this chapter.

§ 1.902 Scope.

In case of any conflict between the rules set forth in this subpart and the rules set forth in parts 13, 20, 22, 24, 27, 30, 74, 80, 87, 88, 90, 95, 96, 97, and 101 of title 47, chapter I of the Code of Federal Regulations, the rules in this part shall govern.

- 6. Amend § 1.907 by revising the definitions of “Private Wireless Services” and “Wireless Radio Services” to read as follows:

§ 1.907 Definitions.

* * * *

Private Wireless Services. Wireless Radio Services authorized by parts 80, 87, 88, 90, 95, 96, 97, and 101 of this chapter that are not Wireless Telecommunications Services, as defined in this part.

* * * *

Wireless Radio Services. All radio services authorized in parts 13, 20, 22, 24, 26, 27, 30, 74, 80, 87, 88, 90, 95, 96, 97 and 101 of this chapter, whether commercial or private in nature.

* * * *

- 7. Amend § 1.924 by adding paragraph (a)(4) to read as follows:

§ 1.924 Quiet Zones.

(a) * * *

(4) Parties subject to subpart B of part 88 of this chapter shall follow the requirements of § 88.35 of this chapter instead of the requirements of paragraph (a) of this section.

* * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

- 8. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

- 9. Amend § 2.1055 by revising paragraph (a)(2) to read as follows:

§ 2.1055 Measurements required: Frequency stability.

(a) * * *

(2) From -20° to $+50^{\circ}$ centigrade for equipment to be licensed for use in the Maritime Services under part 80 of this chapter, except for Class A, B, and S Emergency Position Indicating Radiobeacons (EPIRBs), and equipment to be licensed for use above 952 MHz at operational fixed stations in all services, stations in the Local Television Transmission Service and Point-to-Point Microwave Radio Service under part 21 of this chapter, equipment licensed for use aboard aircraft in the Aviation Services under part 87 of this chapter, uncrewed aircraft stations (as defined in § 88.5 of this chapter) in the Uncrewed Aircraft System Services under part 88 of this chapter, and equipment authorized for use in the Family Radio Service under part 95 of this chapter.

* * * *

PART 87—AVIATION SERVICES

- 10. The authority citation for part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

- 11. Amend § 87.1 by revising paragraph (b) to read as follows:

§ 87.1 Basis and purpose.

* * * *

(b) *Purpose.* Except as provided in part 88 of this chapter, this part states the conditions under which radio stations may be licensed and used in the aviation services. These rules do not govern U.S. Government radio stations.

- 12. Add part 88 to read as follows:

PART 88—UNCREWED AIRCRAFT SYSTEM SERVICES

Subpart A—General Rules

Sec.

88.1 Scope.

88.3 Application of other rule parts.

88.5 Definitions.

Subpart B—Non-Networked Access

88.25 Limitations on NNA communications.

88.27 Authorization.

88.29 Frequencies.

88.31 Non-networked access use.

88.33 Information requirements.

88.35 National radio quiet zone coordination.

Subpart C—[Reserved]**Subpart D—Technical Requirements**

- 88.101 Transmitter power.
- 88.103 Emissions bandwidth.
- 88.105 Emission mask.
- 88.107 Out-of-band emission limits.
- 88.109 Time division duplex requirement.
- 88.111 Certification required.
- 88.113 Authorization of equipment.
- 88.115 RF safety.
- 88.117 Incorporation by reference.

Subpart E—Dynamic Frequency Management Systems

- 88.135 DFMS requirements.
- 88.137 DFMS administrators.
- 88.139 DFMS administrator fees.
- 88.141 Interim access mechanism.

Authority: 47 U.S.C. 154(i), 303, 307.

Subpart A—General Rules**§ 88.1 Scope.**

This part sets forth the regulations governing the use of the 5030–5091 MHz band by Uncrewed Aircraft Systems.

§ 88.3 Application of other rule parts.

(a) Except as expressly provided under this part, part 87 of this chapter shall not apply to uncrewed aircraft systems communications in the 5030–5091 MHz band.

(b) Non-Networked Access (NNA) devices, as defined in this part, are considered part of the Citizens Band Radio Service, as defined in § 95.303 of this chapter. Except for the definitions of Citizens Band Radio Service and Uncrewed Aircraft System Services in § 95.303, the rules of part 95 of this chapter shall not apply to such devices.

§ 88.5 Definitions.

The following terms and definitions apply only to the rules in this part.

Control and Non-payload Communications (CNPC). Any transmission that is sent between the UA component and the UAS ground station of the UAS and that supports the safety or regularity of the UA's flight.

Dynamic Frequency Management System (DFMS). A frequency coordination system operating in the 5030–5091 MHz band that:

- (1) Is highly automated and capable of providing rapid responses to frequency assignment requests from registered NNA operators, and
- (2) In response to such requests, is capable of assigning to the requesting operator temporary protected use of certain frequencies for a particular geographic area and time period tailored to the operator's submitted operation, to the extent such frequencies are available.

Dynamic Frequency Management System (DFMS) Administrator. An

entity authorized by the Commission to operate a DFMS in accordance with the rules and procedures set forth in subpart E of this part.

Interim Access Mechanism (IAM). A process by which non-networked access users will be allowed temporary, short-term access to 5040–5060 MHz frequencies in the period before the first DFMS is approved and placed into operation.

Non-Networked Access (NNA). Temporary, interference-protected access to the 5030–5091 MHz band consistent with subpart B of this part.

Non-Networked Access (NNA) station. An uncrewed aircraft system ground station or uncrewed aircraft station authorized under this part and designed to communicate using NNA assignments consistent with subparts B and D.

Non-Networked Access (NNA) user. An authorized user of spectrum in the 5030–5091 MHz band operating on an NNA basis, as set forth in subpart B.

Payload. Information that is sent to or from a UA component to achieve mission objectives and is not CNPC.

Uncrewed Aircraft (UA). An aircraft operated without the possibility of direct human intervention from within or on the aircraft.

Uncrewed Aircraft Station. A mobile station authorized under this part and located on board a UA.

Uncrewed Aircraft System (UAS). A UA and its associated elements (including an uncrewed aircraft station, communication links, and the components not on board the UA that control the UA) that are required for the safe and efficient operation of the UA in the airspace of the United States.

Uncrewed Aircraft System (UAS) Ground Station. Radio communications equipment on the ground used to maintain control over or otherwise communicate with a UA.

Subpart B—Non-Networked Access**§ 88.25 Limitations on NNA communications.**

(a) Transmissions over an NNA assignment are limited to CNPC.

(b) UAS ground stations may be fixed or mobile, but mobile ground stations cannot be used while in motion or at locations other than those approved under the applicable frequency assignment.

§ 88.27 Authorization.

(a) Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, and that otherwise meets the technical, financial, character, and citizenship qualifications

that the Commission may require in accordance with such Act, is eligible to be an NNA user and operate NNA stations under this part.

(b) NNA users are licensed by the rules in this part and do not need an individual license issued by the Commission. Even though an individual license is not required, an NNA user licensed by the rules in this part must comply with all applicable operating requirements, procedures, and technical requirements found in this part.

(c) To transmit in the frequencies of the 5030–5091 MHz band designated for NNA operations, an NNA user must register with a DFMS and comply with its instructions and the rules in this part.

(d) Registered NNA users may transmit in the frequencies of the 5030–5091 MHz band designated for NNA operations only using NNA stations compliant with the rules of this part, and only pursuant to and consistent with the terms of a frequency assignment from a Commission-approved DFMS.

§ 88.29 Frequencies.

(a) The 5040–5050 MHz band is designated to NNA users for CNPC use.

(b) In the period prior to the approval and commencement of operation by the first DFMS administrator, NNA users may access the 5040–5060 MHz band pursuant to the IAM process, as set forth in § 88.141.

§ 88.31 Non-networked access.

(a) Parties registered with a DFMS may submit a request to the DFMS for temporary frequency assignments for CNPC limited to the duration and geographic coverage necessary to support a single submitted UAS flight. Requests may also be made either prior to or during the relevant operation to modify an assignment. Such requests must be made to the same DFMS responsible for the original assignment.

(b) If frequencies meeting the request are available, the DFMS shall assign them on an exclusive but temporary basis. The scope of the assignment shall be tailored in both duration and geographic coverage to ensure interference-free communications for the entire submitted UAS flight.

(c) When registering with or using the services of a DFMS, a party shall comply with all DFMS Administrator instructions, including those regarding registration process and procedures, requests and other submissions to the DFMS, and operational use of NNA assignments.

(d) UAS operations using NNA assignments within the National Radio

Quiet Zone (NRQZ) are prohibited without the prior coordination with the NRQZ administrator required under § 88.35. Consistent with § 2.106(c)(211) of this chapter, NNA users should take all practicable steps to protect radio astronomy in the 4990–5000 MHz band, subject to § 2.106(c)(74) of this chapter.

(e) Any UAS ground station using an NNA assignment to support a UAS flight, or proxy software acting on the ground station's behalf, must be capable of communicating with the assigning DFMS to achieve the following:

(1) confirm that all NNA stations used in the operation, including any UAS ground station or airborne station used in the flight, are programmed to limit communications in the 5030–5091 MHz band, during the period of the frequency assignment, to the specific frequencies assigned by the DFMS and in accordance with the other terms of the assignment; and

(2) send updates on flight status when a UA has launched and when it has landed.

§ 88.33 Information requirements.

(a) Information submitted to a DFMS with registration or a frequency assignment request must be accurate, complete, and made in good faith. Registration information must include a party's legal name and contact information, as well as other information required by the DFMS.

(b) Parties must keep registration information up to date, and must keep frequency assignment request information up to date until the scheduled time of the operation.

§ 88.35 National radio quiet zone coordination.

(a) Except as provided in paragraphs (a)(1) and (2) of this section, parties planning to operate an NNA station within the area bounded by N 39°15'0.4" on the north, W 78°29'59.0" on the east, N 37°30'0.4" on the south, and W 80°29'59.2" on the west must notify the National Radio Quiet Zone Administrator (NRQZ Administrator) in writing at Post Office Box No. 2, Green Bank, West Virginia 24944, or by email to nrqz@nrao.edu, of the technical details of the proposed operation. The notification must include the geographical coordinates of ground station antenna locations, associated ground station antenna height, antenna directivity (if any), the maximum airborne station altitude, the maximum airborne station flight altitude (MSL or AGL), the frequencies, the emission type, and power.

(1) If an operation or revision of an operation is within the scope, including

any applicable conditions, of a previously granted approval from the NRQZ Administrator, parties need not provide notification of the operation or revision to the NRQZ Administrator, but must submit the approval with any frequency assignment request relying on this exception.

(2) If the NRQZ Administrator establishes criteria for NNA operations in the NRQZ that do not require notification to the NRQZ Administrator, and an operation or revision of an operation is within the scope of such criteria, a party need not provide notification of the operation or revision to the NRQZ Administrator, but, when submitting their request, must certify that their request meets the criteria for NNA operations in the NRQZ that do not require notification to the NRQZ Administrator and provide any additional supporting documentation required by the DFMS.

(3) When a request for concurrence is submitted to the FAA under the Interim Access Mechanism provided under § 88.141, the request must state the date that notification in accordance with paragraph (a) of this section was made or provide an approval from the NRQZ Administrator for operations within the NRQZ or portions thereof along with the maximum operating altitude allowed.

(b) When a request for frequency assignment involving an NNA station subject to paragraph (a) of this section is submitted to a DFMS, the required notification must be made prior to or simultaneously with the request. The request must state the date that notification in accordance with paragraph (a) of this section was made. After receipt of such a request, the DFMS shall allow a period of 20 days for objections in response to the notifications indicated. If a DFMS determines that a request is subject to an exception to notification under paragraphs (a)(1) or (2) of this section, it shall process the request without waiting the 20-day period. In instances in which notification has been made to the NRQZ Administrator prior to the submission of the request, the requesting party must also provide notice to the NRQZ Administrator upon actual submission of the request with the DFMS, specifying which DFMS has received the request. Such notice will be made simultaneous with the submission of the request and shall comply with the requirements of paragraph (a) of this section.

(c) If an objection from the NRQZ Administrator is received by a DFMS during the 20-day period specified in paragraph (b) of this section, the DFMS shall forward the record, including the

assignment request, associated NNA station details, and objection, to the FCC. The FCC will, after consideration of the record, take whatever action is deemed appropriate.

Subpart C—[Reserved]

Subpart D—Technical Requirements

§ 88.101 Transmitter power.

Transmitters operating in the 5030–5091 MHz band must comply with the transmitter output power specified in technical standard RTCA DO–362A (incorporated by reference, see § 88.117) section 2.2.1.6.1 and associated subsections.

§ 88.103 Emissions bandwidth.

The authorized bandwidth is the maximum occupied bandwidth authorized to be used by a station. Transmitters operating in the 5030–5091 MHz band must comply with the channel width requirements, channel placement requirements, tunability requirements, and non-video channel bandwidth limitations specified in technical standard RTCA DO–362A (incorporated by reference, see § 88.117) sections 2.2.1.5.2, 2.2.1.5.3, 2.2.1.5.4, and 2.2.1.5.6, respectively.

§ 88.105 Emission mask.

Transmitters operating in the 5030–5091 MHz band must comply with the ARS and GRS radio transmitter power spectral density (PSD) limits specified in technical standard RTCA DO–362A (incorporated by reference, see § 88.117) section 2.2.1.6.2.1.

§ 88.107 Out-of-band emission limits.

Transmitters operating in the 5030–5091 MHz band must comply with the out-of-band-emission limits specified in technical standard RTCA DO–362A (incorporated by reference, see § 88.117) section 2.2.1.8.2 and associated subsections. On any frequency outside the 5030–5091 MHz band that is not addressed by RTCA DO–362A section 2.2.1.8.2 and associated subsections, the power of any emission, as measured over a 1 megahertz resolution bandwidth, shall be attenuated outside the band below the transmitter power (P) by at least $43 + 10\log(P)$ dB.

§ 88.109 Time division duplex requirement.

Transmitters operating in the 5030–5091 MHz band must comply with the time division duplex (TDD) frame structure and timing accuracy requirements specified in technical standard RTCA DO–362A (incorporated by reference, see § 88.117) sections 2.2.1.3 and 2.2.1.3.1.

§ 88.111 Certification required.

Each transmitter utilized for operation under this part and each transmitter marketed as set forth in § 2.803 of this chapter must be certified by the Commission for use in part 88 services following the procedures set forth in part 2, subpart J of this chapter.

§ 88.113 Authorization of equipment.

An applicant for certification of equipment intended for transmission in the 5030–5091 MHz band must notify the FAA of the filing of a certification application. The letter of notification must be mailed to: FAA, Spectrum Engineering Service Group, AJW–1900, 800 Independence Ave. SW, Washington, DC 20591 prior to the filing of the application with the Commission.

(a) The notification letter must describe the equipment, and give the manufacturer's identification, antenna characteristics, rated output power, emission type and characteristics, the frequency or frequencies of operation, and essential receiver characteristics if protection is required.

(b) The certification application must include a copy of the notification letter to the FAA. The Commission will not act until it receives the FAA's determination regarding whether it objects to the application for equipment authorization. The FAA should mail its determination to: Office of Engineering and Technology Laboratory Division, Equipment Authorization and Compliance Branch, 7435 Oakland Mills Rd., Columbia, MD 21046. The Commission will consider the FAA determination before taking final action on the application.

§ 88.115 RF safety.

Licensees and manufacturers are subject to the radio frequency radiation exposure requirements specified in §§ 1.1307(b), 1.1310, 2.1091, and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions and technical information showing the basis for this statement must be submitted to the Commission upon request.

§ 88.117 Incorporation by reference.

The standards referenced in this section are incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approved material is available for inspection at the Federal

Communications Commission (FCC) and at the National Archives and Records Administration (NARA). Contact the FCC at: 45 L Street NE, Reference Information Center, Room 1.150, Washington, DC 20554; phone: (202) 418–0270. For information on the availability of this material at NARA, email fedreg.legal@nara.gov or go to www.archives.gov/federal-register/cfr/ibr-locations. The material may be obtained from RTCA, Inc., 1150 18th Street NW, Suite 910, Washington, DC 20036; phone: 202–833–9339; email: info@rtca.org; website: <http://RTCA.org>.

(a) RTCA–DO–362A, Command and Control (C2) Data Link Minimum Operational Performance Standards (MOPS) (Terrestrial), dated December 17, 2020.

(b) [Reserved]

Subpart E—Dynamic Frequency Management Systems**§ 88.135 DFMS requirements.**

(a) A DFMS must provide a process for NNA users to register with the system for the purpose of submitting frequency assignment requests and obtaining frequency assignments.

(b) All DFMSs must require the same registration and frequency assignment request information. Registration shall require, among other information, the registrant's legal name and contact information.

(c) A DFMS must be capable of processing frequency assignment requests nationwide and across the entire 5030–5091 MHz band. However, a DFMS may only grant assignments for spectrum within those frequencies specified under § 88.29(a).

(d) In response to a frequency assignment request from a registered party, a DFMS shall determine and provide, through a process that is highly automated and capable of rapid responses to frequency assignment requests, an assignment of frequencies for a particular geographic area and time period tailored to the submitted UAS flight, to the extent that frequencies are available to meet the request and grant of the assignment is otherwise consistent with this part. Assignments must provide protected access to frequencies over a duration and geographic area sufficient to cover and support the entire UAS flight.

Assignments may specify channels and maximum transmit power level.

(e) A DFMS may not terminate an assignment while a flight is ongoing or modify the assignment during this time unless pursuant to a revision request from the assignee.

(f) Assignments must account for the need to protect other authorized operations.

(g) Models and methodologies for interference determinations used by a DFMS should be both effective in avoiding harmful interference and consistent between different DFMSs.

(h) For each frequency assignment request, a DFMS must confirm through certifications in the frequency assignment request process that the requesting party has flight authorization from the FAA to cover the flight associated with the frequency assignment request, and that any remote pilots that will be involved in the flight have all necessary FAA remote pilot authorization, to the extent such authorization is required. Any party challenging a DFMS action with regard to this requirement or otherwise seeking a Commission determination regarding a party's FAA authorization in this context must submit, with its filing to the Commission, a determination from the FAA regarding whether the NNA frequency assignee in question has the relevant authorization under FAA rules and requirements.

(i) A DFMS must be capable of responding to in-flight revision requests.

(j) A DFMS must be capable of communicating directly with a UAS ground station operating in the NNA spectrum, or with proxy software acting on the ground station's behalf, to achieve the following:

(1) ensure that all NNA stations used in an operation, including any ground or airborne station used in the flight, are programmed to limit communications in the 5030–5091 MHz band, during the period of the frequency assignment, to the specific frequencies assigned by the DFMS and in accordance with the other terms of the assignment; and

(2) receive updates on flight status when a UA has launched and when it has landed.

(k) Frequency assignment requests may not be approved:

(1) for periods commencing on or after eight calendar days after the date on which the request is submitted, except to the extent that lack of frequency availability in that time frame or the coordination requirement under § 88.35 justify a later assignment; or

(2) for an operation lasting more than 24 hours.

(l) A DFMS must communicate and coordinate with other DFMSs as necessary to ensure consistent data and assignments, the safe and robust operation of authorized services, and compliance with the rules.

(m) A DFMS must employ protocols and procedures to ensure that all

communications between the DFMS and users or NNA stations in connection with a DFMS's NNA functions are secure and that unauthorized parties cannot access, shut down, or alter the DFMS or its stored information.

(n) Communications between users and a DFMS and between different DFMSs must be secure to prevent corruption or unauthorized interception of data. A DFMS must be protected from unauthorized data input or alteration of stored data.

(o) A DFMS must verify that the NNA stations to be used in operations are FCC-certified devices and must not provide assignments to an uncertified device.

(p) A DFMS must retain information on, and enforce, exclusion zones sufficient to protect Microwave Landing Systems (MLS) in the 5030–5091 MHz band.

(q) A DFMS shall maintain all records for at least 60 months, including but not limited to date, time, and requester identification records for all requests

for, approval of, denial of, or termination of approval for all assignments of frequencies or revisions of such assignments, and all certifications submitted in connection with such requests.

(r) A DFMS must be capable of receiving reports of interference and requests for additional protection from MLS users in the 5030–5091 MHz band or authorized users in adjacent bands and promptly address interference issues.

(s) A DFMS must implement § 88.35 in its frequency assignment process.

(t) A DFMS must implement the terms of any international agreements with Canada and Mexico adopted to address coordination and compatibility of near-border UAS operations in the 5030–5091 MHz band.

(u) Except as provided under paragraphs (v) and (w) of this section, a DFMS must process frequency assignment requests on a non-discriminatory first-come-first-served manner.

(v) In the event of emergencies, a DFMS should, to the extent feasible and consistent with the interests of aviation safety, prioritize requests from public safety entities. Prioritization may not terminate or modify an NNA user's assignment while the assignment is in use during a UAS flight.

(w) During extended periods of congestion, the DFMS should prioritize requests involving flights relying on a single ground station over requests that rely on multiple stations, to the extent feasible and consistent with the interests of aviation safety.

(x) A DFMS must immediately notify the National Science Foundation, Division of Astronomical Sciences, Electromagnetic Spectrum Management Unit, by email at esm@nsf.gov when a request for frequency assignment is approved that will support operation of a UAS within 25 miles of a radio astronomy site listed in table 1 to this section. Notification must include the operation details.

TABLE 1 TO § 88.135

Allen Telescope Array, Hat Creek, CA	Rectangle between latitudes 40°00' N and 42°00' N and between longitudes 120°15' W and 122°15' W. 80 kilometers (50 mile) radius centered on 35°20' N, 116°53' W.	
NASA Goldstone Deep Space Communications Complex, Goldstone, CA	Rectangle between latitudes 17°30' N and 19°00' N and between longitudes 65°10' W and 68°00' W.	
National Astronomy and Ionosphere Center, Arecibo, PR	Rectangle between latitudes 32°30' N and 35°30' N and between longitudes 106°00' W and 109°00' W.	
National Radio Astronomy Observatory, Socorro, NM	Rectangle between latitudes 37°30' N and 39°15' N and between longitudes 78°30' W and 80°30' W.	
National Radio Astronomy Observatory, Green Bank, WV	80 kilometers radius centered on:	
National Radio Astronomy Observatory, Very Long Baseline Array Stations	North latitude	West longitude
Brewster, WA	48°08'	119°41'
Fort Davis, TX	30°38'	103°57'
Hancock, NH	42°56'	71°59'
Kitt Peak, AZ	31°57'	111°37'
Los Alamos, NM	35°47'	106°15'
Mauna Kea, HI	19°48'	155°27'
North Liberty, IA	41°46'	91°34'
Owens Valley, CA	37°14'	118°17'
Pie Town, NM	34°18'	108°07'
Saint Croix, VI	17°45'	64°35'
Owens Valley Radio Observatory, Big Pine, CA	Two contiguous rectangles, one between latitudes 36°00' N and 37°00' N and between longitudes 117°40' W and 118°30' W, and the second between latitudes 37°00' N and 38°00' N and between longitudes 118°00' W and 118°50' W.	

§ 88.137 DFMS administrators.

The Commission will approve one or more DFMS Administrators to manage access to the 5030–5091 MHz band on a nationwide basis as specified in § 88.135. Each DFMS Administrator is responsible for ensuring that its DFMS is fully functional and meets all the rule requirements in this part and providing services to NNA users in the Uncrewed Aircraft System Services. Each DFMS Administrator approved by the Commission:

(a) Must operate a DFMS consistent with the rules of this part.

(b) Must establish and follow protocols and procedures to ensure compliance with the rules set forth in this part.

(c) Must provide service for a ten-year term. This term may be renewed at the Commission's discretion.

(d) Must securely transfer all the information in the DFMS to another approved entity in the event it does not continue as the DFMS Administrator at

the end of its term. It may charge a reasonable price for such conveyance.

(e) Must cooperate with other approved DFMS Administrators to develop a standardized process for coordinating operations, avoiding any conflicting assignments, and maximizing shared use of available frequencies.

(f) Must coordinate with other DFMS Administrators including sharing assignment and other information, facilitating non-interference to and from

operations relying on assignments from other DFMSs, and other functions necessary to ensure that use of available spectrum is safe and efficient and consistent with this part.

(g) Must ensure that the DFMS shall be available at all times to immediately respond to requests from authorized Commission personnel for any and all information stored or retained by the DFMS, including through either or both provision of the information or provision of direct access to the DFMS database, at the discretion of the Commission.

(h) Must establish and follow protocols to comply with enforcement instructions from the Commission.

(i) May implement such reasonable limits on requests as are necessary to prevent the hoarding, warehousing, monopolization, or otherwise excessive reservation of NNA spectrum by a particular party.

§ 88.139 DFMS administrator fees.

(a) A DFMS Administrator may charge users a reasonable fee for services provided, including usage-based fees for frequency assignments.

(b) The Commission, upon request, will review the fees and can require changes in those fees if they are found to be excessive.

§ 88.141 Interim access mechanism.

(a) *IAM Period.* In the period prior to the approval and commencement of operation by the first DFMS administrator, NNA users may access the 5040–5060 MHz band for NNA communications pursuant to the IAM. After the date on which the first DFMS administrator commences operations, NNA communications will be restricted to the 5040–5050 MHz band, as specified in § 88.29(a). After such date, any existing IAM frequency assignments terminates and NNA users may not seek or use frequency assignments pursuant to the IAM. NNA users will be required to request frequency assignments from the DFMS administrator once the DFMS is operational.

(b) *IAM Process.* NNA users seeking to transmit in the band must first obtain concurrence from the FAA for the requested use, and must ensure that any such operations comply with the scope of approval, terms, conditions, and restrictions of the FAA concurrence. Upon receipt of FAA concurrence, NNA users must submit to the FCC an online NNA registration form regarding the requested use, certifying that:

(1) They have complied with the FAA concurrence process;

(2) The operation is in compliance with the Commission's NNA rules and technical requirements;

(3) All equipment utilized in the NNA operation meets equipment certification requirements; and

(4) Their IAM frequency assignment terminates immediately in the event a DFMS becomes operational prior to the end of the IAM frequency assignment.

PART 95—PERSONAL RADIO SERVICES

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

Authority: 47 U.S.C. 154, 303, 307.

■ 14. Amend § 95.303 by adding the definition of “*Uncrewed Aircraft System Services*,” in alphabetical order, to read as follows:

§ 95.303 Definitions.

* * * * *

Uncrewed Aircraft System Services. The rules for these services, including technical rules, are contained in part 88 of this chapter. Only NNA stations authorized on a Non-Networked Access basis, as those terms are defined in § 88.3 of this chapter, are considered part of the Citizens Band Radio Services.

* * * * *

[FR Doc. 2024–29967 Filed 1–7–25; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 90, No. 5

Wednesday, January 8, 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 STATE

2 CFR Part 602

48 CFR Parts 625 and 652

[Public Notice: 12630]

RIN 1400–AF65

RIN 1400–AF66

Department of State Acquisition Regulation: Nondiscrimination in Foreign Assistance; Withdrawal of Two NPRMs

AGENCY: Department of State.

ACTION: Withdrawal of notices of proposed rulemaking and termination of rulemaking proceedings.

SUMMARY: The Department of State (the Department) hereby withdraws two notices of proposed rulemaking (NPRMs) that proposed specific contract and grant terms that would have prohibited the discriminatory use of Department foreign assistance funds on specified grounds.

DATES: The two notices of proposed rulemaking published in the **Federal Register** on January 19, 2024 (89 FR 3583 and 89 FR 3625, respectively) are withdrawn as of January 8, 2025.

FOR FURTHER INFORMATION CONTACT: Kenneth Kero-Mentz, Senior Advisor in the Bureau of Democracy, Human Rights, & Labor, Department of State, keromentzk@state.gov, 202–647–3087.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 2024, the Department published two NPRMs in the **Federal Register** that sought to amend the Department of State Acquisition Regulation (DOSAR) and the Department's grant rules.

The DOSAR rule (RIN 1400–AF65), “Department of State Acquisition Regulation: Nondiscrimination in Foreign Assistance,” proposed to amend the DOSAR (48 CFR Chapter 6) to include a new contract clause entitled “Nondiscrimination in Foreign

Assistance.” The amended clause would have stated that contractors and subcontractors receiving Department-funded foreign assistance funds must not discriminate on specified bases against end-users of supplies or services or in certain employment decisions involving persons employed in the performance of the covered contract and funded in whole or in part with foreign assistance funds, with limited exceptions as specified in the relevant statement of work or as otherwise required by U.S. law.

The grants rule (RIN 1400–AF66), “Nondiscrimination in Foreign Assistance,” proposed to revise 2 CFR part 600 to add an award term at § 602, entitled “Nondiscrimination in Foreign Assistance.” As set out in the NPRM, the proposed award term, applicable to all solicitations, Federal awards, and subawards funded with Department of State foreign assistance funds, would prohibit recipients and subrecipients from discriminating against beneficiaries or potential beneficiaries (*i.e.*, those individuals intended to receive the benefits of the award or persons employed in the performance of the award) on the basis of specified characteristics.

The Department accepted public comments on both NPRMs through March 19, 2024. There were 26 public comments submitted in response to the DOSAR proposed rule, and 50 public comments submitted in response to the grants proposed rule. Although the two rules are distinct in their scope, the issues raised for both rules were substantively similar.

Withdrawal of the Notices of Proposed Rulemaking and Termination of the Rulemaking Proceedings

The Department believes that two of the issues raised by the public would benefit from further study that will extend beyond the time remaining in the administration. Accordingly, the Department is withdrawing these NPRMs and terminating these rulemaking proceedings at this time.

In particular, the Department notes the concern expressed in some public comments that faith-based implementing organizations would be prohibited from employing individuals of a particular religion. In considering alternative text to provide more clarity on this issue in the final rules, it became clear that additional time would be

necessary to fully consider the suggestions provided by commenters and relevant regulatory provisions applicable to other Federal agency partnerships with faith-based organizations. *See, e.g.*, 29 CFR 2.37 (Department of Labor); 7 CFR 16.3(h) (Department of Agriculture); 38 CFR 50.2(h) (Department of Veterans Affairs); 45 CFR 87.3(h) (Department of Health and Human Services).

The Department also determined that additional time would be needed to fully consider comments from both supporters and opponents of the proposed rules on the need for more specific criteria on the rules' proposed waiver provision. Several of these commenters sought to ensure that the provision authorizing waivers “in the best interest of the government” on a range of issues would be applied on a clear and consistent basis. Some commenters referred to the proposed “totality of the circumstances” factor, stating their view that this language would not be enough to guarantee that the concerns of religious organizations will be protected. Other commenters recommended that additional language be included to ensure that waivers would be provided sparingly and only in rare and exceptional cases. The Department appreciates these comments and, as noted above, requires additional time to consider this issue.

The Department is withdrawing these proposed rules and terminating these rulemaking proceedings for the above, independently sufficient reasons concerning the need for further study that will extend beyond the time remaining in the administration. The Department is not withdrawing these proposed rules based on a changed view of the Secretary's authority in this area. These rulemaking proceedings were authorized by the Secretary's longstanding and existing authority, as delegated from the President, to set the terms and conditions for use of Foreign Assistance Act funding, as explained in the two NPRMs.

The Department of State does not intend for final rules to be issued on the basis of these NPRMs.

Zachary Parker,

Director, Office of Organizational Policy, U.S. Department of State.

[FR Doc. 2025–00202 Filed 1–7–25; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2024–0628]

RIN 1625-AA09

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Osprey, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the Blackburn Point Bridge across the Gulf Intracoastal Waterway (GICW), mile 63.1, at Osprey, FL. The Casey Key Association has requested the Coast Guard consider changing the operating schedule to reduce drawbridge openings during the weekday peak traffic periods to assist with alleviating roadway congestion. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before February 7, 2025.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0628 using Federal Decision Making Portal at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Ms. Jennifer Zercher, Bridge Management Specialist, Seventh Coast Guard District; telephone 571–607–5951, email Jennifer.N.Zercher@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking
(Advance, Supplemental)
§ Section
U.S.C. United States Code
TD Temporary Deviation
FL Florida
GICW Gulf Intracoastal Waterway

II. Background, Purpose and Legal Basis

Blackburn Point Bridge across the GICW, mile 63.1, at Osprey, FL, is a swing bridge with a 9-foot vertical clearance above mean high water when in the closed position. The existing regulation requires the bridge to open on demand any time a vessel requests an opening. The current regulation can be found in 33 CFR 117.5.

On August 6, 2024, the Coast Guard published a temporary deviation entitled “Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Osprey, FL” in the **Federal Register** (89 FR 63815). That temporary deviation, effective from 7 a.m. on August 12, 2024, through 7 p.m. on January 31, 2025, allows Blackburn Point Bridge to operate with restricted, scheduled openings at peak traffic times during weekdays and operate on demand at all other times. This temporary deviation was authorized to test the impact of restricted opening on vessels and roadway traffic. The comment period for this temporary deviation ended September 20, 2024, with three comments received.

The three comments received voiced concerns related to the proposed change. The first commentator stated that when the swing bridge was placed on a modified schedule last year to conduct emergency repairs, it caused unsafe conditions for vessels due to the number of waterway users and the restrictive nature of the waterway at the swing bridge. The modified schedule which the commentator was referring, was different than the currently proposed schedule. The previous modifications placed the swing bridge on a twice an hour opening schedule every day of the week, including the weekend. This proposed rule would allow mariners to request an opening three times an hour at designated times Monday through Friday during peak rush hours and would operate on demand all other times. The Coast Guard feels this purposed rule would allow for safe navigation while assisting with alleviating roadway congestion. The commentator also stated that roadway congestion is due to the bridge being a single-lane roadway passage which causes a pinch-point, and suggested the county consider widening or replacing the bridge. Sarasota County is considering replacing the swing bridge, but changes to the physical structure of the bridge are outside the scope of this rulemaking.

The second commentator stated the proposed opening schedule provides no real relief to roadway traffic because it

takes about ten minutes for the bridge to cycle. The Coast Guard has reviewed bridge logs. When one or two vessels are passing, the average opening time is five to seven minutes. When three or more vessels pass the average opening times is eight to twelve minutes. The Coast Guard has not received information supporting the statement the proposed schedule would not provide relief to roadway traffic. To the contrary, the county stated the proposed schedule is assisting with alleviating roadway congestion.

The last commentator stated the swing bridge should remain required to open on demand because tidal movement and shallow water makes it dangerous to hold station while waiting on an opening. Again, this proposed rule would allow mariners to request an opening three times an hour at designated times Monday through Friday during peak rush hours and would operate on demand all other times. The Coast Guard feels this allows for safe navigation while assisting with alleviating roadway congestion.

This NPRM will be open for public comment simultaneously with a Test Deviation under the same name and docket number. Both documents can be found at <https://www.regulations.gov> and comments can be made to either document.

III. Discussion of Proposed Rule

The current operating schedule allows the Blackburn Point Bridge to open on demand for marine traffic. Under this proposed rule, the swing bridge will open at the top of the hour, 20 minutes past the hour and 40 minutes past the hour, Monday through Friday between the hours of 7 a.m. and 7 p.m. At all other times the swing bridge will open on demand. This will assist with alleviating roadway congestion during the weekday and allow for on demand openings in the evenings and weekends. Vessels that can pass beneath the bridge without an opening may do so at any time. Emergency vessels and tugs with tows can still request an opening at any time.

This proposed rule would add one new special requirement to section 117.287 for the Gulf Intracoastal Waterway, the Blackburn Point Bridge at Osprey, FL. Additionally, this proposed rule will republish section 117.287 to reorganize the paragraph structure to follow current regulatory drafting requirements.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking.

Below we summarize our analyses based on these statutes and Executive Orders.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability that vessels can still transit the bridge during the designated times and vessels able to pass without an opening may do so at any time.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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

CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying

with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2024–0628 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. Also, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted, or a final rule is published of any posting or updates to the docket.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

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

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and DHS Delegation No. 00170.1. Revision No. 01.3

■ 2. Revise and republish § 117.287 to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

Public vessels of the United States and tugs with tows must be passed through the drawspan of each drawbridge listed in this section at anytime.

(a) The draw of the Boca Grande Swingbridge, mile 34.3, shall open on signal; except that, from 7 a.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need open only on the hour and half hour. On Saturday, Sunday and Federal holidays, from 7 a.m. to 6 p.m., the draw need open only on the hour, quarter hour, half hour and three quarter hour.

(b) The draw of the Venice Avenue bridge, mile 56.6 at Venice, shall open on signal, except that from 7 a.m. to 4:30 p.m., Monday through Friday except Federal holidays, the draw need open only at 10 minutes after the hour, 30 minutes after the hour and 50 minutes after the hour and except between 4:35 p.m. and 5:35 p.m. when the draw need not open.

(c) The draw of the Hatchett Creek (US–41) bridge, mile 56.9 at Venice, shall open on signal, except that, from 7 a.m. to 4:20 p.m., Monday through Friday except Federal holidays, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour and except between 4:25 p.m. and 5:25 p.m. when the draw need not open. On Saturdays, Sundays, and

Federal holidays from 7:30 a.m. to 6 p.m. the draw need open only on the hour, quarter-hour, half-hour, and three quarter-hour. This bridge need not open to navigation on the second Sunday of November annually, from 9 a.m. to 5 p.m., to facilitate the Iron Man Triathlon event.

(d) The Blackburn Point Bridge, mile 63.1, at Osprey, Florida shall open on signal; except that from 7 a.m. to 7 p.m., Monday through Friday, except Federal holidays, the draw need only open on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(e) The Stickney Point Bridge, mile 68.6, at South Sarasota, Florida shall open on signal, except that from 6 a.m. to 7 p.m. daily, the draw need only open on the hour and half hour.

(f) The Siesta Drive Bridge, mile 71.6, at Sarasota, Florida shall open on signal, except that from 6 a.m. to 7 p.m. daily, the draw need only open on the hour and half hour.

(g) The draw of the Cortez (SR 684) Bridge, mile 87.4, at Bradenton Beach, Florida shall open on signal, except that from 6 a.m. to 7 p.m. daily, the draw need only open on the quarter hour and three quarter hour.

(h) The draw of the Anna Maria (SR 64) (Manatee Avenue West) Bridge, mile 89.2, at Bradenton Beach, Florida shall open on signal, except that from 6 a.m. to 7 p.m. daily, the draw need only open on the quarter hour and three quarter hour.

(i) The draw of the Corey Causeway (SR693) bridge, mile 117.7 at South Pasadena, shall open on signal; except that, from 8 a.m. to 7 p.m. Monday through Friday, and 10 a.m. to 7 p.m. Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(j) The draw of the Treasure Island Causeway bridge, mile 119.0 shall open on signal except that from 7 a.m. to 7 p.m. the draw need open on the hour, 20 minutes after the hour and 40 minutes after the hour Monday through Friday and on the quarter hour and three quarter hour on Saturday, Sunday and Federal holidays.

(k) The draw of the Welch Causeway (SR 699) Bridge, Gulf Intracoastal Waterway mile 122.8, at Madeira Beach, Florida, shall open on signal; except that, from 7 a.m. to 7 p.m. daily, except Federal holidays, the draw need only open on the hour and half hour.

Dated: December 20, 2024.

Douglas M. Schofield,

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

[FR Doc. 2024–31328 Filed 1–7–25; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

OFFICE OF FEDERAL PROCUREMENT POLICY

48 CFR Parts 1, 2, 12, 22, and 52

[FAR Case 2023–021; Docket No. FAR–2023–0021; Sequence No. 1]

RIN 9000–AO69

Office of Federal Procurement Policy; Federal Acquisition Regulation: Pay Equity and Transparency in Federal Contracting

AGENCY: Department of Defense (DoD), General Services Administration (GSA), National Aeronautics and Space Administration (NASA), and Office of Federal Procurement Policy (OFPP).

ACTION: Proposed rule; withdrawal.

SUMMARY: DoD, GSA, and NASA are withdrawing the proposed rule to amend the Federal Acquisition Regulation (FAR) titled: Pay Equity and Transparency in Federal Contracting. The Administrator for Federal Procurement Policy (OFPP Administrator) is simultaneously withdrawing a proposed Government-wide policy, upon which the proposed rule was based.

DATES: The proposed rule published on January 30, 2024, at 89 FR 5843 is withdrawn as of January 8, 2025.

FOR FURTHER INFORMATION CONTACT: FAR Policy, at 202–969–4075 or farpolicy@gsa.gov. Please cite “FAR Case 2023–021”.

SUPPLEMENTARY INFORMATION: On January 30, 2024, the OFPP Administrator issued a proposed Government-wide procurement policy that would: (1) prohibit contractors and subcontractors from seeking and considering information about job applicants' compensation history when making employment decisions about personnel working on or in connection with a Government contract; and (2) require contractors and subcontractors to disclose, in all advertisements for job

openings involving work on or in connection with a Government contract placed by or on behalf of the contractor or subcontractor, the compensation to be offered to the hired applicant, for any position to perform work on or in connection with the contract. On the same date, DoD, GSA, and NASA published proposed amendments to the FAR to reflect the proposed OFPP policy.

The OFPP Administrator's proposed policy reflected a preliminary determination that compensation history bans and compensation disclosure requirements (the latter are also collectively referred to as pay transparency), both together and separately, would promote economy, efficiency, and effectiveness in the procurement of property and services by the Federal Government. The proposed rule cited to a range of studies in support of this conclusion, many analyzing practices by States and localities.

In light of the limited time remaining in the current Administration, OFPP, DoD, GSA, and NASA have decided to withdraw the proposed policy and rule and focus their attention on other priorities, including directives in recent National Defense Authorization Acts. This will also help ensure that the agencies can benefit from the latest information on this topic if they return to it in the future. Accordingly, for these independently sufficient reasons, the proposed policy and rule published on January 30, 2024, at 89 FR 5843, are withdrawn and FAR Case 2023–021 is closed.

List of Subjects in 48 CFR Parts 1, 2, 12, 22, and 52

Government procurement.

Janet Fry,

Director, Federal Acquisition Policy Division,
Office of Governmentwide Acquisition Policy,
Office of Acquisition Policy, Office of
Governmentwide Policy.

[FR Doc. 2025–00118 Filed 1–7–25; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, 173, 174, 176, 177, 178, 179, and 180

[Docket No. PHMSA–2018–0080 (HM–265)]

RIN 2137–AF41

Hazardous Materials: Advancing Safety of Highway, Rail, and Vessel Transportation; Extension of Comment Period

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On October 28, 2024, PHMSA published a notice of proposed rulemaking (NPRM) titled “Hazardous Materials: Advancing Safety of Highway, Rail, and Vessel Transportation (HM–265),” proposing amendments to the Hazardous Materials Regulations (HMR) to adopt several modal-specific amendments that would enhance the safe transportation of hazardous materials in commerce by highway, rail, and vessel transportation. In response to a request for an extension of the comment period submitted by the Railway Supply Institute (RSI), PHMSA is extending the comment period for the HM–265 NPRM by an additional 90 days.

DATES: The comment period for the proposed rule published October 28, 2024, at 89 FR 85590, is extended. Comments must be received by April 28, 2025. To the extent possible, PHMSA will consider late-filed comments as a final rule is developed.

ADDRESSES: Comments should reference Docket No. PHMSA–2018–0080 (HM–265) and may be submitted in the following ways:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments.
- **Fax:** 1–202–493–2251.
- **Mail:** Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE, Washington, DC 20590.
- **Hand Delivery:** To the Docket Management System: Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and Docket Number for this document (PHMSA–2018–0080) or Regulation Identifier number (RIN) (2137–AF41) for this rulemaking at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS) and will include any personal information you provide.

Docket: For access to the dockets to read associated documents or comments received, go to <https://www.regulations.gov> or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its process. DOT posts these comments without change, including any personal information the commenter provides, to <https://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.dot.gov/privacy>.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA; 5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN” for “proprietary information.” Submissions containing CBI should be sent to Eamonn Patrick, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary that PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Eamonn Patrick, Standards and Rulemaking Division, 202–366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 2024, PHMSA published the HM–265 NPRM.¹ In this NPRM, PHMSA, in consultation with the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, and the United States Coast Guard, proposed amendments identified during Departmental review and from industry petitions for rulemaking, to reform modal specific requirements for the transportation of hazardous materials set out in the HMR, 49 Code of Federal Regulations (CFR) parts 107 and 171 through 180. PHMSA expects the adoption of these proposals will maintain or enhance the safe transportation of hazardous materials while increasing the clarity of the HMR, and therefore decrease compliance burdens. The proposed amendments also reflect changing conditions and trends that affect the safe transportation of hazardous materials while still maintaining or enhancing safety.

II. Comment Period Extension

PHMSA initially provided a 90-day comment period for the HM–265 NPRM, which closes on January 27, 2025. In response to a request to extend the comment period from the RSI,² and subsequent comment³ by the American Chemistry Council, the American Petroleum Institute, the Chlorine Institute, the Fertilizer Institute, and the Sulfur Institute, PHMSA is extending the comment period for an additional 90 days. RSI requested an extension to allow sufficient time to address the complexities of the proposed amendments for the NPRM and because the timing of the initial comment period is such that it spans the winter holiday season, which will hamper the ability of interested parties to submit timely comments. PHMSA acknowledges the impact of the winter holiday season on stakeholders' ability to comment and believes a 90-day extension has merit. The NPRM comment period will now close on April 28, 2025. This extension provides the public with an additional 90 days and should provide adequate opportunity for the public to submit comments, while balancing the public interest in timely completion of the final rule. To the extent possible, PHMSA

will also continue to consider late-filed comments.

Issued in Washington, DC, on December 20, 2024, under authority delegated in 49 CFR part 1.97.

William A. Quade,

Deputy Associate Administrator of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2024–31077 Filed 1–7–25; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

[Docket No. FTA–2024–0017]

RIN 2132–AB38

Charter Service

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Transit Administration (FTA) is proposing to amend regulations that govern the provision of charter service by recipients of Federal financial assistance. The proposed changes will remove the Federal Financial Assistance Programs listed in an appendix and the guidance in additional appendices and make non-substantive technical edits throughout to remove outdated citations and provide clarity.

DATES: Comments should be filed by March 10, 2025. FTA will consider comments received after that date to the extent practicable.

ADDRESSES: You may send comments, identified by docket number FTA–2024–0017, by any of the following methods:

- *Federal Rulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for sending comments.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery/Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this

rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave. SE, Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program matters, Danielle Nelson, Office of Program Management, (202) 366–2160 or danielle.nelson@dot.gov. For legal matters, contact Mark Montgomery, Office of Chief Counsel, (202) 366–1017 or mark.montgomery@dot.gov. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

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- I. Executive Summary
 - A. Purpose and Summary of Regulatory Action
 - B. Statutory Authority
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 - D. Benefits and Costs
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- III. Regulatory Analyses and Notices

I. Executive Summary

A. Purpose and Summary of Regulatory Action

FTA is proposing to amend regulations which govern the provision of charter service by recipients of Federal financial assistance. The charter service regulation protects private charter operators from unauthorized competition from FTA grant recipients. Under the charter rules, with limited exceptions, local transit agencies are restricted from operating chartered service. One of those exceptions applies to charter service provided to a qualified human service organization (QHSO) for the purpose of serving persons with mobility limitations related to advanced age, disability, or low income. Under the current rule, QHSOs receiving funding from one of the Federal programs under appendix A are exempt from the charter registration requirements of the regulation. This appendix, created in 2008, is outdated. Through this rulemaking, FTA proposes to remove appendix A and keep the list of qualifying Federal programs for the QHSO exception current on its website, which will reduce the administrative

¹ 89 FR 85590.

² RSI's comment may be viewed here: <https://www.regulations.gov/document/PHMSA-2018-0080-0005>.

³ American Chemistry Council, the American Petroleum Institute, the Chlorine Institute, the Fertilizer Institute, and the Sulfur Institute's comment may be viewed here: <https://www.regulations.gov/comment/PHMSA-2018-0080-0006>.

burden of charter registration for many QHSOs.

B. Statutory Authority

FTA has a statutory mandate to prohibit charter service under 49 U.S.C. 5323(d). The proposed revisions do not make substantive changes to the existing regulations implementing this statutory provision.

C. Summary of Key Provisions

FTA proposes to remove the outdated list of Federal programs in appendix A. Under the current regulation, QHSOs receiving funding from one of the Federal programs under appendix A are exempt from the charter registration requirements of § 604.15. Appendix A is based on a list of programs from the Coordinating Council on Access and Mobility (CCAM), which is a Federal interagency council that works to coordinate funding and provide expertise on human services transportation for people with disabilities, older adults, and individuals with low income. CCAM established the CCAM Program Inventory, which identifies 130 Federal programs that provide funding for human services transportation for these targeted populations. In 2018 and 2019, CCAM agency representatives determined which programs to include in the CCAM Program Inventory through internal agency program validation efforts and the CCAM Program Analysis Working Sessions. CCAM continually updates this inventory to include new Federal funding sources.

D. Benefits and Costs

The proposed rule would relocate supplemental information in the appendices of the Charter Service regulation to the FTA website. The rule would change no requirements for regulated entities and therefore has no expected economic effect. FTA has also determined that the proposed rule would not have a significant effect on a substantial number of small entities.

II. Section-by-Section Analysis

Subpart A—General Provisions

Section 604.1 Purpose

FTA does not propose changes to this section.

Section 604.2 Applicability

FTA proposes to update the applicability section of the regulation to remove programs repealed by statute. Specifically, FTA proposes to remove references to the Over the Road Bus Accessibility Program, the Job Access

and Reverse Commute Program, and the New Freedom Grant Program, which were repealed under the Moving Ahead for Progress in the 21st Century (MAP-21), Public Law 112-141, on October 1, 2012.

604.3 Definitions

FTA proposes to remove a reference to a provision repealed by statute and amend a statutory citation. Throughout the regulation, FTA proposes to utilize the term “website” rather than the outdated “Web site.” Further, FTA proposes to revise the existing definitions of “program purposes” for clarity. FTA also proposes to revise the existing definition of “qualified human service organization” to more closely align with the definition of “transportation-disadvantaged” under Executive Order 13330, Human Service Transportation Coordination (February 24, 2004), which is the Executive order that created CCAM. These amendments do not impact existing requirements.

604.4 Charter Service Agreement

FTA does not propose changes to this section.

Subpart B—Exceptions

Section 604.5 Purpose

FTA proposes to remove the undefined term “community-based” from this section for clarity. The term “charter service” is defined under § 604.3 and does not need that qualifier. This change would not impact existing requirements.

Section 604.6 Government Officials on Official Government Business

FTA does not propose changes to this section.

Section 604.7 Qualified Human Service Organizations

FTA proposes to remove the outdated list of Federal programs in appendix A and clarify in this section that QHSOs receiving funding under one or more of the programs in the CCAM Program Inventory are not required to register on the FTA charter service website to receive charter service from a recipient.

Section 604.8 Leasing FTA Funded Equipment and Drivers

FTA does not propose changes to this section.

Section 604.9 When No Registered Charter Provider Responds to Notice From a Recipient

FTA does not propose changes to this section.

Section 604.10 Agreement With Registered Charter Providers

FTA does not propose changes to this section.

Section 604.11 Petitions to the Administrator

FTA adds clarifying language to this section that does not impact existing requirements.

Section 604.12 Reporting Requirements for All Exceptions

FTA removes an outdated reference that does not impact existing requirements.

Subpart C—Procedures for Registration and Notification

Section 604.13 Registration of Private Charter Operators

FTA proposes to add clarifying language and remove an outdated web address. These amendments do not impact existing requirements.

Section 604.14 Recipient’s Notification to Registered Charter Providers

FTA proposes to remove an outdated web address. The amendment does not impact existing requirements.

Subpart D—Registration of Qualified Human Service Organizations and Duties for Recipients With Respect to Charter Registration Website

Section 604.15 Registration of Qualified Human Service Organizations

FTA proposes to add language that clarifies that only QHSOs that do not receive funding from one of the programs in the CCAM Program Inventory are required to register on the FTA charter service website. This amendment maintains the existing eligibility for QHSOs to receive charter service from an FTA recipient.

Section 604.16 Duties for Recipients With Respect to Charter Registration Website

FTA does not propose changes to this section.

Subpart E—Advisory Opinions and Cease and Desist Orders

Section 604.17 Purpose

FTA does not propose changes to this section.

Section 604.18 Request for an Advisory Opinion

FTA does not propose changes to this section.

Section 604.19 Processing of Advisory Opinions

FTA proposes a grammatical change that does not impact existing requirements.

Section 604.20 Effect of an Advisory Opinion

FTA does not propose changes to this section.

Section 604.21 Special Considerations for Advisory Opinions

FTA does not propose changes to this section.

Section 604.22 Request for a Cease and Desist Order

FTA proposes to amend a typographical error that does not impact existing requirements.

Section 604.23 Decisions by the Chief Counsel Regarding Cease and Desist Orders

FTA proposes to reorder existing §§ 604.23 and 604.24 for clarity.

Section 604.24 Effect of a Cease and Desist Order

FTA proposes to remove paragraph (b) of existing § 604.23 as duplicative with paragraph (b) of existing § 604.24.

Subpart F—Complaints

Section 604.25 Purpose

FTA does not propose changes to this section.

Section 604.26 Complaints and Decisions Regarding Removal of Private Charter Operators or Qualified Human Service Organizations From Registration List

FTA does not propose changes to this section.

Section 604.27 Complaints, Answers, Replies, and Other Documents

FTA proposes to combine paragraphs (f) and (h) of this section for clarity. The amendment does not impact existing requirements.

Section 604.28 Dismissals

FTA does not propose changes to this section.

Section 604.29 Incomplete Complaints

FTA does not propose changes to this section.

Section 604.30 Filing Complaints

FTA does not propose changes to this section.

Section 604.31 Service

FTA does not propose changes to this section.

Subpart G—Investigations

FTA does not propose changes to this subpart.

Subpart H—Decisions by FTA and Appointment of a Presiding Official (PO)

Section 604.34 Chief Counsel Decisions and Appointment of a PO

FTA proposes to make a clarifying edit that does not impact existing requirements.

Section 604.35 Separation of Functions

FTA does not propose changes to this section.

Subpart I—Hearings

FTA does not propose changes to this subpart.

Subpart J—Appeal to Administrator and Final Agency Orders

Section 604.48 Appeal From Chief Counsel Decision

FTA does not propose changes to this section.

Section 604.49 Administrator's Discretionary Review of the Chief Counsel's Decision

FTA proposes non-substantive edits to this section. The amendments do not impact existing requirements.

Subpart K—Judicial Review

FTA does not propose changes to this subpart.

Appendix A—Listing of Human Service Financial Assistance Programs

FTA proposes to remove this appendix.

Appendix B—Reasons for Removal

FTA proposes to remove this appendix.

Appendix C—Frequently Asked Questions

FTA proposes to remove this appendix.

Appendix D—Table of Potential Remedies

FTA proposes to remove this appendix.

III. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Order 12866 (“Regulatory Planning and Review”), as supplemented by Executive Order 13563 (“Improving Regulation and

Regulatory Review”) and Executive Order 14094 (“Modernizing Regulatory Review”), directs Federal agencies to assess the benefits and costs of regulations, to select regulatory approaches that maximize net benefits when possible, and to consider economic, environmental, and distributional effects. It also directs the Office of Management and Budget (OMB) to review significant regulatory actions, including regulations with annual economic effects of \$200 million or more. OMB has determined the proposed rule is not significant within the meaning of Executive Order 12866 and has not reviewed the rule under that order.

The proposed rule would make non-substantive conforming edits and remove supplemental information in the appendices to the Charter Service regulation listing Federal financial assistance programs and frequently asked questions. The proposed rule would change no requirements for regulated entities and therefore has no expected economic effect.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*) requires Federal agencies to assess the impact of a regulation on small entities unless the agency determines that the regulation is not expected to have a significant economic impact on a substantial number of small entities.

The proposed rule would make non-substantive conforming edits to the regulation and remove supplemental information from the appendices but would not change requirements for regulated entities. FTA has therefore determined that the proposed rule would not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FTA has determined that this proposed rule does not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995). This proposed rule does not include a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in 1995 dollars (adjusted for inflation) in any one year. Additionally, the definition of “Federal mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government.

The Federal Transit Act permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and FTA determined this action will not have a substantial direct effect or sufficient federalism implications on the States. FTA also determined this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this rulemaking.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and OMB implementing regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for a currently approved information collection, OMB control number 2132–0543, that is associated with the existing regulation. FTA believes there will be no change in burden hours per submission resulting from this rulemaking.

National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) Those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This rule qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the

proposed rule will involve unusual or extraordinary circumstances and has determined that it will not.

Executive Order 12630 (Taking of Private Property)

FTA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FTA does not believe this proposed rule affects a taking of private property or otherwise has taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this action will not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this proposed rule under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian Tribes; will not impose substantial direct compliance costs on Indian Tribal governments; and will not preempt tribal laws. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12898 (Environmental Justice)

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT

Order 5610.2(a) (77 FR 27534, May 10, 2012)¹ require DOT agencies to achieve environmental justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. All DOT agencies must address compliance with Executive Order 12898 and the DOT Order in all rulemaking activities. On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities.²

FTA has evaluated this action under the Executive order, the DOT Order, and the FTA Circular and has determined that this action will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned 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. The RIN contained in the heading of this document can be used to cross-reference this proposed rule with the Unified Agenda.

List of Subjects in 49 CFR Part 604

Administrative practice and procedure, Buses, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

Veronica Vanterpool,
Acting Administrator.

In consideration of the foregoing, and under the authority of 49 U.S.C. 5323(d), and the delegation of authority at 49 CFR 1.91, the Federal Transit Administration proposes to revise and republish 49 CFR part 604 to read as follows:

¹ Department of Transportation Updated Environmental Justice Order 5610.2(a): Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 77 FR 27534 (May 10, 2012). <https://www.transportation.gov/transportation-policy/environmental-justice/department-transportation-order-56102a>.

² Federal Transit Administration (February 2020). "Environmental Justice Policy Guidance for Federal Transit Administration Recipients." <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/environmental-justice-policy-guidance-federal-transit>.

PART 604—CHARTER SERVICE**Subpart A—General Provisions**

- Sec.
 604.1 Purpose.
 604.2 Applicability.
 604.3 Definitions.
 604.4 Charter service agreement.

Subpart B—Exceptions

- 604.5 Purpose.
 604.6 Government officials on official government business.
 604.7 Qualified human service organizations.
 604.8 Leasing FTA funded equipment and drivers.
 604.9 When no registered charter provider responds to notice from a recipient.
 604.10 Agreement with registered charter providers.
 604.11 Petitions to the Administrator.
 604.12 Reporting requirements for all exceptions.

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- 604.50 Judicial review of a final decision and order.

Authority: 49 U.S.C. 5323(d); 49 CFR 1.51.

Subpart A—General Provisions**§ 604.1 Purpose.**

(a) The purpose of this part is to implement 49 U.S.C. 5323(d), which protects private charter operators from unauthorized competition from recipients of Federal financial assistance under the Federal Transit Laws.

(b) This subpart specifies which entities shall comply with the regulations in this part; defines terms used in this part; explains procedures for an exemption from this part; and sets out the contents of a charter service agreement.

§ 604.2 Applicability.

(a) The requirements of this part shall apply to recipients of Federal financial assistance under the Federal Transit Laws, except as otherwise provided in paragraphs (b) through (g) of this section.

(b) The requirements of this part shall not apply to a recipient transporting its employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, to or from transit facilities or projects within its geographic service area or proposed geographic service area for the purpose of conducting oversight functions such as inspection, evaluation, or review.

(c) The requirements of this part shall not apply to the non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance under any of the following programs: 49 U.S.C. 5307, 49 U.S.C. 5309, 49 U.S.C. 5310, or 49 U.S.C. 5311.

(d) The requirements of this part shall not apply to a recipient transporting its

employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, for emergency preparedness planning and operations.

(e) The requirements of this part shall not apply to a recipient that uses Federal financial assistance from FTA, for program purposes only, under 49 U.S.C. 5310 or 49 U.S.C. 5311.

(f) The requirements of this part shall not apply to a recipient, for actions directly responding to an emergency declared by the President, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration. If the emergency lasts more than 45 days, the recipient shall follow the procedures set out in part 601, subpart D, of this chapter.

(g) The requirements of this part shall not apply to a recipient in a non-urbanized area transporting its employees, other transit system employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area.

§ 604.3 Definitions.

All terms defined in 49 U.S.C. 5301 *et seq.* are used in their statutory meaning in this part. Other terms used in this part are defined as follows:

Administrator means the Administrator of the Federal Transit Administration or his or her designee.

Charter service means, but does not include demand response service to individuals:

(1) Transportation provided by a recipient at the request of a third party for the exclusive use of a bus or van for a negotiated price. The following features may be characteristic of charter service:

(i) A third party pays the transit provider a negotiated price for the group;

(ii) Any fares charged to individual members of the group are collected by a third party;

(iii) The service is not part of the transit provider's regularly scheduled service, or is offered for a limited period of time; or

(iv) A third party determines the origin and destination of the trip as well as scheduling; or

(2) Transportation provided by a recipient to the public for events or functions that occur on an irregular basis or for a limited duration and:

(i) A premium fare is charged that is greater than the usual or customary fixed route fare; or

(ii) The service is paid for in whole or in part by a third party.

Charter service hours means total hours operated by buses or vans while in charter service including:

- (1) Hours operated while carrying passengers for hire; plus
- (2) Associated deadhead hours.

Chief Counsel means the Chief Counsel of FTA and his or her designated employees.

Days means calendar days. The last day of a time period is included in the computation of time unless the last day is a Saturday, Sunday, or legal holiday, in which case, the time period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

Demand response means any non-fixed route system of transporting individuals that requires advanced scheduling by the customer, including services provided by public entities, nonprofits, and private providers.

Exclusive means service that a reasonable person would conclude is intended to exclude members of the public.

Federal Transit Laws means 49 U.S.C. 5301 *et seq.* and includes 23 U.S.C. 142(a) and 142(c), when used to provide assistance to public transit agencies for purchasing buses and vans.

FTA means the Federal Transit Administration.

Geographic service area means the entire area in which a recipient is authorized to provide public transportation service under appropriate local, State, and Federal law.

Government official means an individual elected or appointed at the local, State, or Federal level.

Interested party means an individual, partnership, corporation, association, or other organization that has a financial interest that is affected by the actions of a recipient providing charter service under the Federal Transit Laws. This term includes States, counties, cities, and their subdivisions, and Tribal Nations.

Pattern of violations means more than one finding of unauthorized charter service under this part by FTA beginning with the most recent finding of unauthorized charter service and looking back over a period not to exceed 72 months.

Presiding Official means an official or agency representative who conducts a hearing at the request of the Chief Counsel and who has had no previous contact with the parties concerning the issue in the proceeding.

Program purposes means transportation that serves the needs of either qualified human service organizations or targeted populations (elderly, individuals with disabilities, and or low-income individuals); this

does not include exclusive service for other groups formed for purposes unrelated to the special needs of the targeted populations identified in this definition.

Public transportation has the meaning set forth in 49 U.S.C. 5302(15).

Qualified human service organization means an organization that serves persons who qualify for federally conducted or federally assisted transportation-related programs or services due to disability, income, or advanced age. This term is consistent with the President's Executive order (E.O.) on Human Service Transportation Coordination (E.O. 13330).

Recipient means an agency or entity that receives Federal financial assistance, either directly or indirectly, including subrecipients, under the Federal Transit Laws. This term does not include third-party contractors who use non-FTA funded vehicles.

Registered charter provider means a private charter operator that wants to receive notice of charter service requests directed to recipients and has registered on FTA's charter registration website.

Registration list means the current list of registered charter providers and qualified human service organizations maintained on FTA's charter registration website.

Special transportation means demand response or paratransit service that is regular and continuous and is a type of "public transportation."

Violation means a finding by FTA of a failure to comply with one of the requirements of this part.

§ 604.4 Charter service agreement.

(a) A recipient seeking Federal assistance under the Federal Transit Laws to acquire or operate any public transportation equipment or facilities shall enter into a "Charter Service Agreement" as set out in paragraph (b) of this section.

(b) A recipient shall enter into a Charter Service Agreement if it receives Federal funds for equipment or facilities under the Federal Transit Laws. The terms of the Charter Service Agreement are as follows: "The recipient agrees that it, and each of its sub-recipients, and third party contractors at any level who use FTA-funded vehicles, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal Transit Laws only in compliance with the regulations set out in 49 CFR part 604, the terms and conditions of which are adopted herein by reference."

(c) The Charter Service Agreement is contained in the Certifications and Assurances published annually by FTA

for applicants for Federal financial assistance. Once a recipient receives Federal funds, the Certifications and Assurances become part of its Grant Agreement or Cooperative Agreement for Federal financial assistance.

Subpart B—Exceptions

§ 604.5 Purpose.

The purpose of this subpart is to identify the limited exceptions under which recipients may provide charter services.

§ 604.6 Government officials on official government business.

(a) A recipient may provide charter service to government officials (Federal, State, and local) for official government business, which can include non-transit related purposes, if the recipient:

- (1) Provides the service in its geographic service area;
- (2) Does not generate revenue from the charter service, except as required by law; and
- (3) After providing such service, records the following:

(i) The government organization's name, address, phone number, and email address;

(ii) The date and time of service;

(iii) The number of passengers (specifically noting the number of government officials on the trip);

(iv) The origin, destination, and trip length (miles and hours);

(v) The fee collected, if any; and

(vi) The vehicle number for the vehicle used to provide the service.

(b) A recipient that provides charter service under this section shall be limited annually to 80 charter service hours for providing trips to government officials for official government business.

(c) A recipient may petition the Administrator for additional charter service hours only if the petition contains the following information:

(1) Date and description of the official government event and the number of charter service hours requested;

(2) Explanation of why registered charter providers in the geographic service area cannot perform the service (e.g., equipment, time constraints, or other extenuating circumstances); and

(3) Evidence that the recipient has sent the request for additional hours to registered charter providers in its geographic service area.

(d) FTA shall post the request for additional charter service hours under this section in the Government Officials Exception docket, docket number FTA–2007–0020 at <https://www.regulations.gov>. Interested parties

may review the contents of this docket and bring questions or concerns to the attention of the Ombudsman for Charter Services. The written decision of the Administrator regarding the request for additional charter service hours shall be posted in the Government Officials Exception docket and sent to the recipient.

§ 604.7 Qualified human service organizations.

(a) A recipient may provide charter service to a qualified human service organization (QHSO) for the purpose of serving persons:

- (1) With mobility limitations related to advanced age;
- (2) With disabilities; or
- (3) With low income.

(b) If an organization serving persons described in paragraph (a) of this section receives funding, directly or indirectly, from any of the human services Federal financial assistance programs listed in the Program Inventory of the Coordinated Council on Access and Mobility (CCAM) located on FTA's charter service website, the QHSO shall not be required to register on the FTA charter registration website.

(c) If a QHSO serving persons described in paragraph (a) of this section does not receive funding from any of the programs listed in the CCAM Program Inventory, the QHSO shall register on the FTA charter registration website in accordance with § 604.15.

(d) A recipient providing charter service under this section, whether or not the QHSO receives funding from any of the programs listed in the CCAM Program Inventory, and after providing such charter service, shall record:

- (1) The QHSO's name, address, phone number, and email address;
- (2) The date and time of service;
- (3) The number of passengers;
- (4) The origin, destination, and trip length (miles and hours);
- (5) The fee collected, if any; and
- (6) The vehicle number for the vehicle used to provide the service.

§ 604.8 Leasing FTA funded equipment and drivers.

(a) A recipient may lease its FTA-funded equipment and drivers to registered charter providers for charter service only if the following conditions exist:

- (1) The private charter operator is registered on the FTA charter registration website;
- (2) The registered charter provider owns and operates buses or vans in a charter service business;
- (3) The registered charter provider received a request for charter service

that exceeds its available capacity either of the number of vehicles operated by the registered charter provider or the number of accessible vehicles operated by the registered charter provider; and

(4) The registered charter provider has exhausted all of the available vehicles of all registered charter providers in the recipient's geographic service area.

(b) A recipient leasing vehicles and drivers to a registered charter provider under this section shall record:

(1) The registered charter provider's name, address, telephone number, and email address;

(2) The number of vehicles leased, types of vehicles leased, and vehicle identification numbers; and

(3) The documentation presented by the registered charter provider in support of paragraphs (a)(1) through (4) of this section.

(c) In accordance with § 604.26, if a registered charter provider seeking to lease vehicles has filed a complaint requesting that another registered charter provider be removed from the FTA charter registration website, then the registered charter provider seeking to lease vehicles is not required to exhaust the vehicles from that registered charter provider while the complaint is pending before leasing vehicles from a recipient.

§ 604.9 When no registered charter provider responds to notice from a recipient.

(a) A recipient may provide charter service, on its own initiative or at the request of a third party, if no registered charter provider responds to the notice issued in § 604.14:

(1) Within 72 hours for charter service requested to be provided in less than 30 days; or

(2) Within 14 calendar days for charter service requested to be provided in 30 days or more.

(b) A recipient shall not provide charter service under this section if a registered charter provider indicates an interest in providing the charter service set out in the notice issued pursuant to § 604.14 and the registered charter provider has informed the recipient of its interest in providing the service.

(c) After providing the service, a recipient shall record:

- (1) The group's name, address, phone number, and email address;
- (2) The date and time of service;
- (3) The number of passengers;
- (4) The origin, destination, and trip length (miles and hours);
- (5) The fee collected, if any; and
- (6) The vehicle number for the vehicle used to provide the service.

§ 604.10 Agreement with registered charter providers.

(a) A recipient may provide charter service directly to a customer consistent with an agreement entered into with all registered charter providers in the recipient's geographic service area.

(b) If a new charter provider registers in the geographic service area subsequent to the initial agreement, the recipient may continue to provide charter service under the previous agreement with the other charter providers up to 90 days without an agreement with the newly registered charter provider.

(c) Any of the parties to an agreement may cancel the agreement at any time after providing the recipient a 90-day notice.

§ 604.11 Petitions to the Administrator.

(a) A recipient may petition the Administrator for an exception to the regulations in this part to provide charter service directly to a customer for:

(1) Events of regional or national significance;

(2) Hardship (only for non-urbanized areas under 50,000 in population or small urbanized areas under 200,000 in population); or

(3) Unique and time sensitive events (e.g., funerals of local, regional, or national significance) that are in the public's interest.

(b) The petition to the Administrator shall include the following information:

(1)(i) The date and description of the event;

(ii) The type of service requested and the type of equipment;

(iii) The anticipated number of charter service hours needed for the event; and

(iv) The anticipated number of vehicles and duration of the event; and

(2) For an event of regional or national significance, the petition shall include a description of how registered charter providers were consulted, how registered charter providers will be utilized in providing the charter service, a certification that the recipient has exhausted all of the registered charter providers in its geographic service area, and submit the petition at least 90 days before the first day of the event described in paragraph (b)(1)(i) of this section;

(3) For a hardship request, a petition is only available if the registered charter provider that has indicated an interest in providing the charter service set out in the notice issued pursuant to § 604.14 has a deadhead time that exceeds total trip time from initial pickup to final drop-off, including wait time. The petition shall describe how the

registered charter provider's minimum duration would create a hardship on the group requesting the charter service; or

(4) For unique and time sensitive events, the petition shall describe why the event is unique or time sensitive and how providing the charter service would be in the public's interest.

(c) Upon receipt of a petition that meets the requirements set forth in paragraph (b) of this section, the Administrator shall review the materials and issue a written decision denying or granting the request in whole or in part. In making this decision, the Administrator may seek such additional information as the Administrator deems necessary. The Administrator's decision shall be filed in the Petitions to the Administrator docket, number FTA–2007–0022 at <https://www.regulations.gov> and sent to the recipient.

(d) Any exception granted by the Administrator under this section shall be effective only for the event identified in paragraph (b)(1)(i) of this section.

(e) A recipient shall send its petition to the Administrator by email to ombudsman.charterservice@dot.gov.

(f) A recipient shall retain a copy of the Administrator's approval for a period of at least three years and shall include it in the recipient's quarterly report posted on the charter registration website.

§ 604.12 Reporting requirements for all exceptions.

(a) A recipient that provides charter service in accordance with one or more of the exceptions contained in this subpart shall maintain the required notice and records in an electronic format for a period of at least three years from the date of the service or lease. A recipient may maintain the required records in other formats in addition to the electronic format.

(b) In addition to the requirements identified in paragraph (a) of this section, the records required under this subpart shall include a clear statement identifying which exception the recipient relied upon when it provided the charter service.

(c) A recipient providing charter service under the exceptions in this subpart shall post the records required under this subpart on the FTA charter registration website 30 days after the end of each calendar quarter (*i.e.*, January 30th, April 30th, July 30th, and October 30th). A single document or charter log may include all charter service trips provided during the quarter.

(d) A recipient may exclude specific origin and destination information for

safety and security reasons. If a recipient excludes such information, the record of the service shall describe the reason why such information was excluded and provide generalized information instead of providing specific origin and destination information.

Subpart C—Procedures for Registration and Notification

§ 604.13 Registration of private charter operators.

(a) To be considered a registered charter provider, private charter operators shall register on FTA's charter registration website by providing the following information:

(1) Company name, address, phone number, email address, and facsimile number;

(2) Federal and, if available, State motor carrier identifying number;

(3) The geographic service areas of public transit agencies, as identified by the transit agency's zip code, in which the private charter operator intends to provide charter service;

(4) The number of buses or vans the private charter operator owns;

(5) A certification that the private charter operator has valid insurance; and

(6) Whether the private charter operator is willing to provide free or reduced rate charter services to registered qualified human service organizations.

(b) A private charter operator that provides valid information in this subpart is a "registered charter provider" for purposes of this part and shall have standing to file a complaint consistent with subpart F of this part.

(c) A recipient, a registered charter provider, or their duly authorized representative may challenge a registered charter provider's registration and request removal of the private charter operator from FTA's charter registration website by filing a complaint consistent with subpart F of this part.

(d) FTA may refuse to post a private charter operator's information if the private charter operator fails to provide all of the required information required by paragraph (a) of this section.

(e) A registered charter provider shall provide current and accurate information on FTA's charter registration website and shall update that information no less frequently than every two years.

§ 604.14 Recipient's notification to registered charter providers.

(a) Upon receiving a request for charter service, a recipient may:

(1) Decline to provide the service, with or without referring the requestor to FTA's charter registration website;

(2) Provide the service under an exception provided in subpart B of this part; or

(3) Provide notice to registered charter providers as provided in this section and provide the service pursuant to § 604.9.

(b) If a recipient is interested in providing charter service under the exception contained in § 604.9, then upon receipt of a request for charter service, the recipient shall provide email notice to registered charter providers in the recipient's geographic service area in the following manner:

(1) E-mail notice of the request shall be sent by the close of business on the day the recipient receives the request unless the recipient received the request after 2 p.m., in which case the recipient shall send the notice by the close of business the next business day;

(2) E-mail notice sent to the list of registered charter providers shall include:

(i) Customer name, address, phone number, and email address (if available);

(ii) Requested date of service;

(iii) Approximate number of passengers;

(iv) Whether the type of equipment requested is (are) bus(es) or van(s); and

(v) Trip itinerary and approximate duration; and

(3) If the recipient intends to provide service that meets paragraph (2) of the definition of charter service under § 604.3, the email notice must include the fare the recipient intends to charge for the service.

(c) A recipient shall retain an electronic copy of the email notice and the list of registered charter providers that were sent email notice of the requested charter service for a period of at least three years from the date the email notice was sent.

(d) If a recipient receives an "undeliverable" notice in response to its email notice, the recipient shall send the notice via facsimile. The recipient shall maintain the record of the undeliverable email notice and the facsimile sent confirmation for a period of three years.

Subpart D—Registration of Qualified Human Service Organizations and Duties for Recipients With Respect to Charter Registration Website

§ 604.15 Registration of qualified human service organizations.

(a) Qualified human service organizations (QHSO) that seek free or

reduced rate services from recipients, and do not receive funds from human services Federal financial assistance programs listed in the CCAM Program Inventory located on FTA's charter service website, but serve individuals described in § 604.7 (*i.e.*, individuals with low income, advanced age, or with disabilities), shall register on FTA's charter registration website by submitting the following information:

(1) Name of organization, address, phone number, email address, and facsimile number;

(2) The geographic service area of the recipient in which the qualified human service organization resides;

(3) Basic financial information regarding the qualified human service organization and whether the qualified human service organization is exempt from taxation under section 501(c) (1), (3), (4), or (19) of the Internal Revenue Code, and whether it is a unit of Federal, State, or local government;

(4) Whether the qualified human service organization receives funds directly or indirectly from a State or local program, and if so, which program(s); and

(5) A narrative statement describing the types of charter service trips the qualified human service organization may request from a recipient and how that service is consistent with the mission of the qualified human service organization.

(b) A qualified human service organization is eligible to receive charter services from a recipient if it:

(1) Receives funds from at least one of the human services Federal financial assistance programs listed in the CCAM Program Inventory; or

(2) Registers on the FTA website in accordance with paragraph (a) of this section at least 60 days before the date of the requested charter service and verifies FTA's receipt of its registration by viewing its information on the FTA charter registration website.

(c) A registered charter provider may challenge a QHSO's eligibility under paragraph (b)(2) of this section to receive charter services from a recipient by requesting removal of the QHSO from FTA's charter registration website by filing a complaint consistent with subpart F of this part.

(d) A QHSO eligible under paragraph (b)(2) of this section to receive charter services from a recipient shall provide current and accurate information on FTA's charter registration website and shall update that information no less frequently than every two years.

§ 604.16 Duties for recipients with respect to charter registration website.

Each recipient shall ensure that its affected employees and contractors have the necessary competency to effectively use the FTA charter registration website.

Subpart E—Advisory Opinions and Cease and Desist Orders

§ 604.17 Purpose.

The purpose of this subpart is to set out the requirements for requesting an advisory opinion from the Chief Counsel's Office. An advisory opinion may also request that the Chief Counsel issue a cease and desist order, which would be an order to refrain from doing an act which, if done, would be a violation of this part.

§ 604.18 Request for an advisory opinion.

(a) An interested party may request an advisory opinion from the Chief Counsel on a matter regarding specific factual events only.

(b) A request for an advisory opinion shall be submitted in the following form:

[Date]
Chief Counsel, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E55– 302, Washington, DC 20590
Re: Request for Advisory Opinion
The undersigned submits this request for an advisory opinion from the FTA Chief Counsel with respect to [the general nature of the matter involved].
A. A full statement of all facts and legal points relevant to the request
B. An affirmation that the undersigned swears, to the best of his/her knowledge and belief, this request includes all data, information, and views relevant to the matter, whether favorable or unfavorable to the position of the undersigned, which is the subject of the request.
C. The following certification: "I hereby certify that I have this day served the foregoing [name of document] on the following interested party(ies) at the following addresses and email or facsimile numbers (if also served by email or facsimile) by [specify method of service]:
[list persons, addresses, and email or facsimile numbers]"

Dated this xx day of xx, 20xx. [Signature]
[Printed name]
[Title of person making request] [Mailing address]
[Telephone number] [email address]

(c) The Chief Counsel may request additional information, as necessary, from the party submitting the request for an advisory opinion.

(d) A request for an advisory opinion may be denied if:

(1) The request contains incomplete information on which to base an informed advisory opinion;

(2) The Chief Counsel concludes that an advisory opinion cannot reasonably be given on the matter involved;

(3) The matter is adequately covered by a prior advisory opinion or a regulation; and

(4) The Chief Counsel otherwise concludes that an advisory opinion would not be in the public interest.

§ 604.19 Processing of advisory opinions.

(a) A request for an advisory opinion shall be sent to the Chief Counsel at *ombudsman.charterservice@dot.gov* and filed electronically in the Charter Service Advisory Opinion/Cease and Desist Order docket number FTA–2007–0023 at <https://www.regulations.gov> or sent to the dockets office located at 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, for submission to that docket.

(b) The Chief Counsel shall make every effort to respond to a request for an advisory opinion within ten days of receipt of a request that complies with § 604.18(b). The Chief Counsel shall send his or her decision to the interested party, the docket, and the recipient, if appropriate.

§ 604.20 Effect of an advisory opinion.

(a) An advisory opinion represents the formal position of FTA on a matter, and except as provided in § 604.25, obligates the agency to follow it until it is amended or revoked.

(b) An advisory opinion may be used in administrative or court proceedings to illustrate acceptable and unacceptable procedures or standards, but not as a legal requirement and is limited to the factual circumstances described in the request for an advisory opinion. The Chief Counsel's advisory opinion shall not be binding upon a Presiding Official conducting a proceeding under subpart I of this part.

(c) A statement made or advice provided by an FTA employee constitutes an advisory opinion only if it is issued in writing under this section. A statement or advice given by an FTA employee orally, or given in writing, but not under this section, is an informal communication that represents the best judgment of that employee at the time but does not constitute an advisory opinion, does not necessarily represent the formal position of FTA, and does not bind or otherwise obligate or commit the agency to the views expressed.

§ 604.21 Special considerations for advisory opinions.

Based on new facts involving significant financial considerations, the

Chief Counsel may take appropriate enforcement action contrary to an advisory opinion before amending or revoking the opinion. This action shall be taken only with the approval of the Administrator.

§ 604.22 Request for a cease and desist order.

(a) An interested party may also request a cease and desist order as part of its request for an advisory opinion. A request for a cease and desist order shall contain the following information in addition to the information required for an advisory opinion:

(1) A description of the need for the cease and desist order, a detailed description of the lost business opportunity the interested party is likely to suffer if the recipient performs the charter service in question, and how the public interest will be served by avoiding or ameliorating the lost business opportunity. A registered charter provider must distinguish its loss from that of other registered charter providers in the geographic service area.

(2) A detailed description of the efforts made to notify the recipient of the potential violation of the regulations in this part. Include names, titles, phone numbers or email addresses of persons contacted, date and times contact was made, and the response received, if any.

(b) A request for a cease and desist order may be denied if:

(1) The request contains incomplete information on which to base an informed decision on a cease and desist order;

(2) The Chief Counsel concludes that a cease and desist order cannot reasonably be given on the matter involved;

(3) The matter is adequately covered by a prior a cease and desist order; or

(4) The Chief Counsel otherwise concludes that a cease and desist order would not be in the public interest.

(c) A recipient who is the subject of a request for a cease and desist order shall have three business days to respond to the request. The response shall include a point-by-point rebuttal to the information included in the request for a cease and desist order.

(d) The time period for a response by the recipient begins once a registered charter provider files a request in the Advisory Opinions/Cease and Desist Orders docket (FTA–2007–0023 at <https://www.regulations.gov>) or with the FTA Chief Counsel's Office, whichever date is sooner.

§ 604.23 Decisions by the Chief Counsel regarding cease and desist orders.

(a) The Chief Counsel may grant a request for a cease and desist order if

the interested party demonstrates, by a preponderance of the evidence, that the planned provision of charter service by a recipient would violate this part.

(b) In determining whether to grant the request for a cease and desist order, the Chief Counsel shall consider the specific facts shown in the signed, sworn request for a cease and desist order, applicable statutes, regulations, agreements, and any other information that is relevant to the request.

§ 604.24 Effect of a cease and desist order.

Issuance of a cease and desist order against a recipient shall be considered as an aggravating factor in determining the remedy to impose against the recipient in future findings of noncompliance with this part, if the recipient provides the service described in the cease and desist order issued by the Chief Counsel.

Subpart F—Complaints

§ 604.25 Purpose.

This subpart describes the requirements for filing a complaint challenging the registration of a private charter operator or qualified human service organization on the FTA charter registration website and filing a complaint regarding the provision of charter service by a recipient. Note: To save time and expense for all concerned, FTA expects all parties to attempt to resolve matters informally before beginning the official complaint process.

§ 604.26 Complaints and decisions regarding removal of private charter operators or qualified human service organizations from registration list.

(a) A recipient, a registered charter provider, or its duly authorized representative, may challenge the listing of a registered charter provider or qualified human service organization on FTA's charter registration website by filing a complaint that meets the following:

(1) States the name and address of each entity who is the subject of the complaint;

(2) Provides a concise but complete statement of the facts relied upon to substantiate the reason why the private charter operator or qualified human service organization should not be listed on the FTA charter registration website;

(3) Files electronically by submitting it to the Charter Service Removal Complaints docket number FTA–2007–0024 at <https://www.regulations.gov>;

(4) Serves by email or facsimile if no email address is available, or by overnight mail service with receipt confirmation, and attaches documents

offered in support of the complaint, upon all entities named in the complaint;

(5) Files within 90 days of discovering facts that merit removal of the registered charter provider or qualified human service organization from the FTA Charter Registration website; and

(6) Contains the following certification:

I hereby certify that I have this day served the foregoing [name of document] on the following persons at the following addresses and email or facsimile numbers (if also served by email or facsimile) by [specify method of service]:

[list persons, addresses, and email or facsimile numbers]

Dated this xx day of xxxx, 20xx.
[signature], for [party].

(b) The registered charter provider or qualified human service organization shall have 15 days to answer the complaint and shall file such answer, and all supporting documentation, in the Charter Service Removal Complaint docket number FTA–2007–0024 at <https://www.regulations.gov> and email such answer to ombudsman.charterservice@dot.gov.

(c) A recipient, qualified human service organization, or a registered charter provider, or its duly authorized representative, shall not file a reply to the answer.

(d) FTA shall determine whether to remove the registered charter provider or qualified human service organization from the FTA charter registration website based on a preponderance of the evidence of one or more of the following:

(1) Bad faith;

(2) Fraud;

(3) Lapse of insurance;

(4) Lapse of other documentation; or

(5) The filing of more than one complaint, which on its face, does not state a claim that warrants an investigation or further action by FTA.

(e) FTA's determination whether or not to remove a registered charter provider or qualified human service organization from the registration list shall be sent to the parties within 30 days of the date of the response required in paragraph (b) of this section and shall state:

(1) Reasons for allowing the continued listing or removal of the registered charter provider or qualified human service organization from the registration list;

(2) If removal is ordered, the length of time (not to exceed three years) the private charter operator or qualified human service organization shall be barred from the registration list; and

(3) The date by which the private charter operator or qualified human

service organization may re-apply for registration on the FTA charter registration website.

§ 604.27 Complaints, answers, replies, and other documents.

(a) A registered charter provider, or its duly authorized representative (“complainant”), affected by an alleged noncompliance of this part may file a complaint with the Office of the Chief Counsel.

(b) Complaints filed under this subpart shall:

(1) Be titled “Notice of Charter Service Complaint”;

(2) State the name and address of each recipient that is the subject of the complaint and, with respect to each recipient, the specific provisions of this part that the complainant believes were violated;

(3) Be served in accordance with § 604.31, along with all documents then available in the exercise of reasonable diligence, offered in support of the complaint, upon all recipients named in the complaint as being responsible for the alleged action(s) or omission(s) upon which the complaint is based;

(4) Provide a concise but complete statement of the facts relied upon to substantiate each allegation (complainant must show by a preponderance of the evidence that the recipient provided charter service and that such service did not fall within one of the exemptions or exceptions set out in this part);

(5) Describe how the complainant was directly and substantially affected by the things done or omitted by the recipients;

(6) Identify each registered charter provider associated with the complaint; and

(7) Be filed within 90 days after the alleged event giving rise to the complaint occurred.

(c) Unless the complaint is dismissed pursuant to § 604.28 or § 604.29, FTA shall notify the complainant, respondent, and State recipient, if applicable, within 30 days after the date FTA receives the complaint that the complaint has been docketed. Respondent shall have 30 days from the date of service of the FTA notification to file an answer.

(d) The complainant may file a reply within 20 days of the date of service of the respondent’s answer.

(e) The respondent may file a rebuttal within 10 days of the date of service of the reply.

(f) The answer, reply, and rebuttal shall, like the complaint, contain a concise but complete statement of the facts relied upon to substantiate the

answers, admissions, denials, or averments made and be accompanied by the supporting documentation upon which the submitter relies.

(g) The answer shall deny or admit the allegations made in the complaint or state that the entity filing the document is without sufficient knowledge or information to admit or deny an allegation and shall assert any affirmative defense.

(h) The respondent’s answer may include a motion to dismiss the complaint, or any portion thereof, with a supporting memorandum of points and authorities.

(i) The complainant may withdraw a complaint at any time after filing by serving a “Notification of Withdrawal” on the Chief Counsel and the respondent.

§ 604.28 Dismissals.

Within 20 days after the receipt of a complaint described in § 604.27, the Office of the Chief Counsel shall provide reasons for dismissing a complaint, or any claim in the complaint, with prejudice, under this section if:

(a) It appears on its face to be outside the jurisdiction of FTA under the Federal Transit Laws;

(b) On its face it does not state a claim that warrants an investigation or further action by FTA; or

(c) The complainant lacks standing to file a complaint under subpart B, C, or D of this part.

§ 604.29 Incomplete complaints.

If a complaint is not dismissed under § 604.28, but is deficient as to one or more of the requirements set forth in § 604.27, the Office of the Chief Counsel may dismiss the complaint within 20 days after receiving it. Dismissal shall be without prejudice and the complainant may re-file after amendment to correct the deficiency. The Chief Counsel’s dismissal shall include the reasons for the dismissal without prejudice.

§ 604.30 Filing complaints.

(a) *Filing address.* Unless provided otherwise, the complainant shall file the complaint with the Office of the Chief Counsel, 1200 New Jersey Ave. SE, Room E55–302, Washington, DC 20590 and file it electronically in the Charter Service Complaint docket number FTA–2007–0025 at <https://www.regulations.gov> or mail it to the docket by sending the complaint to 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590.

(b) *Date and method of filing.* Filing of any document shall be by personal

delivery, U.S. mail, or overnight delivery with receipt confirmation. Unless the date is shown to be inaccurate, documents to be filed with FTA shall be deemed filed on the earliest of:

(1) The date of personal delivery;

(2) The mailing date shown on the certificate of service;

(3) The date shown on the postmark if there is no certificate of service; or

(4) The mailing date shown by other evidence if there is no certificate of service and no postmark.

(c) *Electronic service.* A document sent by email shall not constitute service as described in § 604.31.

(d) *Number of copies.* Unless otherwise specified, an executed original shall be filed with FTA.

(e) *Form.* Documents filed with FTA shall be typewritten or legibly printed. In the case of docketed proceedings, the document shall include a title and the docket number, as established by the Chief Counsel or Presiding Official, of the proceeding on the front page.

(f) *Signing of documents and other papers.* The original of every document filed shall be signed by the person filing it or the person’s duly authorized representative. Subject to the enforcement provisions contained in this subpart, the signature shall serve as a certification that the signer has read the document and, based on reasonable inquiry, to the best of the signer’s knowledge, information, and belief, the document is:

(1) Consistent with this part;

(2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and

(3) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the administrative process.

§ 604.31 Service.

(a) *Designation of person to receive service.* The initial document filed by the complainant shall state on the first page of the document for all parties to be served:

(1) The title of the document;

(2) The name, post office address, telephone number; and

(3) The facsimile number, if any, and email address(es), if any.

(4) If any of the items in paragraphs (a)(1) through (3) of this section change during the proceeding, the person shall promptly file notice of the change with FTA and the Presiding Official, if appropriate, and shall serve the notice on all other parties to the proceeding.

(b) *Docket numbers.* Each submission identified as a complaint under this part

by the submitting party shall be filed in the Charter Service Complaint docket FTA–2007–0025.

(c) *Who must be served.* Copies of all documents filed with FTA shall be served by the entity filing them on all parties to the proceeding. A certificate of service shall accompany all documents when they are tendered for filing and shall certify concurrent service on FTA and all parties. Certificates of service shall be in substantially the following form:

I hereby certify that I have this day served the foregoing [name of document] on the following persons at the following addresses and email or facsimile numbers (if also served by email or facsimile) by [specify method of service]:

[list persons, addresses, and email or facsimile numbers]

Dated this xx day of xxxx, 20xx.
[signature], for [party]

(d) *Method of service.* Except as otherwise provided in § 604.26, or agreed by the parties and the Presiding Official, as appropriate, the method of service is personal delivery or U.S. mail.

(e) *Presumption of service.* There shall be a presumption of lawful service:

(1) When acknowledgment of receipt is by a person who customarily or in the ordinary course of business receives mail at the address of the party or of the person designated under this section; or

(2) When a properly addressed envelope, sent to the last known address has been returned as undeliverable, unclaimed, or refused.

Subpart G—Investigations

§ 604.32 Investigation of complaint.

(a) If, based on the pleadings, there appears to be a reasonable basis for investigation, FTA shall investigate the subject matter of the complaint.

(b) The investigation may include a review of written submissions or pleadings of the parties, as supplemented by any informal investigation FTA considers necessary and by additional information furnished by the parties at FTA request. Each party shall file documents that it considers sufficient to present all relevant facts and argument necessary for FTA to determine whether the recipient is in compliance.

(c) The Chief Counsel shall send a notice to complainant(s) and respondent(s) once an investigation is complete, but not later than 90 days after receipt of the last pleading specified in § 604.27 was due to FTA.

§ 604.33 Agency initiation of investigation.

(a) Notwithstanding any other provision under this part, FTA may

initiate its own investigation of any matter within the applicability of this part without having received a complaint. The investigation may include, without limitation, any of the actions described in § 604.32.

(b) Following the initiation of an investigation under this section, FTA sends a notice to the entities subject to investigation. The notice will set forth the areas of FTA's concern and the reasons; request a response to the notice within 30 days of the date of service; and inform the respondent that FTA will, in its discretion, invite good faith efforts to resolve the matter.

(c) If the matters addressed in the FTA notice are not resolved informally, the Chief Counsel may refer the matter to a Presiding Official.

Subpart H—Decisions by FTA and Appointment of a Presiding Official (PO)

§ 604.34 Chief Counsel decisions and appointment of a PO.

(a) After receiving a complaint consistent with § 604.27, and conducting an investigation, the Chief Counsel may:

(1) Issue a decision based on the pleadings filed to date;

(2) Appoint a PO to review the matter; or

(3) Dismiss the complaint pursuant to § 604.28.

(b) If the Chief Counsel appoints a PO to review the matter, the Chief Counsel shall send out a hearing order that sets forth the following:

(1) The allegations in the complaint, or notice of investigation, and the chronology and results of the investigation preliminary to the hearing conducted in accordance with subpart I of this part;

(2) The relevant statutory, judicial, regulatory, and other authorities;

(3) The issues to be decided;

(4) Such rules of procedure as may be necessary to supplement the provisions of this part;

(5) The name and address of the PO, and the assignment of authority to the PO to conduct the hearing in accordance with the procedures set forth in this part; and

(6) The date by which the PO is directed to issue a recommended decision.

§ 604.35 Separation of functions.

(a) Proceedings under this part shall be handled by an FTA attorney, except that the Chief Counsel may appoint a PO, who may not be an FTA attorney.

(b) After issuance of an initial decision by the Chief Counsel, the FTA

employee or contractor engaged in the performance of investigative or prosecutorial functions in a proceeding under this part shall not, in that case or a factually related case, participate or give advice in a final decision by the Administrator or his or her designee on written appeal, and shall not, except as counsel or as witness in the public proceedings, engage in any substantive communication regarding that case or a related case with the Administrator on written appeal.

Subpart I—Hearings

§ 604.36 Powers of a PO.

A PO may:

(a) Give notice of, and hold, pre-hearing conferences and hearings;

(b) Administer oaths and affirmations;

(c) Issue notices of deposition requested by the parties;

(d) Limit the frequency and extent of discovery;

(e) Rule on offers of proof;

(f) Receive relevant and material evidence;

(g) Regulate the course of the hearing in accordance with the rules of this part to avoid unnecessary and duplicative proceedings in the interest of prompt and fair resolution of the matters at issue;

(h) Hold conferences to settle or to simplify the issues by consent of the parties;

(i) Dispose of procedural motions and requests;

(j) Examine witnesses; and

(k) Make findings of fact and conclusions of law and issue a recommended decision.

§ 604.37 Appearances, parties, and rights of parties.

(a) Any party to the hearing may appear and be heard in person and any party to the hearing may be accompanied, represented, or advised by an attorney licensed by a State, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that State or territory, or by another duly authorized representative. An attorney, or other duly authorized representative, who represents a party shall file according to the filing and service procedures contained in §§ 604.30 and 604.31.

(b) The parties to the hearing are the respondent(s) named in the hearing order, the complainant(s), and FTA, as represented by the PO.

(c) The parties to the hearing may agree to extend for a reasonable period of time the time for filing a document under this part. If the parties agree, the PO shall grant one extension of time to

each party. The party seeking the extension of time shall submit a draft order to the PO to be signed by the PO and filed with the hearing docket. The PO may grant additional oral requests for an extension of time where the parties agree to the extension.

(d) An extension of time granted by the PO for any reason extends the due date for the PO's recommended decision and for the final agency decision by the length of time in the PO's extension.

§ 604.38 Discovery.

(a) Permissible forms of discovery shall be within the discretion of the PO.

(b) The PO shall limit the frequency and extent of discovery permitted by this section if a party shows that:

(1) The information requested is cumulative or repetitious;

(2) The information requested may be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

§ 604.39 Depositions.

(a) For good cause shown, the PO may order that the testimony of a witness may be taken by deposition and that the witness produce documentary evidence in connection with such testimony.

Generally, an order to take the deposition of a witness is entered only if:

(1) The person whose deposition is to be taken would be unavailable at the hearing;

(2) The deposition is deemed necessary to perpetuate the testimony of the witness; or

(3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in undue burden to other parties or in undue delay.

(b) Any party to the hearing desiring to take the deposition of a witness according to the terms set out in this subpart, shall file a motion with the PO, with a copy of the motion served on each party. The motion shall include:

(1) The name and residence of the witness;

(2) The time and place for the taking of the proposed deposition;

(3) The reasons why such deposition should be taken; and

(4) A general description of the matters concerning which the witness will be asked to testify.

(c) If good cause is shown in the motion, the PO in his or her discretion

may issue an order authorizing the deposition and specifying the name of the witness to be deposed, the location and time of the deposition, and the general scope and subject matter of the testimony to be taken.

(d) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question propounded shall be recorded and the answers of the witness transcribed verbatim. The written transcript shall be subscribed by the witness, unless the parties by stipulation waive the signing, or the witness is ill, cannot be found, or refuses to sign. The reporter shall note the reason for failure to sign.

§ 604.40 Public disclosure of evidence.

(a) Except as provided in this section, the hearing shall be open to the public.

(b) The PO may order that any information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the PO. The person shall state specific grounds for nondisclosure in the motion.

(c) The PO shall grant the motion to withhold information from public disclosure if the PO determines that disclosure would be in violation of the Privacy Act, would reveal trade secrets or privileged or confidential commercial or financial information, or is otherwise prohibited by law.

§ 604.41 Standard of proof.

The PO shall issue a recommended decision or shall rule in a party's favor only if the decision or ruling is supported by a preponderance of the evidence.

§ 604.42 Burden of proof.

(a) The burden of proof of noncompliance with this part, determination, or agreement issued under the authority of the Federal Transit Laws is on the registered charter provider.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

§ 604.43 Offer of proof.

A party whose evidence has been excluded by a ruling of the PO, during a hearing in which the respondent had an opportunity to respond to the offer of proof, may offer the evidence on the record when filing an appeal.

§ 604.44 Record.

(a) The transcript of all testimony in the hearing, all exhibits received into

evidence, all motions, applications requests and rulings, and all documents included in the hearing record shall constitute the exclusive record for decision in the proceedings and the basis for the issuance of any orders.

(b) Any interested person may examine the record by entering the docket number at <https://www.regulations.gov> or after payment of reasonable costs for search and reproduction of the record.

§ 604.45 Waiver of procedures.

(a) The PO shall waive such procedural steps as all parties to the hearing agree to waive before issuance of an initial decision.

(b) Consent to a waiver of any procedural step bars the raising of this issue on appeal.

(c) The parties may not by consent waive the obligation of the PO to enter a recommended decision on the record.

§ 604.46 Recommended decision by a PO.

(a) The PO shall issue a recommended decision based on the record developed during the proceeding and shall send the recommended decision to the Chief Counsel for ratification or modification not later than 110 days after the referral from the Chief Counsel.

(b) The Chief Counsel shall ratify or modify the PO's recommended decision within 30 days of receiving the recommended decision. The Chief Counsel shall serve his or her decision, which is capable of being appealed to the Administrator, on all parties to the proceeding.

§ 604.47 Remedies.

(a) If the Chief Counsel determines that a violation of this part occurred, he or she may take one or more of the following actions:

(1) Bar the recipient from receiving future Federal financial assistance from FTA;

(2) Order the withholding of a reasonable percentage of available Federal financial assistance; or

(3) Pursue suspension and debarment of the recipient, its employees, or its contractors.

(b) In determining the type and amount of remedy, the Chief Counsel shall consider the following factors:

(1) The nature and circumstances of the violation;

(2) The extent and gravity of the violation ("extent of deviation from regulatory requirements");

(3) The revenue earned ("economic benefit") by providing the charter service;

(4) The operating budget of the recipient;

(5) Such other matters as justice may require; and

(6) Whether a recipient provided service described in a cease and desist order after issuance of such order by the Chief Counsel.

(c) The Chief Counsel office may mitigate the remedy when the recipient can document corrective action of alleged violation. The Chief Counsel's decision to mitigate a remedy shall be determined on the basis of how much corrective action was taken by the recipient and when it was taken. Systemic action to prevent future violations will be given greater consideration than action simply to remedy violations identified during FTA's inspection or identified in a complaint.

(d) In the event the Chief Counsel finds a pattern of violations, the remedy ordered shall bar a recipient from receiving Federal transit assistance in an amount that the Chief Counsel considers appropriate.

(e) The Chief Counsel may make a decision to withhold Federal financial assistance in a lump sum or over a period of time not to exceed five years.

Subpart J—Appeal to Administrator and Final Agency Orders

§ 604.48 Appeal from Chief Counsel decision.

(a) Each party adversely affected by the Chief Counsel's office decision may file an appeal with the Administrator within 21 days of the date of the Chief Counsel's issued his or her decision. Each party may file a reply to an appeal within 21 days after it is served on the party. Filing and service of appeals and replies shall be by personal delivery consistent with §§ 604.30 and 604.31.

(b) If an appeal is filed, the Administrator reviews the entire record and issues a final agency decision based on the record that either accepts, rejects, or modifies the Chief Counsel's decision within 30 days of the due date of the reply. If no appeal is filed, the Administrator may take review of the case on his or her own motion. If the Administrator finds that the respondent is not in compliance with this part, the final agency order shall include a statement of corrective action, if appropriate, and identify remedies.

(c) If no appeal is filed, and the Administrator does not take review of the decision by the office on the Administrator's own motion, the Chief Counsel's decision shall take effect as the final agency decision and order on the twenty-first day after the actual date the Chief Counsel's decision was issued.

(d) The failure to file an appeal is deemed a waiver of any rights to seek judicial review of the Chief Counsel's decision that becomes a final agency decision by operation of paragraph (c) of this section.

§ 604.49 Administrator's discretionary review of the Chief Counsel's decision.

(a) If the Administrator takes review on the Administrator's own motion, the Administrator shall issue a notice of review by the twenty-first day after the actual date of the Chief Counsel's decision that contains the specific findings of fact and conclusions of law in the decision subject to review by the Administrator.

(b) Parties may file one brief on review to the Administrator or rely on their post-hearing briefs to the Chief Counsel's office. Briefs on review shall be filed not later than 10 days after service of the notice of review. Filing and service of briefs on review shall be by personal delivery consistent with §§ 604.30 and 604.31.

(c) The Administrator shall issue a final agency decision and order within 30 days of the due date of the briefs on review. If the Administrator finds that the respondent is not in compliance with this part, the final agency order shall include a statement of corrective action, if appropriate, and identify remedies.

(d) If the Administrator takes review on the Administrator's own motion, the decision of the Chief Counsel is stayed pending a final decision by the Administrator.

Subpart K—Judicial Review

§ 604.50 Judicial review of a final decision and order.

(a) A person may seek judicial review in an appropriate United States District Court of a final decision and order of the Administrator as provided in 5 U.S.C. 701–706. A party seeking judicial review of a final decision and order shall file a petition for review with the Court not later than 60 days after a final decision and order is effective.

(b) The following do not constitute final decisions and orders subject to judicial review:

(1) FTA's decision to dismiss a complaint as set forth in § 604.29;

(2) A recommended decision issued by a PO at the conclusion of a hearing; or

(3) A Chief Counsel decision that becomes the final decision of the Administrator because it was not appealed within the stated timeframes.

[FR Doc. 2024–30970 Filed 1–7–25; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2024–0187; FXES1113090FEDR–256–FF09E21000]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on Two Petitions for Gray Wolf

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on two concurrently filed companion petitions to revise the currently listed gray wolf (*Canis lupus*) entities under the Endangered Species Act of 1973, as amended (Act or ESA). Together, the petitions requested that the Service: designate and delist a Western Great Lakes (WGL) distinct population segment (DPS) of gray wolf due to recovery; and designate a West Coast States DPS of gray wolf and list it as a threatened species, and potentially delist the remnant areas of the gray wolf entity in the lower 48 States due to extinction. Based on our review, we find that the petitions do not present substantial scientific or commercial information indicating that the petitioned actions may be warranted.

DATES: This finding was made on January 8, 2025.

ADDRESSES: Supporting documents: A summary of the basis for the petition finding contained in this document is available on <https://www.regulations.gov> in Docket No. FWS–HQ–ES–2024–0187. In addition, this supporting information is available by contacting the appropriate person, as specified in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Rachel London, Manager, Branch of Delisting and Foreign Species, Ecological Services Headquarters; telephone: 703–358–2491; email: rachel_london@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:

Background

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists or List) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to add a species to the List (*i.e.*, “list” a species), remove a species from the List (*i.e.*, “delist” a species), or change a listed species’ status from endangered to threatened or from threatened to endangered (*i.e.*, “reclassify” a species) presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish the finding promptly in the **Federal Register**.

Our regulations establish that substantial scientific or commercial information with regard to a 90-day petition finding refers to credible scientific or commercial information in support of the petition’s claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted (50 CFR 424.14(h)(1)(i)). A positive 90-day petition finding does not indicate that the petitioned action is warranted; the finding indicates only that the petitioned action may be warranted and that a full review should occur.

When evaluating a petition, we must also consider whether the petitioned entity may be a listable entity under the Act, *i.e.*, a species, a subspecies, or a potential distinct population segment (DPS) of a vertebrate species or subspecies. The evaluation of the taxonomic status of a species or subspecies or the validity of a potential DPS centers on whether the information presented in the petition reaches the substantial information threshold. It is not within our purview to determine taxonomic status or DPS validity in a 90-day petition evaluation; rather, we evaluate information submitted by the petitioners to determine whether the information indicates the petitioned entity may be a listable entity under the Act. We will not expand the scope of our evaluation beyond the petitioned entities, including various combinations of DPSs.

A species may be determined to be an endangered species or a threatened

species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)). The five factors are:

- (a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);
- (b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);
- (c) Disease or predation (Factor C);
- (d) The inadequacy of existing regulatory mechanisms (Factor D); and
- (e) Other natural or manmade factors affecting its continued existence (Factor E).

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species’ continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to, or are reasonably likely to, affect individuals of a species negatively. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition, or the action or condition itself. However, the mere identification of any threat(s) may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. The information presented in the petition must include evidence sufficient to suggest that these threats may be affecting the species to the point that the species may meet the definition of an endangered species or threatened species under the Act.

If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and species-level effects and the expected response by the species. We will evaluate individual threats and their expected effects on the species, then analyze the cumulative effect of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that are expected to have positive effects on the species—

such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets the definition of an endangered species or threatened species under the Act.

If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires that we promptly commence a review of the status of the species, and we will subsequently complete a status review in accordance with our prioritization methodology for 12-month findings (81 FR 49248; July 27, 2016).

Summary of Petition Finding

Species and Range

Currently Listed Entities

- Gray wolf (*Canis lupus*) is listed as endangered in all or portions of 43 of the contiguous United States (all of Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Iowa, Indiana, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Maine, Michigan, Missouri, Mississippi, North Carolina, North Dakota, Nebraska, New Hampshire, New Jersey, Nevada, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Vermont, Wisconsin, and West Virginia; and portions of Arizona, New Mexico, Oregon, Utah, and Washington) and Mexico. This entity also includes a designated nonessential experimental population in Colorado.

- Gray wolf (*Canis lupus*) is listed as threatened in Minnesota.

Petitioned Actions for Revising the Currently Listed Entities

Petitioners asked us to revise the currently listed gray wolf entities by splitting and/or combining the current listings for gray wolf into one or more DPSs and a non-DPS remnant (Sportsmen’s Alliance Foundation et al. 2023b, pp. 25–26, footnote 52).

Evaluation of Information Summary

On June 29, 2023, we received two concurrently filed “companion” petitions from the Sportsmen’s Alliance Foundation, Michigan Bear Hunters Association, Upper Peninsula Bear Houndsmen Association, and Wisconsin Bear Hunters Association (petitioners). Petitioners urged us to consider their

petitions simultaneously (Sportsmen's Alliance Foundation et al. 2023a, p. 34).

In one petition, petitioners asked us to designate a Western Great Lakes (WGL) DPS of gray wolf and remove that petitioned DPS from the List of Endangered and Threatened Wildlife because the DPS does not meet the Act's definition of an endangered or threatened species (Sportsmen's Alliance Foundation et al. 2023a, entire). Petitioners also presented claims related to currently listed gray wolves outside of the Western Great Lakes, and provided two suggestions for how the Service should address these wolves. First, petitioners stated that the non-DPS remnant is a listable entity that would be entitled to the continued protections of the Act (Sportsmen's Alliance Foundation et al. 2023a, p. 35) ("The circumstances here warrant continuing protections for remnant wolves in the original Lower 48 wolf listing through a non-DPS remnant listing."). Alternatively, they suggested that the Service could adopt the approach in their companion petition and protect West Coast wolves as a DPS (Sportsmen's Alliance Foundation et al. 2023a, p. 36) ("Alternatively, even if the Service does not continue a 'non-DPS remnant' listing under the original Lower 48 listing, delisting the WGL DPS will not result in the elimination of protections for the remnant population because the remnant West Coast [w]olves satisfy the criteria to be listed as a DPS if ESA protections are warranted.").

In their companion petition, petitioners proposed two specific actions for addressing listed gray wolves in the lower 48 States outside of the petitioned WGL DPS: (1) recognize a non-DPS remnant and continue endangered species protections for the non-DPS remnant; and (2) recognize a West Coast DPS of gray wolf and reclassify the petitioned DPS from an endangered species to a threatened species under the Act (Sportsmen's Alliance Foundation et al. 2023b, entire). Petitioners did not ask the Service to assign any specific status to the remainder of the listed entity if the second action is implemented, but they suggested that we might delist all the remnant areas not included within the two petitioned DPSs due to extinction. Finally, petitioners clarified that we should take one, or preferably both, actions concurrent with recognizing and delisting a WGL DPS.

Each petition clearly identified itself as such and included the requisite identification information for the petitioners, required at 50 CFR 424.14(c). As requested by the

petitioners, we are evaluating their petitions jointly and this finding addresses both petitions.

Finding

Based on our review of the petitions, sources cited in the petitions, and other readily available information (within the constraints of the Act and 50 CFR 424.14(h)(1)), we find that the petitions do not provide substantial scientific or commercial information indicating that the petitioned actions may be warranted. The petitioners failed to present substantial information for us to conclude that the petitions, considered together, provide a valid approach for revising the current gray wolf (*Canis lupus*) listed entities. As requested by petitioners, we have considered these petitions jointly. Based on our review of the petitions, we find that petitioners provide substantial information that the Western Great Lakes population of gray wolf may qualify as a valid DPS under the Act. However, we find that the petitions do not provide substantial information supporting the petitioned action with respect to gray wolves outside of the Western Great Lakes. They fail to provide substantial scientific or commercial information indicating that a gray wolf remnant in the lower 48 States or a West Coast gray wolf population may constitute a valid listable entity under the Act. Thus, we do not further consider whether revising the currently listed gray wolf entities to recognize a Western Great Lakes DPS and delist it due to recovery may be warranted. The basis for our finding on these petitions and other information regarding our review of the petitions can be found as an appendix at <https://www.regulations.gov> under Docket No. FWS-HQ-ES-2024-0187 under the Supporting Documents section.

Conclusion

On the basis of our evaluation of the information presented in the petitions under section 4(b)(3)(A) of the Act, we have determined that the petitions summarized above for the gray wolf do not present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, we will not further consider whether the petitioned revisions to the currently listed gray wolf entities are warranted.

Authors

The primary authors of this document are staff members of the Branch of Delisting and Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024-31754 Filed 1-7-25; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R8-ES-2024-0041; FXES1111090FEDR-256-FF09E21000] RIN 1018-BH49

Endangered and Threatened Wildlife and Plants; Endangered Species Status for the Bleached Sandhill Skipper

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the bleached sandhill skipper (*Polites sabuleti sinemaculata*), an insect subspecies from Humboldt County, Nevada, as an endangered species under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the bleached sandhill skipper. After a review of the best available scientific and commercial information, we find that listing the subspecies is warranted. Accordingly, we propose to list the bleached sandhill skipper as an endangered species under the Act. If we finalize this rule as proposed, the final rule would add this subspecies to the List of Endangered and Threatened Wildlife and extend the Act's protections to the subspecies. We find that a designation of critical habitat for the bleached sandhill skipper is not determinable at this time.

DATES: We will accept comments received or postmarked on or before March 10, 2025.

Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by February 24, 2025.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically*: Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS–R8–ES–2024–0041, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”

(2) *By hard copy*: Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R8–ES–2024–0041, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: Supporting materials, such as the subspecies status assessment report, are available on the Service’s website at <https://www.fws.gov/office/reno-fish-and-wildlife>, at <https://www.regulations.gov> at Docket No. FWS–R8–ES–2024–0041, or both.

FOR FURTHER INFORMATION CONTACT: Justin Barrett, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Reno Fish and Wildlife Field Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502–7147; telephone 775–861–6300.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Please see Docket No. FWS–R8–ES–2024–0041 on <https://www.regulations.gov> for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. The Act defines a “species” as including any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of

its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species’ critical habitat to the maximum extent prudent and determinable. We have determined that the bleached sandhill skipper meets the definition of an endangered species; therefore, we are proposing to list it as such. Listing a species as an endangered or threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This document proposes to add the bleached sandhill skipper to the List of Endangered and Threatened Wildlife as an endangered species under the Act.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or humanmade factors affecting its continued existence. We have determined that the bleached sandhill skipper is endangered due to the following threats: increased warming and drying conditions due to the synergistic effects of climate change and groundwater pumping.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary), to the maximum extent prudent and determinable, concurrently with listing to designate critical habitat for the species. We have not yet been able to obtain the necessary economic information needed to develop a proposed critical habitat designation for the bleached sandhill skipper, although we are in the process of obtaining this information. At this time, we find that designation of critical habitat for the bleached sandhill skipper is not determinable. When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible.

Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The subspecies’ biology, range, and population trends, including:

(a) Biological or ecological requirements of the subspecies, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns and the locations of any additional populations of this subspecies;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the subspecies, its habitat, or both.

(2) Threats and conservation actions affecting the subspecies, including:

(a) Factors that may be affecting the continued existence of the subspecies, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or humanmade factors.

(b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this subspecies.

(c) Existing regulations or conservation actions that may be addressing threats to this subspecies.

(3) Additional information concerning the historical and current status of this subspecies.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire

submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>.

Our final determination may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that the subspecies is threatened instead of endangered, or we may conclude that the subspecies does not warrant listing as either an endangered species or a threatened species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

We identified the bleached sandhill skipper as a Category 2 candidate on November 21, 1991 (56 FR 58804). Category 2 candidates were defined as species for which we had information that proposed listing was possibly appropriate, but conclusive data on biological vulnerability and threats were not available to support a proposed rule at the time. In the February 28, 1996, Candidate Notice of Review (61 FR

7596), we discontinued the designation of Category 2 species as candidates; therefore, the bleached sandhill skipper was no longer a candidate species.

On January 29, 2010, we received a petition from WildEarth Guardians requesting that 10 subspecies of Great Basin butterflies, including the bleached sandhill skipper, be listed as an endangered or threatened species with critical habitat under the Act. On October 4, 2011, we made our 90-day finding that the petition presented substantial scientific or commercial information indicating that listing of the bleached sandhill skipper may be warranted, and we initiated a status review for this subspecies (76 FR 61532). On September 4, 2012, we published a 12-month finding that the bleached sandhill skipper did not warrant listing under the Act (77 FR 54294).

On October 16, 2022, we received a petition from the Center for Biological Diversity requesting that the bleached sandhill skipper be listed as a threatened species or an endangered species and critical habitat be designated for this subspecies under the Act. On August 17, 2023, we made our 90-day finding that the petition presented substantial scientific or commercial information indicating that listing of the bleached sandhill skipper may be warranted (88 FR 55991). The petition also requested that the bleached sandhill skipper be emergency listed as endangered. The Act does not provide for a process to petition for emergency listing. However, in light of the concerns raised by the petitioner, at the time the petition was received, we did consider the immediacy of possible threats to the subspecies and whether emergency listing may be necessary. We reviewed the information in the petition and in our files, and because the threats were not deemed to be of such a magnitude and extent that immediate species protection was necessary, we did not find emergency listing to be an appropriate course of action. This proposed rule constitutes our 12-month finding on the petition.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the bleached sandhill skipper. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the subspecies, including the impacts of past, present, and future factors (both negative and beneficial) affecting the subspecies.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review in listing and recovery actions under the Act, we solicited independent scientific review of the information contained in the bleached sandhill skipper SSA report. We sent the SSA report to 10 independent peer reviewers and received 3 responses. Results of this structured peer review process can be found at <https://www.regulations.gov>. In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this proposed rule.

Summary of Peer Reviewer Comments

As discussed in Peer Review above, we received comments from three peer reviewers on the draft SSA report. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the information contained in the SSA report. The peer reviewers concurred with our methods and conclusions and provided additional information, clarifications, and suggestions, including updates to the discussion on population counts, clarifications in terminology and discussions of physiological limits, and editorial suggestions. Otherwise, no substantive changes to our analysis and conclusions within the SSA report were deemed necessary, and peer reviewer comments are addressed in version 1.1 of the SSA report.

I. Proposed Listing Determination Background

A thorough review of the taxonomy, life history, and ecology of the bleached sandhill skipper is presented in the SSA report (version 1.1; Service 2024, pp. 9–23).

The bleached sandhill skipper is a small-sized, narrow endemic butterfly found in Humboldt County, Nevada. The bleached sandhill skipper is one of 13 named subspecies of the sandhill skipper and can be distinguished from other sandhill skipper subspecies based on the unusually pale coloration of the wings that give the subspecies a bleached appearance (Austin 1987, p. 8). It occupies alkali meadows in three isolated populations: Pueblo Slough, Gridley Lake, and Rincon Creek which are located within an approximately 14-mile (22-kilometer) area (figure 1). The populations at Pueblo Slough and Gridley Lake are primarily found on Bureau of Land Management (BLM)

lands, with some occurrences on private land, and the population at Rincon Creek is found on the Sheldon National Wildlife Refuge. The three populations are genetically differentiated (Jahner

2023, pp. 3, 9–10) which suggests limited gene flow and that dispersal is minimal. Additionally, the combination of small wing size and large thorax, coupled with short generation time

(approximately one year) and short adult flight period further suggests low dispersal habits (Scott 1986, pp. 42–43, 425; Sekar 2011, pp. 179–182; Stantec 2020, p. 10).

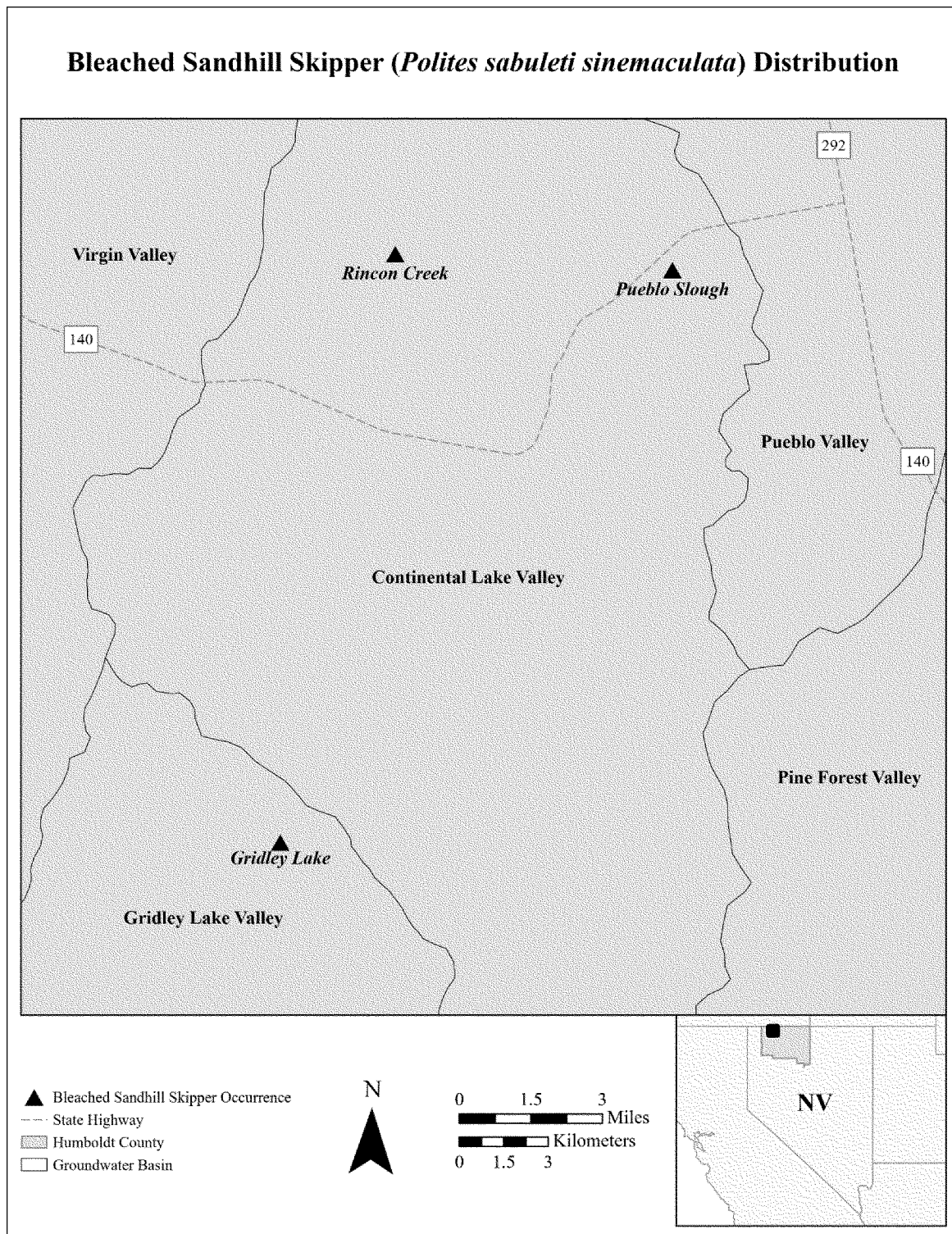


Figure 1—Distribution of the Bleached Sandhill Skipper

The specific timing and expression of life-history characteristics of the bleached sandhill skipper have not been studied in detail, but its phenology is likely similar to other *P. sabuleti* subspecies and univoltine (having one adult flight period per year) skipper species found in similar habitat communities (Service 2024, pp. 11–12).

Bleached sandhill skippers occupy alkali meadow communities dominated by saltgrass (*Distichlis spicata*) and rabbitbrushes (*Chrysothamnus* spp. and *Ericameria* spp.). Saltgrass is the presumed sole larval hostplant, providing food and shelter for larvae and presumably shelter for pupae; the availability of nutritious saltgrass plants throughout the fall is essential for larvae growth, development, and survival (Austin 1987, p. 8; Service 2024, p. 15). Rabbitbrushes are the primary nectar sources for adults; the availability of non-senescing plants during late summer through fall is essential for adult reproduction and survival. These food plants typically grow in areas where there is a shallow water table, and they rely on groundwater as their primary source of water uptake. Lastly, all bleached sandhill skipper life stages—egg, larvae, pupae, and adult—require suitable microclimate, including suitable temperatures and moisture levels.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species.

The Act defines an “endangered species” as a species that is in danger of extinction throughout all or a significant portion of its range and a “threatened species” as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species’ continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an “endangered species” or a “threatened species.” In determining whether a species meets either definition, we must evaluate all identified threats by considering the species’ expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an “endangered species” or a “threatened species” only after conducting this cumulative analysis and describing the expected effect on the species.

The Act does not define the term “foreseeable future,” which appears in the statutory definition of “threatened species.” Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis, which is further described in the 2009 Memorandum Opinion on the foreseeable future from the Department of the Interior, Office of the Solicitor

(M–37021, January 16, 2009; “M–Opinion,” available online at <https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37021.pdf>).

The foreseeable future extends as far into the future as the U.S. Fish and Wildlife Service and National Marine Fisheries Service can make reasonably reliable predictions about the threats to the species and the species’ responses to those threats. We need not identify the foreseeable future in terms of a specific period of time. We will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species’ life-history characteristics, threat projection timeframes, and environmental variability. In other words, the foreseeable future is the period of time over which we can make reasonably reliable predictions. “Reliable” does not mean “certain”; it means sufficient to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess bleached sandhill skipper viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events); and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the subspecies’ ecological

requirements for survival and reproduction at the individual, population, and species levels and described the beneficial and risk factors influencing the subspecies' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual subspecies' life-history needs. The next stage involved an assessment of the historical and current condition of the subspecies' demographics and habitat characteristics, including an explanation of how the subspecies arrived at its current condition. The final stage of the SSA involved making predictions about the subspecies' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages of the SSA process, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time, which we then used to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket FWS-R8-ES-2024-0041 on <https://www.regulations.gov> and at <https://www.fws.gov/office/reno-fish-and-wildlife>.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the subspecies and its resources, and the threats that influence the subspecies' current and future condition, in order to assess the subspecies' overall viability and the risks to that viability.

Species Needs

The SSA report contains a detailed discussion of the bleached sandhill skipper individual, population, and subspecies requirements (Service 2024, pp. 9–23); we provide a summary here. Based upon the best available scientific and commercial information, and acknowledging existing ecological uncertainties, the resource and demographic needs for breeding, feeding, sheltering, and microclimate conditions of the bleached sandhill skipper are summarized below.

Bleached sandhill skippers need alkali meadow communities dominated by saltgrass (the sole larval food plant) and rabbitbrushes (the primary adult nectar source). Each stage of the bleached sandhill skipper's life cycle relies on saltgrass (Austin 1987, p. 8). The density or cover of saltgrass needed for the bleached sandhill skipper is unknown. The quality (health) of saltgrass is important during the larval

stage as green plants are more nutritious (due to increased moisture content) and likely more edible. Because rabbitbrushes are the primary nectar plants for adults (Austin 1987, p. 8; Stantec 2020, p. 125), they are essential for reproduction and survival of bleached sandhill skippers.

All life stages—egg, larvae, pupae, and adult—require suitable microclimate, including suitable temperatures and moisture levels. Bleached sandhill skippers are poikilothermic, meaning that their body temperature is controlled by ambient temperature, which controls critical physiological functions and behaviors, such as respiration, immunity, metabolism, growth and development, fecundity, flight ability, dispersal, oviposition, feeding, and diapause. Moisture conditions are also an important determinant of survival, especially in desert areas. The optimal range of temperature and moisture levels is unknown for bleached sandhill skipper (see “Climate Change” below), but as a desert occupant, it likely experiences conditions close to its upper thermal and moisture limits under normal conditions (Service 2024, pp. 21–23). Studies from a number of other insects, including butterflies, across broad geographic areas show significant fitness (growth, development, fecundity, and survival) consequences as temperatures exceed upper thermal limits (Service 2024, pp. 17–19). Although the optimal range of temperature for bleached sandhill skipper is unknown, based on studies conducted for other butterfly species, substantial fitness consequences (reproduction and survival) are likely triggered when temperatures exceed 35–41 degrees Celsius (C) (95–105 degrees Fahrenheit (F)) (Service 2024, pp. 17–19, 49–51).

Bleached sandhill skipper populations, owing to their poikilothermic physiology, can experience large swings in abundance year-to-year in response to environmental conditions. Thus, to successfully recruit over time, populations need to be large (thousands of individuals) and maintain robust growth rates ($\lambda > 1.0$). Populations also require large sizes and gene flow to maintain genetic health and evolutionary potential. Bleached sandhill skipper populations also require high quality and quantity of habitat to support a robust demography. The amount of habitat required is unknown, but we know that suitable habitat means non-senescent patches of saltgrass and rabbitbrushes embedded within a healthy alkali meadow

vegetation community with few dispersal barriers.

Threats

The main threats affecting the bleached sandhill skipper are related to warming and drying conditions due to climate change and exacerbated by groundwater pumping. We also evaluated existing regulatory mechanisms and ongoing conservation measures. In the SSA report, we considered additional threats: livestock grazing and potential impacts from future geothermal development. We concluded that, as indicated by the best available scientific and commercial information, these additional threats individually are having no to minor impact, but the effects could be intensified through synergistic interactions among all threats. For full descriptions of all threats and how they impact the bleached sandhill skipper, please see the SSA report (Service 2024, pp. 29–56).

Climate Change

Bleached sandhill skipper fitness is tightly controlled by the microclimate (temperature and moisture) experienced by individuals and the quality and quantity of habitat resources (nectar resources and hostplants) (Service 2024, pp. 11–19). Changes in the microclimate conditions and the quality of their habitat, therefore, directly and indirectly influence critical processes such as adult flight ability and timing, reproductive behavior, fecundity, oviposition, feeding, development, and diapause (Palumbo 2011, entire; Caldas 2012, entire). Furthermore, the bleached sandhill skipper is a desert occupant, likely living close to its upper thermal limits under normal conditions, leaving little buffer for accommodating warming and drying conditions.

The climate within bleached sandhill skipper range has been drying and warming over the last several decades. The Southwest region where the bleached sandhill skipper occurs is one of the hottest and driest areas of the United States, and climate change has exacerbated these conditions. Average annual temperatures have increased almost 1.1 degrees Celsius (°C) (2.0 degrees Fahrenheit (°F)) over the last century (Garfin et al. 2014, p. 464). Every part of the Southwest experienced higher average temperatures between 2000 and 2020 than the long-term average (1895–2020) (Environmental Protection Agency (EPA), 2023, p. 3). Within the last decade (comparing 2010–2019 to 1958–2009) in Humboldt County, Nevada, the average annual number of days where the maximum

temperature exceeded the 35 °C (95 °F) thermal limit of bleached sandhill skipper, increased by 2 days (21 versus 23 days) and 1.5 days (3 versus 4.5 days) for 38 °C (100 °F). During the years (2020–2022), the average annual number of days where the maximum temperature exceeded 35 °C (95 °F) increased from the historical average by 15 days, with 5 and 10 days in fall and summer, respectively, and 38 °C (100 °F) was exceeded for 3 days, with 2 days in fall and one day in summer (Service 2024, pp. 47–50).

Temperatures are increasing more at night than during the day and more in winter than in summer, leading to fewer cold snaps, more heatwaves, fewer frosty days and nights, less snow, and earlier snowmelt (Stewart et al. 2005, p. 1152; Mote et al. 2006, entire; Knowles et al. 2006, p. 4557; Abatzoglou and Kolden 2013, entire; Snyder et al. 2019, p. 3; Service 2024, p. 49). Both daytime high temperatures and nighttime low temperatures have exhibited widespread warming trends (Garfin et al. 2013, pp. 79–80; Service 2024, p. 49). In recent decades, reductions in precipitation and winter snowpack—key sources of moisture—have been observed (Garfin et al. 2014, p. 465). Since 2001, large portions of the arid Southwest have experienced prolonged drought, with widespread drought occurring in 2002, 2003, 2007, and 2009 (MacDonald 2010, p. 21256). During these years, the region's precipitation averaged as much as 22–25 percent below the 20th-century mean, with local deficits being greater (MacDonald 2010, p. 21256; Service 2024, pp. 49–53). Based on the long-term Palmer Drought Severity Index, drought conditions in the Southwest have varied since 1895 (EPA 2023, p. 3; Service 2024, p. 46) and since 1990, the Southwest has seen some of the most persistent droughts on record (Garfin et al. 2013, p. 84).

The warming and drying conditions are also likely impacting the quality of bleached sandhill skipper habitat, specifically causing early senescence or loss of saltgrass and rabbitbrushes, although the extent to which this situation is occurring is unknown. Given the subspecies' limited dispersal ability (Service 2024, p. 12), low genetic diversity (Jahner 2023, pp. 3–4), inflexible thermal limits, and narrow diet, bleached sandhill skippers likely lack the capacity to timely and sufficiently adapt to warming temperatures and drying conditions.

Groundwater Pumping

Bleached sandhill skippers are found across two different groundwater basins. The Pueblo Slough and Rincon Creek

populations are found within Continental Lake Valley groundwater basin, and the Gridley Lake population is found within Gridley Lake Valley groundwater basin (Service 2024, pp. 31–39). Pumping of groundwater occurs in these basins for many uses, but the vast majority is for irrigation of agricultural crops (Nevada Division of Water Resources (NDWR) 2023a, p. 1; NDWR 2023b, p. 1). Groundwater pumping that exceeds aquifer recharge may result in surface or groundwater level decline, spring drying and degradation, or the loss of aquatic habitat (Zektser et al. 2005, pp. 396–397; Aldous and Gannett 2021, p. 10). Saltgrass and rabbitbrushes are groundwater-dependent species with shallow root systems. Because of their shallow root systems, they can be harmed by long-term declining or fluctuating water tables (Groeneveld 1994, entire; Manning 1999, entire; Elmore et al. 2006, pp. 775–776; Patten et al. 2008, p. 8). With declining water tables, as the depth to groundwater increases, the ability of shallow roots to access this water resource is affected. A long-term decline in groundwater supply may shift the vegetative community from groundwater-dependent plants to more upland species that rely on precipitation rather than groundwater (Patten et al. 2008, p. 10) or to successional dead-ends where further disturbance results in bare soils dominated by nonnative species (Manning 1999, p. 236).

Groundwater pumping for irrigation occurs hydrologically upgradient from all three populations. Increasing depth-to-groundwater levels have been documented for several groundwater wells upgradient of the Pueblo Slough population (Service 2024, pp. 31–38). Although there are no wells upgradient of the other two populations with sufficient data to determine trends, the increasing depth-to-groundwater trend near Pueblo Slough, coupled with an analysis of normalized vegetation difference index (NVDI) data (a measure of vegetation health; higher values mean more dense and green vegetation) adjusted for climate variability, suggests a drying of the groundwater-dependent vegetation communities across the two water basins where bleached sandhill skipper are found. These data suggest that pumping is currently contributing to increasing the depth-to-groundwater levels at Pueblo Slough and Gridley Lake and drying of the groundwater-dependent vegetation (Service 2024, pp. 31–38). Gridley Lake Valley groundwater basin (where the Gridley Lake population is located) is currently

appropriated and pumped above perennial yield, which is consistent with this assessment. Continental Lake Valley groundwater basin (where Rincon Creek and Pueblo Slough populations are located) is close to fully appropriated and pumped around 25 percent of perennial yield. Our assessment of the available data clearly indicates that, despite being pumped below perennial yield in this valley, the increasing depth-to-groundwater trend is still being realized (Service 2024, pp. 38–39).

In the near-term (years 2020–2029), continued and/or increased groundwater pumping is projected, which will continue to increase the depth to groundwater, impairing the ability of saltgrass and rabbitbrushes to connect with the water table (due to shallow root systems) (Service 2024, p. 65). Thus, we anticipate that continued groundwater pumping, coupled with the impacts of climate change, will continue to cause drying of these areas such that they will no longer support a vegetation community needed to support bleached sandhill skipper populations.

Conservation Efforts and Regulatory Mechanisms

The Nevada Department of Wildlife and the Nevada Department of Conservation and Natural Resources do not have authority to manage or conserve terrestrial invertebrates such as the bleached sandhill skipper. Nevada Revised Statute (NRS) section 501.110 outlines the “Classification of Wildlife” in Nevada and lists the Nevada Department of Wildlife as having authority over wild mammals, wild birds, fish, reptiles, amphibians, mollusks, and crustaceans but does not mention insects. The Nevada Department of Agriculture has statutory authority over insects that are “normally considered to be a pest of cultivated plants, uncultivated plants, agricultural commodities, horticultural products or nursery stock, or that the Director [of the Department of Agriculture] declares to be a pest” (NRS section 555.005(5)). Because the bleached sandhill skipper is not an agricultural pest, it is functionally unmanaged by any State agency.

The bleached sandhill skipper has been placed on Nevada's list of “at-risk species” by the Nevada Division of Natural Heritage (Nevada Division of Natural Heritage 2022, p. 16). However, species included on the At-Risk Plant and Animal Tracking List are not provided any protections by the State (Nevada Division of Natural Heritage 2022, p. 1). The bleached sandhill skipper is considered a BLM Sensitive

Species in Nevada (BLM 2017, p. 24). BLM Sensitive Species are “species requiring special management consideration to promote their conservation and reduce the likelihood and need for future listing under the Act” (BLM 2008, p. 3). Beyond the Sensitive Species designation, other BLM regulations do not provide protections for the bleached sandhill skipper. The BLM Winnemucca District Resources Management Plan requires that proposed actions on BLM land do not affect a species in such a way that it may lead to further listing under the Act (BLM 2013, p. 34). This is the only regulatory mechanism providing any level of protection for the bleached sandhill skipper.

Cumulative Effects

We note that, by using the SSA framework to guide our analysis of the

scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the subspecies. To assess the current and future condition of the subspecies, we evaluate the effects of all the relevant factors that may be influencing the subspecies, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire subspecies, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

Current and Near-Term Conditions

Since 2010, periodic standardized surveys (visual encounter techniques resulting in numbers of individuals counted) have been conducted at Pueblo

Slough (Service and BLM 2014, entire; Service and BLM 2022, entire); count data are available for 6 out of the last 10 years (figure 2). At Pueblo Slough, bleached sandhill skipper counts have steeply declined since 2014, with counts decreasing from an estimated 7,482 individuals in 2014 to an estimate of 245 individuals in 2023 (figure 2). Prior to 2014, bleached sandhill skipper numbers were suggested to be in the thousands, but this information is anecdotal as standardized surveys were not conducted before that time. Although the count data do not provide an abundance estimate, the decline from thousands of butterflies to hundreds of butterflies indicates that the population size is now much smaller, approximately 97 percent less than it had been in 2014. Thus, these data also suggest a declining population trend.

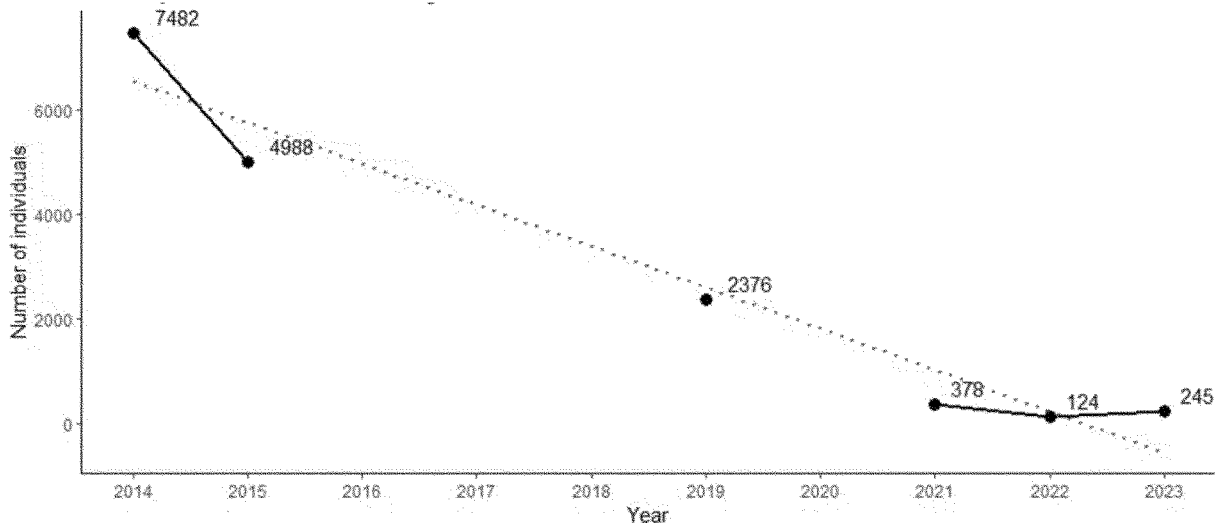


Figure 2—Number of Individuals Counted During Standardized Transect Surveys at Pueblo Slough

(Stantec 2015, p. 14; Stantec 2016, p. 9; Stantec 2020, p. 10; Arid West 2022, p. 10; Arid West 2023, p. 11; Stantec 2023, p. 2. Trend line: linear model in R using Tidyverse, ggplot2, and Viridis packages.)

From Gridley Lake, we have only 1 year of count data (from 2023), and the number of bleached sandhill skippers counted was low (313 individuals). Similarly, we have only 1 year of count data (from 2015) from Rincon Creek, and the number of bleached sandhill skippers counted there was also low (78 individuals). Therefore, data are not available to discern population trends for either Gridley Lake or Rincon Creek populations.

Data are too limited to assess whether the extent and health of saltgrass and

rabbitbrushes have changed over time at all three populations. However, NVDI data suggest that the health of the vegetation community has declined at Pueblo Slough and Gridley Lake and this trend is expected to continue into the near-term.

The steep decline in bleached sandhill skipper population counts coupled with recent studies implicating climate change as the cause of butterfly declines in the Southwestern United States (Crossley et al. 2021, p. 2,707; Forister et al. 2021, p. 1,044) suggest that climate change is a key driver in bleached sandhill population dynamics at Pueblo Slough. Given the regional extent of climate change, it is likely that it is a key driver of the population dynamics at Gridley Lake and Rincon Creek populations as well. Taken together with the magnitude of warming

and drying that has occurred in the last couple of decades, it can be reasonably discerned that climate change and groundwater pumping is having negative impacts on all three bleached sandhill skipper populations.

Current and Near-Term Condition Summary

Bleached sandhill skipper viability requires multiple, resilient populations (high abundance and strong growth rates). Until recently, bleached sandhill skipper populations appeared to have sufficient abundances and growth rates to withstand unfavorable environmental conditions despite its narrow geographic range (low redundancy) and seemingly low representation (owing to the limited ability to shift its range and its low within and among population genetic diversity). However, over the

last 10 years, bleached sandhill skipper abundance has been declining at Pueblo Slough, due to climate change and groundwater pumping. Gridley Lake and Rincon Creek populations, because of their proximity to Pueblo Slough, are likely experiencing and responding similarly to rising temperatures and drying conditions. Thus, given its overall declining population health (low number of individuals, deteriorating habitat conditions), the subspecies is considered to have low resiliency.

Because the subspecies is limited to a relatively small area (three populations within an approximately 14-mile (22-kilometer) area), and because all three populations are considered to have low resiliency, the subspecies is considered to have little redundancy. A single catastrophic event, such as a severe drought or heat wave, could result in the extinction of the subspecies. Additionally, given the subspecies' narrow range and limited to no dispersal capabilities, we consider the subspecies to have low representation, and we do not expect any significant changes in behavioral, ecological, or genetic variation.

Within the near-term (by 2029), the synergistic effects of climate change and groundwater pumping are projected to intensify, further reducing the bleached sandhill skipper's ability to sustain itself, while concurrently impairing the subspecies' ability to withstand stochasticity and catastrophic events. Moreover, current and near-term declining population health will further constrain the bleached sandhill skipper's low representation, thereby exacerbating declines in the subspecies' resiliency and redundancy over time.

Future Condition

As part of the SSA, we also developed three future-condition scenarios to capture the range of uncertainties regarding future threats and the projected responses by the bleached sandhill skipper. Our scenarios assumed a moderate to major increase in the warming and drying conditions within bleached sandhill skipper habitats, due to climate change and the synergistic effects of continued or enhanced groundwater pumping activities. Because we determined that the current condition of the bleached sandhill skipper is consistent with an endangered species (see Determination of Bleached Sandhill Skipper Status, below), we are not presenting the results of the future scenarios in this proposed rule. Please refer to the SSA report (Service 2024, pp. 58–81) for the full analysis of future scenarios.

Determination of the Bleached Sandhill Skipper Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an “endangered species” as a species in danger of extinction throughout all or a significant portion of its range and a “threatened species” as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We presented summary evaluations of the primary threats analyzed in the SSA report including climate change (Factor E) and groundwater pumping (Factor A). We also evaluated existing regulatory mechanisms (Factor D) and ongoing conservation measures. In the SSA report, we also considered additional threats: livestock grazing (Factor A) and geothermal development (Factor A). We concluded that, as indicated by the best available scientific and commercial information, livestock grazing and geothermal development currently have no impact to minor impacts on the bleached sandhill skipper and its habitat and, thus, the overall effect of these activities now and into the near-term is expected to be minimal. However, we consider each of these factors in the determination for the subspecies, because although they may have low impacts on their own, combined with impacts of other threats, they could further reduce the already low number of bleached sandhill skippers.

Status Throughout All of Its Range

After evaluating threats to the subspecies and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we have determined that the bleached sandhill skipper has limited resiliency, redundancy, and representation to maintain viability over time. Since 2014, counts of bleached sandhill skipper have been declining at Pueblo

Slough, due to climate change and exacerbated by groundwater pumping. Gridley Lake and Rincon Creek populations have limited population data, but because of their proximity to Pueblo Slough, they are likely experiencing and responding similarly to warming temperatures and drying conditions. Because the subspecies is limited to a relatively small area (three populations within an approximately 14-mile (22-kilometer) area), the subspecies is considered to have little redundancy. A single catastrophic event, such as a severe drought or heat wave, could result in the extinction of the subspecies. Additionally, given the subspecies' narrow range and limited to no dispersal capabilities, we consider the subspecies to have low representation, and we do not expect any significant changes in behavioral, ecological, or genetic variation.

Within the near-term (by 2029), the synergistic effects of climate change and groundwater pumping are projected to intensify, further reducing the bleached sandhill skipper's ability to sustain itself, while concurrently impairing the subspecies' ability to withstand stochasticity and catastrophic events. Moreover, current and near-term declining population health will further constrain the bleached sandhill skipper's seemingly low evolutionary potential, thereby exacerbating declines in the subspecies' resiliency and redundancy over time.

With declining population health (low number of individuals, deteriorating habitat conditions) coupled with its small geographic range, the subspecies currently has limited ability to withstand inherent stochasticity (environmental, demographic, and genetic), catastrophic events (e.g., heat waves and droughts), and changing environmental conditions (e.g., chronic increases in temperatures, drying conditions). Thus, extirpation risks at all three populations are expected to continue and increase in the near-term.

We do not find the bleached sandhill skipper meets the definition of a threatened species because the subspecies currently has a low number of individuals, has already shown population declines resulting in low resiliency of its populations, and has deteriorating habitat conditions driven or exacerbated by the identified threats. Because the bleached sandhill skipper has low redundancy and representation is limited, the subspecies is vulnerable to even a single catastrophic heat wave or drought event. Thus, after assessing the best scientific and commercial data available, we conclude that the bleached

sandhill skipper is currently in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. We have determined that the bleached sandhill skipper is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the bleached sandhill skipper warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity v. Everson*, 435 F. Supp. 3d 69 (D.D.C. 2020), because that decision related to significant portion of the range analyses for species that warrant listing as threatened, not endangered, throughout all of their range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the bleached sandhill skipper meets the definition of an endangered species. Therefore, we propose to list the bleached sandhill skipper as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, foreign governments, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and

implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened ("downlisting") or removal from protected status ("delisting") and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (<https://www.fws.gov/program/endangered-species>), or from our Reno Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this subspecies is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share

grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Nevada would be eligible for Federal funds to implement management actions that promote the protection or recovery of the bleached sandhill skipper. Information on our grant programs that are available to aid species recovery can be found at: <https://www.fws.gov/service/financial-assistance>.

Although the bleached sandhill skipper is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this subspecies. Additionally, we invite you to submit any new information on this subspecies whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7 of the Act is titled, "Interagency Cooperation," and it mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the Federal action is likely to result in jeopardy or adverse modification.

In contrast, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. Although the conference procedures are required

only when an action is likely to result in jeopardy or adverse modification, action agencies may voluntarily confer with the Service on actions that may affect species proposed for listing or critical habitat proposed to be designated. In the event that the subject species is listed or the relevant critical habitat is designated, a conference opinion may be adopted as a biological opinion and serve as compliance with section 7(a)(2).

Examples of discretionary actions for the bleached sandhill skipper that may be subject to conference and consultation procedures under section 7 are land management or other landscape-altering activities on Federal lands administered by the BLM, the Natural Resources Conservation Service, and the Federal Highway Administration as well as actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the local Service Field Office (see **FOR FURTHER INFORMATION CONTACT**) with any specific questions on section 7 consultation and conference requirements.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, and the Service's implementing regulations codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed any of the following acts with regard to any endangered wildlife: (1) import into, or export from, the United States; (2) take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect) within the United States, within the territorial sea of the United States, or on the high seas; (3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such wildlife that has been taken illegally; (4) deliver, receive, carry, transport, or ship

in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or (5) sell or offer for sale in interstate or foreign commerce. Certain exceptions to these prohibitions apply to employees or agents of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits for endangered wildlife are codified at 50 CFR 17.22, and general Service permitting regulations are codified at 50 CFR part 13. With regard to endangered wildlife, a permit may be issued: for scientific purposes, for enhancing the propagation or survival of the species, or for take incidental to otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

II. Critical Habitat

Background

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate a species' critical habitat concurrently with listing the species. Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.*, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.*, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures

that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that each Federal action agency ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of designated critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement "reasonable and prudent alternatives" to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the

species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information compiled in the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is

unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Critical Habitat Determinability

Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

- (i) Data sufficient to perform required analyses are lacking, or
- (ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of "critical habitat."

We reviewed the available information pertaining to the biological needs of the bleached sandhill skipper and habitat characteristics where the subspecies is located. A careful assessment of the economic impacts that may occur due to a critical habitat designation is still ongoing, and we are in the process of acquiring the complex information needed to perform that assessment. Therefore, due to the current lack of data sufficient to perform required analyses, we conclude that the designation of critical habitat for the bleached sandhill skipper is not determinable at this time. The Act allows the Service an additional year to publish a critical habitat designation that is not determinable at the time of listing (16 U.S.C. 1533(b)(6)(C)(ii)).

Required Determinations

Clarity of the Rule

We are required by Executive Order (E.O.) 12866 and E.O. 12988 and by the Presidential memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951, May 4, 1994), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), the President's memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation; 87 FR 74479, December 5, 2022), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes and Alaska Native Corporations (ANCs) on a government-to-government basis. In accordance with Secretaries' Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We will work with Tribal entities during the future development of a proposed rule for the designation of critical habitat for the bleached sandhill skipper.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Reno Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Reno Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11, in paragraph (h), amend the List of Endangered and Threatened Wildlife by adding an entry for “Skipper, bleached sandhill” in alphabetical order under INSECTS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
Insects				
*	*	*	*	*
Skipper, bleached sandhill	<i>Polites sabuleti sinemaculata</i> .	Wherever found	E	[Federal Register citation when published as a final rule].
*	*	*	*	*

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024–31761 Filed 1–7–25; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 90, No. 5

Wednesday, January 8, 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

Commodity Credit Corporation

Farm Service Agency

[Docket ID FSA–2024–0011]

Notice; Marketing Assistance for Specialty Crops

AGENCY: Commodity Credit Corporation and Farm Service Agency, U.S. Department of Agriculture (USDA).

ACTION: Notice and application extension.

SUMMARY: The Farm Service Agency (FSA) is announcing changes to the available funding, payment limitation, and application deadline for Marketing Assistance for Specialty Crops (MASC). **DATES:** FSA county offices will accept applications for MASC until January 10, 2025.

FOR FURTHER INFORMATION CONTACT: Kathy Sayers; telephone: (202) 720–6870; email: Kathy.Sayers@usda.gov. Individuals with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Background

FSA announced MASC in a Notice of Funds Availability (NOFA) in the **Federal Register** on December 10, 2024 (89 FR 99212–99220). The NOFA announced that the MASC application period began on December 10, 2024, and would end on January 8, 2025. This notice is announcing an extension of the application period through January 10, 2025; the extension is intended to provide public notification of the changes announced in this notice in

advance of the application period closing.

The NOFA provided that MASC would use up to \$2 billion in Commodity Credit Corporation (CCC) funding to provide eligible specialty crop producers with marketing assistance payments that will help them engage in activities that aid in expanding domestic specialty crop markets or in developing new markets for their specialty crops. FSA has determined that an additional \$650 million in CCC funding is available for this purpose, so up to \$2.65 billion may be used to provide assistance through MASC.

The NOFA also provided that a person or legal entity, other than a joint venture or general partnership, cannot receive, directly or indirectly, more than \$125,000 in MASC payments. In this notice, FSA is announcing that the payment limitation will be increased from \$125,000 to \$900,000. FSA is making this change in response to stakeholder engagement and feedback received after publication of the MASC NOFA. During this time, stakeholders have emphasized the higher marketing costs related to specialty crops due to perishability, transporting, and packaging, which present greater financial challenges maintaining and expanding markets. Stakeholders have also raised concerns that the MASC payment limitation was different than the payment limitation for specialty crops in some previous programs.¹ USDA acknowledges the concerns expressed by stakeholders regarding the inconsistent manner in which program requirements are applied and the impact that this may have on producer expectations regarding eligibility and potential program benefits to support producers in marketing their commodities.

The increases in the amount of available funding and the payment limitation do not change how FSA will

¹ FSA has applied a payment limitation of \$900,000 for payments to specialty crop producers under previous programs. For both the Emergency Relief Program (ERP) and ERP 2022, producers were subject to a \$900,000 payment limitation for specialty crops if at least 75 percent of the person or legal entity's average adjusted gross income was income derived from farming, ranching, and forestry related activities. For ERP Phase 1, see the NOFA published May 18, 2022 (87 FR 30164–30172); for ERP Phase 2, see 7 CFR 760.1906(b)(1); for ERP 2022, see the NOFA published October 31, 2023 (88 FR 74404–74419).

determine the percent payment factors used in the MASC payment calculation. As provided in the NOFA, if demand for MASC payments exceeds available funding, either MASC payments may be prorated, the payment limitation may be lowered, or both. The increase to the payment limitation does not change how a payment to a legal entity will be attributed to members who have a direct or indirect ownership interest in the legal entity; the provisions regarding attribution will be applied as provided in the NOFA.

Zach Ducheneaux,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2025–00215 Filed 1–6–25; 8:45 am]

BILLING CODE 3411–E2–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Puerto Rico Advisory Committee to the Commission will convene by virtual web conference on Wednesday, January 29, 2025, at 3:30 p.m. Atlantic Time. The purpose is to continue discussion on their project on the civil rights impacts of the Insular Cases in Puerto Rico.

DATES: January 29, 2025, Wednesday, at 3:30 p.m. Atlantic Time (2:30 p.m. Eastern Time)

ADDRESSES: Meeting will be held via Zoom.

Registration Link (Audio/Visual): <https://tinyurl.com/mpsrnv2>.

Join by Phone (Audio Only): 1–833 435 1820 USA Toll Free; Meeting ID: 161 582 1962 #.

FOR FURTHER INFORMATION CONTACT: Email Victoria Moreno, Designated Federal Officer at vmoreno@usccr.gov, or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting will take place in Spanish with

English interpretation. This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email ebohor@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Victoria Moreno at vmoreno@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1-312-353-8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via www.facadatabase.gov under the Commission on Civil Rights, Puerto Rico Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at ebohor@usccr.gov.

Agenda

1. Welcome & Roll Call
2. Committee Discussion on Project
Regarding the Civil Rights Impacts
of the Insular Cases in Puerto Rico
3. Next Steps
4. Public Comment
5. Other Business
6. Adjourn

Dated: January 2, 2025.

David Mussatt,
Supervisory Chief, Regional Programs Unit.
[FR Doc. 2025-00145 Filed 1-7-25; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-1-2025]

Foreign-Trade Zone (FTZ) 265, Notification of Proposed Production Activity; Unimacts Company; (Steel Products); Conroe, Texas

The City of Conroe, Texas, grantee of FTZ 265 has submitted a notification of proposed production activity to the FTZ Board (the Board) on behalf of the Unimacts Company for the company's facility in Conroe, Texas within FTZ 265. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on December 19, 2024.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via www.trade.gov/ftz. The proposed finished product(s) and material(s)/component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed finished products include flat-rolled steel (electrolytically plated or coated with zinc) of various widths and thicknesses, flat-rolled steel (zinc-coated/plated) of various widths and thicknesses, and flat-rolled steel (coated or plated with various materials) (duty-free).

The proposed foreign-status materials/components include flat-rolled steel (electrolytically plated or coated with zinc) of various widths and thicknesses, flat-rolled steel (zinc coated/plated) of various widths and thicknesses, flat-rolled steel (coated or plated with various materials), wide flat-rolled steel (electrolytically plated or coated with zinc), wide flat-rolled steel (electrolytically plated or coated with aluminum-zinc alloys), and wide flat-rolled steel (plated or coated with zinc) of varying thicknesses (duty-free). The request indicates that certain materials/components are subject to duties under section 232 of the Trade Expansion Act of 1962 (section 232) or section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 232 and section 301 decisions require subject merchandise to be admitted to

FTZs in privileged foreign status (19 CFR 146.41). The request indicates that flat-rolled steel (electrolytically plated or coated with zinc) of various widths and thicknesses, flat-rolled steel (zinc coated/plated) of various widths and thicknesses, flat-rolled steel (coated or plated with various materials), wide flat-rolled steel (electrolytically plated or coated with zinc), wide flat-rolled steel (electrolytically plated or coated with aluminum-zinc alloys), and wide flat-rolled steel (plated or coated with zinc) of varying thicknesses are subject to an antidumping/countervailing duty (AD/CVD) order/investigation if imported from certain countries. The Board's regulations (15 CFR 400.13(c)(2)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in PF status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is February 18, 2025.

A copy of the notification will be available for public inspection in the "Online FTZ Information System" section of the Board's website.

For further information, contact Kolade Osho at Kolade.Osho@trade.gov.

Dated: January 2, 2025.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2025-00188 Filed 1-7-25; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-188, A-557-832]

Float Glass Products From the People's Republic of China and Malaysia: Initiation of Less-Than-Fair- Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov (the People's Republic of China (China)) and Jeff Pedersen (Malaysia), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone:

(202) 482-0665 and (202) 482-2769, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On November 21, 2024, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of float glass products from China and Malaysia filed in proper form on behalf of Vitro Flat Glass, LLC and Vitro Meadville Flat Glass, LLC (the petitioner), a U.S. producer of float glass products.¹ The AD Petitions were accompanied by countervailing duty (CVD) petitions concerning imports of float glass products from China and Malaysia.²

Between November 25 and December 23, 2024, Commerce requested supplemental information pertaining to certain aspects of the Petitions in supplemental questionnaires.³ Between December 2 and 26, 2024, the petitioner filed timely responses to these requests for additional information.⁴

On December 11, 2024, Commerce extended the initiation deadline by 20 days to poll the domestic industry in accordance with section 732(c)(4)(D) of the Tariff Act of 1930, as amended (the Act), because it was “not clear from the Petitions whether the industry support criteria have been met. . . .”⁵

¹ See Petitioner’s Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties,” dated November 21, 2024 (Petitions).

² *Id.*

³ See Commerce’s Letters, “Supplemental Questions,” dated November 26, 2024 (First General Issues Questionnaire); *see also* Country-Specific AD Supplemental Questionnaires: China Supplemental and Malaysia AD Supplemental, dated November 22, 2024; Memorandum, “Phone Call with Counsel to the Petitioner,” dated December 4, 2024 (December 4, 2024, Memorandum); Memorandum, “Phone Call with Counsel to the Petitioner,” dated December 9, 2024 (December 9, 2024, Memorandum); and Memorandum, “Phone Call with Counsel to the Petitioner,” dated December 23, 2024 (December 23, 2024, Memorandum).

⁴ See Petitioner’s Letters, “Amendments to Antidumping and Countervailing Duty Petitions; Volume SI—General Issues and Injury,” dated December 2, 2024 (First General Issues Supplement), “Amendments to Antidumping and Countervailing Duty Petitions; Volume SS—Second Supplemental Responses,” dated December 6, 2024 (Second General Issues Supplement), and “Amendments to Antidumping and Countervailing Duty Petitions; Volume SSS—Third Supplemental Responses,” dated December 10, 2024 (Third General Issues Supplement); *see also* Country-Specific AD Supplemental Responses: China AD Supplement and Malaysia AD Supplement, dated November 27, 2024; and Petitioner’s Letter, “Amendments to Antidumping and Countervailing Duty Petitions—Exhibit SSSS-1,” dated December 26, 2024 (Revised Scope).

⁵ See *Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping and Countervailing Duty Petitions: Float Glass Products from the People’s Republic of China and Malaysia*, 89 FR 102113, 102114 (December 17, 2024) (Initiation Extension Notice).

In accordance with section 732(b) of the Act, the petitioner alleges that imports of float glass products from China and Malaysia are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the float glass products industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions were accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigations.⁶

Periods of Investigation

Because the Petitions were filed on November 21, 2024, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the Malaysia LTFV investigation is October 1, 2023, through September 30, 2024. Because China is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), the POI for the China LTFV investigation is April 1, 2024, through September 30, 2024.

Scope of the Investigations

The products covered by these investigations are float glass products from China and Malaysia. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

Between November 25 and December 31, 2024, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.⁷ Between December 2 and 31, 2024, the petitioner provided clarifications and revised the scope.⁸ The description of merchandise

⁶ See section on “Determination of Industry Support for the Petitions,” *infra*.

⁷ See First General Issues Questionnaire; *see also* December 4, 2024, Memorandum; December 9, 2024, Memorandum; and December 23, 2024, Memorandum, and Memorandum, “Phone Call with Counsel to the Petitioner,” dated December 31, 2024 (December 31, 2024, Memorandum).

⁸ See First General Issues Supplement at SI-1 through SI-5 and Exhibits SI-1 and SI-2; *see also* Second General Issues Supplement at SS-1 through

covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce’s regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).⁹ Commerce will consider all scope comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,¹⁰ all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on January 21, 2025, which is the next business day after 20 calendar days from the signature date of this notice.¹¹ Any rebuttal comments, which may include factual information, and should also be limited to public information, must be filed by 5:00 p.m. ET on January 31, 2025, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of these investigations be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent LTFV and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance’s Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.¹² An

SS-3 and Exhibits SS-1 and SS-2; Third General Issues Supplement at SSS-1 through SSS-7 and Exhibit SSS-1; Revised Scope at Exhibit SSSS-1; and December 31, 2024, Memorandum.

⁹ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); *see also* 19 CFR 351.312.

¹⁰ See 19 CFR 351.102(b)(21) (defining “factual information”).

¹¹ See 19 CFR 351.303(b)(1). The deadline for scope comments falls on January 20, 2025, which is a federal holiday. In accordance with 19 CFR 351.303(b)(1), Commerce will accept comments filed by 5:00 p.m. ET on January 21, 2025 (“For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.”).

¹² See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures*;

electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties with an opportunity to comment on the appropriate physical characteristics of float glass products to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOP) or cost of production (COP) accurately, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) general product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe float glass products, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on January 21, 2025, which is the next business day after 20 calendar days from the signature date of this notice.¹³ Any

Administrative Protective Order Procedures, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.

¹³ See 19 CFR 351.303(b)(1). The deadline for comments on product characteristics falls on January 20, 2025, which is a federal holiday. In accordance with 19 CFR 351.303(b)(1), Commerce will accept comments filed by 5:00 p.m. ET on January 21, 2025 ("For both electronically filed and

rebuttal comments must be filed by 5:00 p.m. ET on January 31, 2025, which is 10 calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the LTFV investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,¹⁴ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the

manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.").

¹⁴ See section 771(10) of the Act.

decision of either agency contrary to law.¹⁵

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.¹⁶ Based on our analysis of the information submitted on the record, we have defined a single domestic like product consisting of float glass products, as defined in the scope, and regardless of country of origin of the primary float glass,¹⁷ and we have analyzed industry support in terms of that domestic like product.¹⁸ While Commerce's definition of the domestic like product is broader than the petitioner's definition, we find that expansion of the domestic like product definition is appropriate in this case in order to ensure a fair assessment of the domestic industry for purposes of measuring industry support. This is consistent with Commerce's broad discretion to define and clarify the scope of an AD investigation in a manner that reflects the intent of the Petitions.¹⁹

¹⁵ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd Algoma Steel Corp., Ltd. v. United States*, 865 F.2d 240 (Fed. Cir. 1989)).

¹⁶ For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, see Checklists, "Antidumping Duty Investigation Initiation Checklists: Float Glass Products from the People's Republic of China and Malaysia," dated concurrently with, and hereby adopted by, this notice (Country-Specific AD Initiation Checklists), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Float Glass Products from the People's Republic of China and Malaysia (Attachment II). These checklists are on file electronically via ACCESS.

¹⁷ Primary float glass, as defined in the scope, is soda-lime-silica glass that is manufactured by floating a continuous strip of molten glass over a smooth bath of tin (or another liquid metal with a density greater than molten glass), cooling the glass in an annealing lehr, and cutting it to appropriate dimensions (*i.e.*, an actual thickness of at least 2.0 millimeters (mm) (0.0787 inches) and an actual surface area of at least 0.37 square meters (4.0 square feet)).

¹⁸ See Attachment II of the Country-Specific AD Initiation Checklists.

¹⁹ See, *e.g.*, *Fujitsu Ltd. v. United States*, 36 F. Supp. 2d 394, 397 (CIT 1999) (citing *Kern-Liebers*

On December 11, 2024, Commerce extended the initiation deadline by 20 days to poll the industry in accordance with section 732(c)(4)(D) of the Act, because it was “not clear from the Petitions whether the industry support criteria have been met. . . .”²⁰ On December 13, 2024, we issued polling questionnaires to all known producers identified in the Petitions.²¹ We requested that the companies complete the polling questionnaire and certify their responses by the due date specified in the cover letter to the questionnaire.²² The petitioner provided comments on the polling questionnaire responses on December 26, 2024.²³ Xinyi²⁴ provided rebuttal comments on December 30, 2024.²⁵

Our analysis of the data we received in the polling questionnaire responses indicates that the domestic producers and workers who support the Petitions account for at least 25 percent of the total production of the domestic like product and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.²⁶ Accordingly, Commerce determines that the industry support requirements of section 732(c)(4)(A) of the Act have been met and that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.²⁷

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports from China and Malaysia exceed the negligibility threshold

provided for under section 771(24)(A) of the Act.²⁸

The petitioner contends that the industry’s injured condition is illustrated by the significant and increasing volume of subject imports; reduced market share; underselling and price depression and/or suppression; lost sales and revenues; and decline in the domestic industry’s production, capacity utilization, sales, employment, and financial performance.²⁹ We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, cumulation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.³⁰

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate LTFV investigations of imports of float glass products from China and Malaysia. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Country-Specific AD Initiation Checklists.

U.S. Price

For China and Malaysia, the petitioner based export price (EP) on transaction-specific average unit values (AUVs) (*i.e.*, month- and port-specific AUVs) derived from official import data and tied to ship manifest data.³¹ For each country, the petitioner made certain adjustments to U.S. price to calculate a net ex-factory U.S. price, where applicable.³²

Normal Value³³

For Malaysia, the petitioner states that it was unable to obtain home market or third country pricing information for float glass products to use as a basis for NV.³⁴ Therefore, for Malaysia, the

petitioner based NV on CV.³⁵ For further discussion of CV for Malaysia, *see* the section “Normal Value Based on Constructed Value,” below.

Commerce considers China to be an NME country.³⁶ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of the China LTFV investigation. Accordingly, we base NV on FOPs valued in a surrogate market economy country in accordance with section 773(c) of the Act.

The petitioner claims that the Republic of Türkiye (Türkiye) is an appropriate surrogate country for China because it is a market economy that is at a level of economic development comparable to that of China and is a significant producer of comparable merchandise.³⁷ The petitioner provided publicly available information from Türkiye to value all FOPs.³⁸ Based on the information provided by the petitioner, we believe it is appropriate to use Türkiye as a surrogate country for China to value all FOPs for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determinations.

Factors of Production

Because information regarding the volume of inputs consumed by Chinese producers/exporters was not reasonably available, the petitioner used its own production experience and product-specific consumption rates as a surrogate to value Chinese manufacturers’ FOPs.³⁹ Additionally, the petitioner calculated factory overhead, selling, general, and administrative (SG&A) expenses, and

USA, Inc. v. United States, 881 F. Supp. 618, 621 (CIT 1995) (citation omitted); and *Initiation of Antidumping Duty Investigations: Spring Table Grapes from Chile and Mexico*, 66 FR 26831 (May 15, 2001).

²⁰ See *Initiation Extension Notice*, 89 FR at 102114.

²¹ See Commerce’s Letter, “Polling Questionnaire,” dated December 13, 2024.

²² *Id.*

²³ See Petitioner’s Letter, “Industry Support Comments from Petitioner,” dated December 26, 2024.

²⁴ Xinyi Energy Smart (Malaysia) Sdn Bhd (Xinyi) is a Malaysian producer/exporter of float glass products. See Xinyi’s Letter, “Entry of Appearance,” dated December 3, 2024.

²⁵ See Xinyi’s Letter, “Xinyi’s Rebuttal Comments on Responses to Department’s Polling Questionnaire,” dated December 30, 2024.

²⁶ See Attachment II of the Country-Specific AD Initiation Checklists.

²⁷ *Id.*

²⁸ For further information regarding negligibility and the injury allegation, *see* Country-Specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Float Glass Products from the People’s Republic of China and Malaysia (Attachment III).

²⁹ *Id.*

³⁰ *Id.*

³¹ See Country-Specific AD Initiation Checklists.

³² *Id.*

³³ In accordance with section 773(b)(2) of the Act, for the Malaysia investigation, Commerce will request information necessary to calculate the constructed value (CV) and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

³⁴ See Malaysia AD Initiation Checklist.

³⁵ *Id.*

³⁶ See, e.g., *Certain Freight Rail Couplers and Parts Thereof from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 88 FR 15372 (March 13, 2023), and accompanying Preliminary Decision Memorandum at 5, unchanged in *Certain Freight Rail Couplers and Parts Thereof from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 88 FR 34485 (May 30, 2023).

³⁷ See China AD Initiation Checklist.

³⁸ *Id.*

³⁹ See China AD Initiation Checklist.

profit based on the experience of a Turkish producer of identical merchandise.⁴⁰

Normal Value Based on Constructed Value

As noted above for Malaysia, the petitioner was unable to obtain home market or third country pricing information for float glass products to use as the basis for NV.⁴¹ Therefore, for Malaysia, the petitioner calculated NV based on CV.⁴²

Pursuant to section 773(e) of the Act, for Malaysia, the petitioner calculated CV as the sum of the cost of manufacturing, SG&A expenses, financial expenses, and profit.⁴³ For Malaysia, in calculating the cost of manufacturing, the petitioner relied on its own experience and product-specific consumption rates, valued using publicly available information in Malaysia, where applicable.⁴⁴ For Malaysia, in calculating SG&A expenses, financial expenses, and profit ratios, the petitioner relied on the fiscal year 2023 financial statements of a Malaysian producer of comparable merchandise.⁴⁵

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of float glass products from China and Malaysia are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for float glass products for each of the countries covered by this initiation are as follows: (1) China—181.54 to 311.81 percent; and (2) Malaysia—66.24 to 1180.00 percent.⁴⁶

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating LTFV investigations to determine whether imports of float glass products from China and Malaysia are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Respondent Selection

Malaysia

In the Petitions, the petitioner identified four companies in Malaysia as producers/exporters of float glass products.⁴⁷ Following standard practice in LTFV investigations involving market economy countries, in the event Commerce determines that the number of companies is large, and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheading(s) listed in the "Scope of the Investigations," in the appendix.

On December 30 2024, Commerce released CBP data on imports of float glass products from Malaysia under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on CBP data and/or respondent selection must do so within three business days of the publication date of the notice of initiation of these investigations.⁴⁸ Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at <https://www.trade.gov/administrative-protective-orders>.

China

In the Petitions, the petitioner identified eight companies in China as producers and/or exporters of float glass products.⁴⁹ Our standard practice for respondent selection in AD investigations involving NME countries is to select respondents based on quantity and value (Q&V) questionnaires in cases where Commerce has determined that the number of companies is large, and it cannot individually examine each

company based upon its resources. Therefore, considering the number of producers and/or exporters identified in the Petitions, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce determines that the number is large and decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Because there are eight Chinese producers and/or exporters identified in the Petitions, Commerce has determined that it will issue Q&V questionnaires to each potential respondent in China for which there is complete address information on the record.

Commerce will post the Q&V questionnaires along with filing instructions on Commerce's website at <https://www.trade.gov/ec-adcvd-case-announcements>. Producers/exporters of float glass products from China that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Commerce's website. Responses to the Q&V questionnaire must be submitted by the relevant Chinese producers/exporters no later than 5:00 p.m. ET on January 14, 2025, which is two weeks from the signature date of this notice. All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). As stated above, instructions for filing such applications may be found on Commerce's website at <https://www.trade.gov/administrative-protective-orders>.

Separate Rates

In order to obtain separate rate status in an NME investigation, exporters and producers must submit a separate rate application. The specific requirements for submitting a separate rate application in an NME investigation are outlined in detail in the application itself, which is available on Commerce's website at <https://access.trade.gov/Resources/nme/nme-sep-rate.html>. The separate rate application will be due 30 days after publication of this initiation notice. Exporters and producers must file a timely separate rate application if they want to be considered for individual examination. Exporters and producers who submit a separate rate application and have been selected as mandatory respondents will be eligible

⁴⁰ *Id.*

⁴¹ See Malaysia AD Initiation Checklist.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See Country-Specific AD Initiation Checklists.

⁴⁷ See Petitions at Volume I (pages I–19 through I–20).

⁴⁸ See Memoranda, "Release of U.S. Customs and Border Protection Entry Data," dated December 30, 2024.

⁴⁹ See Petitions at Volume I (pages I–17 through I–19); see also Third General Issues Supplement at SSS–1.

for consideration for separate rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response both to the Q&V questionnaire and to the separate rate application by the respective deadlines to receive consideration for separate rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that {Commerce} will now assign in its NME investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the {weighted average} of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.⁵⁰

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of China and Malaysia via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 25 days after the date on which the ITC receives notice from Commerce

of initiation of the investigation, whether there is a reasonable indication that imports of float glass products from China and/or Malaysia are materially injuring, or threatening material injury to, a U.S. industry.⁵¹ A negative ITC determination for any country will result in the investigation being terminated with respect to that country.⁵² Otherwise, these LTFV investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted⁵³ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.⁵⁴ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology." When an interested party submits a PMS allegation pursuant to section 773(e) of the Act (*i.e.*, a cost-based PMS allegation), the submission

must be filed in accordance with the requirements of 19 CFR 351.416(b), and Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a cost-based PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), sets a deadline for the submission of cost-based PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a cost-based PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

We note that a PMS allegation filed pursuant to sections 773(a)(1)(B)(ii)(III) or 773(a)(1)(C)(iii) of the Act (*i.e.*, a sales-based PMS allegation) must be filed within 10 days of submission of a respondent's initial section B questionnaire response, in accordance with 19 CFR 351.301(c)(2)(i) and 19 CFR 351.404(c)(2).

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.⁵⁵ For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time

⁵⁰ See Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation Involving NME Countries," (April 5, 2005) at 6 (emphasis added), available on Commerce's website at <https://access.trade.gov/Resources/policy/bull05-1.pdf>.

⁵¹ See section 733(a) of the Act.

⁵² *Id.*

⁵³ See 19 CFR 351.301(b).

⁵⁴ See 19 CFR 351.301(b)(2).

⁵⁵ See 19 CFR 351.301; see also *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at <https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>.

limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.⁵⁶

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.⁵⁷ Parties must use the certification formats provided in 19 CFR 351.303(g).⁵⁸ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (e.g., by filing the required letter of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).⁵⁹

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: December 31, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The scope of these investigations covers float glass products (FGP), which are articles of soda-lime-silica glass that are manufactured by floating a continuous strip of molten glass over a smooth bath of tin (or another liquid metal with a density greater than molten glass), cooling the glass in an annealing lehr, and cutting it to appropriate dimensions. For purposes of the investigations, float glass products have an actual thickness of at least 2.0 mm (0.0787 inches) and an actual surface area of at least 0.37 square meters (4.0 square feet).

The country of origin of each float glass product is determined by the location where the soda-lime-silica glass is first manufactured by floating a continuous strip of molten glass over a smooth bath of tin and cooling the glass in an annealing lehr, regardless of the location of any downstream finishing or fabrication operations.

Prior to being subjected to further treatment, finishing, or fabrication, float glass products meet the requirements of Type I under ASTM-C1036 of the American Society for Testing and Materials (ASTM).

Float glass products may be clear, stained, tinted, or coated with one or more materials. Examples of coated float glass products include Low-E architectural glass (i.e., glass with a low emissivity coating to limit the penetration of radiant heat energy) and frameless mirrors (i.e., flat glass with a silver, aluminum, or other reflective layer) such as mirror stock sheet.

Float glass products may be annealed, chemically strengthened, heat strengthened, or tempered to achieve a desired surface compression, pursuant to ASTM-C1048, ASTM-C1422/C1422M, or other similar specifications.

Float glass products include tub and shower enclosures (i.e., doors and panels) made of tempered glass, which may be sold with attached or unattached hardware. In such cases, the scope covers only the tempered glass, to the exclusion of any non-glass hardware.

The only float glass product assemblies included within the scope are: (1) articles consisting of two or more sheets of float glass that are bonded together using a polymer interlayer (i.e., laminated glass); (2) insulating glass units (IGUs), which consist of two or more sheets of float glass separated by a spacer material and hermetically sealed together at the edge in order to create a thermal barrier using air or one or more gases; and (3) LED mirrors (i.e., float glass mirrors with one or more light-emitting diodes integrated with the mirror, as well as framed float glass mirrors with one or more light-emitting diodes integrated with the mirror or the mirror frame, but without other electronic functionality).

Float glass products covered by the scope may meet one or more of the ASTM-C162, ASTM-C1036, ASTM-C1048, ASTM-C1172, ASTM-C1349, ASTM-C1376, ASTM-C1422/C1422M, ASTM-C1464, ASTM-C1503, ASTM-C1651, ASTM-E1300, and ASTM-E2190 specifications, definitions, and/or standards.

Float glass products may be further worked, including, but not limited to, operations such as: cutting; beveling; edging; notching; drilling; etching; bending; curving; chipping; embossing; engraving; surface grinding; or polishing; and sandblasting (i.e., using high velocity air to stream abrasive particles and thereby impart a frosted aesthetic to the glass surface). A float glass product which undergoes further work remains within the scope so long as the soda-lime-silica glass originally satisfied the requirements of ASTM-C1036 Type I and was first manufactured in a subject country, regardless of where it is further worked.

Excluded from the scope are: (1) wired glass (i.e., glass with a layer of wire mesh

embedded within); (2) patterned flat glass (i.e., rolled glass with a pattern impressed on one or both sides) meeting the requirements of Type II under ASTM-C1036, including greenhouse glass and patterned solar glass (i.e., photovoltaic glass with a textured surface); (3) safety glazing materials for vehicles certified to American National Standards Institute (ANSI) Standard Z26.1; (4) vacuum insulating glass (VIG) units, which consist of two or more sheets of float glass separated by a spacer material, with at least one hermetically sealed compartment that uses a gas-free vacuum as a thermal barrier; (5) framed mirrors without any LEDs integrated with the mirror or the mirror frame; (6) unframed "over-the-door" mirrors that are ready for use as imported without undergoing after importation any processing, finishing, or fabrication; and (7) heat-strengthened washing machine lid glass with an actual surface area less than 6.0 square feet (0.56 square meters).

Also excluded from the scope of the investigations are: (1) soda-lime-silica glass containing less than 0.01 percent iron oxide by weight, annealed with a surface compression less than 3,500 pounds per square inch (PSI), having a transparent conductive oxide base coating (e.g., tin oxide), and with an actual thickness less than or equal to 4.0 mm (0.1575 inches) (i.e., "coated solar glass"); and (2) heat treated soda-lime-silica glass with a surface compression between 3,500 and 10,000 PSI, containing two or more drilled holes, and having an actual thickness less than 2.5 mm (0.0984 inches) (i.e., "clear back solar glass"). Solar glass products (also known as photovoltaic glass) are designed to facilitate the conversion of solar energy into electricity.

Also excluded from the scope of the investigations are any products already covered by the scope of any extant antidumping and/or countervailing duty orders, including *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011), and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011).

The products subject to the investigations are currently classifiable under subheadings 7005.10.8000, 7005.21.1010, 7005.21.1030, 7005.21.2000, 7005.29.1810, 7005.29.1850, 7005.29.2500, 7007.29.0000, 7008.00.0000, 7009.91.5010, 7009.91.5095, and 7009.92.5010 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to the investigations may also enter under HTSUS subheadings 7006.00.4010, 7006.00.4050, and 7007.19.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigations is dispositive.

[FR Doc. 2025-00190 Filed 1-7-25; 8:45 am]

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⁵⁶ See 19 CFR 351.302; see also, e.g., *Time Limits Final Rule*.

⁵⁷ See section 782(b) of the Act.

⁵⁸ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*). Additional information regarding the *Final Rule* is available at <https://access.trade.gov/Resources/filing/index.html>.

⁵⁹ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

DEPARTMENT OF COMMERCE

International Trade Administration

[C-122-858]

Certain Softwood Lumber From Canada: Preliminary Results of Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminary determines that a producer/exporter subject to the countervailing duty (CVD) order on certain softwood lumber from Canada, Interfor Sales & Marketing Ltd. (ISM), is cross-owned with Interfor Corporation, EACOM Timber Corporation (EACOM), Chaleur Forest Products Inc., and Chaleur Forest Products LP, four producers/exporters also subject to the countervailing duty (CVD) order on certain softwood lumber from Canada. Interested parties are invited to comment on these preliminary results.

DATES: Applicable January 8, 2025.

FOR FURTHER INFORMATION CONTACT: Elizabeth Talbot Russ, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5516.

SUPPLEMENTARY INFORMATION:**Background**

On January 3, 2018, Commerce published the CVD order on certain softwood lumber from Canada.¹ On May 10, 2024, the petitioner² requested that Commerce initiate a changed circumstances review (CCR) of the Order, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216, and 19 CFR 251.221(c)(3).³ Specifically, the petitioner requested that Commerce determine that ISM is cross-owned with EACOM, Chaleur Forest Products Inc.,

and Chaleur Forest Products LP.⁴ On June 28, 2024, Commerce initiated the requested CCR.⁵

Scope of the Order

The merchandise covered by this Order is softwood lumber, siding, flooring, and certain other coniferous wood (softwood lumber products). For a complete description of the scope, see the Preliminary Decision Memorandum.⁶

Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b) of the Act, Commerce is conducting a CCR based on a request from an interested party⁷ that shows changed circumstances sufficient to warrant a review of an order. In accordance with 19 CFR 351.221(b)(4) and (c)(3)(i), we preliminary find that the record contains information indicating that Interfor Corporation, ISM, EACOM, Chaleur Forest Products Inc., and Chaleur Forest Products LP meet the definition of cross-ownership under 19 CFR 351.525(b)(6).

For a complete discussion of the information that ISM and the petitioner provided and the complete cross-ownership analysis, see the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Public Comment

Interested parties are invited to comment on the preliminary results of this CCR in accordance with 19 CFR 351.309(c)(1)(ii). Comments may be

submitted to Commerce no later than 10 days after the date of publication of this notice.⁸ Rebuttal comments may be filed with Commerce no later than five days after the comments are filed. Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.⁹

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this CCR, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁰ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this CCR. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹¹ All submissions must be filed electronically using the Enforcement and Compliance's ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the due date set forth in this notice.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, within ten days of publication of this notice in the **Federal Register**. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, Commerce intends to hold the hearing

¹ See *Certain Softwood Lumber Products from Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 347 (January 3, 2018) (Order).

² The petitioner is the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations, an *ad hoc* association whose members are: U.S. Lumber Coalition, Inc.; Collum's Lumber Products, L.L.C.; Fox Lumber Sales, Inc.; Hankins, Inc.; Pleasant River Lumber Company; PotlatchDeltic; S.I. Storey Lumber Co., Inc.; Stimson Lumber Company; Swanson Group; Weyerhaeuser Company; Giustina Land and Timber Company; and Sullivan Forestry Consultants, Inc.

³ See Petitioner's Letter, "Request for Changed Circumstances Review," dated May 10, 2024.

⁴ *Id.*

⁵ See *Certain Softwood Lumber from Canada: Notice of Initiation of Changed Circumstances Review*, 89 FR 53955 (June 28, 2024) (Initiation Notice).

⁶ See Memorandum, "Decision Memorandum for the Preliminary Results of the Changed Circumstances Review of the Countervailing Duty Order on Softwood Lumber Products from Canada," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁷ The petitioner is an *ad hoc* association and the majority the members of the association are composed of interested parties as described in section 771(9)(C), (D), and (E) of the Act, with respect to a domestic like product.

⁸ Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs. See 19 CFR 351.309(d)(1).

⁹ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁰ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹¹ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

at a time and date to be determined. Parties should confirm the date and the time of the hearing two days before the scheduled date.

Final Results of the Changed Circumstances Review

Commerce will issue the final results of this CCR, which will include its analysis of any written comments, no later than 270 days after the date on which this review was initiated.¹² The current requirement for cash deposits of estimated countervailing duties on all entries of subject merchandise will not change as the result of this preliminary CCR determination. As noted in the *Initiation Notice* and Preliminary Decision Memorandum, the purpose of this CCR does not include identifying the applicable cash deposit rates, but rather making determinations of cross-ownership. Furthermore, we note that Interfor Corporation, ISM, EACOM, Chaleur Forest Products Inc., and Chaleur Forest Products LP are all already receiving the same cash deposit rate assigned to non-selected companies.¹³

Notification to Interested Parties

These preliminary results of a CCR and this notice are published in accordance with sections 751(b) and 777(i) of the Act and 19 CFR 351.216, and 19 CFR 351.221(c)(3).

Dated: December 31, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Preliminary Determination of Cross-Ownership
- V. Recommendation

[FR Doc. 2025–00189 Filed 1–7–25; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–189, C–557–833]

Float Glass Products From the People's Republic of China and Malaysia: Initiation of Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable December 31, 2024.

FOR FURTHER INFORMATION CONTACT:

Nathan James (the People's Republic of China (China)), Mira Warrior, or Benjamin Nathan (Malaysia), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5305, (202) 482–8031, and (202) 482–3834, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On November 21, 2024, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) petitions concerning imports of float glass products from China and Malaysia filed in proper form on behalf of Vitro Flat Glass, LLC and Vitro Meadville Flat Glass, LLC (the petitioner), a U.S. producer of float glass products.¹ The CVD Petitions were accompanied by antidumping duty (AD) petitions concerning imports of float glass products from China and Malaysia.²

Between November 25 and December 23, 2024, Commerce requested supplemental information pertaining to certain aspects of the Petitions.³ Between December 2 and 26, 2024, the petitioner filed timely responses to these requests for additional information.⁴

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties," dated November 21, 2024 (Petitions).

² *Id.*

³ See Commerce's Letters, "Supplemental Questions," dated November 26, 2024 (First General Issues Questionnaire); *see also* Country-Specific CVD Supplemental Questionnaires: China Supplemental and Malaysia Supplemental, dated November 26, 2024; Memorandum, "Phone Call with Counsel to the Petitioner," dated December 4, 2024 (December 4, 2024, Memorandum); Memorandum, "Phone Call with Counsel to the Petitioner," dated December 9, 2024 (December 9, 2024, Memorandum); and Memorandum, "Phone Call with Counsel to the Petitioner," dated December 23, 2024 (December 23, 2024, Memorandum).

⁴ See Petitioner's Letters, "Amendments to Antidumping and Countervailing Duty Petitions; Volume SI—General Issues and Injury," dated December 2, 2024 (First General Issues

On December 11, 2024, Commerce extended the initiation deadline by 20 days to poll the domestic industry in accordance with section 702(c)(4)(D) of the Tariff Act of 1930, as amended (the Act), because it was "not clear from the Petitions whether the industry support criteria have been met. . . ."⁵

In accordance with section 702(b)(1) of the Act, the petitioner alleges that the Government of China (GOC) and the Government of Malaysia (GOM) (collectively, Governments) are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of float glass products from China and Malaysia and that such imports are materially injuring, or threatening material injury to, the domestic industry producing float glass products in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating CVD investigations, the Petitions were accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigations.⁶

Periods of Investigation

Because the Petitions were filed on November 21, 2024, the periods of investigation for the China and Malaysia CVD investigations are January 1, 2023, through December 31, 2023.⁷

Scope of the Investigations

The products covered by these investigations are float glass products from China and Malaysia. For a full

Supplement), "Amendments to Antidumping and Countervailing Duty Petitions; Volume SS—Second Supplemental Responses," dated December 6, 2024 (Second General Issues Supplement), and "Amendments to Antidumping and Countervailing Duty Petitions; Volume SSS—Third Supplemental Responses," dated December 10, 2024 (Third General Issues Supplement); *see also* Country-Specific CVD Supplemental Responses: China CVD Supplement and India CVD Supplement, dated December 2, 2024 and December 3, 2024; and Petitioner's Letter, "Amendments to Antidumping and Countervailing Duty Petitions—Exhibit SSSS–1," dated December 26, 2024 (Revised Scope).

⁵ See *Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping and Countervailing Duty Petitions: Float Glass Products from the People's Republic of China and Malaysia*, 89 FR 102113, 102114 (December 17, 2024) (*Initiation Extension Notice*).

⁶ See section on "Determination of Industry Support for the Petitions," *infra*.

⁷ See 19 CFR 351.204(b)(2).

¹² See 19 CFR 351.216(e).

¹³ See *Certain Softwood Lumber Products from Canada: Final Results and Final Rescission, in Part, of the Countervailing Duty Administrative Review; 2021*, 88 FR 50103 (August 1, 2023).

description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

Between November 25 and December 31, 2024, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.⁸ Between December 2 and 31, 2024, the petitioner provided clarifications and revised the scope.⁹ The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).¹⁰ Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information, all such factual information should be limited to public information.¹¹ To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on January 21, 2025, which is the next business day after 20 calendar days from the signature date of this notice.¹² Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on January 31, 2025, which is 10 calendar days from the initial comment deadline.

⁸ See First General Issues Questionnaire; *see also* December 4, 2024, Memorandum; December 9, 2024, Memorandum; and December 23, 2024, Memorandum; and Memorandum, "Phone Call with Counsel to the Petitioner," dated December 31, 2024 (December 31, 2024, Memorandum).

⁹ See First General Issues Supplement at SI-1 through SI-5 and Exhibits SI-1 and SI-2; *see also* Second General Issues Supplement at SS-1 through SS-3 and Exhibits SS-1 and SS-2; Third General Issues Supplement at SSS-1 through SSS-7 and Exhibit SSS-1; Revised Scope at Exhibit SSSS-1, and December 31, 2024, Memorandum.

¹⁰ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹¹ See 19 CFR 351.102(b)(21) (defining "factual information").

¹² See 19 CFR 351.303(b)(1). The deadline for scope comments falls on January 20, 2025, which is a Federal holiday. In accordance with 19 CFR 351.303(b)(1), Commerce will accept comments filed by 5:00 p.m. ET on January 21, 2025 ("For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.").

Commerce requests that any factual information that parties consider relevant to the scope of the investigations be submitted during that time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.¹³ An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the Governments of the receipt of the Petitions and provided an opportunity for consultations with respect to the Petitions.¹⁴ Commerce held consultations with the GOM on December 10, 2024.¹⁵ The GOC ultimately did not request consultations.¹⁶

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the

¹³ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.

¹⁴ See Commerce's Letters, "Invitation for Consultation to Discuss the Countervailing Duty Petition," dated November 22, 2024.

¹⁵ See Memorandum, "Consultations with the Government of Malaysia," dated December 10, 2024; *see also* GOM's Letter, "Government of Malaysia Statements for Consultations," dated December 10, 2024.

¹⁶ See Memorandum, "Change in Request for Consultations," dated December 4, 2024; *see also* GOC's Letter, "Comments on Countervailing Duty Petition on Float Glass from the People's Republic of China (C-570-189)," dated December 9, 2024.

domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,¹⁷ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹⁸

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.¹⁹ Based on our analysis

¹⁷ See section 771(10) of the Act.

¹⁸ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd Algoma Steel Corp., Ltd. v. United States*, 865 F.2d 240 (Fed. Cir. 1989)).

¹⁹ For a discussion of the domestic like product analysis as applied to these cases and information

of the information submitted on the record, we have defined a single domestic like product consisting of float glass products, as defined in the scope, and regardless of country of origin of the primary float glass,²⁰ and we have analyzed industry support in terms of that domestic like product.²¹ While Commerce's definition of the domestic like product is broader than the petitioner's definition, we find that expansion of the domestic like product definition is appropriate in this case in order to ensure a fair assessment of the domestic industry for purposes of measuring industry support. This is consistent with Commerce's broad discretion to define and clarify the scope of a CVD investigation in a manner that reflects the intent of the Petitions.²²

On December 11, 2024, Commerce extended the initiation deadline by 20 days to poll the industry in accordance with section 702(c)(4)(D) of the Act, because it was "not clear from the Petitions whether the industry support criteria have been met. . . ." ²³ On December 13, 2024, we issued polling questionnaires to all known producers identified in the Petitions.²⁴ We requested that the companies complete the polling questionnaire and certify their responses by the due date specified in the cover letter to the questionnaire.²⁵ The petitioner provided comments on the polling questionnaire responses on December

regarding industry support, *see* Checklists, "Countervailing Duty Investigation Initiation Checklists: Float Glass Products from the People's Republic of China and Malaysia," dated concurrently with, and hereby adopted by, this notice (Country-Specific CVD Initiation Checklists), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Float Glass Products from the People's Republic of China and Malaysia (Attachment II). These checklists are on file electronically via ACCESS.

²⁰ Primary float glass, as defined in the scope, is soda-lime-silica glass that is manufactured by floating a continuous strip of molten glass over a smooth bath of tin (or another liquid metal with a density greater than molten glass), cooling the glass in an annealing lehr, and cutting it to appropriate dimensions (*i.e.*, an actual thickness of at least 2.0 millimeters (mm) (0.0787 inches) and an actual surface area of at least 0.37 square meters (4.0 square feet)).

²¹ *See* Attachment II of the Country-Specific CVD Initiation Checklists.

²² *See, e.g., Fujitsu*, 36 F. Supp. 2d 394 (citing *Kern-Liebers USA, Inc. v. United States*, 881 F. Supp. 618, 621 (CIT 1995) (citation omitted)); and *Initiation of Antidumping Duty Investigations: Spring Table Grapes from Chile and Mexico*, 66 FR 26831 (May 15, 2001).

²³ *See Initiation Extension Notice*, 89 FR at 102114.

²⁴ *See* Commerce's Letter, "Polling Questionnaire," dated December 13, 2024.

²⁵ *Id.*

26, 2024.²⁶ Xinyi²⁷ provided rebuttal comments on December 30, 2024.²⁸

Our analysis of the data we received in the polling questionnaire responses indicates that the domestic producers and workers who support the Petitions account for at least 25 percent of the total production of the domestic like product and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.²⁹ Accordingly, Commerce determines that the industry support requirements of section 702(c)(4)(A) of the Act have been met and that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.³⁰

Injury Test

Because China and Malaysia are "Subsidies Agreement Countries" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from China and/or Malaysia materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefiting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports from China and Malaysia exceed the negligibility threshold provided for under section 771(24)(A) of the Act.³¹

The petitioner contends that the industry's injured condition is illustrated by the significant and increasing volume of subject imports; reduced market share; underselling and

price depression and/or suppression; lost sales and revenues; and decline in the domestic industry's production, capacity utilization, sales, employment, and financial performance.³² We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, cumulation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.³³

Initiation of CVD Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating CVD investigations to determine whether imports of float glass products from China and Malaysia benefit from countervailable subsidies conferred by the GOC and GOM, respectively. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of these initiations.

China

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on 20 of the 20 programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate on each program, *see* the China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Malaysia

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on 15 of the 15 programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate on each program, *see* the Malaysia CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

In the Petitions, the petitioner identified eight companies in China and four companies in Malaysia as producers/exporters of float glass

³² *See* Attachment III of the Country-Specific CVD Initiation Checklists.

³³ *Id.*

²⁶ *See* Petitioner's Letter, "Industry Support Comments from Petitioner," dated December 26, 2024.

²⁷ Xinyi Energy Smart (Malaysia) Sdn Bhd (Xinyi) is a Malaysian producer/exporter of float glass products. *See* Xinyi's Letter, "Entry of Appearance," dated December 3, 2024.

²⁸ *See* Xinyi's Letter, "Xinyi's Rebuttal Comments on Responses to Department's Polling Questionnaire," dated December 30, 2024.

²⁹ *See* Attachment II of the Country-Specific CVD Initiation Checklists.

³⁰ *Id.*

³¹ For further information regarding negligibility and the injury allegation, *see* Country-Specific CVD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Float Glass Products from the People's Republic of China and Malaysia (Attachment III).

products.³⁴ Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in these investigations. In the event that Commerce determines that the number of companies is large and it cannot individually examine each company based on Commerce's resources, Commerce intends to select mandatory respondents in CVD investigations using U.S. Customs and Border Protection (CBP) entry data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheading(s) listed in the "Scope of the Investigations" in the appendix to this notice.

On December 30, 2024, Commerce released the CBP data for imports of float glass products from China and Malaysia under administrative protective order (APO) and indicated that interested parties wishing to comment regarding the CBP data and/or respondent selection must do so within three business days of the publication date of the notice of initiation of these investigations.³⁵ Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at <https://www.trade.gov/administrative-protective-orders>.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petitions has been provided to the GOC and GOM via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 25 days after the date on which the ITC receives notice from Commerce of initiation of the investigation, whether there is a reasonable indication that imports of float glass products from China and/or Malaysia are materially injuring, or threatening material injury to, a U.S. industry.³⁶ A negative ITC determination for any country will result in the investigation being terminated with respect to that country.³⁷ Otherwise, these CVD investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors of production under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted³⁸ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.³⁹ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.⁴⁰ For submissions that are

due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.⁴¹

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.⁴² Parties must use the certification formats provided in 19 CFR 351.303(g).⁴³ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (e.g., by filing the required letters of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).⁴⁴

⁴¹ See 19 CFR 351.301; see also *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at <https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>.

⁴² See section 782(b) of the Act.

⁴³ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also frequently asked questions regarding the *Final Rule*, available at https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

⁴⁴ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

³⁴ See Petitions at Volume I (pages I–17 through I–20); see also Third General Issues Supplement at SSS–1.

³⁵ See Memoranda, "Release of U.S. Customs and Border Protection Entry Data," dated December 30, 2024.

³⁶ See section 703(a)(1) of the Act.

³⁷ *Id.*

³⁸ See 19 CFR 351.301(b).

³⁹ See 19 CFR 351.301(b)(2).

⁴⁰ See 19 CFR 351.302.

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: December 31, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The scope of these investigations covers float glass products (FGP), which are articles of soda-lime-silica glass that are manufactured by floating a continuous strip of molten glass over a smooth bath of tin (or another liquid metal with a density greater than molten glass), cooling the glass in an annealinglehr, and cutting it to appropriate dimensions. For purposes of the investigations, float glass products have an actual thickness of at least 2.0 mm (0.0787 inches) and an actual surface area of at least 0.37 square meters (4.0 square feet).

The country of origin of each float glass product is determined by the location where the soda-lime-silica glass is first manufactured by floating a continuous strip of molten glass over a smooth bath of tin and cooling the glass in an annealinglehr, regardless of the location of any downstream finishing or fabrication operations.

Prior to being subjected to further treatment, finishing, or fabrication, float glass products meet the requirements of Type I under ASTM-C1036 of the American Society for Testing and Materials (ASTM).

Float glass products may be clear, stained, tinted, or coated with one or more materials. Examples of coated float glass products include Low-E architectural glass (*i.e.*, glass with a low emissivity coating to limit the penetration of radiant heat energy) and frameless mirrors (*i.e.*, flat glass with a silver, aluminum, or other reflective layer) such as mirror stock sheet.

Float glass products may be annealed, chemically strengthened, heat strengthened, or tempered to achieve a desired surface compression, pursuant to ASTM-C1048, ASTM-C1422/C1422M, or other similar specifications.

Float glass products include tub and shower enclosures (*i.e.*, doors and panels) made of tempered glass, which may be sold with attached or unattached hardware. In such cases, the scope covers only the tempered glass, to the exclusion of any non-glass hardware.

The only float glass product assemblies included within the scope are: (1) articles consisting of two or more sheets of float glass that are bonded together using a polymer interlayer (*i.e.*, laminated glass); (2) insulating glass units (IGUs), which consist of two or more sheets of float glass separated by a spacer material and hermetically sealed together at the edge in order to create a thermal barrier using air or one or more gases; and (3) LED mirrors (*i.e.*, float glass mirrors with one or more light-emitting diodes integrated with the mirror, as well as framed float glass mirrors with one or more light-emitting diodes integrated with the mirror or the mirror frame, but without other electronic functionality).

Float glass products covered by the scope may meet one or more of the ASTM-C162, ASTM-C1036, ASTM-C1048, ASTM-C1172, ASTM-C1349, ASTM-C1376, ASTM-C1422/C1422M, ASTM-C1464, ASTM-C1503, ASTM-C1651, ASTM-E1300, and ASTM-E2190 specifications, definitions, and/or standards.

Float glass products may be further worked, including, but not limited to, operations such as: cutting; beveling; edging; notching; drilling; etching; bending; curving; chipping; embossing; engraving; surface grinding; or polishing; and sandblasting (*i.e.*, using high velocity air to stream abrasive particles and thereby impart a frosted aesthetic to the glass surface). A float glass product which undergoes further work remains within the scope so long as the soda-lime-silica glass originally satisfied the requirements of ASTM-C1036 Type I and was first manufactured in a subject country, regardless of where it is further worked.

Excluded from the scope are: (1) wired glass (*i.e.*, glass with a layer of wire mesh embedded within); (2) patterned flat glass (*i.e.*, rolled glass with a pattern impressed on one or both sides) meeting the requirements of Type II under ASTM-C1036, including greenhouse glass and patterned solar glass (*i.e.*, photovoltaic glass with a textured surface); (3) safety glazing materials for vehicles certified to American National Standards Institute (ANSI) Standard Z26.1; (4) vacuum insulating glass (VIG) units, which consist of two or more sheets of float glass separated by a spacer material, with at least one hermetically sealed compartment that uses a gas-free vacuum as a thermal barrier; (5) framed mirrors without any LEDs integrated with the mirror or the mirror frame; (6) unframed “over-the-door” mirrors that are ready for use as imported without undergoing after importation any processing, finishing, or fabrication; and (7) heat-strengthened washing machine lid glass with an actual surface area less than 6.0 square feet (0.56 square meters).

Also excluded from the scope of the investigations are: (1) soda-lime-silica glass containing less than 0.01 percent iron oxide by weight, annealed with a surface compression less than 3,500 pounds per square inch (PSI), having a transparent conductive oxide base coating (*e.g.*, tin oxide), and with an actual thickness less than or equal to 4.0 mm (0.1575 inches) (*i.e.*, “coated solar glass”); and (2) heat treated soda-lime-silica glass with a surface compression between 3,500 and 10,000 PSI, containing two or more drilled holes, and having an actual thickness less than 2.5 mm (0.0984 inches) (*i.e.*, “clear back solar glass”). Solar glass products (also known as photovoltaic glass) are designed to facilitate the conversion of solar energy into electricity.

Also excluded from the scope of the investigations are any products already covered by the scope of any extant antidumping and/or countervailing duty orders, including *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011), and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011).

The products subject to the investigations are currently classifiable under subheadings 7005.10.8000, 7005.21.1010, 7005.21.1030, 7005.21.2000, 7005.29.1810, 7005.29.1850, 7005.29.2500, 7007.29.0000, 7008.00.0000, 7009.91.5010, 7009.91.5095, and 7009.92.5010 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to the investigations may also enter under HTSUS subheadings 7006.00.4010, 7006.00.4050, and 7007.19.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigations is dispositive.

[FR Doc. 2025-00187 Filed 1-7-25; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Scientific Research, Exempted Fishing, and Exempted Educational Activity Submissions

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to the Office of Management and Budget.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 10, 2025.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at Adrienne.thomas@noaa.gov. Please reference Office of Management and Budget (OMB) Control Number 0648-0309 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection

activities should be directed to Christopher Wright, Fishery Policy Analyst, NOAA Fisheries, 1315 East West Highway, Silver Spring, MD 20910, 301-427-8570, and chris.wright@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection.

Under section 318(d) of the Magnuson-Stevens Fishery and Conservation and Management Act (Magnuson-Stevens Act) [16 U.S.C. 1801, *et seq.*], as amended by the Sustainable Fisheries Act [Pub. L. 104-297], the Secretary of Commerce (Secretary) is required to promulgate regulations that create an expedited, uniform, and regionally-based process to promote issuance, where practicable, of experimental fishing permits. Regulations under 50 CFR 648.12 and 50 CFR 600.745 establish processes for scientific research plans as well as exempted fishing and exempted educational activities that are exempted from applicable fishing regulations. Fishing regulations do not generally affect scientific research activities conducted by a scientific research vessel. Persons planning to conduct such research are encouraged to submit a scientific research plan to ensure that the activities are considered research and not fishing. The researchers are requested to submit reports of their scientific research activity after its completion. Eligible researchers on board federally permitted fishing vessels that plan to temporarily possess fish in a manner not compliant with applicable fishing regulations for the purpose of collecting scientific data on catch may submit a request for a temporary possession letter of authorization. The researchers are requested to submit reports of their scientific research activity after its completion. The National Marine Fisheries Service (NMFS) may also grant exemptions from fishery regulations for educational or other activities (e.g., using non-regulation gear). The applications for these exemptions must be submitted, as well as reports on activities.

II. Method of Collection

Information may be submitted on paper or electronically, and in some cases by telephone.

III. Data

OMB Control Number: 0648-0309.
Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit; individuals or households; not for profit organizations; state, local or tribal governments.

Estimated Number of Respondents: 121.

Estimated Time per Response: Scientific research plans, 13 hours; scientific research reports, 6 hours; exempted fishing permit requests, 10 hours; exempted fishing permit reports, 4.5 hours; exempted educational requests, 5 hours; exempted educational reports, 2.5 hours.

Estimated Total Annual Burden Hours: 2,141.

Estimated Total Annual Cost to Public: \$382.36.

Respondent's Obligation: Mix of Voluntary, Required to Obtain or Retain Benefits, or Mandatory.

Legal Authority: The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

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 information collection request. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2025-00205 Filed 1-7-25; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE603]

Notice of Availability of Draft Environmental Assessment on the Effects of Issuing Incidental Take Permit No. 27490

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

ACTION: Notice; availability of a Draft Environmental Assessment; request for comments.

SUMMARY: NMFS announces the availability of the Draft Environmental Assessment (EA) on the effects of issuing an Incidental Take Permit (ITP) (No. 27490) to the University of Massachusetts Dartmouth School for Marine Science and Technology (SMAST), pursuant to the Endangered Species Act (ESA) of 1973, as amended, for the incidental take of ESA-listed sea turtles and sturgeon associated with the otherwise lawful fisheries survey activities within and adjacent to the Massachusetts/Rhode Island Wind Energy Area. The duration of the requested permit is 10 years. NMFS is requesting comment on the draft EA.

DATES: Written comments must be received at the appropriate address or fax number (see **ADDRESSES**) on or before February 7, 2025.

ADDRESSES: The EA is available for download and review at <https://www.regulations.gov> (enter NOAA-NMFS-2023-0090 in the Search box) and at <https://www.fisheries.noaa.gov/national/endangered-species-conservation/incidental-take-permits> under the section heading Related Documents for the Incidental Take Permit to the University of Massachusetts Dartmouth School for Marine Science and Technology (Sea Turtles and Sturgeon). The draft EA is also available upon written request (see **FOR FURTHER INFORMATION CONTACT**). You may submit comments on the draft EA identified by NOAA-NMFS-2023-0090, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2023–0090 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT:

Alison Verkade, NMFS, Office of Protected Resources at alison.verkade@noaa.gov, 301–427–8074.

SUPPLEMENTARY INFORMATION:

Publication of this notice begins the official public comment period for this draft EA. Per the National Environmental Policy Act (NEPA), the purpose of the draft EA is to evaluate the potential direct, indirect, and cumulative impacts caused by the issuance of Permit No. 27490 to SMAST for the incidental take of ESA-listed sea turtles and sturgeon associated with the otherwise lawful fisheries survey activities within and adjacent to the Massachusetts/Rhode Island Wind Energy Area. All comments received will become part of the public record and will be available for review.

Section 9 of the ESA and Federal regulations prohibit the ‘taking’ of a species listed as endangered or threatened. The ESA defines “take” to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). Section 10(a)(1)(B) of the ESA provides a mechanism for authorizing incidental take of listed species. NMFS is authorized to issue permits under section 10(a)(1)(B) of the ESA, in certain circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following species are included in the EA: the North Atlantic distinct population segments (DPS) of green (*Chelonia mydas*), Kemp’s ridley (*Lepidochelys kempii*), and leatherback (*Dermochelys coriacea*) sea turtles; the Northwest Atlantic Ocean DPS of loggerhead (*Caretta caretta*) sea turtles; and the Gulf of Maine, New York Bight, Chesapeake, Carolina, and South Atlantic DPSs of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*).

Background

NMFS received a draft permit application and conservation plan from SMAST on September 29, 2022. Based on our review of the draft application, we requested further information and clarification. After several draft submissions and reviews, on June 13, 2023, SMAST submitted a complete revised application for the incidental take of ESA-listed sea turtles and sturgeon. On July 6, 2023, we published a notice of receipt (88 FR 43082) of application and conservation plan from SMAST for an incidental take permit. In that notice, we made the ITP application and associated conservation plan available for public comment. During the comment period, we received two requests to extend the public comment period. NMFS provided an additional 15-day public comment period (88 FR 55668, August 16, 2023) to the comment period, which closed on August 31, 2023. We received three comments on the application and conservation plan, and responses to these comments are available in the draft EA.

National Environmental Policy Act

This notice is provided pursuant to section 10(c) of the ESA and the NEPA regulations (40 CFR 1506.6). The draft EA was prepared in accordance with NEPA (42 U.S.C. 4321, *et seq.*, 40 CFR 1500–1508) and applicable NOAA policy and procedures (NOAA Administrative Order (NAO) 216–6A and the NOAA Companion Manual (CM) for the NAO 216–6A).

Alternatives Considered

NMFS’ proposed action is issuance of an ITP to SMAST would authorize take of threatened and endangered sea turtle and sturgeon species associated with the otherwise lawful fisheries survey activities within and adjacent to the Massachusetts/Rhode Island Wind Energy Area and require implementation of a conservation plan, in accordance with the requirements of the ESA. In preparing the draft EA, NMFS considered the following two alternatives for the proposed action.

Alternative 1: No Action. In accordance with the CM for NAO 216–6A, section 6.B.i, NMFS is defining the no action alternative as not authorizing the requested incidental take of ESA-listed sea turtles and sturgeon. This is consistent with our statutory obligation under section 10(a)(1)(B) of the ESA to either: (1) deny the requested ITP or (2) grant the requested ITP and prescribe mitigation, monitoring, and reporting requirements. Under the no action alternative, NMFS would not issue the ITP, in which case, we assume SMAST would either not complete the fisheries surveys, or would use alternative methods to collect fisheries information and the full suite of specific mitigation measures, monitoring, reporting explained in the Conservation Plan would not be implemented. The Council on Environmental Quality (CEQ) regulations and the CM for NAO 216–6A require consideration and analysis of a no action alternative for the purposes of presenting a comparative analysis to the action alternatives. The no action alternative, serves as a baseline against which the impacts of the action alternatives will be compared and contrasted.

Alternative 2: Issue Permit as Requested in Application (Preferred alternative): Under Alternative 2, an ITP would be issued to exempt SMAST from the ESA prohibition on taking sturgeon and sea turtles during operation of the otherwise lawful fisheries survey activities within and adjacent to the Massachusetts/Rhode Island Wind Energy Area. As required under section 10(a)(1)(B), the ITP would require SMAST to operate as described in the application and conservation plan to avoid, minimize, and mitigate take of ESA-listed sea turtles and sturgeon.

Final permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: January 2, 2025.

Lisa Manning,

Acting Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2025–00158 Filed 1–7–25; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE**Office of the Secretary****Defense Business Board; Notice of Federal Advisory Committee Meeting**

AGENCY: Office of the Deputy Secretary of Defense, Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Business Board (“the Board”) will take place.

DATES: Open to the public Monday, January 13, 2025 from 3:00 p.m. to 4:35 p.m. Eastern time.

ADDRESSES: The meeting will be conducted virtually by Zoom. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: Ms. Cara Allison Marshall, Designated Federal Officer (DFO) of the Board in writing at Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155; or by email at cara.l.allisonmarshall.civ@mail.mil; or by phone at 703–614–1834.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer, the Defense Business Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its January 13, 2025 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of chapter 10 of Title 5, United States Code (U.S.C.) (commonly known as the “Federal Advisory Committee Act” or “FACA”), 5 U.S.C. 552b (commonly known as the “Government in the Sunshine Act”), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The mission of the Board is to examine and advise the Secretary of Defense on overall DoD management and governance. The Board provides independent, strategic-level, private sector and academic advice and counsel on enterprise-wide business management approaches and best

practices for business operations and achieving National Defense goals.

Agenda: The Board meeting will begin January 13 at 3:00 p.m. with opening remarks by the Board DFO, Ms. Cara Allison Marshall, followed by a welcome by the Board Chair. The Board will receive a presentation on the study, Supply Chain Illumination of the Department of Defense, from Mr. Craig Albright and Gen (ret) Joe Votel, Co-Chairs, Business Transformation Advisory Subcommittee. During this session, the Subcommittee will brief the Board, for its consideration, deliberation and vote, on the best practice, findings, and recommendations it compiled as part of a recent study on ways to improve Supply Chain Risk Management through increased illumination of supply chains. The DFO will then adjourn the open session. The latest version of the agenda is available on the Board’s website at: <https://dbb.dod.afpims.mil/Meetings/Meeting-January-2025/>.

Meeting Accessibility: Pursuant to 5 U.S.C. 1009(a)(1) and 41 CFR 102–3.140, the meeting on January 13 from 3:00 p.m. to 4:30 p.m. is open to the public virtually. Persons desiring to attend the public sessions are required to register. To attend the public sessions, submit your name, affiliation/organization, telephone number, and email contact information to the Board at osd.pentagon.odam.mbx.defense-business-board@mail.mil. Requests to attend the public sessions must be received no later than 4:00 p.m. on Friday, January 10, 2025. Upon receipt of this information, the Board will provide further instructions for virtually attending the meeting.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and 5 U.S.C. 1009(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the Board in response to the stated agenda of the meeting or regarding the Board’s mission in general. Written comments or statements should be submitted to Ms. Cara Allison Marshall, the DFO, via electronic mail (the preferred mode of submission) at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author’s name, title or affiliation, address, and daytime phone number. The DFO must

receive written comments or statements submitted in response to the agenda set forth in this notice by Friday, January 10, 2025, to be considered by the Board. The DFO will review all timely submitted written comments or statements with the Board Chair and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next scheduled meeting. Please note that all submitted comments and statements will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board’s website.

Dated: January 2, 2025.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2025–00147 Filed 1–7–25; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 24–19]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 24–19, Policy Justification, and Sensitivity of Technology.

Dated: January 2, 2025.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

February 15, 2024

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 24-19, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Italy for defense articles and services estimated to cost \$69.3 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 24-19

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Italy

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$56.7 million
Other	\$12.6 million

TOTAL \$69.3 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Foreign Military Sales case IT-D-YAD was below the congressional notification threshold at \$32.5 million (\$23.0 million in Major Defense Equipment (MDE)) and included twelve (12) AIM-

120C-8 Advanced Medium Range Air-to-Air Missiles (AMRAAM). The Government of Italy has requested that the case be amended to include an additional twelve (12) AIM-120C-8 AMRAAM Missiles. This amendment will cause the case to exceed the notification threshold, and thus notification of the entire case is required.

The above notification requirements are combined as follows:

Major Defense Equipment (MDE):

Twenty-four (24) AMRAAM

Non-MDE:

Also included are Common Munitions Built-in-Test (BIT)/Reprogramming Equipment (CMBRE); ADU-891 Adaptor Group Test Set; AMRAAM containers and support equipment; integration and test support and

equipment; munitions support and support equipment; spare parts, consumables and accessories, and repair and return support; contractor logistics support; classified software delivery and support; classified and unclassified publications and technical documentation; studies and surveys; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department:* Air Force (IT-D-YAD)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* February 15, 2024

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Italy—AIM-120C-8 Advanced Medium-Range Air-to-Air Missiles

The Government of Italy has requested to buy twelve (12) AIM-120C-8 Advanced Medium Range Air-to-Air Missiles (AMRAAM) that will be added to a previously implemented case whose value was under the congressional notification threshold. The original Foreign Military Sales (FMS) case, valued at \$32.5 million (\$23.0 million in Major Defense Equipment (MDE)), included twelve (12) AIM-120C-8 AMRAAM missiles. This notification is for a combined total of twenty-four (24) AIM-120C-8 AMRAAM missiles. Also included are Common Munitions Built-in-Test (BIT)/Reprogramming Equipment (CMBRE); ADU-891 Adaptor Group Test Set; AMRAAM containers and support equipment; integration and test support and equipment; munitions support and support equipment; spare parts, consumables and accessories, and repair and return support; contractor logistics support; classified software delivery and support; classified and unclassified publications and technical documentation; studies and surveys; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The estimated total cost is \$69.3 million.

This proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a NATO Ally that is a force for political stability and economic progress in Europe.

The proposed sale will improve Italy's capability to meet current and future threats by ensuring Italy has modern, capable air-to-air munitions. It will also advance United States interoperability with NATO and the Italian Armed Forces. Italy already has AMRAAMs in its inventory and will have no difficulty

absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be RTX Corporation, Arlington, VA. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Italy.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 24-19

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AIM-120C-8 Advanced Medium Range Air-to-Air Missiles (AMRAAM) is a supersonic, air-launched, aerial intercept, guided missile featuring digital technology and micro-miniature, solid-state electronics. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high and low-flying and maneuvering targets.

2. The Common Munitions Built-In-Test (BIT)/Reprogramming Equipment (CMBRE) is support equipment used to interface with weapon systems to initiate and report BIT results, and to upload and download flight software. CMBRE supports multiple munitions platforms with a range of applications that perform preflight checks, periodic maintenance checks, loading of Operational Flight Program data, loading of munitions mission planning data, loading of Global Positioning System cryptographic keys, and declassification of munitions memory.

3. The ADU-891 Adapter Group Test Set provides the physical and electrical interface between the CMBRE and the missile.

4. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

5. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

6. A determination has been made that Italy can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

7. All defense articles and services listed in this transmittal have been authorized for release and export to Italy.

[FR Doc. 2025-00143 Filed 1-7-25; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 24-06]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 24-06, Policy Justification, and Sensitivity of Technology.

Dated: January 2, 2025.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
 2800 Defense Pentagon
 Washington, DC 20301-2800

February 7, 2024

The Honorable Mike Johnson
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 24-06, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Poland for defense articles and services estimated to cost \$1.2 billion. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
 James A. Hursch
 Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 24-06

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Poland

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 0
Other	\$1.2 billion
TOTAL	\$1.2 billion

Funding Source: Foreign Military Financing Direct Loan and National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

None

Non-MDE:

Airspace and Surface Radar Reconnaissance (ASRR) aerostat systems; Airborne Early Warning (AEW) Radars with Identification of Friend or Foe (IFF) capability; electronic intelligence (ELINT) sensors systems; mooring systems with powered tether with embedded fiber optics; Ground Control Systems (GCS); associated

installation hardware; special tools and test equipment; Basic Issue Items (BII); program management support; verification testing; systems technical support; transportation; spare and repair parts; communications equipment; operators and maintenance manuals; personnel training and training equipment; tool and test equipment; repair and return; publications and technical documentation; Quality Assurance Team (QAT); U.S. Government and contractor engineering, technical, and logistics support services; in-

country Field Service Representatives (FSR); and other related elements of logistics and program support.

(iv) *Military Department: Army (PL-B-JET)*

(v) *Prior Related Cases, if any: None*

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None*

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex*

(viii) *Date Report Delivered to Congress: February 7, 2024*

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Poland—Aerostat Systems

The Government of Poland has requested to buy Airspace and Surface Radar Reconnaissance (ASRR) aerostat systems; Airborne Early Warning (AEW) Radars with Identification of Friend or Foe (IFF) capability; electronic intelligence (ELINT) sensors systems; mooring systems with powered tether with embedded fiber optics; Ground Control Systems (GCS); associated installation hardware; special tools and test equipment; Basic Issue Items (BII); program management support; verification testing; systems technical support; transportation; spare and repair parts; communications equipment; operators and maintenance manuals; personnel training and training equipment; tool and test equipment; repair and return; publications and technical documentation; Quality Assurance Team (QAT); U.S. Government and contractor engineering, technical, and logistics support services; in-country Field Service Representatives (FSR); and other related elements of logistics and program support. The estimated total program cost is \$1.2 billion.

The proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a NATO Ally that is a force for political stability and economic progress in Europe.

The proposed sale will improve Poland's capability to meet current and future threats of enemy air and ground weapons systems. Poland will use the capability as an airborne early warning system to defend against incoming regional threats. This will also enable Poland to increase its contribution to future NATO operations. Poland will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Raytheon Intelligence and Space, of El Segundo, CA; TCOM, L.P., of Columbia, MD; ELTA North America, of Annapolis Junction, MD; and Avantis Federal LLC (a wholly owned subsidiary of QinetiQ, Inc.), of McLean, VA. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require forty (40) aerostat contractor representatives to travel to Poland for eighty-four (84) months to conduct the Contractor Logistics Support, training, and component assembly support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 24–06

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Airspace and Surface Radar Reconnaissance (ASRR) system is a tethered aerostat system capable of supporting a variety of surveillance payloads. It incorporates a tethered aerostat with a relocatable mooring system capable of supporting payloads up to 7,000 lbs at altitudes up to 15,000 ft, which provides surveillance systems with a line of sight of up to 350km. In addition to the aerostat, each system includes a mobile mooring system, ground control and maintenance shelters, electrical generators and power distribution panel, forklift and man lift, and supply of helium and spare parts. The program will also include system training, maintenance, and in-country support services. Each of the four (4) aerostats will carry a payload consisting of one (1) radar system and one (1) electronic surveillance electronic intelligence (ELINT) sensor system with integrated Identify Friend or Foe (IFF) capability.

a. Radar System. The radar system will include one of the following: ETLA North America ELM–2083, Raytheon KnightWatch, or C-Speed ESR–LWR Radar. These systems comprise of a multi-function radar capable of providing long-range detection of airborne and maritime targets that are static or in motion. The systems can operate in overland, maritime, and air-to-air modes. They display Moving Target Indicator (MTI) tracks overlaid on a Doppler Beam Sharpened (DBS) image. The systems can switch between vertically and horizontally orientated antennas and incorporate an IFF capability of one of the following:

Raytheon APX–119, TPX–62, and AS–4664 electronically scanned array (ESA) antennas or Telephonics SFF–44 All-Mode interrogator.

b. ELINT System. The ELINT system will include one of the following: Raytheon Deutschland Advanced Radar Detection System (ARDS), BANC3 TSD–2000, or ETLA North America ELL–8385. These systems comprise of a modular, scalable software-defined radio (SDR) designed for airborne ELINT missions. The system can search, intercept, collect, geo-locate, analyze, store, and distribute wireless signals.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Poland can provide the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Poland.

[FR Doc. 2025–00141 Filed 1–7–25; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 24–09]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a

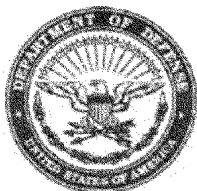
copy of a letter to the Speaker of the House of Representatives with attached Transmittal 24-09, Policy Justification, and Sensitivity of Technology.

Dated: January 2, 2025.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

February 21, 2024

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 24-09, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Taipei Economic and Cultural Representative Office in the United States (TECRO) for defense articles and services estimated to cost \$75 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 24-09

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Taipei Economic and Cultural Representative Office in the United States (TECRO)

(ii) *Total Estimated Value:*
Major Defense Equipment * \$0

Other \$75 million

TOTAL \$75 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

None

Non-MDE:

Foreign Military Sales (FMS) Cross Domain Solutions (CDS); High

Assurance internet Protocol Encryptor (HAIPE) devices; Global Positioning System (GPS) receivers; communications equipment; requirements analysis; engineering; technical services; and other related elements of logistics and program support.

(iv) *Military Department:* Navy (TW-P-GQD)

(v) *Prior Related Cases, if any:* None
 (vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* February 21, 2024

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States—Taiwan Advanced Tactical Data Link System Upgrade Planning

The Taipei Economic and Cultural Representative Office in the United States (TECRO) has requested to buy Foreign Military Sales (FMS) Cross Domain Solutions (CDS); High Assurance devices; Global Positioning System (GPS) receivers; communications equipment; requirements analysis; engineering; technical services; and other related elements of logistics and program support. The estimated total cost is \$75 million.

This proposed sale is consistent with U.S. law and policy as expressed in Public Law 96–8.

This proposed sale serves U.S. national, economic, and security interests by supporting the recipient's continuing efforts to modernize its armed forces and maintain a credible defensive capability. The proposed sale will help improve the security of the recipient and assist in maintaining political stability, military balance, and economic progress in the region.

The proposed sale will improve the recipient's ability to meet current and future threats by enhancing communications and network security, and providing infrastructure to allow the secure flow of tactical information. The recipient will have no difficulty absorbing this support and equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor(s) will be determined through U.S. Government competitive processes. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require an estimated 200 U.S. Government personnel and 200 U.S. contractor representatives to travel to the recipient, as required, to provide engineering and technical support services as well as program and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 24–09

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Foreign Military Sales (FMS) Cross Domain Solution (CDS) provides a gateway that allows for secure exchange of information between networks.

2. The High Assurance internet Protocol Encryptor (HAIPE) devices provide a gateway that allows two enclaves to securely exchange data over a network.

3. The Global Positioning System (GPS) Precise Positioning System (PPS) Host Application Equipment (HAE) GPS/Inertial Navigation System (INS) with chipset to receive the M-code signal is a self-contained navigation system that provides the following: acceleration, velocity, position, attitude, platform azimuth, magnetic and true heading, altitude, body angular rates time tags, and coordinated universal time (UTC) synchronized time. The M-code chipset enables the GPS receiver access to the encrypted M-code signal providing protection against active spoofing attacks and improved jamming resistance.

4. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

5. If a technologically advanced adversary were to obtain knowledge of

the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

6. A determination has been made that the recipient can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

7. All defense articles and services listed in this transmittal have been authorized for release and export to the recipient.

[FR Doc. 2025–00154 Filed 1–7–25; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–0T]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–0T.

Dated: January 2, 2025.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

FEB 15 2024

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 23-0T. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 08-19 of September 8, 2008.

Sincerely,

James A. Hursch
Director

Enclosure:

1. Transmittal
2. Regional Balance (Classified document provided under separate cover)

BILLING CODE 6001-FR-C

Transmittal No. 23-0T

**REPORT OF ENHANCEMENT OR
UPGRADE OF SENSITIVITY OF
TECHNOLOGY OR CAPABILITY (SEC.
36(B)(5)(C), AECA)**

(i) *Purchaser:* Government of the United Arab Emirates
(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 08-19
Date: September 8, 2008
Implementing Agency: Missile Defense Agency
Funding Source: National Funds
(iii) *Description:* On September 8, 2008, Congress was notified by Congressional certification transmittal number 08-19 of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, to the United Arab Emirates of 3 Terminal High Altitude Air Defense (THAAD) Fire Units with 147 THAAD missiles, 4 THAAD radar

sets (3 tactical and one maintenance float), 6 THAAD fire and control communication stations, and 9 THAAD launchers. Also included are fire unit maintenance equipment, prime movers (trucks), generators, electrical power units, trailers, communications equipment, tools, test and maintenance equipment, repair and return, system integration and checkout, spare/repair parts, publications, documentation, personnel services, and other related support elements. The estimated total cost was \$6.95 billion. Major Defense Equipment (MDE) constituted \$4.20 billion of this total.

On August 7, 2012, Congress was notified by Congressional certification transmittal number 0D-12 of the upgrade of the 3 THAAD Fire Units previously notified but not yet delivered, with the addition of 7 Multifunctional Information

Distribution System Low Volume Terminals (MIDS-LVTs). The total net cost of MDE increased by \$2.8 million to \$4.203 billion. The estimated total case value remained \$6.95 billion.

This transmittal notifies the possible sale of an additional twelve (12) THAAD launchers. Also included is five (5) years of sustainment support for both the THAAD ground equipment and the THAAD radar sets, consisting of: system software maintenance and upgrade; test components; repair and return; support equipment; spare and repair parts; personnel training and training equipment; publications and technical data; U.S. Government and contractor technical assistance; and other related elements of logistical and program support. The total value of the new items and services is \$1.163 billion. The net cost of MDE will increase by \$120 million, resulting in a revised MDE

value of \$4.323 billion. The net cost of non-MDE will increase by \$1.043 billion. The total estimated case value will increase by \$1.163 billion to \$8.113 billion.

(iv) *Significance*: The proposed sale will improve UAE's capability to counter current and future threats in the region.

(v) *Justification*: This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of an important regional partner. The UAE is a vital U.S. partner for political stability and economic progress in the Middle East.

(vi) *Sensitivity of Technology*: The Sensitivity of Technology Statement contained in the original notification applies to items reported here.

The highest level of classification of defense articles, components, and

services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress*: February 15, 2024

[FR Doc. 2025-00139 Filed 1-7-25; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23-89]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION:

This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-89, Policy Justification, and Sensitivity of Technology.

Dated: January 2, 2025.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

February 5, 2024

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-89, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of the Netherlands for defense articles and services estimated to cost \$908 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 23-89

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of the Netherlands

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$351 million
Other	\$557 million

TOTAL	\$908 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

One hundred twenty (120) AGM-158B/B-2 Joint Air-to-Surface Standoff Missiles with Extended

Range (JASSM-ER) All-Up-Rounds
Fifteen (15) AGM-158 Inert JASSMs with Test Instrumentation Kits
Two (2) AGM-158 JASSM Separation Test Vehicles

One (1) AGM-158 Instrumented Test Vehicle

Two (2) JASSM Jettison Test Vehicles
Non-MDE:

Also included are AGM-158 JASSM Dummy Air Training Missiles (DATM) and containers; KGV-135A encryption devices; test and integration equipment and support; spare parts, consumables, accessories, and repair and return support; munitions support and support equipment; classified and unclassified publications and technical documentation; Contractor Logistics Support (CLS);

transportation support; personnel training and training equipment; studies and surveys; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department:* Air Force (NE-D-YAI)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* February 5, 2024

*as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

The Netherlands—Joint Air-to-Surface Standoff Missiles with Extended Range

The Government of the Netherlands has requested to buy one hundred twenty (120) AGM-158B/B-2 Joint Air-to-Surface Standoff Missiles with Extended Range (JASSM-ER) All-Up-Rounds; fifteen (15) AGM-158 Inert JASSMs with Test Instrumentation Kits; two (2) AGM-158 JASSM Separation Test Vehicles; one (1) AGM-158 Instrumented Test Vehicle; and two (2) JASSM Jettison Test Vehicles. Also included are AGM-158 JASSM Dummy Air Training Missiles (DATM) and containers; KGV-135A encryption devices; test and integration equipment and support; spare parts, consumables, accessories, and repair and return support; munitions support and support equipment; classified and unclassified publications and technical documentation; Contractor Logistics Support (CLS); transportation support; personnel training and training equipment; studies and surveys; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The estimated total cost is \$908 million.

This proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a NATO Ally that is a force for political stability and economic progress in Europe.

The proposed sale will improve the Netherlands' capability to meet current and future threats by increasing its airborne, long-range, precision-strike combat capability. The Netherlands will use these systems to defend NATO Allies and deter aggression. The Netherlands will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin Missiles and Fire

Control, Orlando, FL. The purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the Netherlands.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23-89

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AGM-158B Joint Air-to-Surface Standoff Missile with Extended Range (JASSM-ER) All Up Round is a low-observable, highly-survivable, subsonic cruise missile designed to penetrate next-generation air defense systems enroute to target. The JASSM-ER is designed to kill hard, medium-hardened, soft, and area type targets. The extended range over the baseline was obtained by going from a turbo jet to a turbo-fan engine and by reconfiguring the fuel tanks for added capacity.

The AGM-158B-2 system capabilities include all the capabilities of the AGM-158B. The AGM-158B-2 configuration will have different internal components to address multiple obsolescence issues as well as subcomponent updates to position for M-Code and other potential upgrades.

2. The KGV-135A is a high-speed, general purpose encryptor/decryptor module used for wide-band data encryption.

3. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used

to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that the Netherlands can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

6. All defense articles and services listed in this transmittal have been authorized for release and export to the Netherlands.

[FR Doc. 2025-00140 Filed 1-7-25; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 24-14]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

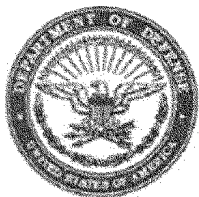
SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 24-14, Policy Justification, and Sensitivity of Technology.

Dated: January 2, 2025.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

February 15, 2024

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 24-14, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Italy for defense articles and services estimated to cost \$150 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 24-14

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Italy

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 74 million
Other	\$ 76 million

TOTAL \$150 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Foreign Military Sales (FMS) case IT-D-AAG was below congressional notification

threshold at \$22.5 million (\$9.7 million in Major Defense Equipment (MDE)) and included twenty-four (24) Guided Bomb Unit (GBU)-53/B Small Diameter Bombs-Increment II (SDB-II) All-Up-Rounds (AURs); and four (4) GBU-53/B SDB-II Captive Carry Reliability Tests (CCRTs). The Government of Italy has requested the case be amended to include an additional one hundred twenty-five (125) GBU-53/B SDB-II AURs; and eight (8) GBU-53/B SDB-II CCRTs. This amendment will cause the case to exceed the MDE and total case value notification thresholds, and thus notification of the entire program is required.

The Government of Italy has also requested a new FMS case that includes an additional twenty-four (24) GBU-53/B SDB-II AURs; and two (2) GBU-53/B SDB-II CCRTs.

The above notification requirements are combined as follows:

Major Defense Equipment (MDE):
One hundred seventy-three (173)
GBU-53/B SDB-II AURs
Fourteen (14) GBU-53/B, SDB-II
CCRTs

Non-MDE:

Also included are SDB-II Weapon Load Crew Trainers (WLCT) and Practical Explosive Ordnance Disposal Trainers (PEST); munitions support and support

equipment; unclassified software delivery and support; spare parts, consumables and accessories, and repair and return support; modifications and maintenance support; unclassified publications and technical documentation; studies and surveys; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department*: Air Force (IT-D-AAG, IT-D-AAH)

(v) *Prior Related Cases, if any*: None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: February 15, 2024

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Italy—Small Diameter Bomb II

The Government of Italy has requested to buy one hundred twenty-five (125) Guided Bomb Unit (GBU)-53/B Small Diameter Bombs-Increment II (SDB-II) All-Up-Rounds (AURs); and eight (8) GBU-53/B SDB-II Captive Carry Reliability Tests (CCRTs) that will be added to a previously implemented case whose value was under the congressional notification threshold. The original FMS case, valued at \$22.5 million (\$9.7 million in MDE), included twenty-four (24) GBU-53/B SDB-II AURs; and four (4) GBU-53/B SDB-II CCRTs. The Government of Italy has also requested a new FMS case that includes twenty-four (24) GBU-53/B SDB-II AURs; and two (2) GBU-53/B SDB-II CCRTs. This notification is for a combined total of one hundred seventy-three (173) GBU-53/B SDB-II AURs; and fourteen (14) GBU-53/B SDB-II CCRTs. Also included are SDB-II Weapon Load Crew Trainers (WLCT) and Practical Explosive Ordnance Disposal Trainers (PEST); munitions support and support equipment; unclassified software delivery and support; spare parts, consumables and accessories, and repair and return support; modifications and maintenance support; unclassified publications and technical documentation; studies and surveys; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The estimated total cost is \$150 million.

This proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a NATO Ally that is a force for political stability and economic progress in Europe.

The proposed sale will improve Italy's capability to meet current and future threats by improving the Italian Air Force and Navy's F-35 weapons capabilities. It will also advance United States interoperability with NATO and the Italian Armed Forces. Italy already has the SDB-II in its inventory and will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be RTX Corporation, Arlington, VA. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Italy.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 24-14

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The GBU-53/B Small Diameter Bomb—Increment II (SDB-II) is a 250-pound class precision-guided, semiautonomous, conventional, air-to-ground munition used to defeat moving targets from standoff range. The SDB-II has deployable wings and fins and uses Global Positioning System/Inertial Navigation System (GPS/INS) guidance, network-enabled datalink (Link-16 and ultra-high frequency (UHF)), and a multi-mode seeker (millimeter wave radar, imaging infrared, semi-active laser) to autonomously search, acquire, track, and defeat a variety of moving or stationary targets, at standoff range or close in, in a variety of attack modes, in clear or adverse weather. The SDB-II employs a multi-effects warhead (blast, fragmentation, and shaped-charge) for maximum lethality against armored and soft targets. The SDB-II weapon system consists of the tactical All-Up-Round (AUR) weapon, a 4-place common carriage system, and Mission Planning System Munitions Application Program (MAP).

a. The SDB-II Captive Carry Reliability Test vehicles are an inert SDB-II configuration used for any

purpose where an inert round without telemetry or termination capability would be useful, but primarily for reliability data collection during carriage.

b. The SDB-II Weapon Load Crew Trainer (WLCT) is a mass mockup of the tactical AUR used for load crew and maintenance training. It does not contain energetics, a live fuze, any sensitive components, or hazardous material. It is not flight certified.

c. The SDB-II Practical Explosive Ordnance Disposal Trainer (PEST) is an Explosive Ordnance Disposal (EOD) training unit with sections and internal subassemblies which are identical to, or correlate to, the external hardware, sections and internal subassemblies of the tactical AUR. The PEST does not contain energetics, a live fuze, any sensitive components, or hazardous material. It is not flight certified.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Italy can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to Italy.

[FR Doc. 2025-00142 Filed 1-7-25; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF EDUCATION

Applications for New Awards; Native Hawaiian Career and Technical Education Program (NHCTEP)

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2025 for the Native Hawaiian Career and Technical Education Program (NHCTEP).

DATES:

Applications Available: January 8, 2025.

Deadline for Notice of Intent to Apply: Applicants are strongly encouraged, but not required, to submit a notice of intent to apply by February 7, 2025.

Deadline for Transmittal of Applications: February 7, 2025.

Deadline for Intergovernmental Review: June 9, 2025.

Pre-Application Webinar Information: For information about a pre-application webinar or potential future webinars, visit the Perkins Collaborative Resource Network (PCRN) at <http://cte.ed.gov/>.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.

FOR FURTHER INFORMATION CONTACT: Patti Beltram, Ed.D., U.S. Department of Education, 400 Maryland Avenue SW, Room 4A115, Washington, DC 20202. Telephone: (202) 987-1370. Email: NHCTEP@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:**Full Text of Announcement****I. Funding Opportunity Description**

Purpose of Program: NHCTEP provides grants to improve career and technical education (CTE) programs that are consistent with the purposes of the Carl D. Perkins Career and Technical Education Act of 2006 (the Act or Perkins V), and that benefit Native Hawaiians.

Assistance Listing Number: 84.259A.

OMB Control Number: 1894-0006.

Background: This notice invites applications for a NHCTEP competition that implements section 116 of the Act. Section 116(h) of the Act authorizes the Secretary of Education (Secretary) to award grants to, or enter into cooperative agreements or contracts with, community-based organizations primarily serving and representing Native Hawaiians to plan, conduct, and administer programs, or portions of programs, that are for the benefit of Native Hawaiians and authorized by and consistent with Perkins V.

Priorities: This competition has one absolute priority. The absolute priority is from section 116 of the Act.

Absolute Priority: For FY 2025, and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

The priority is:

Authorized Program.

To meet this priority, applicants must propose and carry out a CTE program consistent with Perkins V. (20 U.S.C. 2302(5))

Note: If an applicant with an open NHCTEP grant receives a grant under this competition, they must demonstrate that the activities and objectives of the grant will not duplicate or overlap with the expenses, activities, and objectives of other open grants with the same or similar activities and objectives. (2 CFR 200.403 and 200.404)

Requirements:

This notice includes one application and two program requirements that are based on statutory requirements or the Notice of final requirements, definitions, and selection criteria (Notice of Final Requirements) published in the **Federal Register** on March 24, 2009 (74 FR 12341). The source is noted after each requirement.

The application requirement is:

Career and technical education agreement. Any applicant that is not proposing to provide career and technical education directly to Native Hawaiian students and proposes instead to pay one or more qualified educational entities to provide such career and technical education to Native Hawaiian students must include with its application a written career and technical education agreement between the applicant and the educational entity. The written agreement must describe the commitment between the applicant and the educational entity and must include, at a minimum, a statement of the responsibilities of the applicant and the entity. The agreement must be signed by the appropriate individuals on behalf of each party, such as the authorizing official or administrative head of the applicant Native Hawaiian community-based organization. (Notice of Final Requirements).

The program requirements are:

Requirement 1—Authorized Use of NHCTEP Funds:

Section 116(c) of the Act requires that funds awarded under NHCTEP be used to carry out “career and technical education programs” (20 U.S.C. 2326(c), as the term “career and technical education” is defined by the Act as

amended by the Strengthening Career and Technical Education for the 21st Century Act (20 U.S.C. 2302(5)). Grantees may use funds awarded under NHCTEP to—

(1) Provide preparatory, refresher, and remedial education services that are designed to enable students to achieve success in career and technical education programs or programs of study.

(2) Provide stipends to students who are enrolled in career and technical education programs and who have acute economic needs which cannot be met through work-study programs. Stipends shall not exceed reasonable amounts as prescribed by the Secretary. (Section 116(c) of the Act)

Requirement 2—Direct Assistance to Students:

A grantee may provide direct assistance to students only if the following conditions are met:

(1) The recipient of the direct assistance is an individual who is a member of a special population (as defined in section 3(29) of the Act) and who is participating in the grantee’s NHCTEP project.

Note: As a result of the reauthorization of Perkins V, the definition for “special population” referenced above is now found at section 3(48) of the Act, and is provided in the definitions section of this notice.

(2) The direct assistance is needed to address barriers to the individual’s successful participation in a NHCTEP project.

(3) The direct assistance is part of a broader, more generally focused program or activity for addressing the needs of an individual who is a member of a special population.

Note: Direct assistance to individuals who are members of special populations is not, by itself, a “program or activity for special populations.”

(4) The grant funds used for direct assistance must be expended to supplement, and not supplant, assistance that is otherwise available from non-Federal sources. For example, generally, a community-based organization could not use NHCTEP funds to provide child care for single parents if non-Federal funds previously were made available for this purpose, or if non-Federal funds are used to provide child care services for single parents participating in non-CTE programs and these services otherwise (in the absence of NHCTEP funds) would have been available to CTE students.

(5) In determining how much of the NHCTEP grant funds it will use for direct assistance to an eligible student, a grantee—

(i) May only provide assistance to the extent that it is needed to address barriers to the individual's successful participation in CTE; and

(ii) Considers whether the specific services to be provided are a reasonable and necessary cost of providing CTE programs for special populations. However, the Secretary does not envision a circumstance in which it would be a reasonable and necessary expenditure of NHCTEP project funds for a grantee to utilize a majority of a project's budget to pay direct assistance to students, in lieu of providing the students served by the project with CTE. (Notice of Final Requirements).

Definitions: These definitions are from the Act or the Notice of Final Requirements. The source of each definition is noted after the definition.

Acute economic need means an income that is at or below the national poverty level according to the latest available data from the U.S. Department of Commerce or the U.S. Department of Health and Human Services Poverty Guidelines. (Notice of Final Requirements).

Career and technical education (CTE) means organized educational activities that—

(a) Offer a sequence of courses that—

(1) Provides individuals with rigorous academic content and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions, which may include high-skill, high-wage, or in-demand industry sectors or occupations, which shall be, at the secondary level, aligned with the challenging State academic standards adopted by a State under section 1111(b)(1) of the Elementary and Secondary Education Act of 1964, as amended (ESEA);

(2) Provides technical skill proficiency or a recognized postsecondary credential, which may include an industry-recognized credential, a certificate, or an associate degree; and

(3) May include prerequisite courses (other than a remedial course)¹ that meet the requirements of this paragraph (a);

(b) Include competency-based, work-based, or other applied learning that supports the development of academic knowledge, higher-order reasoning and

problem-solving skills, work attitudes, employability skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual;

(c) To the extent practicable, coordinate between secondary and postsecondary education programs through programs of study, which may include coordination through articulation agreements, early college high school programs, dual or concurrent enrollment program opportunities, or other credit transfer agreements that provide postsecondary credit or advanced standing; and

(d) May include career exploration at the high school level or as early as the middle grades (as such term is defined in section 8101 of the ESEA). (20 U.S.C. 2302(5)).

CTE concentrator means—

(a) At the secondary school level, a student served by an eligible recipient who has completed at least 2 courses in a single career and technical education program or program of study; and

(b) At the postsecondary level, a student enrolled in an eligible recipient who has—

(1) Earned at least 12 credits within a career and technical education program or program of study; or

(2) Completed such a program if the program encompasses fewer than 12 credits or the equivalent in total. (20 U.S.C. 2302(12))

Direct assistance to students means tuition, dependent care, transportation, books, and supplies that are necessary for a student to participate in a project funded under this program. (Notice of Final Requirements).

In-demand industry sector or occupation means—

(a) An industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the State, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors; or

(b) An occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the State, regional, or local economy, as appropriate. (20 U.S.C. 2302(26); 29 U.S.C. 3102).

Institution of higher education means—

(a) An educational institution in any State that—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate or persons who meet the requirements of section 1091(d) of this title;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of pre-accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(b) The term "institution of higher education" also includes—

(1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (1), (2), (4), and (5) of paragraph (a); and

(2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in paragraph (a)(1) of this definition, admits as regular students individuals—

(A) who are beyond the age of compulsory school attendance in the State in which the institution is located; or,

(B) who will be dually or concurrently enrolled in the institution and a secondary school. (20 U.S.C. 2302(30); 20 U.S.C. 1001(a) and (b)).

Native Hawaiian means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii. (20 U.S.C. 2326(a)(3)).

Professional development means activities that—

(a) are an integral part of eligible agency, eligible recipient, institution, or school strategies for providing educators (including teachers, principals, other school leaders, administrators, specialized instructional support

¹ Section 116(c)(2) of the Act provides that, notwithstanding the exclusion of remedial courses from the Act's definition of CTE, funds made available under NHCTEP "may be used to provide preparatory, refresher, and remedial education services that are designed to enable students to achieve success in career and technical education programs or programs of study."

personnel, career guidance and academic counselors, and paraprofessionals) with the knowledge and skills necessary to enable students to succeed in career and technical education, to meet challenging State academic standards under section 1111(b)(1) of ESEA, or to achieve academic skills at the postsecondary level; and

(b) Are sustained (not stand-alone, 1-day, or short-term workshops), intensive, collaborative, job-embedded, data-driven, and classroom-focused, to the extent practicable evidence-based, and may include activities that—

(1) Improve and increase educators'—

(A) Knowledge of the academic and technical subjects;

(B) Understanding of how students learn; and

(C) Ability to analyze student work and achievement from multiple sources, including how to adjust instructional strategies, assessments, and materials based on such analysis;

(2) Are an integral part of eligible recipients' improvement plans;

(3) Allow personalized plans for each educator to address the educator's specific needs identified in observation or other feedback;

(4) Support the recruitment, hiring, and training of effective educators, including educators who became certified through State and local alternative routes to certification;

(5) Advance educator understanding of—

(A) Effective instructional strategies that are evidence-based; and

(B) Strategies for improving student academic and technical achievement or substantially increasing the knowledge and teaching skills of educators;

(6) Are developed with extensive participation of educators, parents, students, and representatives of Indian Tribes (as applicable), of schools and institutions served under the Act;

(7) Are designed to give educators of students who are English learners in career and technical education programs or programs of study the knowledge and skills to provide instruction and appropriate language and academic support services to those students, including the appropriate use of curricula and assessments;

(8) As a whole, are regularly evaluated for their impact on increased educator effectiveness and improved student academic and technical achievement, with the findings of the evaluations used to improve the quality of professional development;

(9) Are designed to give educators of individuals with disabilities in career and technical education programs or

programs of study the knowledge and skills to provide instruction and academic support services to those individuals, including positive behavioral interventions and supports, multi-tier system of supports, and use of accommodations;

(10) Include instruction in the use of data and assessments to inform and instruct classroom practice;

(11) Include instruction in ways that educators may work more effectively with parents and families;

(12) Provide follow-up training to educators who have

participated in activities described in this definition that are designed to ensure that the knowledge and skills learned by the educators are implemented in the classroom;

(13) Promote the integration of academic knowledge and skills and relevant technical knowledge and skills, including programming jointly delivered to academic and career and technical education teachers; or

(14) Increase the ability of educators providing career and technical education instruction to stay current with industry standards. (20 U.S.C. 2302(40)).

Program of study means a coordinated, nonduplicative sequence of academic and technical content at the secondary and postsecondary level that—

(A) Incorporates challenging State academic standards, including those adopted by a State under section 1111(b)(1) of ESEA;

(B) Addresses both academic and technical knowledge and skills, including employability skills;

(C) Is aligned with the needs of industries in the economy of the State, region, Tribal community, or local area;

(D) Progresses in specificity (beginning with all aspects of an industry or career cluster and leading to more occupation-specific instruction);

(E) Has multiple entry and exit points that incorporate credentialing; and

(F) Culminates in the attainment of a recognized postsecondary credential. (20 U.S.C. 2302(41)).

Recognized postsecondary credential means a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the State involved or Federal Government, or an associate or baccalaureate degree. (20 U.S.C. 2302(43); 29 U.S.C. 3102(52)).

Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State

law, except that the term does not include any education beyond grade 12. (20 U.S.C. 2302(44); 20 U.S.C. 7801(45)).

Special populations means—

(a) Individuals with disabilities;

(b) Individuals from economically disadvantaged families, including low-income youth and adults;

(c) Individuals preparing for non-traditional fields; (d) Single parents, including single pregnant women;

(e) Out-of-workforce individuals;

(f) English learners;

(g) Homeless individuals described in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(h) Youth who are in, or have aged out of, the foster care system; and

(i) Youth with a parent who—

(i) Is a member of the armed forces (as such term is defined in section 101(a)(4) of title 10, United States Code); and

(ii) Is on active duty (as such term is defined in section 101(d)(1) of such title). (20 U.S.C. 2302(48)).

Support services means services related to curriculum modification, equipment modification, classroom modification, supportive personnel (including paraprofessionals and specialized instructional support personnel), and instructional aids and devices. (20 U.S.C. 2302(50)).

Work-based learning means sustained interactions with industry or community professionals in real workplace settings, to the extent practicable, or simulated environments at an educational institution that foster in-depth, firsthand engagement with the tasks required of a given career field, that are aligned to curriculum and instruction. (20 U.S.C. 2302(55)).

Program Authority: 20 U.S.C. 2326(h).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Guidance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) Notice of Final Requirements.

Note: As of October 1, 2024, grant applicants must follow the provisions stated in the updated OMB Uniform

Guidance (89 FR 30046, April 22, 2024) when preparing an application. For more information about these regulations please visit: www.cfo.gov/resources-coffa/uniform-guidance/.

Note: The regulations in 34 CFR 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Department estimates \$3,800,000 will be available for awards made in FY 2025.

Note: Contingent upon the availability of funds and the quality of applications, the Department anticipates making awards for the first 12-month budget period using FY 2024 appropriations available in FY 2025 and FY 2025 appropriations, if any, that become available in FY 2026. The Department may make partial awards using FY 2024 appropriations available in FY 2025 and award the remaining funds using FY 2025 appropriations available in FY 2026 when they become available.

Estimated Range of Awards: \$150,000 to \$650,000 for each 12-month budget period (*i.e.*, a total of approximately \$750,000 to \$3,250,000 for a full 60-month project period).

Estimated Average Size of Awards: \$500,000 for each 12-month budget period.

Estimated Number of Awards: 6–8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* The following entities are eligible to apply under this competition:

(a) Community-based organizations primarily serving and representing Native Hawaiians.

(b) Any community-based organization may apply individually or as part of a consortium with one or more one or more eligible community-based organizations. (Eligible applicants seeking to apply for funds as a consortium must meet the requirements in 34 CFR 75.127–75.129, which apply to group applications.)

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its

net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

Note: A faith-based organization is eligible to apply for and receive a grant under this program on the same basis as any other private organization, consistent with Appendix A to 34 CFR part 75.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This competition involves supplement-not-supplant funding requirements. In accordance with section 211(a) of the Act (20 U.S.C. 2391(a)), funds under this program may not be used to supplant non-Federal funds used to carry out CTE activities. Further, the prohibition against supplanting also means that grantees will be required to use their negotiated restricted indirect cost rates under this program. (34 CFR 75.563)

We caution applicants not to plan to use funds under NHCTEP to replace otherwise available non-Federal funding for direct assistance to students and family assistance programs. For example, NHCTEP funds must not be used to supplant non-Federal funds with Federal funds in order to pay the costs of students' tuition, dependent care, transportation, books, supplies, and other costs associated with participation in a CTE program.

Funds under NHCTEP should not be used to replace Federal student financial aid. The Act does not authorize the Secretary to fund projects that serve primarily as entities through which students may apply for and receive tuition and other financial assistance.

c. *Indirect Cost Rate Information:* This program uses a restricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see www.ed.gov/about/ed-offices/fofo#Indirect-Cost-Division.

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

e. *Limitation on Services:* Section 215 of the Act (20 U.S.C. 2395) forbids the use of Perkins funds for the education of students prior to the middle grades. The term middle grades refers to grades 5 through 8, as defined in section 8101 of ESEA.

3. *Subgrantees:* Under 34 CFR 75.708 (b) and (c), a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: institutions of higher education, nonprofit organizations, local educational agencies. The grantee may only award subgrants to entities it has identified in an approved application, including any amendments to an approved application.

IV. Application and Submission Information

1. Application Submission

Instructions: Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs, which contain requirements and information on how to submit an application.

2. Submission of Proprietary

Information: Given the types of projects that may be proposed in applications for NHCTEP, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define “business information” and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public on the Department's website, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600 (Predisclosure Notification Procedures for Confidential Commercial Information), please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under “Other Attachments Form,” please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review*: This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions*: We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit*: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to 35 pages and (2) use the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Notice of Intent to Apply*: The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line “Intent to Apply,” and include the applicant’s name and a contact person’s name and email address. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria*: The selection criteria for this program are from the Notice of Final Requirements or 34 CFR

75.210. The source is noted after each criterion.

The maximum score for each criterion is indicated in parentheses.

(a) *Quality of the project design* (Up to 26 points). In determining the quality of the design of the proposed project, we consider the following factors:

(1) The extent to which the proposed project proposes specific, measurable targets, connected to strategies, activities, resources, outputs, and outcomes, and uses reliable administrative data to measure progress and inform continuous improvement. (34 CFR 75.210(c)(2)(v)). (Up to 16 points).

(2) The extent to which the design of the proposed project is appropriate to and will successfully address the needs of the target population or other identified needs (as evidenced by such data as local labor market demand, occupational trends, and surveys). (Notice of Final Requirements). (Up to 10 points).

(b) *Quality of the project services* (Up to 30 points). In determining the quality of the services to be provided by the proposed project, we consider the following factors:

(1) The quality and sufficiency of strategies for ensuring equitable and adequate access and participation for project participants who experience barriers based on one or more of the following: economic disadvantage; gender; race; ethnicity; color; disability; age; language; living in a rural location; experiencing homelessness or housing insecurity; involvement with the justice system; pregnancy, parenting, or caregiver status. This determination includes the steps developed and described in the form Equity For Students, Teachers, And Other Program Beneficiaries (OMB Control No. 1894–0005) (section 427 of the General Education Provisions Act (20 U.S.C. 1228a)). (34 CFR 75.210(d)(2)). (Up to 12 points).

(2) The extent to which the services to be provided by the proposed project will create and offer activities that focus on enabling participants to obtain the skills necessary to gain employment in high-skill, high-wage, and high-demand occupations in emerging fields or in a specific career field (Notice of Final Requirements). (Up to 10 points).

(3) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to build recipient and project capacity in ways that lead to improvements in practice among the recipients of those services. (34 CFR 75.210(d)(3)(v)). (Up to 8 points).

(c) *Adequacy of resources* (Up to 22 points). In determining the adequacy of resources for the proposed project, we consider the following factors:

(1) The extent to which the budget is adequate to support the proposed project and the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (34 CFR 75.210(f)(2)(iii)). (Up to 8 points).

(2) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization(s) and the entities to be served, including the evidence and relevance of commitments (e.g., articulation agreements, memoranda of understanding, letters of support, or commitments to employ project participants) of the applicant, local employers, or entities to be served by the project. (Notice of Final Requirements). (Up to 7 points).

(3) The extent to which the costs are reasonable in relation to the number of persons to be served, the depth and intensity of services, and the anticipated results and benefits. (34 CFR 75.210(f)(2)(iv)). (Up to 7 points).

(d) *Quality of the management plan* (Up to 22 points). In determining the quality of the management plan for the proposed project, we consider the following factors:

(1) The feasibility of the management plan to achieve project objectives and goals on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (34 CFR 75.210(g)(2)(i)). (Up to 10 points).

(2) The extent to which the time commitments of the project director and other key project personnel, including instructors, are appropriate and adequate to meet the objectives of the proposed project. (Notice of Final Requirements). (Up to 5 points).

(3) The extent to which the proposed project team maximizes diverse perspectives, for example by reflecting the lived experiences of project participants, or relevant experience working with the target population. (34 CFR 75.210(e)(3)(iv)). (Up to 7 points).

3. *Review and Selection Process*: We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant’s use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to

submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

4. *Risk Assessment and Special Conditions*: Consistent with 2 CFR 200.206, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose special conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System*: If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management (SAM). You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

VI. Award Administration Information

1. *Award Notices*: If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification

(GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

4. *Administrative and National Policy Requirements*: We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

5. *Open Licensing Requirement*: Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. The dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

6. *Reporting*: (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. See the standards in 2 CFR 170.105 to determine whether you are covered by 2 CFR part 170.

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on

reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

7. *Performance Measures*: The Department has established the following performance measures for purposes of Department reporting under 34 CFR 75.110, which it will use to evaluate the overall performance of the grantee's project, as well as NHCTEP as a whole:

(a) At the secondary level: An increase in—

(1) The percentage of CTE concentrators who graduate high school, as measured by—

(A) The four-year adjusted cohort graduation rate (defined in section 8101 of ESEA); and

(B) At the grantee's discretion, the extended-year adjusted cohort graduation rate (defined in section 8101 of ESEA);

(2) The percentage of CTE concentrators graduating from high school having attained postsecondary credits in the relevant CTE program earned through a dual or concurrent enrollment program or another credit transfer agreement;

(3) The percentage of CTE concentrators graduating from high school having participated in work-based learning;

(4) The percentage of CTE concentrators graduating from high school having attained a recognized postsecondary credential; and

(5) The percentage of CTE concentrators who, after exiting from secondary education, are in postsecondary education or advanced training, military service, or a service program, or are employed.

(b) At the postsecondary level: An increase in—

(1) The percentage of CTE concentrators who remain enrolled in postsecondary education, are in advanced training, military service, or a service program, or are employed; and

(2) The percentage of CTE concentrators who receive a recognized postsecondary credential.

Project-Specific Performance Measures:

In addition to the performance measures noted above, applicants may propose project-specific performance measures and performance targets consistent with the objectives of the proposed project. Examples of such project-specific performance measures

could include student recruitment, student participation in work-based learning at the postsecondary level, and teacher and faculty participation in professional development.

Note: All grantees will be expected to submit a semi-annual and an annual performance report addressing these performance measures, to the extent that these performance measures apply to each grantee's NHCTEP project.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit

your search to documents published by the Department.

Luke Rhine,

Acting Assistant Secretary for Career, Technical, and Adult Education.

[FR Doc. 2025-00209 Filed 1-7-25; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Applications for New Awards; Fulbright-Hays Faculty Research Abroad (FRA) Fellowship Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications (NIA) for fiscal year (FY) 2025 for the Fulbright-Hays Faculty Research Abroad (FRA) Fellowship Program.

DATES: *Applications Available:* January 8, 2024.

Deadline for Transmittal of Applications: March 10, 2025.

Preapplication Webinar and Applicant Resources: The Department will hold a preapplication meeting via webinar for prospective applicants. Detailed information regarding this webinar will be provided on the Fulbright-Hays FRA website at <https://www.ed.gov/grants-and-programs/grants-higher-education/ife/fulbright-hays-faculty-research-abroad-fra-program#How-To-Apply>. For additional information about the Department's discretionary grant process, please review the overview and resources at www2.ed.gov/fund/grant/about/grantmaking/index.html. The resources will be especially helpful for individuals who are exploring the Department's funding opportunities for the first time.

Note: For new potential grantees unfamiliar with grantmaking at the Department, please consult our "Getting Started with Discretionary Grant Applications" web page at <https://www.ed.gov/grants-and-programs/apply-grant/education-grants-application-management-closeout>.

ADDRESSES: The addresses pertinent to this competition—including the addresses for obtaining and submitting an application—can be found under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Amy Marrion, U.S. Department of Education, 400 Maryland Avenue SW, Room 5C110, Washington, DC 20202. Telephone: (202) 987-01083. Email: FRA@ed.gov. If you are deaf, hard of

hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays FRA Fellowship Program provides grants to colleges and universities to fund fellowships for faculty members seeking to improve their area studies and foreign language skills by conducting research abroad. The program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States.

Assistance Listing Number: 84.019A.

OMB Control Number: 1840-0005.

Priorities: This notice contains one absolute priority and three competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority and Competitive Preference Priorities 1 and 2 are from the regulations for this program (34 CFR 663.21(d)). Competitive Preference Priority 3 is from the Secretary's Notice of Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Absolute Priority: For FY 2025, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Specific Geographic Regions of the World.

A research project that focuses on one or more of the following geographic areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, Central and Eastern Europe and Eurasia, and the Western Hemisphere (excluding the United States and its territories).

Competitive Preference Priorities: For FY 2025, the following priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an additional 1 point to an application that meets Competitive Preference Priority 1; an additional 2 points to an application that meets Competitive Preference Priority 2; and an additional 3 points to an application that meets Competitive Preference Priority 3, for a maximum of 6 additional points.

These priorities are:

Competitive Preference Priority 1—Focus on Less Commonly Taught Languages (1 point).

A research project that focuses on any modern foreign language except French, German, or Spanish.

Competitive Preference Priority 2—Thematic Focus on Academic Fields (2 points).

A research project conducted in modern foreign languages and area studies with an academic focus on any of the following academic fields: science (including climate change), technology, engineering (including infrastructure studies), mathematics, computer science, psychology, social work, education (comparative or international), international development, political science, public health (including epidemiology), or economics.

Competitive Preference Priority 3—Promoting Equity in Student Access to Educational Resources and Opportunities (3 points).

Projects implemented by one or more of the following entities:

- (1) Community college (as defined in this notice).
- (2) Historically Black Colleges and Universities (as defined in this notice).
- (3) Tribal College or University (as defined in this notice).
- (4) Minority-serving institution (as defined in this notice).

Definitions: The following definitions are from the Supplemental Priorities and 34 CFR 662.7.

Area studies means a program of comprehensive study of the aspects of a society or societies, including the study of their geography, history, culture, economy, politics, international relations, and languages.

Binational commission means an educational and cultural commission established, through an agreement between the United States and either a foreign government or an international organization, to carry out functions in connection with the program covered by this part.

Community college means “junior or community college” as defined in section 312(f) of the Higher Education Act of 1965, as amended (HEA).

Historically Black colleges and universities means colleges and universities that meet the criteria set out in 34 CFR 608.2.

Institution of Higher Education means the definition contained in 34 CFR 600.4.

Minority-serving institution means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA.

Tribal college or university has the meaning ascribed it in section 316(b)(3) of the HEA.

Note: Hispanic-Serving Institutions that meet the criteria in 34 CFR 606.2(a) are, among other qualifying institutions, “minority-serving institutions.”

Program Authority: 22 U.S.C. 2452(b)(6).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Guidance for Federal Financial Assistance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 663.21. (e) The Supplemental Priorities.

Note: The open licensing requirement in 2 CFR 3474.20 does not apply to this program.

Note: As of October 1, 2024, grant applicants must follow the provisions stated in the OMB Guidance for Federal Financial Assistance (89 FR 30046, April 22, 2024) when preparing an application. For more information about these regulations please visit: <https://www.cfo.gov/resources-coffa/uniform-guidance/>.

II. Award Information

Type of Award: Discretionary grants redistributed as fellowships to individual beneficiaries.

Estimated Available Funds: \$8,249,000 for the Fulbright-Hays Overseas programs in FY 2025. We intend to use an estimated \$750,000 for the FRA competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: \$35,000,000–\$70,000,000.

Estimated Average Size of Awards: \$50,000.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months. Faculty may request funding for a period of no less than 3 months and no more than 12 months.

III. Eligibility Information

1. a. **Eligible Applicants:** Institutions of higher education (IHEs). Eligible faculty members at the IHE submit their

individual research narratives and application forms to their home IHE representative, who compiles all research narratives from faculty and incorporates them into the grant application package that the institution submits electronically through the Department's G6 system on behalf of all applicant faculty at that institution.

b. **Individuals Eligible to Receive a Fellowship:** A faculty member is eligible to receive a fellowship if the individual—is a citizen, national or permanent resident of the United States; is employed by an IHE; has been engaged in teaching relevant to their foreign language or area studies specialization for the two years immediately preceding the date of the award; proposes research relevant to their modern foreign language or area studies specialization, which is not dissertation research for a doctoral degree; and possesses sufficient foreign language skills to carry out the dissertation research project.

2. a. **Cost Sharing or Matching:** This program does not require cost sharing or matching.

b. **Administrative Cost Limitation:** In accordance with 34 CFR 663.30(d), the Secretary awards the institution an administrative allowance of \$100 for each fellowship listed in the grant award document.

3. **Subgrantees:** A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. **Address to Request Application Package:** Both IHEs and faculty applicants can obtain an application package via the internet at the following address: www.G6.ed.gov.

2. **Submission Dates and Times:** Submit applications for grants under the program electronically using G6.ed.gov. For information (including dates and times) about how to submit your application electronically, please refer to **Other Submission Requirements**.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other

requirements and limitations in this notice.

3. *Intergovernmental Review*: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

4. *Funding Restrictions*: We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit*: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 10 pages and the bibliography to no more than two pages and (2) use the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.

- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; budget section, including the narrative budget justification; the assurance and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Unique Entity Identifier (UEI), Taxpayer Identification Number (TIN), and System for Award Management (SAM)*: To do business with the Department, you must—

- Have a UEI number and a TIN;
- Register both your UEI number and TIN with SAM, the Government’s primary registrant database;
- Provide your UEI number and TIN on your application; and
- Maintain an active SAM registration with current information while your application is under review

by the Department and, if you are awarded a grant, during the project period.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2 to 5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS/UEI number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can submit an application through G6.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS/UEI number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at www.SAM.gov. To further assist you with obtaining and registering your DUNS/UEI number and TIN in SAM or updating your existing SAM account, please visit <https://sam.gov/content/help>.

7. *Other Submission Requirements*:

Applications for grants under this program must be submitted electronically unless an IHE qualifies for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications*.

Submit applications for grants under the Fulbright-Hays FRA Fellowship Program, Assistance Listing Number 84.019A, electronically using the G6 system, accessible through the

Department’s G6 site at: www.G6.ed.gov. While completing the electronic application, both the IHE and the faculty applicant will be entering data online that will be saved into a database. Neither the IHE nor the faculty applicant may email an electronic copy of a grant application to us.

Please note the following:

- The process for submitting applications electronically under the Fulbright-Hays FRA Fellowship Program requires several steps. The following is a brief overview of the process; however, all applicants should review the detailed description of the application process in the application package. In summary, the major steps are:

- (1) IHEs must email the name of the institution and the full name and email address of the project director to FRA@ed.gov. We suggest that applicant IHEs submit this information no later than 2 weeks prior to the application deadline date to ensure that they obtain access to G6 well before that date;

- (2) Faculty applicants must complete their individual applications and submit them to their home IHE project director using G6;

- (3) Persons providing references for individual faculty applicants must complete and submit reference forms to the IHE’s project director, using G6; and

- (4) The IHE’s project director must officially submit the IHE’s application, including all eligible individual faculty applications, reference forms, and other required forms, using G6.

- The IHE must complete the electronic submission of the grant application by 11:59:59 p.m., Eastern Time, on the application deadline date. G6 will not accept an application for this competition after 11:59:59 p.m., Eastern Time, on the application deadline date. Therefore, we strongly recommend that both the IHE and the faculty applicant begin the application process early and not wait until close to the application deadline date to prepare their applications. The table below shows the days and times that the G6 website will be available.

G6 HOURS OF OPERATION IN EASTERN TIME

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Unavailable from 03:00 p.m.–11:59 p.m.	Unavailable from 12:00 a.m.–06:00 a.m.	Available 24 hours ...	Unavailable from 09:00 p.m.–11:59 p.m.	Unavailable from 12:00 a.m.–06:00 a.m.	Available 24 hours ...	Available 24 hours.

- Faculty applicants will not receive additional points because they submit

their applications in electronic format, nor will we penalize an IHE or faculty

applicant if the applicant qualifies for an exception to the electronic

submission requirement, as described elsewhere in this section, and submits an application in paper format.

- IHEs must upload all application documents electronically, including the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- Both IHEs and faculty applicants must upload the narrative sections and all other attachments to their application as files in a read-only flattened Portable Document Format (PDF), meaning any fillable documents must be saved and submitted as nonfillable PDF files. Do not upload any interactive or fillable PDF files. If you upload a file type other than a read-only, nonmodifiable PDF (e.g., Word, Excel, WordPerfect) or submit a password-protected file, we will be unable to review that material. Please note that this will likely result in your application not being considered for funding. The Department will not convert material from other formats to PDF.

- Prior to submitting your electronic application, please redact any personally identifiable information (SSN, birthdate, etc.). You may wish to print a copy of your application package for your records.

- After the individual faculty applicant electronically submits their application to the IHE, the faculty applicant will receive an automatic acknowledgment from the G6 system. After the person designated to provide a reference submits the reference electronically to the Department on behalf of a faculty applicant, they will receive an electronic confirmation from the G6 system. After the applicant IHE submits its application, including all eligible individual faculty applications to the Department, the applicant IHE will also receive an automated acknowledgment from G6 that will include a unique PR/Award number for the IHE's application.

- Within 3 working days after submitting its electronic application, the applicant IHE must—

- (1) Print the SF 424 from G6;
- (2) Have the Authorizing Representative sign this form;
- (3) Place the PR/Award number in the upper right-hand corner of the hard copy signature page of the SF 424; and
- (4) Email the signed SF 424 to FRA@ed.gov.

- We may request that you provide hard copies with original signatures for

other forms in the application at a later date.

Application Deadline Date Extension in Case of System Unavailability: If an IHE is prevented from electronically submitting its application on the application deadline date because the G6 system is unavailable, we will grant the IHE an extension until 11:59:59 p.m., Eastern Time, the following business day to enable the IHE to transmit its application electronically, by mail, or by hand delivery. We will grant this extension if—

- (1) The IHE is a registered user of the G6 system and the IHE has initiated an electronic application for this competition; and

- (2) G6 is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 11:59 p.m., Eastern Time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the IHE an extension. To request a time extension due to G6 unavailability or to confirm our acknowledgment of G6's unavailability, an IHE may contact either (1) the person listed under **FOR FURTHER INFORMATION CONTACT** or (2) the e-Grants help desk at 1-888-336-8930. If G6 is unavailable due to technical problems with the system and the application deadline is extended, an email will be sent to all registered users who have initiated a G6 application. The deadline date extensions described in this section apply only to the unavailability of the G6 system.

b. *Submission of Paper Applications.* The Department discourages paper applications, but if electronic submission is not possible (e.g., you do not have access to the internet), (1) you must provide a prior written notification that you intend to submit a paper application and (2) your paper application must be postmarked by the application deadline date.

The prior written notification may be submitted by email or by mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of the competition NIA. If you submit your notification by email, it must be received by the Department no later than 14 calendar days before the application deadline date. If you mail your notification to the Department, it must be postmarked no later than 14 calendar days before the application deadline date.

If you submit a paper application, you must have, and include on your application, a UEI number and mail the original and two copies of your application, on or before the application deadline date, to the Department at the

following address: U.S. Department of Education, OFO/G6 Functional Application Team, Mail Stop 5C231, Attention: 84.019A, 400 Maryland Avenue SW, Washington, DC 20202-4260.

The IHE must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.

- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

- (3) A dated shipping label, invoice, or receipt from a commercial carrier.

- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.

- (2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark.

Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

Note for Mail Delivery of Paper Applications: If you mail your application to the Department—

- (1) You must indicate on the envelope and in Item 11 of the SF 424 the ALN, including suffix letter, if any, of the competition under which you are submitting your application; and

- (2) The G6 Functional Application Team will notify you of the Department's receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from the regulations for this program in 34 CFR 663.21 and are as follows:

- (a) *Quality of proposed project (70 points).* The Secretary reviews each application to determine the quality of the research project proposed by the applicant. The Secretary considers—

- (1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used (20 points);

- (2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's importance in terms of the concerns of the discipline (10 points);

(3) The preliminary research already completed or plans for research prior to going overseas, and the kinds, quality and availability of data for the research in the host country or countries (10 points);

(4) The justification for overseas field research, and preparations to establish appropriate and sufficient research contacts and affiliations abroad (10 points);

(5) The applicant's plans to share the results of the research in progress with scholars and officials of the host country or countries and the American scholarly community (5 points); and

(6) The objectives of the project regarding the sponsoring institution's plans for developing or strengthening, or both, curricula in modern foreign languages and area studies (15 points).

(b) *Qualifications of the applicant (30 points).* The Secretary reviews each application to determine the qualifications of the applicant. In coordination with any priorities established under 34 CFR 663.21(d), the Secretary considers one or more of the following—

(1) The overall strength of applicant's academic record (teaching, research, contributions, professional association activities) (10 points);

(2) The applicant's excellence as a teacher or researcher, or both, in his or her area or areas of specialization (5 points);

(3) The applicant's proficiency in one or more of the languages (other than English) of the host country or countries of research (5 points);

(4) The extent to which the applicant's academic record demonstrates steps taken to further improve advanced language proficiency to overcome any anticipated language barriers relative to the proposed research project (5 points); and

(5) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's previous overseas experience, or documentation provided by the sponsoring institution, or both (5 points).

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For FY 2025, faculty applications are divided into seven categories based on the world area focus of their research projects, as described in the absolute priority listed in this notice. Foreign language and area studies experts on discrete world area-based panels will evaluate the faculty applications. Each panel reviews, scores, and ranks its assigned applications separately from the applications assigned to the other world area panels. At the conclusion of the panel review process, however, all faculty applications will be ranked together from the highest to lowest score for funding recommendation purposes.

If there are applications on the rank order slate with the same average score, the Fulbright Foreign Scholarship Board's policy governing veteran's preference will be used in the tiebreaker and selection process. Veteran's preference will be used first to determine which application to recommend for funding. This means that in instances where two or more applications have the same average score on the rank order slate, and there are insufficient funds to support all of the equally ranked applications, the veteran's application will be given preference.

For applications that have tied average scores but are not subject to the veteran's preference, the Department will use the average score assigned on the Technical Review Forms for the "Quality of proposed project" selection criterion. If a tie still exists, the average score for selection criterion (a)(1) under "Quality of proposed project" (20 points) will be used as the tiebreaker. A final tiebreaker, should it become necessary, will use the average score assigned for the "Qualifications of the applicant" selection criterion.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not

fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

5. *In General:* In accordance with the Guidance for Federal Financial Assistance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115—232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify the IHE's U.S. Representative and U.S. Senators and send the IHE a Grant Award Notification (GAN). We also may notify the IHE informally.

If a faculty application is not evaluated or not selected for funding, we notify the IHE.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of its binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. See the standards in 2 CFR 170.105 to determine whether you are covered by 2 CFR part 170.

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to <https://www.ed.gov/grants-and-programs/apply-grant/grant-application-and-other-forms>.

4. *Performance Measure:* For the purpose of Department reporting under 34 CFR 75.110, the Department will use the following performance measure:

FRA Measure: The percentage of Fulbright-Hays FRA fellows who increased their foreign language scores in speaking, reading, or writing by at least one proficiency level.

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2024-30920 Filed 1-7-25; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Electric Vehicle Working Group

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: The Department of Energy hereby publishes a notice of open meetings of the Electric Vehicle Working Group (EVWG). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, January 30, 2025; 3 to 5 p.m. EST. Start and end times may change. Please visit <https://driveelectric.gov/ev-working-group> for the most up to date agenda.

ADDRESSES: This meeting will be held virtually. Members of the public who would like to participate virtually must register at: <https://driveelectric.gov/ev-working-group>.

FOR FURTHER INFORMATION CONTACT: Dr. Rachael Nealer, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; email: evwg@ee.doe.gov; phone: (202) 586-3916.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The Electric Vehicle Working Group (EVWG) was formed by the Joint Office of Energy and Transportation to make recommendations to the Secretaries of Energy and Transportation regarding the development, adoption, and integration of light-, medium-, and heavy-duty

electric vehicles (EVs) into the U.S. transportation and energy systems.

Tentative Agenda: The tentative agenda for this meeting is a discussion of next steps for the EVWG, including schedule and proposed deliverables. There will also be a discussion on the current subcommittee structure and whether modifications should be made based on upcoming work. Meeting materials and a link to registration can be found here: <https://driveelectric.gov/ev-working-group>.

Public Participation: This virtual meeting is open to the public. Individuals who would like to attend must register at: <https://driveelectric.gov/ev-working-group>.

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the public comment portion of the meeting. Approximately 20 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed three minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak during the public comment period should indicate so within their registration.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Dr. Rachael Nealer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or email: evwg@ee.doe.gov.

Minutes: The minutes of the meeting will be available on <https://driveelectric.gov/ev-working-group> or by contacting Dr. Nealer. She may be reached at the above postal address or email address.

Signing Authority: This document of the Department of Energy was signed on January 3, 2025, by Alyssa Petit, Deputy Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 3, 2025.

Jennifer Hartzell,

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

[FR Doc. 2025–00219 Filed 1–7–25; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
AES Pike County Energy Storage, LLC.	EG25–1–000
BCE Seal Beach, LLC	EG25–2–000
Wheatsborough Solar, LLC	EG25–3–000
Pluto Energy Storage, LLC	EG25–4–000
Kola Energy Storage, LLC	EG25–5–000
Jackson Fuller Energy Storage, LLC.	EG25–6–000
NRG THW GT LLC	EG25–7–000
Morris Solar, LLC	EG25–8–000
Milford Gen Lead, LLC	EG25–9–000
Illinois Winds LLC	EG2510–000
Hummingbird Energy Storage, LLC.	EG25–11–000
Azalea Springs Solar Park LLC.	EG25–12–000
Duff Solar Park LLC	EG25–13–000
Pleasantville Solar Park LLC.	EG25–14–000
Riverstart Solar Park IV LLC.	EG25–15–000
Sandrini BESS Storage LLC.	EG25–16–000
Peregrine Energy Storage, LLC.	EG25–17–000
OneLNG Power LLC	EG25–18–000
Kuna Bess LLC	EG25–19–000
Westside Canal 2A, LLC ...	EG25–20–000
IN Solar 1, LLC	EG25–21–000
IEP Tejas Verde LLC	EG25–22–000
New Hickory Solar LLC	EG25–23–000

Take notice that during the month of December 2024, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2024).

Dated: January 2, 2025.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2025–00233 Filed 1–7–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25–40–000]

Florida Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on December 24, 2024, Florida Gas Transmission Company, LLC (FGT), 1300 Main Street, Houston, Texas 77002, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.208, and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) and FGT's blanket certificate issued in Docket No. CP82–553–000, for authorization to abandon in-place approximately 8.4 miles of FGT's 6-/8-inch-diameter Panama City Lateral from approximate Mile Post (MP) 22.8 to approximate MP 31.2, and related appurtenances (collectively referred to as the Panama City Lateral) in Bay County, Florida. FGT proposes to maintain the Panama City Lateral pursuant to the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration idling guidance and regulations, and to retain and maintain FGT's rights-of-way and easements and all related rights-of-way and easement rights for future use, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

Any questions concerning this request should be directed to Blair Lichtenwalter, Senior Director of Certificates, Florida Gas Transmission Company, LLC, 1300 Main Street, Houston, Texas 77002, by phone at (713) 989–2605, by fax at (713) 989–1205, or by email at Blair.Lichtenwalter@energytransfer.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on March 3, 2025. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,¹ any person² or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,³ and must be submitted by the protest deadline, which is March 3, 2025. A protest may also serve as a motion to intervene so long as the

¹ 18 CFR 157.205.

² Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

³ 18 CFR 157.205(e).

protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is March 3, 2025. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to/intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before March 3,

2025. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP25–40–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Protest", "Intervention", or "Comment on a Filing"; or⁶

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP25–40–000.

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.
To file via any other method: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail at: Blair Lichtenwalter, Senior Director of Certificates, Florida Gas Transmission Company, LLC, 1300 Main Street, Houston, Texas 77002, or at Blair.Lichtenwalter@energytransfer.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

⁶ Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at www.ferc.gov using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

Dated: January 2, 2025.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2025–00234 Filed 1–7–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC25–5–000]

Commission Information Collection Activities (FERC–545); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, *FERC 545: Gas Pipeline Rates: Rate Change (Non-Formal)*.

DATES: Comments on the collection of information are due March 10, 2025.

ADDRESSES: You may submit copies of your comments (identified by Docket No. IC25–5–000) by one of the following methods:

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

Electronic filing through <http://www.ferc.gov> is preferred.

- **Electronic Filing:** Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be submitted to FERC as follows:

- *Mail via U.S. Postal Service Only:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

- *All other services (including courier):* Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov>. For user assistance, contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at (866) 208-3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <http://www.ferc.gov>.

FOR FURTHER INFORMATION CONTACT:

Kayla Williams may be reached by email at DataClearance@FERC.gov, telephone at (202) 502-6468.

SUPPLEMENTARY INFORMATION:

Title: FERC-545: Gas Pipeline Rates: Rate Change (Non-formal)

OMB Control No.: 1902-0154

Type of Request: Three-year extension of the FERC-545 information collection requirements with no changes to the reporting requirements.

Abstract: FERC-545 is required to implement sections 4, 5, and 16 of the Natural Gas Act (NGA) (15 U.S.C. 717c, 717d, and 717o). NGA Sections 4, 5, and

16 authorize the Commission to inquire into rate structures and methodologies and to set rates at a just and reasonable level. Specifically, a natural gas company must obtain Commission authorization for all rates and charges made, demanded, or received in connection with the transportation or sale of natural gas in interstate commerce. FERC-545 consists of: (1) Tariff Filings which are filings regarding proposed changes to a pipeline's tariff and any related compliance filings; (2) Rate Filings which are rate-related filings under NGA sections 4 and 5 and any related compliance filings and settlements; (3) Informational Reports, for example, annual reconciliation reports; (4) Negotiated Rates and Non-Conforming Agreement Filings; (5) North American Energy Standards Board (NAESB) Filings; (6) Market-Based Rates for Storage Filings; and (6) the Labor-Wage Policy which allows jurisdictional entities to include wages consistent with project-area standards in cost-of-service rates filed with the Commission where the record supports that outcome.

Under the NGA, a natural gas company's rates must be just and reasonable and not unduly discriminatory or preferential. The Commission may act under different sections of the NGA to effect a change in a natural gas company's rates. When the Commission reviews rate increases that a natural gas company has proposed, it is subject to the requirement of section 4(e) of the NGA. These types of filings are referred to as general section 4 rate cases. In the proceedings, the Commission reviews a pipeline's rates and services. A pipeline can file a general section 4 rate case anytime it wishes, provided the pipeline

did not agree otherwise in a settlement. A pipeline must demonstrate that the new rates it proposes to charge are just and reasonable. When a rate increase filing is made pursuant to section 4, the application is typically suspended and set for hearing by a Commission Order. On the other hand, when the Commission seeks to impose its own rate determination, it must do so in compliance with section 5(a) of the NGA. Under section 5, the Commission must first establish and demonstrate that a pipeline's existing rate is no longer just and reasonable.

Section 16 of the NGA states that the Commission "shall have the power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out provisions of [the NGA]." In other words, section 16 of the NGA grants the Commission the power to define accounting, technical and trade terms, prescribe forms, statements, declarations or reports and to prescribe rules and regulations.

Pipelines adjust their tariffs to meet market and customer needs. Commission review of these proposed changes is required to ensure rates remain just and reasonable and that services are not provided in an unduly or preferential manner. The Commission's regulation in 18 CFR part 154 specifies what changes are allowed and the procedures for requesting Commission approval.

Type of Respondents: Jurisdictional natural gas companies.

Estimate of Annual Burden:¹ The Commission estimates the annual public reporting burden for the information collection as:

FERC-545: GAS PIPELINE RATES: RATE CHANGE (NON-FORMAL)

[No change]

	Number of respondents	Average number of responses per respondent	Total number of responses	Average burden & cost per response ²	Total annual burden hours & total annual cost	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Tariff Filings	141	3	423	211 hrs.; \$22,999	89,253 hrs.; \$9,728,577	\$68,997
Rate Filings	19	2	38	354 hrs.; \$38,586	13,452 hrs.; \$1,466,268	77,172
Informational Reports	80	2	160	235 hrs.; \$25,615	37,600 hrs.; \$4,098,400	51,230
Negotiated Rates & Non-Conforming Agreement Filings.	75	8	600	233 hrs.; \$25,397	139,800 hrs.; \$15,238,200	203,176
Market-Base Rates for Storage Filings	2	1	2	230 hrs.; \$25,070	460 hrs.; \$50,140	25,070
NAESB (version 3.2) one time over 3 years carried over from RM96-1-042 ³ .	59.33	1	59.33	10 hrs.; \$1,090	593.30 hrs.; \$64,669.70	1,090

¹ Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. Refer to 5 CFR 1320.3 for additional information.

FERC-545: GAS PIPELINE RATES: RATE CHANGE (NON-FORMAL)—Continued
[No change]

	Number of respondents	Average number of responses per respondent	Total number of responses	Average burden & cost per response ²	Total annual burden hours & total annual cost	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Labor-Wage Policy ⁴	11	1	11	15 hrs.; \$1,635	165 hrs.; \$17,985	1,635
Total (Including Section 4 Rate Cases) .....	.....	.....	1,293 (rounded) ....	.....	281,323 hrs. (rounded); \$30,664,240.	.....

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.

² The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures for May 2024 posted by the Bureau of Labor Statistics for the Utilities sector (available at https://www.bls.gov/oes/current/naics3_221000.htm) and scaled to reflect benefits using the relative importance of employer costs for employee compensation from March 2024 available at <https://www.bls.gov/news.release/ecec.nr0.htm>). The hourly estimates for salary plus benefits are: Computer and Information Systems Manager (Occupation Code: 11-3021), \$115.47; Computer and Information Analysts (Occupation Code: 15-1210), \$80.10; Electrical Engineer (Occupation Code: 17-2071), \$79.31; Legal (Occupation Code: 23-0000), \$162.66. The average hourly cost (salary plus benefits) weighting all of the above skill sets evenly, is \$109.38. We round it to \$109/hour.

³ At the time of this notice for extension request, Docket No. RM96-1-043 was issued by the Commission on November 22, 2024. The Order updated the requirement to reflect the Wholesale Gas Quadrant (WGQ) 4.0 standards. OMB has not yet approved this modification as it has not published in the **Federal Register**, which is required for Information Collection Requests (ICRs) to be submitted. However, to prevent a lapse in the approval of the existing collection's expiration date, the Commission is publishing this Notice with the currently approved burden estimates that involve the NAESB standards (59.33 responses). The updated burden estimates for the NAESB revisions will increase the burden to 64.33 (rounded) responses, which is the average number of responses per annum.

⁴ Project-Area Wage Standards in the Labor Cost Component of Cost-of-Service Rates under Docket No. PL24-1-000 was issued on March 21, 2024, which allows jurisdictional entities to include wages consistent with project-area standards in cost-of-service rates filed with the Commission where the record supports that outcome.

Dated: January 2, 2025.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2025-00232 Filed 1-7-25; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1933-116, 1934-065]

Southern California Edison Company; San Bernardino Valley Municipal Water District; Notice of Application of Transfer of Licenses and Soliciting Comments, Motions To Intervene, and Protests

On September 20, 2024, Southern California Edison Company (transferor) and San Bernardino Valley Municipal Water District (transferee) filed an application with the Federal Energy Regulatory Commission (FERC or Commission) to transfer the licenses for the 6.3-megawatt Santa Ana River 1 & 3 Hydroelectric Project No. 1933 (Santa Ana Project) and the 3.0-megawatt Mill Creek ²/₃ Hydroelectric Project No. 1934 (Mill Creek Project). The Santa Ana Project, located on the Santa Ana River, and the Mill Creek Project, located on Mill Creek and its tributary Mountain Home Creek, are both situated in San Bernardino County, California, and occupy federal land within the San Bernardino National Forest.

Pursuant to 16 U.S.C. 801, the applicants seek Commission approval to transfer the licenses for the Santa Ana Project and the Mill Creek Project from the transferor to the transferee. Upon approval, the transferee will be required by the Commission to comply with all the requirements of the licenses.

Applicants Contacts

For Transferor: Wayne Allen, Principal Manager, Southern California Edison, 2244 Walnut Grove Ave., Rosemead, CA 91770, wayne.allen@sce.com and Jordan von Almen, Principal Manager, Southern California

Edison, 2244 Walnut Grove Ave., Rosemead, CA 91770,

jordan.vonalmen@sce.com.

For Transferee: Heather P. Dyer, CEO/General Manager, San Bernardino Valley Municipal Water District, 380 East Vanderbilt Way, San Bernardino, CA 92408, heatherd@sbvmwd.com.

FERC Contact: Woohee Choi, Phone: (202) 502-6336, Email: Woohee.Choi@ferc.gov.

Deadline for filing comments, motions to intervene, and protests: *30 days* from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

In lieu of electronic filing, you may submit a paper copy. Submissions sent via U.S. Postal Service must be addressed to, Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Submissions sent via any other carrier must be addressed to, Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The first page of any filing should include docket numbers P-1933-116 and P-1934-065. Comments emailed to Commission staff are not considered part of the Commission record.

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: January 2, 2025.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2025-00231 Filed 1-7-25; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP25-323-000.
Applicants: Rockies Express Pipeline LLC.

Description: 4(d) Rate Filing: REX 2024-12-31 Negotiated Rate Agreement to be effective 1/1/2025.

Filed Date: 12/31/24.

Accession Number: 20241231-5221.

Comment Date: 5 p.m. ET 1/13/25.

Docket Numbers: RP25-324-000.

Applicants: Northern Natural Gas Company.

Description: 4(d) Rate Filing: 20241231 Negotiated Rate Filing to be effective 1/1/2025.

Filed Date: 12/31/24.

Accession Number: 20241231-5254.

Comment Date: 5 p.m. ET 1/13/25.

Docket Numbers: RP25-325-000.

Applicants: Gillis Hub Pipeline, LLC.
Description: 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreements 12.31.24 to be effective 1/1/2025.

Filed Date: 12/31/24.

Accession Number: 20241231-5259.

Comment Date: 5 p.m. ET 1/13/25.

Docket Numbers: RP25-326-000.

Applicants: Mountain Valley Pipeline, LLC.

Description: 4(d) Rate Filing: Negotiated Rate Agreement—1/1/2025 to be effective 1/1/2025.

Filed Date: 12/31/24.

Accession Number: 20241231-5287.

Comment Date: 5 p.m. ET 1/13/25.

Docket Numbers: RP25-327-000.

Applicants: Great Basin Gas Transmission Company.

Description: 4(d) Rate Filing: Non-Conforming TSA No. F29 Amendment to be effective 12/1/2024.

Filed Date: 12/31/24.

Accession Number: 20241231-5428.

Comment Date: 5 p.m. ET 1/13/25.

Docket Numbers: RP25-328-000.

Applicants: NEXUS Gas

Transmission, LLC.

Description: 4(d) Rate Filing: Negotiated Rates—Castleton 860576 and 860581 eff 1-1-25 to be effective 1/1/2025.

Filed Date: 1/2/25.

Accession Number: 20250102-5001.

Comment Date: 5 p.m. ET 1/14/25.

Docket Numbers: RP25-329-000.

Applicants: Texas Eastern Transmission, LP.

Description: 4(d) Rate Filing: Negotiated Rates—TVA 911901 eff 1-1-25 to be effective 1/1/2025.

Filed Date: 1/2/25.

Accession Number: 20250102-5002.

Comment Date: 5 p.m. ET 1/14/25.

Docket Numbers: RP25-330-000.

Applicants: Equitrans, L.P.

Description: 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—1/1/2025 to be effective 1/1/2025.

Filed Date: 1/2/25.

Accession Number: 20250102-5099.

Comment Date: 5 p.m. ET 1/14/25.

Docket Numbers: RP25-331-000.

Applicants: Mountain Valley Pipeline, LLC.

Description: 4(d) Rate Filing: Negotiated Rates Capacity Agreements 1/1/2025 to be effective 1/1/2025.

Filed Date: 1/2/25.

Accession Number: 20250102-5123.

Comment Date: 5 p.m. ET 1/14/25.

Docket Numbers: RP25-332-000.

Applicants: Texas Eastern Transmission, LP.

Description: 4(d) Rate Filing: Negotiated Rates—Chevron 911109 eff 1-1-25 to be effective 1/1/2025.

Filed Date: 1/2/25.

Accession Number: 20250102-5140.

Comment Date: 5 p.m. ET 1/14/25.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.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: January 2, 2025.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2025-00235 Filed 1-7-25; 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: AC25-43-000.

Applicants: Michigan Electric Transmission Company LLC.

Description: Michigan Electric Transmission Company LLC submits proposed accounting entries for its acquisition of electric plant conveyed by Hillsdale Board of Public Utilities.

Filed Date: 12/30/24.

Accession Number: 20241230-5404.

Comment Date: 5 p.m. ET 1/21/25.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-1290-013.

Applicants: San Diego Gas & Electric Company.

Description: Triennial Market Power Analysis for Southwest Region of San Diego Gas & Electric Company.

Filed Date: 12/31/24.

Accession Number: 20241231-5445.

Comment Date: 5 p.m. ET 3/3/25.

Docket Numbers: ER10-2302-012; ER19-2674-005.

Applicants: New Mexico PPA Corporation, Public Service Company of New Mexico.

Description: Triennial Market Power Analysis for Southwest Region of Public Service Company of New Mexico, et al.

Filed Date: 12/31/24.
Accession Number: 20241231-5449.
Comment Date: 5 p.m. ET 3/3/25.
Docket Numbers: ER10-2400-019.
Applicants: Blue Canyon Windpower LLC.

Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of Blue Canyon Windpower LLC.

Filed Date: 12/31/24.
Accession Number: 20241231-5456.
Comment Date: 5 p.m. ET 3/3/25.
Docket Numbers: ER10-2564-014; ER10-2289-014; ER10-2600-014.

Applicants: UNS Electric, Inc., UniSource Energy Development Company, Tucson Electric Power Company.

Description: Triennial Market Power Analysis for Southwest Region of Tucson Electric Power Company, et al.

Filed Date: 12/31/24.
Accession Number: 20241231-5440.
Comment Date: 5 p.m. ET 3/3/25.

Docket Numbers: ER10-2739-038; ER10-1892-025; ER17-1494-006; ER19-170-006; ER20-660-012; ER21-1505-004; ER22-425-005; ER22-1241-004; ER22-1324-001; ER24-1366-002.

Applicants: Tumbleweed Energy, LLC, LeConte Energy Storage, LLC, REV Energy Marketing, LLC, Enerwise Global Technologies, LLC, Diablo Energy Storage, LLC, Bolt Energy Marketing, LLC, Gateway Energy Storage, LLC, Vista Energy Storage, LLC, Columbia Energy LLC, LS Power Marketing, LLC.

Description: Triennial Market Power Analysis for Southwest Region of LS Power Marketing, LLC, et al.

Filed Date: 12/31/24.
Accession Number: 20241231-5454.
Comment Date: 5 p.m. ET 3/3/25.

Docket Numbers: ER15-1873-020.
Applicants: Buckeye Wind Energy LLC.

Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of Buckeye Wind Energy LLC.

Filed Date: 12/31/24.
Accession Number: 20241231-5459.
Comment Date: 5 p.m. ET 3/3/25.

Docket Numbers: ER16-1720-031; ER21-2137-014.

Applicants: IR Energy Management LLC, Invenergy Energy Management LLC.

Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of Invenergy Energy Management LLC, et al.

Filed Date: 12/31/24.
Accession Number: 20241231-5457.
Comment Date: 5 p.m. ET 3/3/25.

Docket Numbers: ER20-681-011.
Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Triennial Market Power Analysis for Southwest Region of Tri-State Generation and Transmission Association, Inc.

Filed Date: 12/31/24.
Accession Number: 20241231-5447.
Comment Date: 5 p.m. ET 3/3/25.

Docket Numbers: ER20-1790-003; ER11-4498-015; ER11-4499-015; ER11-4501-017; ER12-979-016; ER12-2448-016; ER13-2409-011; ER14-2858-010; ER15-2615-006; ER15-2620-006; ER16-2293-007; ER16-2577-006; ER16-2653-007; ER16-2687-005; ER17-790-004; ER17-2457-006; ER17-2470-006; ER18-27-005; ER18-2312-005; ER18-2330-004; ER20-2134-003; ER21-2597-003; ER22-2481-002; ER22-2482-001.

Applicants: 25 Mile Creek Windfarm LLC, Seven Cowboy Wind Project, LLC, Rockhaven Wind Project, LLC, Cimarron Bend Wind Project III, LLC, Enel Green Power Rattlesnake Creek Wind Project, LLC, Enel Green Power Diamond Vista Wind Project, LLC, Thunder Ranch Wind Project, LLC, Red Dirt Wind Project, LLC, Rock Creek Wind Project, LLC, Cimarron Bend Wind Project II, LLC, Chisholm View Wind Project II, LLC, Cimarron Bend Wind Project I, LLC, Lindahl Wind Project, LLC, Drift Sand Wind Project, LLC, Little Elk Wind Project, LLC, Goodwell Wind Project, LLC, Origin Wind Energy, LLC, Buffalo Dunes Wind Project, LLC, Chisholm View Wind Project, LLC, Rocky Ridge Wind Project, LLC, Caney River Wind Project, LLC, Smoky Hills Wind Project II, LLC, Smoky Hills Wind Farm, LLC, Aurora Wind Project, LLC.

Description: Triennial Market Power Analysis for Southwest Region of Aurora Wind Project, LLC, et al.

Filed Date: 12/31/24.
Accession Number: 20241231-5443.
Comment Date: 5 p.m. ET 3/3/25.

Docket Numbers: ER21-9-009; ER21-86-009; ER21-88-009.

Applicants: Orange County Energy Storage 3 LLC, Orange County Energy Storage 2 LLC, Henrietta D Energy Storage LLC.

Description: Triennial Market Power Analysis for Southwest Region of Henrietta D Energy Storage LLC, et al. under ER21-9, et al.

Filed Date: 12/31/24.
Accession Number: 20241231-5452.
Comment Date: 5 p.m. ET 3/3/25.

Docket Numbers: ER21-136-007.
Applicants: Flat Ridge 3 Wind Energy, LLC.

Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of Flat Ridge 3 Wind Energy, LLC.

Filed Date: 12/31/24.

Accession Number: 20241231-5461.

Comment Date: 5 p.m. ET 3/3/25.

Docket Numbers: ER21-1755-012; ER23-1642-009; ER24-280-002; ER14-2500-020.

Applicants: Newark Energy Center, LLC, Hartree-Meadowlands Newark, LLC, Stored Solar J&WE, LLC, Hartree Partners, LP.

Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of Hartree Partners, LP, et al.

Filed Date: 12/31/24.

Accession Number: 20241231-5444.

Comment Date: 5 p.m. ET 3/3/25.

Docket Numbers: ER25-61-001.

Applicants: Florida Power & Light Company.

Description: Tariff Amendment: Response to Deficiency Letter ER25-61 to be effective 1/1/2022.

Filed Date: 1/2/25.

Accession Number: 20250102-5224.

Comment Date: 5 p.m. ET 1/23/25

Docket Numbers: ER25-62-001.

Applicants: Florida Power & Light Company.

Description: Tariff Amendment: Response to Deficiency Letter ER25-62 to be effective 1/1/2022.

Filed Date: 1/2/25.

Accession Number: 20250102-5222.

Comment Date: 5 p.m. ET 1/23/25.

Docket Numbers: ER25-573-001

Applicants: PacifiCorp

Description: Tariff Amendment: Request for Modification of Requested Effective Date to be effective 5/16/2025.

Filed Date: 1/2/25.

Accession Number: 20250102-5186.

Comment Date: 5 p.m. ET 2/18/25.

Docket Numbers: ER25-841-000.

Applicants: New England Power Pool Participants Committee.

Description: 205(d) Rate Filing: Jan 2025 Membership Filing to be effective 12/1/2024.

Filed Date: 12/31/24.

Accession Number: 20241231-5391.

Comment Date: 5 p.m. ET 1/21/25.

Docket Numbers: ER25-842-000.

Applicants: Wabash Valley Power Association, Inc.

Description: Tariff Amendment: Notice of Cancellation of Volume 1 of Formulary Rate Tariff to be effective 1/2/2025.

Filed Date: 1/2/25.

Accession Number: 20250102-5000.

Comment Date: 5 p.m. ET 1/23/25.

Docket Numbers: ER25-843-000.

Applicants: Wabash Valley Energy Marketing, Inc.

Description: Tariff Amendment: Notice of Cancellation of Volume 1 of Formulary Rate Tariff to be effective 1/2/2025.

Filed Date: 1/2/25.

Accession Number: 20250102–5007.

Comment Date: 5 p.m. ET 1/23/25.

Docket Numbers: ER25–844–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Original CSA Service Agreement No. 7447; Project Identifier No. AE2–045 to be effective 12/2/2024.

Filed Date: 1/2/25.

Accession Number: 20250102–5051.

Comment Date: 5 p.m. ET 1/23/25.

Docket Numbers: ER25–845–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Original NSA Service Agreement No. 7455; Queue Position No. AE2–226 to be effective 3/4/2025.

Filed Date: 1/2/25.

Accession Number: 20250102–5091.

Comment Date: 5 p.m. ET 1/23/25.

Docket Numbers: ER25–846–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Original NSA, Service Agreement No. 7470; AE1–243 to be effective 3/4/2025.

Filed Date: 1/2/25.

Accession Number: 20250102–5192.

Comment Date: 5 p.m. ET 1/23/25.

Docket Numbers: ER25–847–000

Applicants: Midcontinent Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2025–01–02 Attachment Y SSR Online Application Tool to be effective 3/4/2025.

Filed Date: 1/2/25.

Accession Number: 20250102–5197

Comment Date: 5 p.m. ET 1/23/25.

Docket Numbers: ER25–848–000.

Applicants: Merced BESS, LLC.

Description: 205(d) Rate Filing: Merced BESS LLC MBR Tariff to be effective 1/10/2025.

Filed Date: 1/2/25.

Accession Number: 20250102–5225.

Comment Date: 5 p.m. ET 1/23/25.

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: January 2, 2025.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2025–00236 Filed 1–7–25; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–12519–02–OA]

Rescheduling Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the EPA hereby provides notice of a meeting of the Local Government Advisory Committee (LGAC) on the date and time described below. This meeting will be open to the public. For information on public attendance and participation, please see the registration information under **SUPPLEMENTARY INFORMATION**.

DATES: The LGAC will have a virtual meeting January 10th, from 3 p.m.–4 p.m. Eastern Standard Time. This virtual meeting is being rescheduled from January 9th at 2 p.m., for which notice was provided on December 23, 2024 (2024–30752; 89 FR 104535). This is due to the closure of executive departments and agencies of the federal government on January 9th as a mark of respect for President Carter.

FOR FURTHER INFORMATION CONTACT: Frank Sylvester, Designated Federal Officer (DFO) of the Local Government Advisory Committee, at sylvester.frank.j@epa.gov or 202–564–1279.

Information on Accessibility: For information on access or services for

individuals requiring accessibility accommodations, please send an email to LGAC@epa.gov. To request accommodation, please do so five (5) business days prior to the meeting, to give EPA as much time as possible to process your request.

SUPPLEMENTARY INFORMATION:

Content: The LGAC will discuss a welcome letter to the incoming administration, highlighting the committee's value to the Agency and where the committee can best help the Administration achieve its priorities. Meeting materials and recommendations will be posted online closer to the meeting dates.

Registration: The meeting will be held virtually through Microsoft Teams. Members of the public who wish to participate should register by contacting Frank Sylvester, Designated Federal Officer (DFO) of the Local Government Advisory Committee, at sylvester.frank.j@epa.gov or 202–564–1279 at least 24 hours of the meeting start time. The agenda and other supportive meeting materials will be available online at <https://www.epa.gov/ocir/local-government-advisory-committee-lgac> and can be obtained by written request to the DFO. In the event of cancellation for unforeseen circumstances, please contact the DFO or check the website above for reschedule information.

Francis Sylvester,

Designated Federal Officer, Office of Congressional and Intergovernmental Relations.

[FR Doc. 2025–00238 Filed 1–7–25; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreement to the Secretary by email at Secretary@fmc.gov, or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of the agreement are available through the Commission's website (www.fmc.gov) or by contacting

the Office of Agreements at (202) 523-5793 or tradeanalysis@fmc.gov.

Agreement No.: 201347-001.

Agreement Name: Sallaum/Hyundai Glovis Space Charter Agreement.

Parties: Hyundai Glovis Co. Ltd.; Sallaum Lines SA.

Filing Party: Wayne Rohde, Cozen O'Connor.

Synopsis: The amendment expands the geographic scope of the Agreement, clarifies language in light of the expansion of the scope, and adds new Articles 5.1(b) and 5.1(c).

Proposed Effective Date: 1/3/2025.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/33505>.

Dated: January 3, 2025.

Alanna Beck,

Federal Register Alternate Liaison Officer.

[FR Doc. 2025-00229 Filed 1-7-25; 8:45 am]

BILLING CODE 6730-02-P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m., Tuesday, January 28, 2025.

PLACE: The Richard V. Backley Hearing Room, Room 511, 1331 Pennsylvania Avenue NW, Suite 504 North, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor v. Morton Salt, Inc.*, Docket No. CENT 2022-0176. (Issues include whether the Judge erred in concluding that violations of 30 CFR 57.3200 and 57.11053(c) were not significant and substantial.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Emogene Johnson (202) 434-9935/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Phone Number for Listening to Meeting: 1-(866) 236-7472.

Passcode: 678-100.

Authority: 5 U.S.C. 552b.

Dated: January 6, 2025.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2025-00360 Filed 1-6-25; 4:15 pm]

BILLING CODE 6735-01-P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Tuesday, January 28, 2025.

PLACE: The Richard V. Backley Hearing Room, Room 511, 1331 Pennsylvania Avenue NW, Suite 504 North, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor v. Morton Salt, Inc.*, Docket No. CENT 2022-0176. (Issues include whether the Judge erred in concluding that violations of 30 CFR 57.3200 and 57.11053(c) were not significant and substantial.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Emogene Johnson (202) 434-9935/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Phone Number for Listening to Meeting: 1-(866) 236-7472.

Passcode: 678-100.

Authority: 5 U.S.C. 552b.

Dated: January 6, 2025.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2025-00365 Filed 1-6-25; 4:15 pm]

BILLING CODE 6735-01-P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-XXXX; Docket No. 2025-0001; Sequence No. 2]

Information Collection; Student Loan Repayment Application and Service Agreement (GSA Form 5015)

AGENCY: Office of Human Resource Management, Strategic Planning, Policy, and Training Division, General Services Administration (GSA).

ACTION: Notice; request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement.

DATES: Submit comments on or before March 10, 2025.

ADDRESSES: Submit comments identified by Information Collection 3090-XXXX; "Student Loan Repayment Application and Service Agreement (GSA Form 5015)" to: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "Information Collection 3090-XXXX; Student Loan Repayment Application and Service Agreement (GSA Form 5015)." Select the link "Submit a Comment" that corresponds with "Information Collection 3090-XXXX; Student Loan Repayment Application and Service Agreement (GSA Form 5015)." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090-XXXX; Student Loan Repayment Application and Service Agreement (GSA Form 5015)" 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 "Information Collection 3090-XXXX; Student Loan Repayment Application and Service Agreement (GSA Form 5015)," in all correspondence related to this collection. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Colin C. Bennett, Human Resources Specialist, Office of Human Resources Management, Strategic Planning, Policy, and Training Division, at telephone 240-418-6822 or via email to colin.bennett@gsa.gov for clarification of content.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal civil service personnel law, codified at 5 U.S.C. 5379, allows Federal agencies to use appropriated funds, revenue funds, or revolving funds, to pay for all or part of student loan debts incurred by job candidates or existing agency employees. By law, each candidate or employee is limited to a benefit of \$10,000 per calendar year and a lifetime limit of \$60,000 (at any agency or combination of Federal agencies). This benefit is paid by the Federal agency directly to the financial institution, and not to the job candidate

or employee. When paid by an agency to the lender, these benefits are considered taxable wages and are subject to income tax withholding and Social Security and Medicare payroll taxes.

There are many eligibility requirements that must be met before agencies can transfer funds to a candidate's or employee's lender. First, the student loans must be made, insured, or guaranteed under parts B, D or E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 *et seq.*). Normally these loans are part of the U.S. Department of Education's William D. Ford Federal Direct Loan Program. Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans, and Direct Consolidation Loans are all common types of Direct Loans.

Only certain types of Federal appointments are eligible. Non-career temporary appointments limited to 1 year or less are not eligible. Non-career term appointments of less than 3 years are also excluded. "Schedule C" political appointments in the Title 5 excepted service are also not eligible. All candidates or employees who are eligible, and who receive benefits, must sign a service agreement to remain with the Federal Government (sometimes with the specific agency) for a period no less than 3 years. In practice, if payments are made annually over the course of multiple years, the service agreement length can last as long as 6 years under this recruitment and retention bonus authority.

To ensure that Federal funds are only used in an appropriate and strategic manner, the Office of Personnel Management (OPM) has promulgated civil services implementing regulations, found at 5 CFR part 537. These regulations stipulate that this authority is available to job candidates, who are not currently part of the Federal civil service, when the candidates are highly-qualified and the agency otherwise would encounter difficulty in filling the positions with highly qualified individuals. This authority is also available to facilitate the retention of agency employees when those employees would otherwise be likely to leave the Federal service agency for outside employment. In the retention context, agencies must determine that it

is essential to retain the employees based upon their high or unique qualifications or a special agency need.

GSA, like many Federal agencies, has administrative approval controls to make sure that funds are only used for the most appropriate recruitment or retention cases. At GSA, the administrative approval process is currently very cumbersome and laborious because it requires a custom-written memorandum by a "Requesting Official" (*i.e.*, the selecting official or employee's supervisor), routed through a senior "Reviewing Official" for budgetary approval, and then finally routed through three different divisions within the Office of Human Resources and then one additional office in the office of the Chief Financial Officer. Because each memorandum is custom-written, the agency is only able to transactionally process a very small number of requests each year (*i.e.*, typically 1 to 7 requests annually, across an agency of nearly 13,000 employees).

In an effort to improve Government efficiency, GSA proposes to standardize and streamline its agency process for this personnel authority by creating a new agency form, GSA Form 5015, "Student Loan Repayment Application and Service Agreement." The purpose of this form will be to collect together, in one place, information necessary to determine a job candidate's or employee's eligibility. The information collected will include the type of loan, the name and address of the lender, and a justification statement summarizing the candidate's or employee's knowledge, skills and abilities that support a "highly-qualified" designation. The proposed form also will contain standard signature blocks for all 6 agency signatures that are required for transactional processing. The agency's current processing procedures are contained within the public administrative Order 9537.1B, "Student Loan Repayment Plan," found at <http://www.gsa.gov/>. The proposed form also contains the Service Agreement itself, so that all signatures and binding terms and conditions of the agreement are centralized into one location.

Public notice for GSA Form 5015 is sought because non-Federal job candidates may partially complete

certain selections of the form, to aid the selecting official who is responsible for the vacancy announcement. For student loan repayment applications that are approved and processed, the GSA Form 5015 will be placed into the future or existing employee's Official Personnel File (OPF) as an agency temporary document, in accordance with the OPM Guide to Personnel Recordkeeping (available at <http://www.opm.gov>).

B. Annual Reporting Burden

Respondents: 25 per year.

Responses Per Respondent: 1.

Total Annual Responses: 25.

Hours per Response: 8.

Total Burden Hours: 200.

C. Public Comments

Public comments are solicited to help GSA understand whether or not creating the proposed new GSA Form 5015 will help to streamline the current consideration and approval process as well as save labor hours in the creation of requests and their subsequent approval and administrative routing. The agency would also like to know: (a) whether this collection of information is necessary, (b) whether it will have practical utility, (c) whether our estimate of the public burden of this collection of information is accurate (and based on valid assumptions and methodology), (d) whether or not there are ways to enhance the new form's utility and clarity of the information to be collected, and (e) whether or not there might be ways in to minimize the data collection burden through the use of information technology.

Obtaining Copies of Proposals: We have provided a copy of the proposed draft GSA Form 5015 at the end of this notice below the signature block. A copy of the proposed draft form can alternatively be obtained through GSA's Regulatory Secretariat Division by calling (202) 501-4755 or emailing GSARegSec@gsa.gov. Please cite OMB Control No. 3090-XXXX, *Student Loan Repayment Application and Service Agreement (GSA Form 5015)*, in all correspondence.

Lois Mandell,

*Director, Regulatory Secretariat Division,
General Services Administration.*

GSA Form 5015

STUDENT LOAN REPAYMENT APPLICATION AND SERVICES AGREEMENT		OMB Control No.: Expiration Date:
PART I: APPLICATION		
1. Name (Last Name, First Name, Middle Initial)		2. Social Security No.
3. Position Title		
4. Occupational Series	5. Pay Plan	6. Grade
7. GSA Component ☐ Public Building Service (PBS) ☐ Federal Acquisition Service ☐ Staff Office If Staff Office, name of Staff Office:		
8. Organization correspondence symbol:		
9. Appointment Type: ☐ Competitive Service ☐ Excepted Service		
10. Is this a term appointment? ☐ Yes ☐ No Note: If yes, the term appointment must be 3 years or longer or lead to possible conversion to the competitive service.		
11. Basis of application: ☐ Recruitment ☐ Retention of an existing GSA employee If Recruitment, provide effective date of GSA appointment (MM/DD/YYYY)		
12. Annual loan repayment amount (not to exceed \$10,000):		
13. Number of years of requested benefits: ☐ 1 Year (requires 3 years of service) ☐ 2 Years (requires 3 years of service) ☐ 3 Years (requires 3 years of service) ☐ 4 Years (requires 4 years of service) ☐ 5 Years (requires 5 years of service) ☐ 6 Years (requires 6 years of service) Note: For recruitment, the service agreement period begins upon appointment. For retention, the period begins on the date this form is signed.		

GSA Form 5015

14. Tax Handling

Payments by the Government to third parties (such as lenders) are considered taxable income under income and employment tax rules. You have two options on how this tax obligation can be handled (5 C.F.R. § 537.106(a)(6)). Check the appropriate box.

- ☐ Have the taxes withheld from the payment to the lender, which will mean that the actual payment to the lender will be smaller than originally anticipated;
- ☐ Make the total payment to the lender but have GSA Payroll set up a collectible debt which can be repaid either by check written to GSA or through periodic installment deductions from future paychecks, under 5 U.S.C. § 5514.

Note: There is no cost difference to the job candidate or employee between either of these two choices. Neither choice involves an interest charge by GSA.

15. Justification Statement

Provide a comprehensive justification statement (written by supervisor and applicant)

Note: Student loan repayment benefits are only available if the job candidate or GSA employee can demonstrate that he or she is highly-qualified. For applications related to recruitment, the hiring official must demonstrate that the position would be difficult to fill without this workplace benefit. For applications based on retention, the employee's current supervisor must demonstrate that the employee otherwise is likely to leave the agency for employment outside the Federal service and it is essential to retain the employee based on the employee's high or unique qualifications or a special need of the agency.

16. Signature of Applicant (i.e. Job Candidate or GSA Employee)
By signing this agreement, you agree to the terms attached.

17. Date (MM/DD/YYYY)

PART II: TERMS OF AGREEMENT

GSA will repay the amounts specified in the above application directly to the holder of the qualifying federally-insured student loan, on the job candidate or employee's behalf. GSA is not obligated to pay student loan repayment benefits based upon a service agreement with another agency.

The gross repayment amounts are subject to federal, state, and local income tax and social security and Medicare tax withholding, which will be subtracted from the gross amount before the repayment is made to the holder of the loan(s).

This service agreement does not constitute a right, promise, or entitlement for continued employment or non-competitive conversion to the competitive service. This agreement to make repayments on a loan does not exempt an employee from his or her responsibility or liability for any loan the individual has taken out.

In compliance with 5 C.F.R. §§ 537.106(c) and 107(a), GSA reserves the right to terminate a multi-year agreement early in the event that funding is no longer available after the first year.

A job candidate or employee will be deemed to have breached this agreement if he or she separates from GSA voluntarily (including through agency transfer, appointment expiration, resignation, or retirement) or involuntarily (due to misconduct, unacceptable performance, or a negative suitability determination) before this agreement expires. A job candidate or employee will be deemed to not have breached this agreement if the involuntary separation is due to reasons not within the individual's control, such as a reduction in force.

If the employee is not able to maintain an acceptable level of performance (i.e. a rating of "3" out of 5), then the employee loses eligibility for future payments under a multi-year agreement. This situation, however, does not cause a breach of agreement, and does not generate a collectible Government debt.

The job candidate or employee understands that when there is a breach of this agreement that the individual may owe GSA a collectible Government debt, based on 31 U.S.C. Subchapter II. The employee has the right, under 5 U.S.C. § 5379 and 5 C.F.R. Part 537, to request a waiver of the collectible debt, if it would be against equity and good conscience or against the public interest.

Internal temporary or permanent reassignments, promotions, or reductions in grade within GSA do not constitute a breach of the service agreement. However, if the employee moves to a new position covered by a different funding source (for example, from FAS to PBS, or PBS to FAS, etc.), the new organization is not obligated to continue multi-year benefits. In this case, the employee must still remain in GSA service for a 3-year minimum period or a one-year period following the final payment by GSA to the lender (if longer than a 3 year

GSA Form 5015

service period)	
PART III: LOAN VERIFICATION INFORMATION	
1. Name of Loan Holder:	
2. Loan Holder Address:	3. Loan Holder Employer Identification Number (EIN)
4. Type of Loan ☐ Federal Family Education Loan (pre 2010) ☐ William D. Ford Direct Loan Program ☐ Federal Perkins Loan Program ☐ Loan under the Public Health Service Act	5. Do you want the payment made by electronic funds transfer? ☐ Yes ☐ No Note: If yes, complete and attach SF-1199a
6. Outstanding Balance of the Loan (\$)	7. As of Date (DD/MM/YYYY)
PART IV: APPROVAL SIGNATURES	
1. Requesting Official (i.e. supervisor)	2. Date (DD/MM/YYYY)
3. Reviewing Official (i.e. FAS Deputy or Assistant Commissioner, PBS Regional Commissioner, or Head of Staff Office)	3. Date (DD/MM/YYYY)
4. OHRM Director of Staffing Service Center	5. Date (DD/MM/YYYY)
6. Deputy Chief Human Capital Officer (OHRM)	7. Date (DD/MM/YYYY)
8. Chief Human Capital Officer (OHRM)	9. Date (DD/MM/YYYY)
10. Chief Financial Officer (OCFO)	11. Date (DD/MM/YYYY)

PRIVACY ACT STATEMENT
Information collected via this form is pursuant to federal law, in particular: 5 U.S.C. § 5379. Disclosure is mandatory so that the correct pay and benefits can be provided. The information collected via this form will only be used by OHRM and the employee's supervisor under the provisions of 5 U.S.C. § 552a(b)(3) [routine use]. Such information is not releasable to the general public due to 5 U.S.C. § 552(b)(6) and will be stored within the Office of Personnel Management's (OPM) Electronic Personnel Folder (eOPF) application, under System of Record Notice (SORN) "OPM/GOVT-1" via the Federal Register at 77 FR 73694 (December 11, 2012). A job candidate's failure to provide the information requested on this form may lead to the erroneous payment of benefits, or, the non-payment of eligible benefits.
PAPERWORK REDUCTION ACT STATEMENT
This information collection meets the requirements of 44 U.S.C. § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 3090-0329. We estimate that it will take 3 hours to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: U.S. General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street, NW, Washington, DC 20405.
INSTRUCTIONS
The following guidance is provided to help the applicant and the supervisor to be able to complete this form. PART I: Application 1. Name: Provide your full, official name as contained within official agency records. 2. Social Security Number: You may provide only the last 4 digits of your SSN. 3. Position Title: Provide the official title of your position, as listed in your position description. 4. Occupational Series: Provide your 4-digit occupational series. If you do not know your series, an OHRM staff member can provide you with that information. 5. Pay Plan: Provide your pay plan (such as GS). 6. Grade: Provide your grade, if your pay plan uses grades, otherwise, write "N/A". 7. GSA Component: Provide the GSA component that you work for, since this may impact the source of Government funds used if you are approved for this benefit. 8. Organization Correspondence Symbol: Provide the office correspondence (i.e. mail routing) symbol. 9. Appointment type: Provide whether or not you are in the competitive service or excepted service. If you do not know, you may ask a staff member with OHRM. 10. Term Appointment: Provide whether or not you are on a term appointment, such as a Pathways Recent Graduate program appointment. This information will help determine whether or not you are eligible for this workplace benefit.

GSA Form 5015

11. **Basis of Application:** Provide whether or not this is for a job candidate new to Federal service or if this is an existing GSA employee.
12. **Annual Loan Repayment Amount:** Provide here the dollar annual amount that you are requesting and that the Reviewing Official has approved.
13. **Number of Years of Requested Benefits:** Provide the total number of payments and service agreement years covered by this application and approval.
14. **Justification Statement:** Provide a detailed justification statement of the skills, competencies, and accomplishments, which support the determination that the employee is highly-qualified. To write this narrative the applicant and supervisor may draw from the applicant's resume as well as the official position description. These two documents can be attached, to facilitate application review and approval. For job candidates, the supervisor must also demonstrate that the position is difficult to fill, such as due to employment trends, geographical labor market shortages, and pay disparities between the Government and the private sector. For current GSA employees as applicants, the supervisor must demonstrate that the employee is at risk of leaving the Federal service, through resignation or retirement. This can be based on the high demand of the position or occupational series, or can be due the applicant actually having received a non-Federal offer of employment.
15. **Signature of Applicant:** The applicant must sign here. The signature means that the applicant is willing to be subject to the terms of the agreement if the application is approved.
16. **Date of Signature:** Date (DD/MM/YYYY)

PART II - No instructions required.

PART III - Loan Information

1. **Name of Loan Holder:** Provide the name of the lending institution or lending source
2. **Loan Holder Address:** Provide the address in case a check payment is made
3. **Loan Holder EIN:** Provide the IRS employer identification number (used for tax purpose)
4. **Type of Loan:** Provide the type of loan. If your type of loan is **not** listed then it is **not** eligible for this benefit. For example, loans from private banks are not eligible.
5. **Electronic Funds Transfer:** It is usually best to transfer funds electronically, to prevent paper checks from being lost. It is recommended that applicants complete the SF-1199a, which is the Direct Deposit form. This provides GSA with the appropriate electronic funds transfer information.
6. **Outstanding Loan Balance:** Please contact your lender and generate a statement showing the total loan balance, as of a certain date
7. **Date of Loan Balance:** Provide the date of the statement from the loan holder

Note on Attachments

Please attach the following to this application package:

1. A copy of the applicant's resume
2. A copy of the position description for the position applied for, or of the incumbent employee applying for this benefit
3. A copy of the statement from the lender showing the loan balance and loan information

Guidance on Completing the SF-1199a

1. Enter personal information in Section 1, A.
2. Enter the name of the person or entity to whom your loan payments are made in Section 1, B.
3. Enter your social security number in Section 1, C and sign.
4. Section 1, D is not applicable.
5. Enter the Employee Loan Account number in Section 1, E.
6. Check "Other" and enter Student Loan Repayment in Section 1, F.
7. Section 1, G is not applicable.
8. Under Section 2, "Government Agency Name" enter GSA Fax: 816-823-5435.
9. Under Section 2, "Government Agency Address" enter 2300 Main Street - 2NW, Kansas City, Missouri 64108.
10. In Section 3 enter name, address, and routing number of financial institution; and
11. Obtain name, telephone number, and signature of institution representative.

[FR Doc. 2024-31659 Filed 1-7-25; 8:45 am]

BILLING CODE 6820-FM-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention**

[30Day-25-24FU]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for

Disease Control and Prevention (CDC) has submitted the information collection request titled "Comprehensive Understanding of Readiness for Elimination of Hepatitis C in Corrections (Cure-HepC)", to the Office of Management and Budget (OMB) for review and approval. CDC previously published a "Proposed Data Collection Submitted for Public Comment and Recommendations" notice on May 28, 2024, to obtain comments from the public and affected agencies. CDC received two non-substantive public comments related to

the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570.

Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

Proposed Project

Comprehensive Understanding of Readiness for Elimination of Hepatitis C in Corrections (Cure-HepC)survey—New—National Center for HIV, Viral Hepatitis, STD, and Tuberculosis

Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC previously piloted the Comprehensive Understanding of Readiness for Elimination of Hepatitis C in Corrections (Cure-HepC) survey with the American Correctional Association in seven jurisdictions. The goal is to administer the validated Cure-HepC survey to all 50-state Department of Corrections (DOC) including the district of Columbia, and large jails. This survey captures data on current hepatitis C screening, testing, and treatment practices, hepatitis C prevalence estimates, access to substance use disorder treatment including medications for opioid use disorder (MOUD), and challenges in scaling hepatitis C testing and treatment programming.

The results of this survey will be used to accelerate the implementation of hepatitis C screening, testing and treatment best practices and track the elimination of hepatitis C in carceral settings. Point prevalence data allows for the appropriate allocation of resources to support state DOCs and large jails in their efforts to eliminate hepatitis C in carceral settings. Understanding challenges in best practices implementation can shape technical assistance and resources to accelerate their adoption. The importance of this task is monumental in that carceral health is community health and eliminating hepatitis C in carceral settings greatly advances overall elimination efforts.

The information collected will allow CDC to be good stewards of resources by guiding programmatic initiatives and

allocation of funding sources. Data from this project will be used to inform planning and evaluation of programming that aim to reduce new viral hepatitis infections, reduce viral hepatitis-related morbidity and mortality, and reduce viral hepatitis-related disparities. The data collected will establish a system for ongoing program evaluation and improvement and allow for data-driven resource allocation to areas of greatest need. Invitations will be sent to 101 state DOCs and large jails, to include the District of Columbia.

This self-administered survey modality will include programmed required data elements, logic checks, skip patterns, and range values, thereby improving the quality of the data and reducing burden for respondents. Respondents who do not wish to complete the survey online via secure web-based application will be given other options including to schedule a telephone or videoconference interview with a member of the study administration team. All data, regardless of survey modality used, will be entered into a secure web-based application (e.g., REDCap, Survey Monkey). The burden to respondents will remain the same regardless of mode of administration. Participating sites will have a set-time period, to complete the survey. Estimated time to complete survey is between 30 to 80 minutes, with an average time to complete of 55 minutes, to include time for collecting the required data elements and entering the data elements into the web-based survey form. The total annual burden is estimated to be 96 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondent	Form	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Participating State Department of Corrections Prisons and large jails, to include District of Columbia.	Comprehensive Understanding of Readiness for Elimination of Hepatitis C in Corrections (Cure-HepC) survey.	101	1	55/60
Non-responding State Department of Corrections Prisons and large jails, to include District of Columbia.	Non-Response survey	101	1	2/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.

[FR Doc. 2025-00160 Filed 1-7-25; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–25–1046]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled “National Breast and Cervical Cancer Early Detection Program (NBCCEDP) Monitoring Activities” to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on October 1, 2024 to obtain comments from the public and affected agencies. CDC received five non-substantive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular

information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Breast and Cervical Cancer Early Detection Program (NBCCEDP) Monitoring Activities (OMB Control No. 0920–1046, Exp. 3/31/2025)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting a Revision of the information collection (OMB Control No. 0920–1046), titled National Breast and Cervical Cancer Early Detection Program (NBCCEDP) Monitoring Activities. Information collection consists of an annual NBCCEDP survey, baseline and annual clinic-level data collection, a quarterly program update (QPU) tool, a service delivery projection worksheet, and minimum data elements (MDEs). CDC proposes revisions to the Annual NBCCEDP Survey, clinic-level data collection tool and quarterly program update (QPU), and continued use of the service delivery projection worksheet and MDEs with no changes. The number of respondents will increase from 70 to 71 and the total estimated annualized burden will decrease from 1,220 hours to 1,162 hours.

Breast and cervical cancers are prevalent among U.S. women. Evidence shows that deaths from both breast and cervical cancers can be avoided by increasing screening services—mammography, pap, and human papillomavirus (HPV) tests—among women. However, screening is typically underutilized among women who are under- or uninsured, have no regular source of healthcare, or who recently immigrated to the U.S.

To improve access to cancer screening, Congress passed the Breast and Cervical Cancer Mortality Prevention Act of 1990 (Pub. L. 106–354), which directed CDC to create the National Breast and Cervical Cancer Early Detection Program (NBCCEDP). The NBCCEDP currently provides funding to 71 recipients under “Cancer Prevention and Control Programs for State, Territorial, and Tribal

Organizations (DP22–2202).” The purpose of NBCCEDP is to increase breast and cervical cancer screening rates among women residing within defined geographical locations (as determined by the funded program) who are at or below 250% of the federal poverty level; aged 50–75 years for breast cancer services, and aged 21–64 years for cervical cancer services; and are under- or uninsured.

CDC proposes revisions to three of the five information collections:

- Annual NBCCEDP Survey—submitted to CDC annually and collects program-level information to monitor recipients’ challenges, external funding sources, partnerships, and EBI implementation. The survey has been revised to add questions related to partnership activities and recipients’ requirements for patients’ payments towards screening services, and remove COVID–19-related questions.

- Clinic-level data collection—submitted to CDC at baseline and annually to assess health system, clinic, and patient population characteristics; monitoring and quality improvement activities; EBI implementation; and baseline or annual screening rates. The tool has been revised to remove COVID–19-related variables and update response options for measures used to report breast and cervical cancer screening rates.

- QPU—submitted to CDC four times per year to monitor award spending, service delivery, staff vacancies, program challenges and successes, and technical assistance (TA) needs. This instrument has been revised to include two optional open-ended items for recipients to provide context to reported service delivery and spending data if needed.

CDC proposes continued use of the remaining two information collections—the Service Delivery Project Worksheet and the MDEs—which have not been changed.

To maximize consistency in our routine data collections for the current NBCCEDP funding cycle, CDC has not revised NBCCEDP information collections to align with the Department of Health and Human Services (HHS)’ current best practices for demographic questions related to sexual orientation and gender identity (SOGI) and race and ethnicity (R/E) at this time. However, CDC plans to revise information collections that include demographic items to align with HHS’ SOGI and R/E guidelines for the next funding cycle beginning in 2027. The proposed modifications to the information collections will allow CDC to better

gauge progress in meeting NBCCEDP program goals and monitor implementation activities, evaluate outcomes, and identify awardee technical assistance needs. In addition, findings will inform program

improvement and help identify successful activities that need to be maintained, replicated, or expanded.

CDC requests OMB approval for three years and for an estimated 1,162 annual burden hours. Participation is required

for NBCCEDP awardees. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)
NBCCEDP Recipients	Annual NBCCEDP Survey	71	1	46/60
	NBCCEDP Clinic-level Information Collection Instrument—Breast.	71	6	40/60
	NBCCEDP Clinic-level Information Collection Instrument—Cervical.	71	6	40/60
	Quarterly Program Update	71	4	32/60
	Service Delivery Projection Worksheet	71	1	29/60
	MDEs	71	2	150/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2025–00161 Filed 1–7–25; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–25–25CH; Docket No. CDC–2024–0102]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Combating Antimicrobial Resistant Gonorrhea and Other STIs (CARGOS). CARGOS is a comprehensive strategy designed to streamline and improve the coordination of Antimicrobial Resistance (AR) surveillance and preparedness and response activities focused on *Neisseria gonorrhoeae* (GC) and expand capacity to include other

STIs with emerging AR in the United States.

DATES: CDC must receive written comments on or before March 10, 2025.

ADDRESSES: You may submit comments identified by Docket No. CDC–2024–0102 by either of the following methods:

- ☐ *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- ☐ *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov. Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of

information, including each new proposed collection, each proposed extension of the existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of collecting information on those to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic responses; and
5. Assess information collection costs.

Proposed Project

Combating Antimicrobial Resistant Gonorrhea and Other STIs (CARGOS)—New—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of the proposed Combating Antimicrobial Resistant

Gonorrhea and Other STIs (CARGOS) data collection is to: (1) strengthen local epidemiologic capacity to detect, monitor, and respond to AR in STIs; (2) improve coordination of AR in STI preparedness and outbreak response activities; (3) enhance local laboratory testing for surveillance, reporting, and response; and (4) enhance coordination between epi-lab-health information technology for public health action. This information collection is important because: (1) effective treatment of gonorrhea is critical to gonorrhea control and prevention; (2) untreated or inadequately treated gonorrhea can cause serious reproductive health complications, such as infertility; (3) *Neisseria gonorrhoeae* (the bacterium that causes gonorrhea) has consistently demonstrated the ability to develop resistance to the antibiotics used for treatment and may be developing resistance to the last remaining treatment option recommended by CDC; and (4) antibiotic-resistant gonorrhea is extremely difficult to detect without enhanced surveillance and public health activities, such as CARGOS, because healthcare providers rarely perform or have access to resistance testing for individual patients. CARGOS will support rapid detection of resistant gonorrhea, get actionable information into the hands of healthcare providers (to support appropriate treatment of individual patients) and local health departments (to support rapid public health response to slow the spread of resistant infections in the community), and support multiple national public health strategies including the 2020–2025 National Action Plan for Combating Antibiotic-Resistant Bacteria (CARB) and STI National Strategic Plan for the United States 2021–2025.

Jurisdictions participating in CARGOS applied as part of a competitive process and will participate voluntarily. As an overview of CARGOS, healthcare providers at participating clinics will collect

specimens for *N. gonorrhoeae* culture testing from men and women seeking care for gonorrhea. Specimens that demonstrate *N. gonorrhoeae* (called “isolates”) will undergo antibiotic resistance testing at the local public health laboratory. Detection of resistance is rapidly communicated by the laboratory staff to the healthcare provider and health department to initiate a field investigation. The patient (from whom the resistant specimen was taken) will be interviewed to obtain demographics, clinical and risk factor information. For cases of gonorrhea of public health significance, recent sexual contacts of those cases will be interviewed by the health department and tested for gonorrhea. The participating health departments will collect and transmit to CDC demographic and clinical data about persons tested for and diagnosed with gonorrhea in the participating clinics, results of local antibiotic resistance testing, and information about field investigations. None of the data transmitted to CDC will contain any personally identifiable information. These data will be used by CDC to monitor and improve understanding of resistance and identify scalable, effective approaches to prevent the spread of resistance. Data will be transmitted through CDC’s Secure Access Management Services (SAMS). SAMS is an approved federal information technology system that provides authorized and validated users secure and encrypted access to CDC file transfer applications. The encrypted data will be stored in a secure CDC server with strictly controlled and restricted access rights. Isolates will be shipped each month to one of four Antibiotic Resistance Regional Laboratory Network (ARLN) laboratories for confirmatory antibiotic susceptibility testing and molecular characterization.

Under the CARGOS protocol, local CARGOS data managers from each of the funded jurisdictions will abstract

STD clinic data for patients tested for gonorrhea, receive resistance testing laboratory results from local public health laboratories, abstract data about field investigations, and will merge the data. Every month, the local CARGOS data manager will clean the data, remove personally identifiable information, and transmit the data to CDC. CDC estimates these data processes will take eight hours every month. Annually, the local CARGOS data manager will send a final cumulative data file for a total of 12 data transmissions/responses.

Microbiologists at public health laboratories from each funded jurisdictions will conduct antibiotic resistance testing on all *N. gonorrhoeae* isolates on approximately 700 isolates each year (600 clinical isolates and 100 control strains; each test is approximately 10 minutes). Every month, a laboratory data manager will abstract test results and securely send the datafile to the local CARGOS data manager. We estimate that laboratory data managers will spend approximately one hour each time they abstract, clean, and transmit project data.

Health department staff will interview any person diagnosed with antibiotic-resistant gonorrhea or have a case of gonorrhea of public health significance (index case) and his/her sexual contacts. On average, two drug-resistant isolates are identified annually. These isolates will spur field investigations, which will result in two additional interviews each month. CDC estimates a total of 48 interviews will occur annually at each site, for a total of 960 interviews each year across the funded sites. Each interview will take approximately 30 minutes.

CDC requests OMB approval for an estimated 3,875 annual burden hours. Respondents receive federal funds to participate in this project. There are no additional costs to respondents other than their time.

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden hours
Public Health Laboratory Microbiologist.	Attachment 3A	19	700	10/60	2,217
Public Health Laboratory Data Manager.	Attachment 3A	19	6	1	114
Local CARGOS data manager/epidemiologist.	Attachments 3A, 3B, 3C	19	7	8	1,064
Gonorrhea Patients and Sexual Contacts.	Attachment 3C	960	1	0.5	480
Total .....	.....	.....	.....	.....	3,875

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.

[FR Doc. 2025-00164 Filed 1-7-25; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day-25-0666; Docket No. CDC-2025-0001]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Pathogens of High Consequence, which assesses the incidence and prevalence of select high consequence pathogens of public health importance in acute care hospitals. In addition to the nine diseases approved for collection, the following three additional diseases are being added to the form: Influenza A (H5), Marburg, and Oropouche.

DATES: CDC must receive written comments on or before March 10, 2025.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2025-0001 by either of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments.
- **Mail:** Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal

(www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS H21-8, Atlanta, Georgia 30329; Telephone: 404-639-7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

National Healthcare Safety Network (NHSN) (OMB Control No. 0920-0666, Exp. 12/31/2027)—Revision—Information Collection Request—National Center for Emerging and Zoonotic Infection Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Division of Healthcare Quality Promotion (DHQP), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC) collects data from healthcare facilities in the National Healthcare Safety Network (NHSN) under OMB Control Number 0920-0666. NHSN provides facilities, health departments, states, regions, and the nation with data necessary to identify problem areas, measure the progress of prevention efforts, and ultimately eliminate healthcare-associated infections (HAIs) nationwide. NHSN also allows healthcare facilities to track blood safety errors and various HAI prevention practice methods such as healthcare personnel influenza vaccine status and corresponding infection control adherence rates.

Enrollment in NHSN has continuously increased, with over 37,000 actively reporting healthcare facilities across the U.S. Of the total enrolled healthcare facilities, there are over 6,000 acute care facilities. NHSN currently has eight components, and the collection of information is authorized by the Public Health Service Act (42 U.S.C. 242b, 242k, and 242m (d)), (Attachment A1-A3). Data reported under NHSN's Patient Safety Component are used to determine the magnitude of the healthcare-associated adverse events and trends in the rates of the events, in the distribution of pathogens, and in the adherence to prevention practices. Data will help detect changes in the epidemiology of adverse events resulting from new medical therapies and changing patient risks. Additionally, reported data is being used to describe the epidemiology of antimicrobial use and resistance and to better understand the relationship of antimicrobial therapy to this rising problem.

NHSN's data is used to aid in the tracking of HAIs and guide infection prevention activities/practices that protect patients. The Centers for Medicare and Medicaid Services (CMS) and other payers use these data to determine incentives for performance at healthcare facilities across the U.S. and surrounding territories, and members of the public may use some protected data to inform their selection among available providers. Each of these parties is dependent on the completeness and accuracy of the data. CDC and CMS work closely and are fully committed to ensuring complete and accurate reporting, which are critical for protecting patients and guiding

national, state, and local prevention priorities.

This Revision includes an update to add three diseases included as part of Form 57.130—Pathogens of High Consequence. The original collection captured the number of patients newly admitted and currently hospitalized with certain diseases in acute care hospitals (*e.g.*,. Crimean-Congo Hemorrhagic Fever (CCHF), Dengue, Ebola, Lassa, Measles, Mpox, MERS-CoV, Nipah, and Toxigenic *Vibrio cholerae*) broken down by adult patients and pediatric patients. Three additional diseases are being added to the data collection, Influenza A (H5), Marburg, and Oropouche. Influenza A (H5) has been on the CDC’s Office of Readiness and Response website as an active response. Marburg and Oropouche were recently added to the website as active responses due to international outbreaks. It is crucial for CDC to be aware of cases of these select infectious diseases of public health concern to help ensure that local and state authorities are equipped to contain and prevent further spread. Facilities enrolled in the NHSN Patient Safety Component will be asked to select the specific diseases they are reporting on and then provide the overall number of patients hospitalized with confirmed disease along with stratification of disease in adult and pediatric patients. The data collection will be collected electronically via the NHSN application.

This Revision requests OMB approval for an estimated 111,021 annual burden hours to be added to Form 57.130—Pathogens of High Consequence. The total estimated annual burden hours for the NHSN package will be increased to 4,508,255. Participation is required for healthcare facilities that report through the NHSN platform. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Infection Preventionist/Microbiologist	57.130 Pathogens of High Consequence.	3,650	365	5/60	111,021
Total .....	.....	.....	.....	.....	4,508,255

Jeffrey M. Zirger,
*Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.*
[FR Doc. 2025–00165 Filed 1–7–25; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND
HUMAN SERVICES

**Centers for Disease Control and
Prevention**
[60Day–25–0469; Docket No. CDC–2024–
0105]

**Proposed Data Collection Submitted
for Public Comment and
Recommendations**

AGENCY: Centers for Disease Control and
Prevention (CDC), Department of Health
and Human Services (HHS).
ACTION: Notice with comment period.

SUMMARY: The Centers for Disease
Control and Prevention (CDC), as part of
its continuing effort to reduce public
burden and maximize the utility of
government information, invites the
general public and other federal
agencies the opportunity to comment on
a continuing information collection, as
required by the Paperwork Reduction
Act of 1995. This notice invites
comment on a proposed information
collection project titled National
Program of Cancer Registries Cancer
Surveillance System. This information

collection creates a Cancer Registry that
provides useful data on cancer
incidence, trends, and outcomes.

DATES: CDC must receive written
comments on or before March 10, 2025.

ADDRESSES: You may submit comments,
identified by Docket No. CDC–2024–
0105 by either of the following methods:

- *Federal eRulemaking Portal:*
www.regulations.gov. Follow the
instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information
Collection Review Office, Centers for
Disease Control and Prevention, 1600
Clifton Road, NE, MS–D74, Atlanta,
Georgia 30329.

Instructions: All submissions received
must include the agency name and
Docket Number. CDC will post, without
change, all relevant comments to
www.regulations.gov.

Please note: Submit all comments
through the Federal eRulemaking portal
(www.regulations.gov) or by U.S. mail to
the address listed above.

FOR FURTHER INFORMATION CONTACT: To
request more information on the
proposed project or to obtain a copy of
the information collection plan and
instruments, contact Jeffrey M. Zirger,
Information Collection Review Office,
Centers for Disease Control and
Prevention, 1600 Clifton Road, NE, MS–
D74, Atlanta, Georgia 30329; Telephone:
404–639–7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the
Paperwork Reduction Act of 1995 (PRA)
(44 U.S.C. 3501–3520), federal agencies

must obtain approval from the Office of
Management and Budget (OMB) for each
collection of information they conduct
or sponsor. In addition, the PRA also
requires federal agencies to provide a
60-day notice in the **Federal Register**
concerning each proposed collection of
information, including each new
proposed collection, each proposed
extension of existing collection of
information, and each reinstatement of
previously approved information
collection before submitting the
collection to the OMB for approval. To
comply with this requirement, we are
publishing this notice of a proposed
data collection as described below.

The OMB is particularly interested in
comments that will help:

1. Evaluate whether the proposed
collection of information is necessary
for the proper performance of the
functions of the agency, including
whether the information will have
practical utility;
2. Evaluate the accuracy of the
agency’s estimate of the burden of the
proposed collection of information,
including the validity of the
methodology and assumptions used;
3. Enhance the quality, utility, and
clarity of the information to be
collected;
4. Minimize the burden of the
collection of information on those who
are to respond, including through the
use of appropriate automated,
electronic, mechanical, or other
technological collection techniques or

other forms of information technology, e.g., permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

National Program of Cancer Registries Cancer Surveillance System (OMB Control No. 0920–0469, Exp. 1/31/2026)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2021, the most recent year for which complete incidence information is available, almost 620,000 people died of cancer and more than 1.8 million were diagnosed with cancer. It is estimated that 17 million Americans are currently alive with a history of cancer. In the U.S., State/Territory-based central cancer registries (CCR) are the only method for systematically collecting and reporting population-based information about cancer incidence and outcomes such as survival. These data are used to measure the changing incidence and burden of each cancer; identify populations at increased or increasing risk; target preventive measures; and measure the success or failure of cancer control efforts in the United States.

In 1992, Congress passed the Cancer Registries Amendment Act which established the National Program of Cancer Registries (NPCR). The NPCR provides support for State/Territory-based cancer registries that collect,

manage, and analyze data about cancer cases. The State/Territory-based cancer registries report information to CDC through the National Program of Cancer Registries Cancer Surveillance System (NPCR CSS), (OMB Control No. 0920–0469). CDC plans to request OMB approval to continue collecting this information for three years. Data definitions will be updated to reflect changes in national standards for cancer diagnosis and coding. No changes to the total estimated annualized burden hours or number of respondents are anticipated.

The NPCR CSS allows CDC to collect, aggregate, evaluate, and disseminate cancer incidence data at the national level. The NPCR CSS is the primary source of information for the *United States Cancer Statistics (USCS)*, which CDC has published annually since 2002. The latest *USCS* report published in 2024 provided cancer statistics for 98% of the U.S. population from all cancer registries in the United States. Prior to the publication of *USCS*, cancer incidence data at the national level were available for only 14% of the population of the United States. The NPCR CSS also allows CDC to monitor cancer trends over time, describe geographic variation in cancer incidence throughout the country, and provide incidence data on populations by race, ethnicity, and other demographic and tumor characteristics and data on rare cancers. These activities and analyses further support CDC's planning and evaluation efforts

for state and national cancer control and prevention. In addition, datasets can be made available for secondary analysis.

Respondents are NPCR-supported CCRs in 46 U.S. States, three Territories, and the District of Columbia. Fifty CCRs submit data elements specified for the Standard NPCR CSS Report. Each CCR is asked to transmit two data files to CDC per year. The first NPCR CSS Standard file, submitted in January, is a preliminary report consisting of one year of data for the most recent year of available data. CDC evaluates the preliminary data for completeness and quality and provides a report back to the CCR. The second NPCR CSS Standard file, submitted in November, contains cumulative cancer incidence data from the first diagnosis year for which the cancer registry collected data with the assistance of NPCR funds (e.g., 1995) through 12 months past the close of the most recent diagnosis year (e.g., 2022). The cumulative file is used for analysis and reporting. The burden for each file transmission is estimated at two hours per response. Because cancer incidence data are already collected and aggregated at the state level, the additional burden of reporting the information to CDC is small.

All information is transmitted to CDC electronically. Participation is required as a condition of the cooperative agreement with CDC. CDC requests OMB approval for an estimated 200 annual burden hours. There are no costs to respondents except their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Central Cancer Registries in States, Territories, and the District of Columbia.	Standard NPCR CSS Report	50	2	2	200
Total .....	.....	.....	.....	.....	200

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.

[FR Doc. 2025–00163 Filed 1–7–25; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2025–0002]

Establishing a Road Map for Accelerated Diagnosis and Treatment of HCV Infection in the United States

AGENCY: Centers for Disease Control and Prevention, Health, and Human Services (HHS).

ACTION: Notice of public meeting and request for comment.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces a two-day convening hosted and facilitated by the Association of Public Health Laboratories (APHL) to discuss hepatitis C diagnostics. Leaders from public health, laboratory, medical, academic, and industry sectors will have the opportunity to provide individual input, without building a consensus, on accelerating the diagnosis of current hepatitis C virus (HCV)

infection. Members of the public with interest and expertise in diagnosing HCV infection are also invited to provide individual input. Specifically, the convening will focus on how to leverage the following hepatitis C diagnostic methods: same-day diagnosis and treatment, and viral-first testing. The goal of the convening will be for each person to give their individual input, and not to build consensus. No discussions, recommendations, or advice to CDC will occur or be provided at the meeting. Day 1 will focus on the utility of point-of-care (POC) testing for accelerating same-day HCV diagnosis and rapid treatment initiation. Day 2 will focus on the utility of viral-first testing strategies for accelerating HCV diagnosis and treatment initiation in the United States. Following the meeting, APHL will prepare a meeting report summarizing the discussion and public comment received through [regulations.gov](https://www.regulations.gov), developed and documented as individual input to ensure thorough and complete input from partners. CDC and APHL will disseminate the APHL-prepared report as a reference for partners and industry to follow in developing and implementing future hepatitis C testing strategies. The final report will be added to docket CDC-2025-0002 once it is available.

DATES: Written comments must be received on or before February 19, 2025.

Times: February 11–12, 2025, 1:00–5:00 p.m. EST.

Place: Virtual Meeting.

To register for this virtual meeting on the public line (listen-only access), please use the following link: <https://webster.eventsair.com/hepatitis-2025-meeting/hcvattende>.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2025-0002 by either of the methods listed below. Do not submit comments by email. CDC does not accept comments by email.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Mail:** Office of Policy and Communications, Division of Viral Hepatitis, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road, MS US12-3 Atlanta, GA 30329-4018.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For access to the docket to read background

documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Maxwell R. Rowshandel, Office of Policy and Communications, Division of Viral Hepatitis, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road, MS US12-3 Atlanta, GA 30329-4018, phone: 1 (202) 245-0627, email: dvhpolicy@cdc.gov.

SUPPLEMENTARY INFORMATION: CDC announces a convening to discuss hepatitis C diagnostics. Interested parties are invited to provide public comment on [regulations.gov](https://www.regulations.gov) in Docket CDC-2025-0002 on or before February 19, 2025.

Background

More than 2.4 million adults in the United States are estimated to have hepatitis C virus (HCV) infection [Eric H, Hepatology 2024]. New infections continue to increase, primarily in association with injection drug use; nearly 67,400 cases of acute hepatitis C are estimated to have occurred in 2022 [CDC 2022 VH Surv Rpt]. More than half of new infections progress to chronic infection [Seo S, Clin Gastro Hepatol 2020]. Without treatment, HCV infection can lead to advanced liver disease, liver cancer, and death [Liang TF, Ann Intern Med 2000]. Since 2013, safe and effective treatment has been available that cures more than 95% of all treated persons, prevents future health complications, stops further transmission, and allows for the possibility of hepatitis C elimination [Falade-Nwulia O, Ann Intern Med 2017].

Testing is the first step to accessing life-saving treatment; however, about one-third of people with hepatitis C in the United States are unaware of their infection [Lewis KC, CID 2024]. The Centers for Disease Control and Prevention (CDC) recommends hepatitis C screening for all adults at least once, all pregnant persons during every pregnancy, and all persons with risk for HCV infection, including periodic testing if risk persists [Schillie S, MMWR Recomm Rep 2020]. Current testing guidance for clinicians and laboratories begins with a hepatitis C antibody (anti-HCV) test followed, when reactive, by a nucleic acid test (NAT) to detect HCV RNA to diagnose current infection [CDC MMWR 2013]. Updated operational guidance was provided to ensure completion of the two-step approach using specimens collected during a single patient encounter. (Cartwright EJ, MMWR 2023)

A limitation of the antibody-first hepatitis C testing approach is that it takes an average of 7 to 8 weeks after HCV infection to develop a reactive HCV antibody (Abdel-Hamid M, Clin Micro 2002). Therefore, the current testing sequence fails to diagnose HCV infection in the window-phase/early acute phase, within the first 6 months following infection, and among immunocompromised people who may have delayed seroconversion. Fortunately, advancements in the diagnostic and regulatory landscape have created an opportunity to improve hepatitis C testing. Currently, there are two tests for viral markers that identify current HCV infection: (1) real-time (RT) polymerase chain reaction (PCR) testing of HCV ribonucleic acid (RNA) detects virus within 1 to 2 weeks of infection (Gowda C, Clin Infect Dis 2020); and (2) HCV core antigen (HCVcAg) testing, currently approved outside of the United States, that uses an immunoassay to detect HCV core antigen within 2 to 3 weeks of infection (Sepulveda-Crespo D, Rev Med Virol 2023). Such virologic tests have become faster to perform and more accessible in a variety of care settings including closer to the point-of-care.

With CDC support, the Association of Public Health Laboratories (APHL) held a 2-day convening of key stakeholders and subject matter experts in October 2021 to identify high-priority diagnostic tools needed to advance diagnosis of current HCV infection and linkage to treatment in a range of clinical and nonclinical settings. The published meeting report called for the US Food and Drug Administration (FDA) to reclassify HCV diagnostic tests from class III to class II, supported the availability of an FDA-cleared rapid CLIA-waived point-of-care (POC) HCV viral detection test, and encouraged CDC to review and update recommendations for HCV testing to identify current HCV infection, including testing sequences that detect HCV viral markers in the first step. (<https://www.aphl.org/aboutAPHL/publications/Documents/ID-HCV-2021-Meeting-Report.pdf>).

Subsequent to the APHL-led meeting:

- In November 2021, the FDA reclassified hepatitis C diagnostic tests from class III devices to class II devices with special controls (510k), providing a new, lower-barrier opportunity for manufacturers to introduce new hepatitis C diagnostic tools for FDA review, including tests that were available at that time outside of the United States, such as a nucleic acid test (NAT) for HCV RNA detection in a POC format and an assay for HCVcAg.

- In January 2024, CDC affirmed existing viral-first testing recommendations among people with recent HCV exposure (<https://www.cdc.gov/hepatitis-c/hcp/diagnosis-testing/#:~:text=HCV%20RNA%20testing%20for,a%20syringe%20service%20program>);

- In January 2024, CDC began the process of updating HCV testing guidance for clinicians and laboratorians, including evaluating testing strategies for the general population that include tests for viral markers in the first testing step (e.g., “viral-first”); and

- In June 2024, the FDA authorized an HCV RNA CLIA-waived near point-of-care test for the diagnosis of current HCV infection.

Public Participation and Public Comment

Public engagement will entail listen-only observation of information shared on day 1 and day 2. If members of the public have input on the questions asked during the meeting, those public comments can be collected through [regulations.gov](https://www.regulations.gov) using Docket CDC–2025–0002 on or before February 19, 2025, and will be included in the final meeting report. Written comments must be submitted on or before February 19, 2025.

Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on <https://www.regulations.gov>. Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. Do not submit comments by email. CDC does not accept comment by email.

Noah Aleshire,

Chief Regulatory Officer, Centers for Disease Control and Prevention.

[FR Doc. 2025–00204 Filed 1–7–25; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–25–24FS]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled “Needle Exchange Utilization Survey (NEXUS)” to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on May 28, 2024, to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

- (a) 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;

- (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- (c) Enhance the quality, utility, and clarity of the information to be collected;

- (d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

- (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open

for Public Comments” or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Needle Exchange Utilization Survey (NEXUS)—New—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The opioid crisis in the U.S. has led to steep increases in overdose, Hepatitis C Virus (HCV) incidence, and HIV clusters and outbreaks among people who inject drugs (PWID). These alarming trends indicate an urgent need to strengthen interventions to prevent morbidity and mortality and transmission of infectious disease among PWID. Syringe services programs (SSPs) are evidence-based, highly effective prevention programs that have expanded in many areas in the United States to respond to the increasing needs of providing HIV and HCV prevention and other health and social services to PWID and their communities. Due to an increase in HCV and HIV related to injection drug use (IDU), it is now critical to understand current patterns of IDU for the prevention of these infectious diseases and other injection related harms. Data to inform these prevention efforts are needed nationally, particularly from non-urban settings that have experienced increases in IDU and where current surveillance activities are non-existent or limited.

The purpose of the Needle Exchange Utilization Survey (NEXUS) is to develop a surveillance system to monitor drug use, prevention behaviors, and the infectious disease consequences of drug use in 6–15 select urban and non-urban areas of the U.S. that the opioid crisis has impacted. Such a surveillance system is needed to inform prevention efforts and policy. The specific objectives of the project are to assess the following among persons who inject drugs who are recruited in SSPs and their peers who use drugs through peer-driven recruitment: (1) drug use and sexual behaviors, injection risk networks, receipt of prevention services, and barriers to prevention and care; and (2) the prevalence of HIV and HCV infections.

CDC requests OMB approval for an estimated 3,126 total annualized burden hours. Participation is voluntary and

there are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondent	Form	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Persons Screened	Eligibility Screening Form English	5,400	1	5/60
Persons Screened	Eligibility Screening Form Spanish	600	1	5/60
Persons who give permission	Model Project Consent Form English	4,050	1	5/60
Persons who give permission	Model Project Permission Form Spanish	450	1	5/60
Eligible Participants	NEXUS Survey English	4,050	1	30/60
Eligible Participants	NEXUS Survey Spanish	450	1	30/60

Jeffrey M. Zirger,

*Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.*

[FR Doc. 2025–00159 Filed 1–7–25; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–25–1360]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled “CryptoNet Case Report Form” to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on October 21, 2024 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

CryptoNet Case Report Form (OMB Control No. 0920–1360, Exp. 1/31/2025)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Waterborne Disease Prevention Branch (WDPB) in the Division of Foodborne, Waterborne, and Environmental Diseases (DFWED) works

to prevent domestic and global water-related diseases. The WDPB is comprised of five teams, including the Domestic Waterborne Disease Epidemiology and Response (WDER) Team, which focuses on the prevention and control of waterborne-related diseases and outbreaks in the United States. One of the diseases included in the team’s work is cryptosporidiosis, an acute diarrheal disease caused by infection with *Cryptosporidium* parasites.

The Case Surveillance Program is a subunit within the Domestic WDER Team that focus on the data collection and management activities of five waterborne diseases, including cryptosporidiosis, in the United States. The Case Surveillance Program’s current scope of work includes modernizing data collection and management, enabling data connections, and improving public data access to aid public health action.

CryptoNet is the first molecular tracking system for *Cryptosporidium* in the United States. To meet the needs of the CryptoNet and Case Surveillance Program, and the needs of local officials, the CryptoNet case report form (CRF) was developed. The CRF includes a set of data elements that can be used to identify exposures trends in outbreak- and non-outbreak-associated *Cryptosporidium* cases, to generate hypotheses about the sources of infection in clusters or outbreaks, and to identify strategies to prevent and control *Cryptosporidium* cases, clusters, or outbreaks.

Data from the CRF will be used by federal, state, and local public health officials responsible for conducting interviews with reported cases of cryptosporidiosis in their jurisdiction in order to systemically assess core exposure elements and risk factors among cases of cryptosporidiosis. Collected data will be used by CDC staff to inform cryptosporidiosis sporadic

case, cluster, and outbreak prevention and control strategies. CRF data elements and the CRF were designed for administration via telephone interviews with individuals ill with

cryptosporidiosis, or their designated proxy.

CDC requests OMB approval for an estimated 125 annual burden hours. Providing information is voluntary, and

there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Individuals ill with cryptosporidiosis, or their designated proxy.	CryptoNet Case Report Form	500	1	15/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2025–00162 Filed 1–7–25; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–25–1357; Docket No. CDC–2024–0104]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled The Greater Access and Impact with NAT (GAIN) Study: Improving HIV Diagnosis, Linkage to Care, and Prevention Services with HIV Point-of-Care Nucleic Acid Tests (NATs). This study will identify facilitators and barriers with implementation of HIV point-of-care (POC) nucleic acid tests (NATs) in clinical settings, estimate the sensitivity and specificity of the HIV POC NAT, and assess the impact of the test in decreased time to receipt of HIV prevention and care.

DATES: CDC must receive written comments on or before March 10, 2025.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0104 by either of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments.

- **Mail:** Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

The Greater Access and Impact with NAT (GAIN) Study: Improving HIV Diagnosis, Linkage to Care, and Prevention Services with HIV Point-of-Care Nucleic Acid Tests (NATs) (OMB Control No. 0920–1357, Exp. 12/31/2024)—Reinstatement—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

HIV prevention and care services can be improved by the availability of Point-of-care (POC) HIV viral RNA testing in clinical settings. Viral RNA tests are the most sensitive HIV tests for the detection of early infection. The purpose of this data collection is to develop feasible and effective models to integrate HIV POC nucleic acid tests (NATs) in HIV prevention and treatment services. The HIV POC NAT can be used to test persons at high-risk of acquiring HIV infection to reduce the time

between testing in community-based and clinical-based settings and linkage to HIV care, ART initiation, and viral suppression.

Data will be used to compare an HIV RNA POC NAT to standard lab-based HIV testing. The data will be analyzed and disseminated to describe the real-world performance and clinical usefulness of HIV RNA POC NAT technology. Data will be gathered through: clinical site extraction of

electronic medical records for use as a retrospective baseline comparator after study implementation; a longitudinal, prospective study of persons without HIV seeking HIV testing or PrEP services; a longitudinal, prospective study of persons with HIV seeking STI testing; a randomized clinical trial of HIV POC NAT or standard of care for persons with HIV; a survey, interviews, and focus groups to understand HIV POC NAT acceptability among persons

without HIV and persons with HIV; an assessment of the performance of an HIV POC NAT among persons with HIV; and an acceptability/feasibility assessment among clinical and community providers and costing analyses.

CDC is requesting OMB approval for estimated 880 annual burden hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Participating Clinic	Baseline data collection variables list.	2	1	2	4
Participants in prospective study of persons without HIV seeking HIV testing and/or PrEP services.	Monthly study report form	2	12	15/60	6
	Release of information form	850	1	10/60	142
Participants in prospective study of persons with HIV seeking STI testing.	Study visit survey	850	1	15/60	213
	Release of information form	50	1	10/60	8
Participants in RCT of POC NAT or Standard of Care for persons with HIV.	Study visit survey	50	1	15/60	13
	Release of information form	212	1	10/60	35
Participants in survey group examining POC NAT acceptability.	Study visit survey	212	1	15/60	53
	POC NAT acceptability survey	500	1	20/60	167
Participants in cross-sectional comparison of several point-of-care NATs.	Release of information form	333	1	10/60	56
Participants in the acceptability/feasibility assessment.	Study visit survey	333	1	15/60	83
	POC NAT acceptability survey, focus group, or interview.	100	1	1	100
Total .....	.....	.....	.....	.....	880

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2025-00166 Filed 1-7-25; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2007-D-0435]

Obesity and Overweight: Developing Drugs and Biological Products for Weight Reduction; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “Obesity and Overweight: Developing Drugs and Biological Products for Weight Reduction.” This draft guidance provides recommendations to industry regarding the development of drugs and biological products regulated within the Center for Drug Evaluation and Research intended for reduction and long-term maintenance of body weight in patients with obesity or overweight. This draft guidance revises and replaces the draft guidance for industry “Developing Products for Weight Management” issued in February 2007.

DATES: Submit either electronic or written comments on the draft guidance by April 8, 2025 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your

comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2007-D-0435 for “Obesity and Overweight: Developing Drugs and Biological Products for Weight Reduction.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting

of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: John Sharretts, Center for Drug Evaluation and Research (HFD-510), Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 240-402-4678.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “Obesity and Overweight: Developing Drugs and Biological Products for Weight Reduction.” This draft guidance is intended to provide recommendations to industry regarding the development of drugs and biological products regulated within the Center for Drug Evaluation and Research in FDA intended for reduction and long-term maintenance of body weight in patients with either obesity or who are classified as overweight based on body mass index and also have weight-related medical problems. This draft guidance revises and replaces the draft guidance for industry “Developing Products for Weight Management” issued on February 15, 2007 (72 FR 7441), which no longer reflects our current state of knowledge and the state of medical product development.

This draft guidance focuses on the design of trials to demonstrate sustained medical weight loss in individuals with obesity and those with body mass index classified as overweight who also have

weight-related comorbidities. Medical weight loss is defined within the draft guidance as a long-term reduction in excess body fat with a goal of reduced morbidity and mortality. The weight reduction indication comprises the concepts of both initial weight loss and weight maintenance (*i.e.*, prevention of weight regain) for a minimum of 1 year.

Major topics in this draft guidance include discussion of appropriate adult and pediatric participants to enroll in clinical trials for chronic weight management, principles of phase 1 and phase 2 trials, and detailed discussion of phase 3 trials, including trial design, size, and duration; efficacy endpoints; safety evaluation; and statistical principles. Special topics include trial considerations for patients with diabetes mellitus, assessment of weight management products in combination, and trial considerations for assessment of pediatric patients.

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on “Obesity and Overweight: Developing Drugs and Biological Products for Weight Reduction.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). This guidance refers to collections of information from “individuals under treatment or clinical examination in connection with research,” which are not subject to review by OMB under 5 CFR 1320.3(h)(5). The collections of information in 21 CFR part 312 for investigational new drug applications have been approved under OMB control number 0910-0014. The collections of information in 21 CFR part 314 for new drug applications, including formal meetings between FDA and sponsors or applicants have been approved under OMB control number 0910-0001. The collections of information in 21 CFR part 58, Good Laboratory Practice for Nonclinical Studies, has been approved under OMB control number 0910-0119.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: December 30, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2025–00237 Filed 1–7–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–D–3780]

Developing Drugs for Optical Imaging; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “Developing Drugs for Optical Imaging.” The purpose of this guidance is to provide recommendations to sponsors regarding clinical trial design features that support development and approval of optical imaging drugs that are used in conjunction with imaging devices and intended as intraoperative aids for the detection of pathology such as tumors or to enhance the conspicuity of normal anatomical structures.

DATES: Submit either electronic or written comments on the draft guidance by April 8, 2025 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a

third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2024–D–3780 for “Developing Drugs for Optical Imaging.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you

must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Libero Marzella, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–2050; or Erica Takai, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5456, Silver Spring, MD 20993–0002, 301–796–6353.

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “Developing Drugs for Optical Imaging.” The purpose of this guidance is to provide recommendations to sponsors regarding clinical trial design features that support development and approval of optical imaging drugs that are used in conjunction with imaging devices and intended as intraoperative aids for detection of pathology such as tumors or to enhance the conspicuity of normal anatomical structures.

This draft guidance is necessary because of the burgeoning interest in the development of novel optical imaging drugs and imaging devices to assist standard surgical procedures in a variety of clinical contexts. Surgeons use these imaging drugs with imaging devices during surgery to assist the standard of care direct visual inspection and palpation of tissue in the surgical field. The imaging drugs, for example, enhance the ability of the surgeon to distinguish tumors from normal tissue. Therefore, the drugs can increase the likelihood of a safe and complete removal of cancers and can minimize the risk of unintended injury to normal anatomical structures. The use of minimally invasive surgical approaches is a contributing factor driving the development of optical imaging products because of the loss of touch perception and more limited field of view with these procedures. For instance, the development of molecularly targeted fluorescent optical drugs aims to facilitate a surgeon's ability to identify the margins of primary tumors and contiguous tumor lesions to achieve a surgical cure.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on "Developing Drugs for Optical Imaging." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR 201.56 and 201.57 relating to the content and format requirements for labeling of drugs and biologics have been approved under OMB control number 0910–0572. The collections of information in 21 CFR part 312 relating to the investigational new drug application pathway, which includes clinical trials and clinical trial design, have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 relating to the submission of new drug applications and abbreviated new drug applications have been approved under

OMB control number 0910–0001. The collections of information in 21 CFR part 601 for the submission of biologics license applications have been approved under OMB control number 0910–0338. The collections of information in 21 CFR part 812 relating to investigational device exemptions have been approved under OMB control number 0910–0078.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: December 26, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2025–00213 Filed 1–7–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–0604]

Withdrawal of Food and Drug Administration Notice Regarding Yong Sheng Jiao; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is issuing this notice to withdraw the December 5, 2024, **Federal Register** notice entitled "Yong Sheng Jiao; Denial of Hearing; Final Debarment Order" because the document provided the incorrect bases for debarment and omitted edited language. A corrected notice document is published elsewhere in this **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Karen Fikes, Office of Scientific Integrity, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4232, Silver Spring, MD 20993, 301–796–9603.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 5, 2024 (89 FR 96655), FDA published a notice entitled "Yong Sheng Jiao; Denial of Hearing; Final Debarment Order." The notice incorrectly reflected language for debarment and omitted edited language. The published document did not evince all changes and edits relevant to this notice. For this reason, the notice,

Docket No. FDA–2024–N–0604, as published in the **Federal Register** on December 5, 2024, is hereby withdrawn.

Dated: December 31, 2024.

George M. Warren,

Director, Office of Scientific Integrity.

[FR Doc. 2025–00125 Filed 1–7–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–0604]

Yong Sheng Jiao; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is denying a request for a hearing submitted by Yong Sheng Jiao, also known as Yongsheng Jiao and Wilson Jiao (Jiao), and is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Jiao for 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Jiao was convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance under the FD&C Act. In determining the appropriateness and period of Jiao's debarment, FDA considered the relevant factors listed in the FD&C Act. Jiao submitted a request for hearing but failed to file with the Agency information and analyses sufficient to create a basis for a hearing.

DATES: The order is applicable January 8, 2025.

ADDRESSES: Any application for termination of debarment by Jiao under section 306(d) of the FD&C Act (21 U.S.C. 335a(d)) (application) may be submitted as follows:

Electronic Submissions

• **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. An application submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application 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 application, that information will be posted on <https://www.regulations.gov>.

- If you want to submit an application with confidential information that you do not wish to be made available to the public, submit the application 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 a written/paper application submitted to the Dockets Management Staff, FDA will post your application, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All applications must include the Docket No. FDA-2024-N-0604. An application will be placed in the docket and, unless 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 an application with confidential information that you do not wish to be made publicly available, submit your application 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 your application. 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 application 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, 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 between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT:

Karen Fikes, Office of Scientific Integrity, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4232, Silver Spring, MD 20993, 301-796-9603.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1) of the FD&C Act permits FDA to debar an individual if the Agency finds that the individual has been convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. On January 24, 2023, Jiao, the owner and operator of Santec Chemicals Corporation and Syntec Pharma Corporation, pled guilty to a felony count of causing the delivery of misbranded drugs into interstate commerce in violation of sections 301(a), 303(a)(2), and 502(a) of the FD&C Act (21 U.S.C. 331(a), 333(a)(2), and 352(a)). Then, on January 8, 2024, the U.S. District Court for the Eastern District of New York entered a judgment convicting and sentencing Jiao to 2 years of probation and fines.

Jiao's conviction stemmed from conduct, occurring on or about and between November 30, 2017, and April 30, 2020, relating to the importation of a drug, dipyrone, which is not approved for use in the United States. Jiao imported dipyrone from suppliers located in China into the United States, addressed to one of his businesses, Santec Chemicals Corporation. The shipments of dipyrone were misbranded in that they were either not labeled or they were falsely labeled as sebacic acid. Jiao pled guilty to knowingly and intentionally introducing into interstate commerce, with the intent to defraud and mislead the Federal Government, the misbranded drug dipyrone.

By letter dated March 18, 2024, FDA's Office of Regulatory Affairs (ORA)

notified Jiao of its proposal to debar him for a period of 5 years (Proposal). As explained in the Proposal, Jiao's conviction stemmed from conduct relating to the importation of any drug or controlled substance into the United States by illegally importing and introducing misbranded dipyrone into interstate commerce in violation of sections 301(a), 303(a)(2), and 502(a) of the FD&C Act. An individual convicted of a felony for conduct related to the importation into the United States of any drug or controlled substance may be subject to debarment as set forth in section 306(b)(3)(C) of the FD&C Act. Therefore, ORA found, on the basis of Jiao's conviction, that Jiao is subject to debarment under section 306(b)(1) of the FD&C Act.

The Proposal explained that the maximum period of debarment for an individual subject to permissive debarment for a felony under section 306(c)(2)(A)(iii) of the FD&C Act is 5 years. The Proposal also outlined findings concerning the three relevant factors that ORA considered in determining the appropriateness and period of debarment, as provided in section 306(c)(3) of the FD&C Act: (1) the nature and seriousness of any offense involved; (2) the nature and extent of voluntary steps to mitigate the impact on the public of any offense involved; and (3) prior convictions under the FD&C Act or under other Acts involving matters within the jurisdiction of FDA. ORA found that the nature and seriousness of the offense and the nature and extent of voluntary steps to mitigate the effect on the public are unfavorable factors for Jiao. ORA found the lack of prior convictions involving matters within FDA jurisdiction as a favorable factor for Jiao. ORA concluded that the facts supporting the unfavorable factors outweigh those supporting the favorable factor, thereby warranting a 5-year period of debarment. The Proposal also informed Jiao of an opportunity to request a hearing under section 306(i) of the FD&C Act and part 12 (21 CFR part 12).

In response to the Proposal, Jiao submitted a timely request for a hearing, which included a notice of appearance and a statement of intent to prepare and submit materials in support of the hearing request. In a letter submitted to the Dockets Management Staff dated May 12, 2024, Jiao submitted information in support of his request for a hearing (Response). Jiao's Response included multiple documents meant to address the two unfavorable factors identified in ORA's Proposal.

Under the authority delegated to him by the Commissioner of Food and Drugs, the Director, Office of Scientific Integrity (OSI Director) has considered Jiao's request for a hearing. Hearings are granted only if there is a genuine and substantial issue of fact. A request for a hearing may not rest upon mere allegations or denials but must present specific facts showing that there is a genuine and substantial issue of fact that justifies a hearing. Hearings will not be granted on issues of policy or law, on mere allegations, denials or general descriptions of positions and contentions, or on data and information insufficient to justify the factual determination urged (see 21 CFR 12.24(b)). The OSI Director has considered Jiao's arguments and concluded that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing.

II. Argument in Support of a Hearing

Jiao's Response included documents and claims that challenge ORA's proposed findings in determining the appropriateness and period of permissive debarment. Specifically, Jiao argues that he should not be "punished" for wrongdoing by his company's supplier in China and that he incorrectly signed the plea agreement due to a misunderstanding, contending that FDA approved bulk importation of dipyrone during the time of his illegal importation. As a preliminary matter, debarment, under section 306 of the FD&C Act, is a remedial measure to protect public health, not a punishment. (See *DiCola v. FDA*, 77 F.3d 504, 507 (D.C. Cir. 1996) (permanent debarment of convicted individual is not punishment, but instead is a remedy to protect the integrity of the drug industry and public confidence in that industry)). Insofar as Jiao is arguing that he is actually innocent of the offense to which he pled guilty, under section 306(l) of the FD&C Act a person is convicted of a criminal offense, *inter alia*, when a Federal court enters a judgment of conviction or when a Federal court accepts a plea of guilty. The administrative record, including Jiao's supporting documents, establishes that he pled guilty in Federal court on January 24, 2023. After accepting Jiao's guilty plea, the Federal court entered a judgment of conviction on January 8, 2024. Jiao does not dispute the court's judgment of conviction or acceptance of his guilty plea based on his admission to knowingly and intentionally importing misbranded dipyrone with an intent to defraud or mislead the Federal Government. Jiao cannot now dispute

the facts to which he admitted in support of his guilty plea during the criminal proceedings against him. Federal court is the proper venue for any challenge to Jiao's guilty plea based on a claim of actual innocence, not this remedial proceeding.

Jiao next appears to challenge the proposed period of debarment, arguing that the two considerations in section 306(c)(3) of the FD&C Act deemed unfavorable in the Proposal should be treated as favorable in light of the arguments and documents submitted by him in support of his hearing request.

Relying on the Presentence Investigation Report, Plea Agreement, and Mitigation Letter from his criminal proceedings, Jiao first appears to challenge ORA's findings regarding the nature and seriousness of his offense under section 306(c)(3)(A) of the FD&C Act. Jiao contends that, as reflected in the documents from his criminal proceedings, his supplier in China is the cause of shipping the dipyrone as sebacic acid to avoid the "unreasonable testing requirement in China" and that he relabeled the product before shipment to customers. As noted above, however, Jiao pled guilty to causing the introduction of a misbranded drug into the United States. The basis for Jiao's guilty plea was his causing a misbranded drug to enter the United States, not the subsequent shipment to his customers. Without FDA premarket review, such illegally imported drugs pose a significant risk to patients because they lack findings of safety and effectiveness, manufacturing quality standards, and appropriate labeling for use. Inasmuch as Jiao admitted, as part of his guilty plea, to "knowingly, intentionally, and voluntarily" causing the introduction of such drugs into the United States with an intent to defraud or mislead the Federal Government, Jiao's claims that his supplier was responsible for shipping the misbranded product and that he relabeled the product before further shipment fail to raise a genuine and substantial issue of fact regarding the nature and seriousness of his offense under section 306(c)(3)(A) of the FD&C Act, and the OSI Director will treat this consideration as unfavorable.

Jiao also argues that FDA should treat as favorable the consideration under section 306(c)(3)(C) of the FD&C Act, which requires the Agency to consider "the nature and extent of voluntary steps to mitigate the impact on the public of any offense involved" in determining the appropriateness and period of his debarment. Citing a **Federal Register** document from 2019 (84 FR 64080, November 20, 2019), Jiao

argues that FDA "allowed" dipyrone for bulk importation and that, therefore, his company's sales after 2019 should not have created a negative "impact on the public." Jiao's reading of this **Federal Register** document is incorrect. FDA did not indicate in this **Federal Register** document that the Agency was either approving, or exercising enforcement discretion with respect to bulk dipyrone for use in compounding under limited circumstances. Regardless, as discussed above, Jiao admitted to knowingly and intentionally importing a misbranded drug with an intent to defraud or mislead the Federal Government. Any change in FDA's enforcement policies with respect to that drug would not qualify as a voluntary step taken by Jiao to mitigate the impact of his offense on the public, nor does he provide adequate information regarding additional steps he took that mitigate the effects of the offenses he committed on the public under section 306(c)(3)(C) of the FD&C Act, and thus, he has failed to raise a genuine and substantial issue of fact with respect to that consideration.

Furthermore, insofar as Jiao intends to argue that FDA's policies regarding dipyrone at the time of his criminal conduct diminish the nature and seriousness of his offense, he has also failed to raise a genuine and substantial issue of fact with respect to the consideration under section 306(c)(3)(A) of the FD&C Act. As set forth above, he has mischaracterized FDA's enforcement policies regarding dipyrone at the time of his criminal conduct. More importantly, as part of his guilty plea, he admitted to intentionally and knowingly causing the introduction of a misbranded drug into the United States with an intent to defraud or mislead the Federal Government. Even assuming that FDA might have exercised its enforcement discretion with respect to that drug under a narrow set of circumstances, his own criminal conduct prevented the Agency from assessing those circumstances with respect to the drug he offered for import into the United States.

Based on the undisputed record, including the facts to which Jiao pled guilty in his criminal proceedings, a 5-year debarment period is appropriate. Although it is undisputed that Jiao has no previous criminal convictions related to matters within the jurisdiction of FDA, this single favorable factor does not counterbalance the nature and seriousness of his offense and lack of voluntary steps promptly taken to mitigate the impact of his offense on the public. Therefore, the OSI Director agrees with ORA's conclusion that "the

facts supporting the unfavorable factors outweigh those supporting the favorable factor, and therefore warrant imposition of a five-year period of debarment.”

III. Findings and Order

Therefore, the OSI Director, under section 306(b)(1) of the FD&C Act and authority delegated to him by the Commissioner of Food and Drugs, finds that Jiao has been convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance and is subject to debarment, as set forth in section 306(b)(3)(C) of the FD&C Act. FDA has considered the applicable factors listed in section 306(c)(3) of the FD&C Act and determined that a debarment period of 5 years is appropriate.

As a result of the foregoing finding, Jiao is debarred for a period of 5 years from importing or offering for import any drug into the United States, effective January 8, 2025. Pursuant to section 301(cc) of the FD&C Act, the importing or offering for import into the United States of any drug by, with the assistance of, or at the direction of Jiao, is a prohibited act.

Dated: December 31, 2024.

George M. Warren,

Director, Office of Scientific Integrity.

[FR Doc. 2025–00126 Filed 1–7–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Maternal, Infant, and Early Childhood Home Visiting Program Model Eligibility Review Survey

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice with request for comment.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate,

below, or any other aspect of the ICR. Specifically, HRSA is inviting public comment on its proposed survey to identify evidence-based service delivery models that funding recipients may use to provide services under HRSA’s MIECHV Program.

DATES: Comments on this ICR should be received no later than March 10, 2025.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or mail the HRSA Information Collection Clearance Officer, Room 14NWH04, 5600 Fishers Lane, Rockville, Maryland, 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email paperwork@hrsa.gov or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program Model Eligibility Review Survey, OMB No. 0915–xxxx—New

Abstract: HRSA, through its Maternal and Child Health Bureau, oversees the MIECHV Program in partnership with the Administration for Children and Families (ACF) within HHS. The MIECHV Program supports voluntary, evidence-based home visiting services during pregnancy and to families with young children up to kindergarten entry living in at-risk communities. The MIECHV Program was last reauthorized in December 2022.¹ One key program requirement is that programs deliver services using models that meet HHS criteria for evidence of effectiveness.² HRSA and ACF define such service delivery models as “evidence-based.” ACF administers the Home Visiting Evidence of Effectiveness (HomVEE) review process to identify early childhood home visiting models that demonstrate evidence of effectiveness.³ However, not all evidence-based service delivery models approved through the HomVEE process meet MIECHV statutory requirements as enacted in the last reauthorization of the program in

2022 such that they may be used to carry out the MIECHV Program in fidelity to applicable program requirements.

HRSA previously issued a Request for Information notice and request for comment regarding its proposal to standardize criteria for assessing model eligibility to be implemented using MIECHV Program funds in 2021.⁴ This ICR reflects new MIECHV statutory provisions that were added in December 2022 and thus replaces that 2021 notice. HRSA is issuing this ICR to propose a survey to identify service delivery models that meet both HHS criteria for evidence of effectiveness, as determined by HomVEE review, and applicable MIECHV statutory requirements, and therefore may be used by eligible entities to provide home visiting services through the MIECHV Program. This will be accomplished by validating whether evidence-based models, as determined by HomVEE, align with the MIECHV Program’s statutory requirements, as further discussed in this notice. This process will ensure that models used by funding recipients (and their local implementing agencies) to deliver MIECHV Program services effectively support programs in meeting core components of the MIECHV Program, including those added during the program’s 2022 reauthorization.

Following approval of this ICR request, HRSA will assess all models that meet HHS criteria for evidence of effectiveness, as determined by the HomVEE review, to determine their MIECHV eligibility by requesting information from home visiting model developers through a standardized survey. As of November 20, 2024, HomVEE lists 24 models that meet HHS criteria for evidence of effectiveness.⁵ Upon receiving the survey from HRSA, model developers will have 30 days to provide requested information on model characteristics, resources, and processes. A panel of HRSA reviewers will assess the survey responses against the MIECHV statutory requirements. Any of the 24 evidence-based models that also meet these criteria will be considered eligible for MIECHV Program implementation and remain eligible for implementation after the end of the current performance period.

¹ Section 6101 of the Consolidated Appropriations Act, 2023, Public Law 117–328, recently amended Section 511 of the Social Security Act, as added by the Patient Protection and Affordable Care Act, Public Law 111–148, section 2951, and extended appropriated funding through FY 2027.

² 42 U.S.C. 711(d)(3)(C)(i).

³ The current HHS criteria for evidence-based models can be found at: <https://homvee.acf.hhs.gov/about-us/hhs-criteria>.

⁴ HRSA, HHS, “Statutory Requirements and Process Standardization: Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program Model Eligibility Review.” *Federal Register* 86, no. 184 (September 27, 2021): 53329. <https://www.federalregister.gov/d/2021-20853>.

⁵ HomVEE lists home visiting models that meet HHS criteria for evidence of effectiveness at: <https://homvee.acf.hhs.gov/HRSA-Models-Eligible-MIECHV-Grantees>.

Models that do not meet these criteria will not be eligible to be used by eligible entities (and their local implementing agencies) to carry out the MIECHV Program and may continue to be used only through the currently applicable period of performance. HRSA will work with eligible entities regarding any changes in model approval that may affect their program implementation because certain models will no longer be available for use; however, eligible entities will be expected to propose projects using models approved for MIECHV Program implementation under future funding awards. Model developers may submit a written request for reconsideration of HRSA's decision within 15 days of receiving a negative determination and should provide any available supporting information for their request. HRSA will have 45 days after the receipt of the request to reassess the model.

After HRSA completes the initial review, all eligible models may be reassessed against the statutory requirements through the routine, periodic HomVEE review process for models that have already met HHS criteria for evidence of effectiveness. HRSA and ACF will continue to collaborate in future years to assess home visiting models against MIECHV statutory requirements.

HRSA seeks public comment on the proposed methodology HRSA proposes to use to identify service delivery models that meet MIECHV statutory requirements, including how the proposed changes will affect interested parties such as eligible entities, model developers, and eligible families receiving MIECHV services.

MIECHV Program Statutory Requirements for Home Visiting Models: The MIECHV Program's authorizing statute mandates that funding recipients

implementing the program use a service delivery model that meets specific statutory requirements. Models must "conform to a clear consistent home [visiting] model that has been in existence for at least 3 years and is research-based, grounded in relevant empirically-based knowledge, linked to program determined outcomes, [and is] associated with a national organization or institution of higher education that has comprehensive home visitation program standards that ensure high-quality service delivery and continuous program quality improvement."⁶ Under the statute, the model must also have demonstrated significant sustained positive outcomes in statutory benchmark areas and participant outcomes when evaluated using well-designed and rigorous randomized controlled research designs, and the evaluation results have been published in a peer-reviewed journal; or quasi-experimental research designs.⁷ The 2022 reauthorization also added a new requirement that the "standards for training requirements applicable to virtual service delivery under a home visiting model shall be equivalent to those that apply to in-person service delivery under the model."⁸

To ensure programs comply with MIECHV statutory requirements,⁹ service delivery models also must support the delivery of home visiting services through the employment of well-trained and competent staff¹⁰ that receive ongoing high-quality supervision,¹¹ support programs' strong organizational capacity to implement home visiting activities¹² and ability to establish appropriate linkages and referral networks to other community resources and supports for participating families,¹³ monitor the fidelity of program implementation to ensure

services are delivered in fidelity to the specified model,¹⁴ and ensure voluntary participation in the program.¹⁵ The 2022 reauthorization also requires MIECHV programs¹⁶ to implement service delivery home visiting models that provide or support targeted, intensive home visiting services for high-risk populations¹⁷ and support the delivery of home visiting services through at least one in-person home visit for each participating family during each 12-month period of enrollment.¹⁸

Need and Proposed Use of the Information: Section 711 establishes statutory requirements for the MIECHV Program. Information gained from this information collection will inform determinations of which service delivery models are eligible to be implemented in the MIECHV Program.

Likely Respondents: Organizations that develop, support implementation of, and implement early childhood home visiting models that meet HHS criteria for evidence of effectiveness, as determined by HomVEE review.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
MIECHV Program Model Eligibility Review Survey	24	1	24	3	72
Total	24	.....	24	.....	72

⁶ 42 U.S.C. 711(d)(3)(A)(i)(I).

⁷ 42 U.S.C. 711(d)(3)(A)(i)(I).

⁸ 42 U.S.C. 711(d)(4)(B).

⁹ HRSA proposes to identify service delivery models that may be used by MIECHV funding recipients because they comply with statutory requirements applicable to service delivery models and support MIECHV statutory program requirements. Such models, in addition to meeting

the service delivery model requirements in subsections 711(d)(3)(A)(i) and 711(d)(4)(B), must also support program requirements, including those in subsections 711(d)(3)(C) and 711(e).

¹⁰ 42 U.S.C. 711(d)(3)(C)(ii).

¹¹ 42 U.S.C. 711(d)(3)(C)(iii).

¹² 42 U.S.C. 711(d)(3)(C)(iv).

¹³ 42 U.S.C. 711(d)(3)(C)(v).

¹⁴ 42 U.S.C. 711(d)(3)(C)(vi).

¹⁵ 42 U.S.C. 711(e)(7)(A).

¹⁶ HRSA proposes to identify service delivery models that may be used by MIECHV funding recipients because they comply with statutory requirements applicable to service delivery models and support MIECHV statutory program requirements.

¹⁷ 42 U.S.C. 711(d)(3)(B).

¹⁸ 42 U.S.C. 711(d)(3)(C)(vii), 711(e)(10)(C).

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2025-00129 Filed 1-7-25; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Indigenous Innovation and Health Equity Tribal Advisory Committee; Solicitation of Nominations for Delegates

AGENCY: Office of Minority Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS) Office of Minority Health (OMH) hereby gives notice that OMH is accepting nominations of candidates to serve as primary and alternate delegates for the Center for Indigenous Innovation and Health Equity Tribal Advisory Committee (CIIHE TAC).

DATES: Tribal leaders are encouraged to submit their nomination letters for CIIHE TAC delegates by January 17, 2024, at the address listed below. OMH will continue to receive nominations until all CIIHE TAC primary and alternate delegate positions are filled.

ADDRESSES: All nominations should be emailed to minorityhealth@hhs.gov. Please use the subject line "CIIHE TAC Nomination."

FOR FURTHER INFORMATION CONTACT: For information and guidance about the nomination process for CIIHE TAC delegates, please contact Rochelle Rollins, Senior Policy Advisor, at Rochelle.Rollins@hhs.gov. Sample CIIHE TAC nomination letters are available on the OMH website: <https://minorityhealth.hhs.gov/ciihe-tribal-advisory-committee-tac>.

SUPPLEMENTARY INFORMATION: Authorized under Section 1707 of the Public Health Service Act, 42 U.S.C. 300u-6, as amended, the mission of OMH is to improve the health of racial and ethnic minority and American Indian and Alaska Native (AI/AN)

populations through the development of health policies and programs that help eliminate health disparities. OMH awards and other activities are intended to support the identification of effective policies, programs, and practices that improve health outcomes and to promote the sustainability and dissemination of these approaches.

Through the Joint Explanatory Statement (JES) accompanying the 2021 Consolidated Appropriations Act, Congress directed OMH to create the CIIHE to advance Indigenous solutions that ultimately address health disparities in AI/AN and Native Hawaiian and Pacific Islander populations. Congress identified four CIIHE priority areas: research, education, service, and policy development. The JES accompanying the subsequent annual appropriations acts has included language for OMH to continue funding the CIIHE.

OMH established the CIIHE TAC to provide Tribal leaders a venue to exchange views, share information, and provide feedback to OMH on the development of activities addressing the four CIIHE priority areas. The CIIHE TAC shall support, but not supplant, government-to-government consultation activities that OMH undertakes.

TAC Membership: The CIIHE TAC will consist of 16 delegate positions: one from each of the 12 geographic areas served by the Indian Health Service (IHS) and four National At-Large Member positions.

Alaska Area
Albuquerque Area
Bemidji Area
Billings Area
California Area
Great Plains Area
Nashville Area
Navajo Area
Oklahoma Area
Phoenix Area
Portland Area
Tucson Area
National At-Large Members (4)

The CIIHE TAC charter establishes a two (2) year term length for each delegate. There are vacancies for all IHS areas, except the Navajo and Tucson Areas, due to the ending of the CIIHE TAC members' 2-year terms.

Eligibility: The CIIHE TAC delegates must be: (1) Elected Tribal officials from a federally recognized Tribe acting in their official capacity as elected officials of their Tribe, with authority to act on behalf of the Tribe; or (2) individuals designated by an elected Tribal official. Designees must have the authority to act on behalf of the Tribal official and the Tribe and be qualified to represent the

views of the AI/AN Tribes in the area from which they are nominated. No delegate of the CIIHE TAC may be an employee of the federal government.

Nomination Procedures: CIIHE TAC candidates must be nominated by an elected Tribal leader. The nomination letter must be on Tribal letterhead and signed by an elected Tribal leader, and must include the following information:

- Name of the nominee
- Nominee's official title
- Name of the nominee's tribe
- Date of nominee's election to official Tribal position and term length
- Nominee's contact information (mailing address, phone, and email)
- Nominee's expertise that is relevant to the CIIHE TAC
- Name of Tribal leader submitting the nomination
- Official title of Tribal leader submitting the nomination
- Contact information for Tribal leader submitting the nomination and/or the administrative office for the Tribal government

Sample CIIHE TAC nomination letters are available on the OMH website: <https://minorityhealth.hhs.gov/ciihe-tribal-advisory-committee-tac>.

Selection Process: OMH is responsible for selecting and finalizing CIIHE TAC delegates.

Eligible nominees will be considered in the following priority order:

1. Tribal President/Chairperson/Governor
2. Tribal Vice-President/Vice-Chairperson/Lt. Governor
3. Elected or Appointed Tribal Official
4. Designated Tribal Official with authority to act on behalf of the Tribal Leader

In the event there are multiple nominations for a given IHS area, OMH will determine the delegates based on a review of the submitted nomination materials.

Nominees will be notified of the status of delegate selection in February 2024.

Dated: December 16, 2024.

Capt. Tarsha Cavanaugh,

Principal Deputy Director, Office of Minority Health.

[FR Doc. 2025-00210 Filed 1-7-25; 8:45 am]

BILLING CODE 4150-29-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Organization, Functions, and Delegations of Authority; Part G; Indian Health Service Headquarters, Office of the Director

AGENCY: Indian Health Service, Department of Health and Human Services.

ACTION: Final notice.

SUMMARY: Part G of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS) is hereby amended to reflect a reorganization of the Indian Health Service (IHS). The purpose of this reorganization is to revise the current approved structure for the IHS, Office of the Director, Intergovernmental Affairs functions in Chapter GA (GAA–GAC), as provided for herein.

SUPPLEMENTARY INFORMATION: The IHS is an Operating Division within the Department of Health and Human Services (HHS) and is under the leadership and direction of a Director who is directly responsible to the Secretary of Health and Human Services. The IHS Headquarters is reorganizing the following major component: Office of the Director, under the Deputy Director for Intergovernmental Affairs.

Part G of the Statement of Organization, Functions, and Delegations of Authority was most recently amended at 89 FR 61126, July 30, 2024.

Authority: 44 U.S.C. 3101.

Diversity Management and Equal Employment Opportunity Staff (GA3)

(1) Administers the Indian Health Service (IHS) equal employment opportunity, civil rights, and affirmative action and Alternative Dispute Resolution programs, in accordance with applicable laws, regulations, and the Department of Health and Human Services (HHS) policies; (2) plans and oversees the implementation of IHS affirmative employment and special emphasis programs in accordance with applicable laws, regulations and HHS policies; (3) reviews data and advises IHS managers of possible discriminatory trends; (4) ensures immediate implementation of required actions on complaints of alleged sexual harassment or discrimination; (5) decides on accepting, for investigation, or dismissing discrimination complaints and evaluates accepted complaints for

procedural sufficiency and investigates and resolves complaints; (6) evaluates accepted formal complaints of discrimination for procedural sufficiency and adjudicates and resolves complaints; and (7) develops/ administers equal employment opportunity education and training programs for IHS managers, supervisors, counselors, and employees.

Office of Indian Self-Determination and Self-Governance (GAA)

(1) Provides leadership and implementation of legislation and authorities under Title I and Title V of Indian Self-Determination and Education Assistance Act (ISDEAA), excluding construction authorities; (2) provides oversight and monitoring of Agency compliance with ISDEAA policies, administrative procedures and guidelines; (3) advises the IHS Director, on activities and issues related to ISDEAA; (4) works in partnership with Tribal governments and the Tribal Self-Governance Advisory Committee (TSGAC) in the development and recommendations of policies, administrative procedures, and guidelines of ISDEAA activities for the implementation of the Tribal Self-Governance Program (TSGP); (5) provides Agency leadership of national TSGAC meetings for Tribal governments on the TSGP; (6) coordinates and provides technical assistance Tribal governments and Tribal organizations, as outlined in the ISDEAA; (7) coordinates the oversight and monitoring funding agreements and annual funding agreements at all levels; (8) serves as the principal IHS office for the development of presentations and trainings on the ISDEAA; (9) participates in meetings between Tribal delegations, Tribal governments, and the IHS Director; (10) develops executive management reports, reports to Congress, and conducts data analysis on ISDEAA activities; (11) provides ISDEAA leadership, assistance, and support to IHS Area offices and program offices, including on issues related to Contract Support Costs (CSC); and (12) participates in cross-cutting issues and processes including, but not limited to, emergency preparedness/security, budget formulation, ISDEAA, Tribal shares computations, and resolution of audit findings related to Tribal health programs.

Division of Indian Self-Determination and Education Assistance Act Programs (GAA1)

(1) Provides Agency leadership and direction for all Agency negotiators on ISDEAA Title I and Title V contracts

and compacts and annual funding agreements; (2) provides Agency-wide assistance and support to Agency negotiators for ISDEAA Title I and Title V negotiations; (3) provides policy and procedural guidance to Agency negotiators in support of ISDEAA negotiation activities; (4) responsible for education and technical assistance, as appropriate, to Tribal personnel in the preparation, negotiation, and payment of ISDEAA contracts and compacts; (5) performs monitoring and oversight of all ISDEAA program activities and funding; (6) conducts performance reviews of ISDEAA program activities; (7) develops programmatic responses regarding ISDEAA to oversight entities such as Office of Inspector General and Government Accountability Office in coordination with the IHS Office of Quality; and (8) coordinates and leads internal Agency review with the Headquarters leadership team on potential Title I, full or partial, Declinations Reassumptions and Title V Final Offer Review Group activities.

Division of Tribal Payments (GAA1A)

(1) Collaborates with the Office of Finance and Accounting (OFA) to review and ensure ISDEAA payment documents are in compliance with policies and procedures; (2) monitors, tracks and conducts financial management activities for ISDEAA payments; (3) develops Agency Programs, Services, Functions, and Activities policy, manual development and monitoring activities; (4) provides support to OFA and Agency negotiators on oversight and monitoring activities of single audits of ISDEAA programs to ensure compliance with laws and regulations; (5) provides Agency oversight and technical assistance to Agency negotiators regarding Tribal payments; (6) coordinates with the OFA and leads the management and oversight of financial management tools and subsidiary financial systems to make payments to Tribal Health Programs; (7) conducts periodic oversight reviews on the Agency Tribal payments process; and (8) works closely with the OFA to complete payments to Tribes for ISDEAA contracts and compacts.

Training and Technical Assistance Staff (GAA1B)

(1) Provides leadership in the development, planning and delivery of training and technical assistance (T/TA) through engagement with Federal, Tribal and Tribal Organization (T/TO) partners; (2) develops and manages Agency-wide, standardized training curriculum for ISDEAA; (3) conducts

data monitoring and tracking for all T/TA activities, ensuring accurate measure reporting and benchmarking while enhancing management of T/TA assets; (4) researches issues and develops learning objectives to resolve and foster approaches to ISDEAA related issues; (5) coordinates Agency expertise and training resources to address Tribal issues and technical support for T/TO's; (6) collaborates with T/TOs to build upon existing strengths and knowledge; (7) develop ISDEAA compliance tools to conduct periodic program level oversight reviews; and (8) coordinates T/TA related information technology investments to develop internal T/TA resource database, Agency T/TA resource page, and a central T/TA learning management system.

Division of Contract Support Costs (GAA2)

(1) Provides a uniform and equitable system of determining, tracking and reconciling CSC funds for new, expanded and ongoing ISDEAA compacts and contracts; (2) provides coordination in the administration of CSC activities across the Agency; (3) provides Agency leadership guidance in the development and implementation of Agency CSC policies and procedures; (4) provides technical assistance and education to Federal, and/or T/TO's in the preparation, negotiation, determination, payment and reconciliation of CSC funding; (5) provides Agency leadership for the IHS/Tribal CSC Advisory Committee activities; (6) in coordination through OFA, participates in the budget justification process and provides all requirements for CSC funding levels; (7) maintains systems to monitor all CSC funds paid to T/TO's; and (8) develops executive management reports, reports to Congress and data analysis on CSC activities.

Division of Tribal Leasing (GAA3)

(1) Provides Agency leadership in the administration of section 105(l) of the ISDEAA, 25 U.S.C. 5324(l), and the implementing regulations at 25 CFR part 900, subpart H, also known as "section 105(l) leases" or "Tribal leases;" (2) develops 105(l) policies and procedures for Agency negotiations, implementation and administration for the Agency 105(l) program; (3) responsible for education and technical assistance of the 105(l) program T/TO and Agency negotiators in the preparation, negotiation, determination, and payments; (4) provides oversight of 105(l) program activities and funding; (5) develops oversight and monitoring activities for periodic program activities

and performance reviews of 105(l) program; (6) in coordination with OFA, develops budget justification for 105(l) program funding requests; (7) communicates with the Department of Interior, Bureau of Indian Affairs on 105(l) lease proposals and associated Agency policies; (8) in coordination through OFA, participates in the budget justification process and provides all requirements for 105(l) funding levels; (9) maintains systems to monitor all 105(l) funds paid to T/TO's; and (10) develops executive management reports, reports to Congress and data analysis on 105(l) activities.

Office of Tribal and Urban Affairs (GAB)

(1) Provides Agency leadership concerning policy development, program management, resource allocation related to Direct Service Tribes (DST) Urban Indian Organization (UIO) oversight activities; (2) advises the IHS Director and Deputy Director for Intergovernmental Affairs on Tribal, Indian Self-Determination and Education Assistance Act and Urban program; (3) serves as the principal Agency liaison with T/TO, national, regional and Area Tribal consortiums, UIOs; (4) serves as the primary lead for the Direct Service Tribes Advisory Committee (DSTAC) by coordination of DSTAC meetings to provide a forum for the DST leaders to express their concerns and primary issues relating to direct health care delivery by the IHS; (5) coordinates and facilitates meetings between Tribal delegations and the Office of the Director; (6) maintain a central contact information database on Tribal governments; (7) works with program offices to obtain information regarding IHS Tribal advisory committee activities including quarterly and annual meetings and committee representative listings; (8) serves as the IHS liaison to the HHS Secretary's Tribal Advisory Committee (STAC); (9) participates in policy development on issues concerning newly federally recognized and restored Tribes; (10) maintains a central database of contact information for Tribal leaders, health director's health programs, etc.; and (11) participates in cross-cutting issues and processes including, but not limited to, emergency preparedness/security, budget formulation, and resolution of audit findings related to program activities.

Division of Tribal Coordination (GAB1)

(1) Provides Agency leadership and coordination for DSTs as required by 25 U.S.C. 1663; (2) directs a national program and providing leadership and

advocacy in the development of health policy, program management, budget formulation, resource allocation, and delegation support for DSTs; (3) provides service-wide leadership, guidance and support for DSTs to include strategic planning and program evaluation; (4) ensures maximum flexibility to DST health and related support systems for Indian beneficiaries; (5) serves as the focal point for consultation and participation between DSTs, T/TO's and the Service in the development of Service policy; (6) provides Agency leadership and coordination for Tribal advisory group activities including membership listings, developing policies and operating procedures and coordination; (7) holds biannual consultations with DSTs in appropriate locations to gather information and aid in the development of health policy; (8) coordinates and conducts Tribal Consultation activities in accordance with Presidential Memorandum on Uniform Standards for Tribal Consultation, including policy development and serves as central Agency point of contact for Tribal Consultation matters; (9) manages and coordinates the review and communicating throughout the Agency executive orders that affect T/TOs; (10) ensures dissemination of annual reports for Tribal advisory committees; and (11) serves as central Agency point of contact for Tribal delegations including scheduling, planning, coordination, correspondence and tracking of issues.

Tribal Resources Staff (GAB1A)

(1) Administers a national statutorily mandated grant program designed to assist Tribal governments and Tribal organizations in beginning and/or expanding ISDEAA, Public Law 93-638, Title I and Title V, as amended; (2) provides leadership and management of Tribal Management Grant (TMG) and the Tribal Self-Governance Grant Program (TSGGP) funding; (3) participates in the development of budget formulation and justification requests for TMG resources; (4) provides leadership communication to T/TOs for TMG funding opportunities; (5) conducts program analysis of TMGs; (6) coordinates the review, evaluation and eligibility determinations of proposals from Tribal governments and Tribal organizations for ISDEAA planning, negotiation and management grants and recommendations to the IHS Director; and (7) develops executive management reports, reports to Congress and analysis on TMG/TSGGP activities.

Public Engagement Staff (GAB1B)

(1) Communicates with T/TOs and UIOs regarding relevant Agency information on programs and services that impact Tribal communities; (2) coordinates the dissemination of information from the Chief Medical Officer (CMO) regarding critical health issues that impact Tribal communities; (3) coordinates forums for discussion with T/TOs and UIOs with subject matter experts to develop a knowledge base of critical information for public consumption; (4) develop and leads townhall engagements for IHS customers; and (5) works with Public Affairs Staff to develop campaign forums for customer engagement.

Division of Urban Indian Affairs (GAB2)

(1) Advises the IHS Director and Deputy Director for Intergovernmental Affairs on activities and issues related to the implementation of Title V of the Indian Health Care Improvement Act, codified as amended in 25 U.S.C. 1651–1660i; (2) develops policies, administrative procedures, and guidelines for UIO health programs and organizations services and activities; (3) shares relevant Agency information for UIOs regarding pertinent IHS health policies affecting UIOs, in coordination with the IHS, CMO; (4) ensures that confer with UIOs occurs to the extent allowed by applicable law; (5) provide technical assistance and program support to Urban Indian health programs and organizations in managing health programs; (6) provides leadership and coordinates with other public and private agencies and organizations on program support for Urban Indian health programs and organizations; (7) advises the IHS Director on Agency compliance with Urban Indian health program policies, administrative procedures, and guidelines; (8) coordinates Agency communications with Urban Indian health program representatives; (9) participates in cross-cutting UIO issues and processes including, but not limited to emergency preparedness/security, budget formulation, computations and resolution of audit findings as may be needed and appropriate; and (10) administers and maintains a national grant program for UIO grant activities.

Office of External Affairs (GAC)

(1) Builds strategic and trusted relationships with Congress, media outlets, non-governmental entities, philanthropic, community and faith-based organizations; (2) advocates and advances Agency priorities with

external outlets; (3) serve as the hub for external entities to work with IHS for the advancement of the Agency's relationship with American Indians and Alaska Natives; (4) coordinates activities between the IHS and the Department of Veterans Affairs (VA); (5) serves as liaison for legislative affairs activities and coordination throughout the Agency; (6) provides executive secretariat support throughout the Agency; and (7) provides public affairs leadership and communications.

Veteran Coordination Support Staff (GAC1)

(1) Coordinates program activities for IHS, Tribes, UIOs, and the VA to serve the health care needs of American Indian and Alaska Native (AI/AN) Veterans; (2) provides Agency coordination and oversight of the IHS/VA memorandum of understanding and operational plan; (3) provides support of the VA advisory workgroups and serves as staff support for the IHS representative on the VA advisory workgroup; (4) serves as Agency liaison for Tribes, Tribal Organizations, and UIOs to enter into VA and other partnerships that improve health outcomes for AI/AN Veterans; and (5) serves as the central point of contact for the VA, Federal agencies, HHS Operating Divisions, and other partners on AI/AN Veteran-related matters and to promote health care for AI/AN Veterans.

Strategic Partnerships Staff (GAC2)

(1) Serves as Agency liaison to enhance communication with local, state, and Tribal governments as well as private sector, profit and not-for profit groups, and national organizations; (2) facilitates and coordinates communication between the IHS and external stakeholders at a high level, for Agency to partnerships to advance IHS initiatives; (3) serves as a central point of contact for other intergovernmental officials and external stakeholders; (4) serves as a liaison between IHS and non-governmental entities; (5) develops Agency strategies to strengthen intergovernmental and non-governmental relationships; (6) researches internal and external stakeholder opportunities for engagement to develop partnerships for IHS, Tribal, and Urban (ITU) health care; and (7) develops annual reports of outcomes of strategic partnership activities.

Legislative Affairs Staff (GAC3)

(1) Serves as the principal advisor to the IHS Director on all legislative and congressional relations matters; (2) advises the IHS Director and other IHS

officials on the need for changes in legislation and manages the development of IHS legislative initiatives; (3) serves as the IHS liaison office for congressional and legislative affairs with congressional offices, the HHS, the Office of Management and Budget, the White House, and other Federal agencies; (4) tracks all major legislative proposals in the Congress that would impact Indian health; (5) ensures that the IHS Director and appropriate IHS and HHS officials are briefed on the potential impact of proposed legislation; (6) develops legislative strategy for key policy and legislative initiatives; (7) provides technical assistance and advice relative to the effect that legislative initiatives/implementation would have on the IHS; provides support and collaborates with the OFA relative to IHS appropriations efforts; (8) directs the development of IHS briefing materials for Congressional hearings, testimony, and bill reports; (9) analyzes legislation for necessary action within the IHS; (10) develops appropriate legislative implementation plans; and (11) coordinates with IHS Headquarters (HQ) and Area Offices as appropriate to provide legislative leadership on issues raised from advocacy entities, and provides technical support to respond to requests from the public, including Tribal governments, Tribal organizations, and Indian community organizations regarding IHS legislative issues.

Executive Secretariat Staff (GAC4)

(1) Manages the processing of executive correspondence and related information to the IHS Director from Tribes and Tribal governments, Tribal organizations, UIOs, Federal departments and agencies, Congress and Congressional staff offices, attorneys, patients, schools, universities, employees, grantees, contractors, and the general public; (2) reviews and monitors correspondence received by the IHS Director and assigns reply or follow-up action to appropriate IHS HQ program offices and IHS Area Offices; (3) ensures the quality, responsiveness, clarity, and substance of IHS-generated correspondence prepared for the IHS Director's signature by coordinating the review of integrity and policy issues, and performing standard edits and revisions; (4) reviews and coordinates clearance of decision documents for the IHS Director's approval to ensure successful operations and policy-making within the Agency; (5) assists IHS officials as they prepare documents for the HHS Secretary's review, decision, and/or signature; (6) serves as the Agency's liaison with the HHS

Office of the Secretary's Executive Secretariat on IHS program, policy, and special matters; (7) performs special writing assignments for the IHS Director; (8) maintains official records of the IHS Director's correspondence and conducts topic research of files, as needed; (9) oversees an electronic document handling system to assist in managing the timely processing of internal and external executive correspondence; (10) conducts training to promote conformance by IHS HQ and Area staff to the IHS Executive Correspondence Guidelines; (11) tracks reports required by Congress; and (12) manages the IHS review of non-IHS regulatory documents that impact the delivery of health services to Indians.

Public Affairs Staff (GAC5)

(1) Serves as the principal advisor for strategic planning on communications, media relations, and public affairs policy formulation and implementation; ensures IHS policy is consistent with directives from the HHS Assistant Secretary for Public Affairs; (2) provides leadership and advocacy to establish and implement policy for internal and external dissemination of Agency information intended for public release or employee and stakeholder information; (3) serves as the central office for technical guidance and assistance to IHS staff for the development of public affairs and media communication; (4) coordinates public affairs activities with other public and private sector organizations; (5) coordinates the clearance of IHS public relations activities, campaigns, and communications materials; (6) represents the IHS in discussions regarding policy and public affairs initiatives/implementation; (7) provides technical assistance and advice relative to the effect public affairs initiatives/implementation would have on the IHS; collaborates with the Division of Regulatory and Policy Coordination, for review and response to media requests received under the Freedom of Information Act, and ensures the security of IHS documents used in such responses that contain sensitive and/or confidential information; and (8) serves as the IHS liaison office for press and public affairs activities with HHS, IHS Area Offices, media and other external organizations and representatives.

P. Benjamin Smith

Deputy Director, Indian Health Service.

[FR Doc. 2025-00183 Filed 1-7-25; 8:45 am]

BILLING CODE 4166-14-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2024-0002; Internal Agency Docket No. FEMA-B-2485]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before April 8, 2025.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA-B-2485, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and

Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at https://www.floodsrp.org/pdfs/srp_overview.pdf.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/>

prelimdownload and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the

tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,
Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Cochise County, Arizona and Incorporated Areas Project: 18-09-0036S Preliminary Date: October 11, 2024	
City of Benson	City Hall, 101 East 6th Street, Benson, AZ 85602.
City of Sierra Vista	City Hall, 1011 North Coronado Drive, Sierra Vista, AZ 85635.
City of Tombstone	City Offices, 613 East Allen Street, Tombstone, AZ 85638.
Town of Huachuca City	Town Hall, 500 North Gonzales Boulevard, Huachuca City, AZ 85616.
Unincorporated Areas of Cochise County	Cochise County Engineering & Natural Resources Department, 1415 West Melody Lane, Building F, Bisbee, AZ 85603.
Alameda County, California and Incorporated Areas Project: 21-09-0020S Preliminary Date: June 28, 2024	
City of Oakland	Planning and Building Department, 250 Frank H. Ogawa Plaza, Second Floor, Oakland, CA 94612.
Unincorporated Areas of Alameda County	Alameda County Public Works Agency, 399 Elmhurst Street, Hayward, CA 94544.

[FR Doc. 2025-00244 Filed 1-7-25; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2024-0002; Internal Agency Docket No. FEMA-B-2488]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community

number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472,

(202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain

management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard

determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below.

Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA

Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Alabama:						
Jefferson	City of Birmingham (23-04-3251P).	The Honorable Randall Woodfin, Mayor, City of Birmingham, 710 North 20th Street, 3rd Floor, Birmingham, AL 35203.	Department of Planning, Engineering, and Permits, 710 20th Street North, Room 210, Birmingham, AL 35203.	https://msc.fema.gov/portal/advanceSearch .	Feb. 21, 2025	010116
Jefferson	City of Birmingham (24-04-3190P).	The Honorable Randall Woodfin, Mayor, City of Birmingham, 710 North 20th Street, 3rd Floor, Birmingham, AL 35203.	City Hall, 710 North 20th Street, Room 500, Birmingham, AL 35203.	https://msc.fema.gov/portal/advanceSearch .	Mar. 13, 2025	010116
Jefferson	City of Fultondale (23-04-3251P).	The Honorable Larry Holcomb, Mayor, City of Fultondale, 1210 Walker Chapel Road, Fultondale, AL 35068.	Business License, Permit, and Inspections Department, 1015 Old Walker Chapel Road, Fultondale, AL 35068.	https://msc.fema.gov/portal/advanceSearch .	Feb. 21, 2025	010121
Jefferson	City of Mountain Brook (24-04-3190P).	The Honorable Stewart Welch, III, Mayor, City of Mountain Brook, P.O. Box 130009, Mountain Brook, AL, 35213.	City Hall, 56 Church Street, Mountain Brook, AL, 35213.	https://msc.fema.gov/portal/advanceSearch .	Mar. 13, 2025	010128
Jefferson	City of Tarrant (23-04-3251P).	The Honorable Wayman Newton, Mayor, City of Tarrant, 1604 Pinson Valley Parkway, Tarrant, AL 35217.	City Hall, 1604 Pinson Valley Parkway, Tarrant, AL 35217.	https://msc.fema.gov/portal/advanceSearch .	Feb. 21, 2025	010131
Jefferson	Unincorporated Areas of Jefferson County (23-04-3251P).	The Honorable Jimmie Stephens, President, Jefferson County Commission, 716 Richard Arrington Jr. Boulevard North, Suite 210, Birmingham, AL 35203.	Jefferson County Department of Development Services, 716 Richard Arrington Jr. Boulevard North, Suite B200, Birmingham, AL 35203.	https://msc.fema.gov/portal/advanceSearch .	Feb. 21, 2025	010217
Arizona:						
Maricopa	City of Phoenix (23-09-0361P).	The Honorable Kate Gallego, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, AZ 85003.	City Hall, 200 West Washington Street, Phoenix, AZ 85003.	https://msc.fema.gov/portal/advanceSearch .	Mar. 7, 2025	040051
Maricopa	Town of Paradise Valley (23-09-0361P).	The Honorable Jerry Bien-Willner, Mayor, Town of Paradise Valley, 6401 East Lincoln Drive, Paradise Valley, AZ 85253.	Town Hall, 6401 East Lincoln Drive, Paradise Valley, AZ 85253.	https://msc.fema.gov/portal/advanceSearch .	Mar. 7, 2025	040049
Pinal	City of Apache Junction (24-09-0270P).	The Honorable Chip Wilson, Mayor, City of Apache Junction, 300 East Superstition Boulevard, Apache Junction, AZ 85119.	City Hall, 300 East Superstition Boulevard, Apache Junction, AZ 85119.	https://msc.fema.gov/portal/advanceSearch .	Mar. 6, 2025	040120
Arkansas:						
Washington	City of Springdale (24-06-0636P).	The Honorable Doug Sprouse, Mayor, City of Springdale, 201 Spring Street, Springdale, AR 72764.	City Hall, 201 Spring Street, Springdale, AR 72764.	https://msc.fema.gov/portal/advanceSearch .	Mar. 24, 2025	050219
California:						
San Joaquin ...	City of Lathrop (24-09-0243P).	The Honorable Sonny Dhaliwal, Mayor, City of Lathrop, 390 Town Center Drive, Lathrop, CA 95330.	City Hall, 390 Towne Center Drive, Lathrop, CA 95330.	https://msc.fema.gov/portal/advanceSearch .	Mar. 13, 2025	060738
Ventura	City of Santa Paula (24-09-0113P).	Dan Singer, City Manager, City of Santa Paula, 970 Ventura Street, Santa Paula, CA 93060.	Public Works Department, 866 East Main Street, Santa Paula, CA 93060.	https://msc.fema.gov/portal/advanceSearch .	Mar. 6, 2025	060420

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Ventura	Unincorporated Areas of Ventura County (24-09-0113P).	Kelly Long, Chair, Ventura County Board of Supervisors, 1203 Flynn Road, Suite 220, Camarillo, CA 93012.	Ventura County Government, Center Hall of Administration, 800 South Victoria Avenue, Ventura, CA 93009.	https://msc.fema.gov/portal/advanceSearch .	Mar. 6, 2025	060413
Colorado:						
Douglas	Town of Castle Rock (24-08-0008P).	The Honorable Jason Gray, Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104.	Water Administration Building, 175 Kellogg Court, Castle Rock, CO 80104.	https://msc.fema.gov/portal/advanceSearch .	Mar. 21, 2025	080050
Douglas	Unincorporated Areas of Douglas County (24-08-0008P).	George Teal, Chair, Douglas County Board of County Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Douglas County Public Works, 100 3rd Street, Castle Rock, CO 80104.	https://msc.fema.gov/portal/advanceSearch .	Mar. 21, 2025	080049
Jefferson	Unincorporated Areas of Jefferson County (24-08-0337P).	Lesley Dahlkemper, Chair, Jefferson County, Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Jefferson County, Planning and Zoning Division, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.	https://msc.fema.gov/portal/advanceSearch .	Mar. 28, 2025	080087
Delaware:						
New Castle	Unincorporated areas of New Castle County (24-03-0197P).	The Honorable Matthew Meyer, New Castle County Executive, 87 Reads Way, New Castle, DE 19720.	New Castle County Government Center, 87 Reads Way, New Castle, DE 19720.	https://msc.fema.gov/portal/advanceSearch .	Mar. 20, 2025	105085
Florida:						
Charlotte	Unincorporated areas of Charlotte County (24-04-2434P).	Bill Truex, Chair, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Building Department, 18400 Murdock Circle, Port Charlotte, FL 33948.	https://msc.fema.gov/portal/advanceSearch .	Mar. 24, 2025	120061
Clay	Unincorporated areas of Clay County (24-04-3312P).	Jim Renninger, Chair, Clay County Board of Commissioners, P.O. Box 1366, Green Cove Springs, FL 32043.	Clay County Administration Building, 477 Houston Street, 3rd Floor, Green Cove Springs, FL 32043.	https://msc.fema.gov/portal/advanceSearch .	Apr. 4, 2025	120064
Hillsborough ...	Unincorporated areas of Hillsborough County (25-04-0554P).	Bonnie Wise, Hillsborough County Administrator, 601 East Kennedy Boulevard, 26th Floor, Tampa, FL 33602.	Hillsborough County Center, 601 East Kennedy Boulevard, 22nd Floor, Tampa, FL 33602.	https://msc.fema.gov/portal/advanceSearch .	Mar. 17, 2025	120064
Orange	City of Orlando (24-04-0779P).	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801.	Public Works Department, Engineering Division, 400 South Orange Avenue, 8th Floor, Orlando, FL 32801.	https://msc.fema.gov/portal/advanceSearch .	Mar. 24, 2025	120186
Orange	City of Orlando (24-04-6931P).	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801.	Public Works Department, Engineering Division, 400 South Orange Avenue, 8th Floor, Orlando, FL 32801.	https://msc.fema.gov/portal/advanceSearch .	Apr. 7, 2025	120186
Orange	Unincorporated areas of Orange County (24-04-0779P).	The Honorable Jerry L. Demings, Mayor, Orange County, 201 South Rosalind Avenue 5th Floor, Orlando, FL 32801.	Orange County Public Works Department, Stormwater Management Division, 4200 South John Young Parkway, Orlando, FL 32839.	https://msc.fema.gov/portal/advanceSearch .	Mar. 24, 2025	120179
Palm Beach ...	Unincorporated areas of Palm Beach County (24-04-4466P).	Verdenia C. Baker, Administrator, Palm Beach County, 301 North Olive Avenue, Suite 1101, West Palm Beach, FL 33411.	Palm Beach County Vista Center, Building Division, 2300 North Jog Road, Vista Center, 1st Floor, 1E-17, West Palm Beach, FL 33401.	https://msc.fema.gov/portal/advanceSearch .	Apr. 3, 2025	120192
Polk	City of Lakeland (24-04-3478P).	The Honorable William "Bill" Mutz, Mayor, City of Lakeland, 228 South Massachusetts Avenue, Lakeland, FL 33801.	City Hall, 228 South Massachusetts Avenue, Lakeland, FL 33801.	https://msc.fema.gov/portal/advanceSearch .	Mar. 24, 2025	120267
Polk	Unincorporated areas of Polk County (24-04-3478P).	Bill Beasley, Polk County Manager, 330 West Church Street, Bartow, FL 33830.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33830.	https://msc.fema.gov/portal/advanceSearch .	Mar. 24, 2025	120261

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Sarasota	City of Venice (24-04-3479P).	The Honorable Nick Pachota, Mayor, City of Venice, 401 West Venice Avenue, Venice, FL 34285.	Engineering Department, 401 West Venice Avenue, Venice, FL 34285.	https://msc.fema.gov/portal/advanceSearch .	Mar. 31, 2025	125154
Sarasota	Unincorporated areas of Sarasota County (24-04-3479P).	Michael A. Moran, Chair, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	https://msc.fema.gov/portal/advanceSearch .	Mar. 31, 2025	125144
North Carolina: Cumberland ...	Unincorporated Areas of Cumberland County (24-04-0875P).	Kirk DeViere, Chair, Cumberland County Board of Commissioners, P.O. Box 1829, Fayetteville, NC 28302.	Cumberland County Planning & Inspections Department, 130 Gillespie Street, Fayetteville, NC 28301.	https://msc.fema.gov/portal/advanceSearch .	Mar. 12, 2025	370076
Guilford	City of Greensboro (23-04-6190P).	The Honorable Nancy Vaughan, Mayor, City of Greensboro, P.O. Box 3136, Greensboro, NC 27402.	Stormwater Planning Division, 2602 South Elm, Eugene Street, Greensboro, NC 27402.	https://msc.fema.gov/portal/advanceSearch .	Mar. 21, 2025	375351
Harnett	Unincorporated Areas of Harnett County (24-04-0875P).	Matt Nicol, Chair, Harnett County Board of Commissioners, P.O. Box 759, Lillington, NC 27546.	Harnett County Development Services, 420 McKinney Pkwy., Lillington, NC 27546.	https://msc.fema.gov/portal/advanceSearch .	Mar. 12, 2025	370328
Ohio: Franklin	City of Columbus (24-05-2037P).	The Honorable Andrew J. Ginther, Mayor, City of Columbus, 90 West Broad Street, Columbus, OH 43215.	City Hall, 1250 Fairwood Avenue, Columbus, OH 43206.	https://msc.fema.gov/portal/advanceSearch .	Mar. 31, 2025	390170
Franklin	City of Reynoldsburg (24-05-2037P).	The Honorable Joe Begeny, Mayor, City of Reynoldsburg, 7232 East Main Street, Reynoldsburg, OH 43068.	City Hall, 7232 East Main Street, Reynoldsburg, OH 43068.	https://msc.fema.gov/portal/advanceSearch .	Mar. 31, 2025	390177
South Dakota: Pennington	City of Rapid City (24-08-0254P).	The Honorable Jason Salamun, Mayor, City of Rapid City, 300 6th Street, Rapid City, SD 57701.	Engineering Department, 300 6th Street, Rapid City, SD 57701.	https://msc.fema.gov/portal/advanceSearch .	Apr. 2, 2025	465420
Tennessee: Sevier	City of Sevierville (24-04-4910P).	The Honorable Robert W. Fox, Mayor, City of Sevierville, 120 Gary Wade Boulevard, Sevierville, TN 37862.	Division of Code Enforcement, 120 Gary Wade Boulevard, Sevierville, TN 37862.	https://msc.fema.gov/portal/advanceSearch .	Mar. 17, 2025	475444
Rutherford	City of Murfreesboro (24-04-1833P).	The Honorable Shane McFarland, Mayor, City of Murfreesboro, 111 West Vine Street, Murfreesboro, TN 37130.	City Hall, 111 West Vine Street, Murfreesboro, TN 37130.	https://msc.fema.gov/portal/advanceSearch .	Mar. 12, 2025	470168
Rutherford	Unincorporated Areas of Rutherford County (24-04-1833P).	The Honorable Joe Carr, Mayor, Rutherford County, 1 Public Square, Room 101, Murfreesboro, TN 37130.	Rutherford County Planning and Engineering Department, 1 South Public Square #200, Murfreesboro, TN 37130.	https://msc.fema.gov/portal/advanceSearch .	Mar. 12, 2025	470165
Texas: Bexar	City of San Antonio (24-06-0419P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Department of Public Works, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	https://msc.fema.gov/portal/advanceSearch .	Mar. 10, 2025	480045
Bexar	Unincorporated areas of Bexar County (24-06-2212P).	The Honorable Peter Sakai, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	https://msc.fema.gov/portal/advanceSearch .	Feb. 24, 2025	480035
Comal	City of New Braunfels (24-06-0435P).	Robert Camareno, Manager, City of New Braunfels, 550 Landa Street, New Braunfels, TX 78130.	City Hall, 550 Landa Street, New Braunfels, TX 78130.	https://msc.fema.gov/portal/advanceSearch .	Mar. 12, 2025	485493

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Grayson	Unincorporated areas of Grayson County (24–06–0789P).	The Honorable Bruce Dawsey, Grayson County Judge, 100 West Houston Street, Sherman, TX 75090.	Grayson County Court-house, 100 West Houston Street, Sherman, TX 75090.	https://msc.fema.gov/portal/advanceSearch .	Mar. 24, 2025	480829
Kendall	Unincorporated areas of Kendall County (24–06–0930P).	The Honorable Shane Stolarczyk, Kendall County Judge, 201 East San Antonio Avenue, Boerne, TX 78006.	Kendall County Court-house, 201 East San Antonio Avenue, Suite 101, Boerne, TX 78006.	https://msc.fema.gov/portal/advanceSearch .	Mar. 24, 2025	480417
Midland	City of Midland (24–06–2101P).	The Honorable Lori Blong, Mayor, City of Midland, 300 North Loraine Street, Midland, TX 79701.	Engineering Department, 300 North Loraine Street, 5th Floor, Midland, TX 79701.	https://msc.fema.gov/portal/advanceSearch .	Apr. 2, 2025	480477
Midland	Unincorporated areas of Midland County (23–06–2576P).	The Honorable Terry Johnson, Midland County Judge, 500 North Loraine Street, Suite 1100, Midland, TX 79701.	Midland County Public Works Department, 500 North Loraine Street, Suite 1100, Midland, TX 79701.	https://msc.fema.gov/portal/advanceSearch .	Mar. 31, 2025	481239
Midland	Unincorporated areas of Midland County (24–06–2101P).	The Honorable Terry Johnson, Midland County Judge, 500 North Loraine Street, Suite 1100, Midland, TX 79701.	Midland County Public Works Department, 500 North Loraine Street, Suite 1100, Midland, TX 79701.	https://msc.fema.gov/portal/advanceSearch .	Apr. 2, 2025	481239
Tarrant	City of Benbrook (24–06–0786P).	James Hinderaker, Manager, City of Benbrook, 911 Winscott Road, Benbrook, TX 76126.	City Hall, 911 Winscott Road, Benbrook, TX 76126.	https://msc.fema.gov/portal/advanceSearch .	Apr. 3, 2025	480586
Tarrant	City of Fort Worth (24–06–0786P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, Engineering Vault and Map Repository, 200 Texas Street, Fort Worth, TX 76102.	https://msc.fema.gov/portal/advanceSearch .	Apr. 3, 2025	480596
Travis	City of Manor (23–06–2497P).	The Honorable Christopher Harvey Mayor, City of Manor, P.O. Box 387, Manor, TX 78653.	City Hall, 105 East Eggleston Street, Manor, TX 78653.	https://msc.fema.gov/portal/advanceSearch .	Apr. 7, 2025	481027
Travis	Unincorporated areas of Travis County (23–06–2497P).	The Honorable Andy Brown, Travis County Judge, P.O. Box 1748, Austin, TX 78767.	Travis County Floodplain Management, 700 Lavaca Street, 5th Floor, Austin, TX 78701.	https://msc.fema.gov/portal/advanceSearch .	Apr. 7, 2025	481026
Washington: King	Town of Skykomish (22–10–0931P).	The Honorable Henry Sladek, Mayor, Town of Skykomish, P.O. Box 308, Skykomish, WA 98288.	City Hall, 119 4th Street North, Skykomish, WA 98288.	https://msc.fema.gov/portal/advanceSearch .	Mar. 31, 2025	530236
King	Unincorporated Areas of King County (22–10–0931P).	Dow Constantine, King County Executive, 401 5th Avenue, Suite 800, Seattle, WA 98104.	King County Executive Office, 401 5th Avenue, Suite 800, Seattle, WA 98104.	https://msc.fema.gov/portal/advanceSearch .	Mar. 31, 2025	530071
Wyoming: Teton	Unincorporated Areas of Teton County (23–08–0662P).	Luther Propst, Chair, Teton County Board of Commissioners, P.O. Box 3594, Jackson, WY 83001.	Teton County Public Works Department, 320 South King Street, Jackson, WY 83002.	https://msc.fema.gov/portal/advanceSearch .	Mar. 20, 2025	560094

[FR Doc. 2025–00242 Filed 1–7–25; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2484]****Proposed Flood Hazard Determinations****AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.**ACTION:** Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table

below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before April 8, 2025.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA-B-2484, to Rick Sacbabit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbabit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbabit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472,

(202) 646-7659, or (email) patrick.sacbabit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in

support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at https://www.floodsrp.org/pdfs/srp_overview.pdf.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison. (Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Barry County, Missouri and Incorporated Areas Project: 20-07-0041S Preliminary Date: November 7, 2023 and September 10, 2024	
City of Cassville	City Hall, 300 Main Street, Cassville, MO 65625.
City of Monett	City Hall, 217 5th Street, Monett, MO 65708.
City of Washburn	City Hall, 321 Main Street, Washburn, MO 65772.
Unincorporated Areas of Barry County	Barry County Courthouse, 700 Main Street, Cassville, MO 65625.
Village of Arrow Point	Barry County Courthouse, 700 Main Street, Cassville, MO 65625.
Village of Chain-O-Lakes	Barry County Courthouse, 700 Main Street, Cassville, MO 65625.
Village of Emerald Beach	Village of Emerald Beach Village Hall, 23956 Cardinal Drive, Golden, MO 65658.
Carter County, Missouri and Incorporated Areas Project: 19-07-0066S Preliminary Date: November 10, 2023 and July 3, 2024	
City of Ellsinore	City Hall, 11 West Cleveland Avenue, Ellsinore, MO 63937.
City of Grandin	City Hall, 310 Walnut Street, Grandin, MO 63943.
City of Van Buren	City Hall, 1401 Main Street, Van Buren, MO 63965.
Unincorporated Areas of Carter County	Carter County Courthouse, 1122 Main Street, Van Buren, MO 63965.
Douglas County, Missouri and Incorporated Areas Project: 19-07-0067S Preliminary Date: July 14, 2023 and July 17, 2024	
City of Ava	City Hall, 404 South Jefferson Street, Ava, MO 65608.

Community	Community map repository address
Unincorporated Areas of Douglas County	Douglas County Courthouse, 203 East Lincoln Avenue, Ava, MO 65608.

St. Clair County, Missouri and Incorporated Areas
Project: 19-07-0073S Preliminary Date: January 12, 2024

City of Appleton City	City Hall, 114 East 4th Street, Appleton City, MO 64724.
City of Lowry City	City Hall, 406 West 4th Street, Lowry City, MO 64763.
City of Osceola	City Hall, 210 Olive Street, Osceola, MO 64776.
Unincorporated Areas of St. Clair County	St. Clair County Courthouse, 655 2nd Street, Osceola, MO 64776.
Village of Collins	City Hall, 1604 Main Street, Collins, MO 64738.
Village of Roscoe	St. Clair County Courthouse, 655 2nd Street, Osceola, MO 64776.
Village of Vista	St. Clair County Courthouse, 655 2nd Street, Osceola, MO 64776.

Sabine County, Texas and Incorporated Areas
Project: 23-06-0055S Preliminary Date: August 27, 2024

City of Hemphill	City Hall, 211 Starr Street, Hemphill, TX 75948.
City of Pineland	City Hall, 101 Dogwood Street, Pineland, TX 75968.
Unincorporated Areas of Sabine County	Sabine County Administration Building, 201 Main Street, Hemphill, TX 75948.

[FR Doc. 2025-00243 Filed 1-7-25; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2024-0002; Internal Agency Docket No. FEMA-B-2487]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before April 8, 2025.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA-B-2487, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that

are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at https://www.floodsrp.org/pdfs/srp_overview.pdf.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where

applicable, FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary

studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
San Augustine County, Texas and Incorporated Areas Project: 23-06-0054S Preliminary Date: August 8, 2024	
City of San Augustine	City Hall, 301 South Harrison Street, San Augustine, TX 75972.
Town of Broadus	Community Center, 1011 FM 2558, Broadus, TX 75929.
Unincorporated Areas of San Augustine County	San Augustine County Courthouse, 100 West Columbia Street, Room 105, San Augustine, TX 75972.
Shelby County, Texas and Incorporated Areas Project: 23-06-0058S Preliminary Date: August 27, 2024	
City of Center	City Hall, 617 Tenaha Street, Center, TX 75935.
City of Huxley	Huxley City Hall, 11798 FM 2694, Shelbyville, TX 75973.
City of Joaquin	City Office, 124 North Preston Street, Joaquin, TX 75954.
City of Tenaha	City Hall, 238 North George Bowers Drive, Tenaha, TX 75974.
City of Timpson	City Hall, 456 Jacob Street, Timpson, TX 75975.
Unincorporated Areas of Shelby County	Shelby County Courthouse, 200 San Augustine Street, Center, TX 75935.

[FR Doc. 2025-00245 Filed 1-7-25; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2025-0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Each LOMR is available for inspection at both the respective

Community Map Repository address listed in the table below and online through the FEMA Map Service Center at <https://msc.fema.gov>.

FOR FURTHER INFORMATION CONTACT: Rick Sacibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65. The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the

floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Alabama: Limestone (FEMA Docket No.: B-2467).	City of Madison (24-04-6459X).	The Honorable Paul Finley, Mayor, City of Madison, 100 Hughes Road, Madison, AL 35758.	City Hall, 100 Hughes Road, Madison, AL 35758.	Jan. 9, 2025	010308
Arizona: Mojave (FEMA Docket No.: B-2460).	City of Kingman (24-09-0317P).	The Honorable Ken Watkins, Mayor, City of Kingman, 310 North 4th Street, Kingman, AZ 86401.	Mohave County Flood Control District, 3250 East Kino Avenue, Kingman, AZ 86409.	Dec. 5, 2024	040060
Colorado:					
Ebert (FEMA Docket No.: B-2460).	Town of Elizabeth (23-08-0679P).	The Honorable Tammy Payne, Mayor, Town of Elizabeth, P.O. Box 159, Elizabeth, CO 80107.	Town Hall, 321 South Banner Street, Elizabeth, CO 80107.	Dec. 6, 2024	080056
Ebert (FEMA Docket No.: B-2460).	Unincorporated areas of Elbert County (23-08-0679P).	Chris Richardson, Chair, Elbert County Board of Commissioners, P.O. Box 7, Kiowa, CO 80117.	Elbert County Government, 215 Comanche Street Kiowa, CO 80117.	Dec. 6, 2024	080055
Jefferson (FEMA Docket No.: B-2454).	City of Lakewood (24-08-0107P).	The Honorable Wendi Strom, Mayor, City of Lakewood, 480 South Allison Parkway, Lakewood, CO 80226.	Public Works and Engineering Department, 480 South Allison Parkway, Lakewood, CO 80226.	Nov. 22, 2024	085075
Connecticut: Fairfield (FEMA Docket No.: B-2460).	Town of Stratford (24-01-0076P).	The Honorable Laura R. Hoydick, Mayor, Town of Stratford, 2725 Main Street, Stratford, CT 06615.	Building Department 2725 Main Street Stratford, CT 06615.	Nov. 25, 2024	090016
Florida:					
Hillsborough (FEMA Docket No.: B-2454).	City of Tampa (23-04-5115P).	The Honorable Jane Castor, Mayor, City of Tampa, 306 East Jackson Street, Tampa, FL 33602.	City Hall, 306 East Jackson Street, Tampa, FL 33602.	Nov. 25, 2024	120114
Monroe (FEMA Docket No.: B-2460).	Unincorporated areas of Monroe County (24-04-3773P).	The Honorable Holly Merrill Raschein, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon FL 33050.	Dec. 6, 2024	125129
Nassau (FEMA Docket No.: B-2460).	Town of Callahan (23-04-2277P).	The Honorable Randy Knagge, Mayor, Town of Callahan, 542300 U.S. Highway 1, Callahan, FL 32011.	Town Hall, 542300 U.S. Highway 1, Callahan, FL 32011.	Dec. 12, 2024	120171
Nassau (FEMA Docket No.: B-2460).	Unincorporated areas of Nassau County (23-04-2277P).	Taco Pope, Nassau County Manager, 96135 Nassau Place, Suite 1, Yulee, FL 32097.	Nassau County Building Department, 96161 Nassau Place Yulee, FL 32097.	Dec. 12, 2024	120170
Nassau (FEMA Docket No.: B-2460).	Unincorporated areas of Nassau County (24-04-1544P).	Taco Pope, Nassau County Manager, 96135 Nassau Place, Suite 1, Yulee, FL 32097.	Nassau County Building Department, 96161 Nassau Place Yulee, FL 32097.	Dec. 5, 2024	120170
Palm Beach (FEMA Docket No.: B-2462).	City of Delray Beach (23-04-6363P).	Terrence Moore, Manager, City of Delray Beach, 100 Northwest 1st Avenue, Delray Beach, FL 33444.	Building Inspections Department, 100 Northwest 1st Avenue, Delray Beach, FL 33444.	Dec. 9, 2024	125102
Volusia (FEMA Docket No.: B-2462).	City of Daytona Beach (24-04-2270P).	The Honorable Derrick Henry, Mayor, City of Daytona Beach, 301 South Ridgewood Avenue, Daytona Beach, FL 32114.	City Hall, 301 South Ridgewood Avenue, Daytona Beach, FL 32114.	Dec. 13, 2024	125099
Polk (FEMA Docket No.: B-2460).	Unincorporated areas of Polk County (24-04-1992P).	Bill Beasley, Polk County Manager, 330 West Church Street, Bartow, FL 33830.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33830.	Dec. 5, 2024	120261
Illinois:					
Kane (FEMA Docket No.: B-2460).	Unincorporated areas of Kane County (24-05-0491P).	Corinne Pierog, Chair, Kane County Board, 719 South Batavia Avenue, Building A Geneva, IL 60134.	Kane County Water Resources Department, 719 South Batavia Avenue, Building A, Geneva, IL 60134.	Nov. 29, 2024	170896
Macon (FEMA Docket No.: B-2460).	City of Decatur (24-05-1373P).	The Honorable Julie Moore Wolfe, Mayor, City of Decatur, 1 Gary K. Anderson Plaza, Decatur, IL 62523.	City Hall, 1 Gary K. Anderson Plaza, Decatur, IL 62523.	Nov. 29, 2024	170429
Will (FEMA Docket No.: B-2460).	Village of New Lenox (24-05-0965P).	The Honorable Timothy Baldermann, Mayor, Village of New Lenox, 1 Veterans Parkway, New Lenox, IL 60451.	Village Hall, 1 Veterans Parkway New Lenox, IL 60451.	Dec. 6, 2024	170706
Iowa: Black Hawk (FEMA Docket No.: B-2462).	City of Waterloo (22-07-1024P).	The Honorable Quentin Hart, Mayor, City of Waterloo, 715 Mulberry Street, Waterloo, IA 50703.	City Hall, 715 Mulberry Street, Waterloo, IA 50703.	Dec. 13, 2024	190025
Michigan:					
Kalamazoo (FEMA Docket No.: B-2462).	City of Kalamazoo (24-05-1071P).	The Honorable David Anderson, Mayor, City of Kalamazoo, 241 West South Street, Kalamazoo, MI 49007.	City Hall, 241 West South Street, Kalamazoo, MI 49007.	Dec. 16, 2024	260315
Oakland (FEMA Docket No.: B-2462).	City of Rochester Hills (24-05-0583P).	The Honorable Bryan Barnett, Mayor, City of Rochester Hills, 1000 Rochester Hills Drive, Rochester Hills, MI 48309.	City Hall, 1000 Rochester Hills Drive, Rochester Hills, MI 48309.	Dec. 9, 2024	260471
Minnesota:					
Anoka (FEMA Docket No.: B-2460).	City of Centerville (23-05-1374P).	The Honorable D. Love, Mayor, City of Centerville, 1880 Main Street, Centerville, MN 55038.	City Hall, 1880 Main Street Centerville, MN 55038.	Dec. 9, 2024	270008
Anoka (FEMA Docket No.: B-2460).	City of Lino Lakes (23-05-1374P).	The Honorable Rob Rafferty, Mayor, City of Lino Lakes, 600 Town Center Parkway, Lino Lakes, MN 55014.	City Hall, 600 Town Center Parkway, Lino Lakes, MN 55014.	Dec. 9, 2024	270015
Cottonwood (FEMA Docket No.: B-2462).	City of Windom (23-05-2934P).	The Honorable Dominic Jones, Mayor, City of Windom, P.O. Box 38, Windom, MN 56101.	City Hall, 444 9th Street, Windom, MN 56101.	Dec. 12, 2024	270090

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Cottonwood (FEMA Docket No.: B-2462).	Unincorporated areas of Cottonwood County (23-05-2934P).	Kelly Thongvivong, Cottonwood County Coordinator, 28606 County Road 1, Comfrey, MN 56019.	Cottonwood County Environmental Department, 339 9th Street, Windom, MN 56101.	Dec. 12, 2024	270622
Mississippi: Hancock (FEMA Docket No.: B-2460).	City of Bay St. Louis (23-04-5378P).	The Honorable Mike Favre, Mayor, City of Bay St. Louis, 688 Highway 90, Bay St. Louis, MS 39520.	Chiniche Engineering and Surveying, 407 Highway 90, Bay St. Louis, MS 39520.	Dec. 6, 2024	285251
New Jersey: Bergen (FEMA Docket No.: B-2462).	Borough of Ho-Ho-Kus (23-02-0548P).	The Honorable Thomas Randall, Mayor, Borough of Ho-Ho-Kus, 333 Warren Avenue, Ho-Ho-Kus, NJ 07423.	Borough Hall, 333 Warren Avenue, Ho-Ho-Kus, NJ 07423.	Dec. 9, 2024	340044
Bergen (FEMA Docket No.: B-2462).	Village of Ridgewood (23-02-0548P).	The Honorable Paul Vagianos, Mayor, Village of Ridgewood, 131 North Maple Avenue, Ridgewood, NJ 07450.	Village Hall, 131 North Maple Avenue, Ridgewood, NJ 07450.	Dec. 9, 2024	340067
New Mexico: Bernalillo (FEMA Docket No.: B-2460).	City of Albuquerque (24-06-0613P).	The Honorable Tim Keller, Mayor, City of Albuquerque, 1 Civic Plaza Northwest, Albuquerque, NM 87102.	Planning Department 600 2nd Street Northwest, Albuquerque, NM 87102.	Dec. 5, 2024	350002
North Carolina: Cabarrus (FEMA Docket No.: B-2467).	Town of Harrisburg (22-04-4548P).	The Honorable Jennifer Teague, Mayor, Town of Harrisburg, P.O. Box 100 Harrisburg, NC 28075.	Town Hall, 4100 Main Street, Suite 101, Harrisburg, NC 28075.	Jan. 3, 2025	370038
Texas: Bexar (FEMA Docket No.: B-2460).	City of San Antonio (24-06-0474P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Public Works Department,, Storm Water Division 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	Nov. 25, 2024	480045
Collin (FEMA Docket No.: B-2460).	Unincorporated areas of Collin County (24-06-0873P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, McKinney, TX 75071.	Collin County Juvenile Justice Alternative Education Program Building, 4690 Community Avenue, McKinney, TX 75071.	Dec. 2, 2024	480130
Denton (FEMA Docket No.: B-2460).	City of Fort Worth (23-06-1526P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, Engineering Vault and Map Repository, 200 Texas Street, Fort Worth, TX 76102.	Dec. 5, 2024	480596
Denton (FEMA Docket No.: B-2460).	Unincorporated areas of Denton County (23-06-1526P).	The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive, Suite 3100, Denton, TX 76208.	Denton County Development Services Department, 3900 Morse Street Denton, TX 76208.	Dec. 5, 2024	480774
Hidalgo (FEMA Docket No.: B-2462).	City of Edinburg (23-06-2507P).	The Honorable Ramiro Garza Jr., Mayor, City of Edinburg, 415 West University Drive, Edinburg, TX 78539.	Engineering Department, 415 West University Drive, Edinburg, TX 78539.	Dec. 9, 2024	480338
Tarrant (FEMA Docket No.: B-2460).	City of Fort Worth (24-06-0569P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, Engineering Vault and Map Repository, 200 Texas Street, Fort Worth, TX 76102.	Nov. 29, 2024	480596
Tarrant (FEMA Docket No.: B-2460).	Unincorporated areas of Tarrant County (24-06-0569P).	The Honorable Tim O'Hare, Tarrant County Judge, 100 East Weatherford Street, Suite 501, Fort Worth, TX 76196.	Tarrant County Transportation Department Engineering Section, 100 East Weatherford Street, Fort Worth, TX 76196.	Nov. 29, 2024	480582
Travis (FEMA Docket No.: B-2460).	City of Mustang Ridge (24-06-0742P).	The Honorable David Bunn, Mayor, City of Mustang Ridge, 12800 U.S. Highway 183 South, Buda, TX 78610.	City Hall, 12800 U.S. Highway 183 South, Mustang Ridge, TX 78610.	Dec. 9, 2024	481687
Virginia: Fairfax (FEMA Docket No.: B-2460).	Unincorporated areas of Fairfax County (24-03-0112P).	Bryan Hill, Fairfax County Executive, 12000 Government Center Parkway, Fairfax, VA 22035.	Public Works and Environmental Services, Department, 12000 Government Center Parkway, Suite 449, Fairfax, VA 22035.	Nov. 29, 2024	515525
Independent City (FEMA Docket No.: B-2460).	City of Suffolk (24-03-0330P).	The Honorable Michael D. Duman, Mayor, City of Suffolk, 442 West Washington Street, Suffolk, VA 23434.	Department of Planning and Community Development, 442 West Washington Street, Suffolk, VA 23434.	Dec. 5, 2024	510156

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2489]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before April 8, 2025.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables below. Additionally,

the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA–B–2489, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) patrick.sacbibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown

on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at https://www.floodsrp.org/pdfs/srp_overview.pdf.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, “Flood Insurance.”)

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Boone County, Nebraska and Incorporated Areas	
Project: 23–07–0052S Preliminary Date: October 18, 2024	
City of Albion	City Office, 420 West Market Street, Albion, NE 68620.
City of St. Edward	City Hall, 1302 State Highway 39, St. Edward, NE 68660.
Unincorporated Areas of Boone County	Boone County Courthouse, 222 South 4th Street, Albion, NE 68620.
Village of Cedar Rapids	City Hall, 425 West Main Street, Cedar Rapids, NE 68627.
Village of Petersburg	Village Office, 203 East Widaman Avenue, Petersburg, NE 68652.
Village of Primrose	Village Hall, 229 Commercial Street, Primrose, NE 68655.
Caldwell County, Texas and Incorporated Areas	
Project: 24–06–0048S Preliminary Date: August 16, 2024	
City of Lockhart	City Hall, 308 West San Antonio Street, Lockhart, TX 78644.
City of Luling	City Hall, 509 East Crockett Street, Luling, TX 78648.

Community	Community map repository address
City of Mustang Ridge	Mustang Ridge City Offices, 12800 U.S. Highway 183 South, Buda, TX 78610.
City of Niederwald	City Hall, 8807 Niederwald Strasse, Niederwald, TX 78640.
City of San Marcos	Engineering Department City Hall, 630 East Hopkins Street, San Marcos, TX 78666.
City of Uhland	City Hall, 15 North Old Spanish Trail, Uhland, TX 78640.
Unincorporated Areas of Caldwell County	Caldwell County Sanitation Department, 1700 FM 2720, Lockhart, TX 78644.

Morris County, Texas and Incorporated Areas
Project: 23-06-0040S Preliminary Date: September 18, 2024

City of Daingerfield	City Hall, 101 Linda Drive, Daingerfield, TX 75638.
City of Hughes Springs	City Hall, 603 East 1st Street, Hughes Springs, TX 75656.
City of Lone Star	City Hall, 200 West Industrial Boulevard, Lone Star, TX 75668.
City of Naples	City Hall, 205 Main Street, Naples, TX 75568.
City of Omaha	City Hall, 305 White Oak Avenue, Omaha, TX 75571.
Unincorporated Areas of Morris County	Morris County Courthouse, 500 Broadnax Street, Suite B, Daingerfield, TX 75638.

Panola County, Texas and Incorporated Areas
Project: 23-06-0056S Preliminary Date: August 19, 2024

City of Beckville	City Hall, 211 South Washington Street, Beckville, TX 75631.
City of Carthage	City Hall, 812 West Panola Street, Carthage, TX 75633.
City of Gary	City Hall, 2607 FM 999, Gary, TX 75643.
City of Tatum	City Hall, 680 Crystal Farms Road, Tatum, TX 75691.
Unincorporated Areas of Panola County	Panola County Annex Building, 316 West Sabine Street, Carthage, TX 75633.

Trinity County, Texas and Incorporated Areas
Project: 23-06-0043S Preliminary Date: August 28, 2024

City of Groveton	City Hall, 115 West Front Street, Groveton, TX 75845.
City of Trinity	City Hall, 101 West Madison Street, Trinity, TX 75862.
Unincorporated Areas of Trinity County	Trinity County Courthouse, 162 West 1st Street, Groveton, TX 75845.

[FR Doc. 2025-00246 Filed 1-7-25; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2024-0002; Internal Agency Docket No. FEMA-B-2403]

Proposed Flood Hazard Determinations for Hartford County, Connecticut (All Jurisdictions)

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed notice concerning proposed flood hazard determinations, which may include the addition or modification of any Base Flood Elevation, base flood depth, Special Flood Hazard Area boundary or zone designation, or regulatory floodway (herein after referred to as proposed flood hazard determinations)

on the Flood Insurance Rate Maps and, where applicable, in the supporting Flood Insurance Study reports for Hartford County, Connecticut (All Jurisdictions).

DATES: This withdrawal is effective January 8, 2025.

ADDRESSES: You may submit comments, identified by Docket No. FEMA-B-2403, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: On January 29, 2024, FEMA published a proposed notice at 89 FR 5554, proposing flood hazard determinations for Hartford County, Connecticut (All Jurisdictions). FEMA is withdrawing the proposed notice.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Nicholas A. Shufro,
Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2025-00247 Filed 1-7-25; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2024-0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter

referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at <https://msc.fema.gov>.

FOR FURTHER INFORMATION CONTACT: Rick Sacibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency

(FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65. The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the

floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No.: B-2451).	City of Surprise (23-09-0744P).	The Honorable Skip Hall, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Public Works Department, Engineering Development Services, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Oct. 25, 2024	040053
Mohave (Interim skipped per FEMA's directive).	City of Bullhead City (24-09-0186P).	The Honorable Steve D'Amico, Mayor, City of Bullhead City, 2355 Trane Road, Bullhead City, AZ 86442.	Public Works Department, 2355 Trane Road, Bullhead City, AZ 86442.	Nov. 12, 2024	040125
California:					
Riverside (FEMA Docket No.: B-2451).	City of Corona (23-09-0763P).	The Honorable Tom Richins, Mayor, City of Corona, 400 South Vicentia Avenue, Corona, CA 92882.	Public Works Department, 400 South Vicentia Avenue, Corona, CA 92882.	Oct. 29, 2024	060250
Riverside (Interim skipped per FEMA's directive).	City of Moreno Valley (24-09-0212P).	The Honorable Ulises Cabrera, Mayor, City of Moreno Valley, 14177 Frederick Street, Moreno Valley, CA 92552.	Public Works Department, 14177 Frederick Street, Moreno Valley, CA 92552.	Nov. 11, 2024	065074
San Bernardino (Interim skipped per FEMA's directive).	City of Rancho Cucamonga (23-09-1288P).	The Honorable L. Dennis Michael, Mayor, City of Rancho Cucamonga, 10500 Civic Center Drive, Rancho Cucamonga, CA 91730.	Engineering Department, 10500 Civic Center Drive, Rancho Cucamonga, CA 91730.	Nov. 13, 2024	060671
San Diego (FEMA Docket No.: B-2451).	City of San Diego (23-09-1115P).	The Honorable Todd Gloria, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101.	Development Services Department, 1222 1st Avenue, MS 301, San Diego, CA 92101.	Nov. 5, 2024	060295
San Diego (FEMA Docket No.: B-2451).	Unincorporated Areas of San Diego County (23-09-1385P).	Nora Vargas, Chair, San Diego County Board of Supervisors, 1600 Pacific Highway Room 335, San Diego, CA 92101.	San Diego County Flood Control District, Department of Public Works, 5510 Overland Avenue, Suite 410, San Diego, CA 92123.	Nov. 6, 2024	060284
San Mateo (Interim skipped per FEMA's directive).	City of Burlingame (23-09-1024P).	The Honorable Donna Colson, Mayor, City of Burlingame, 501 Primrose Road, Burlingame, CA 94010.	City Hall, 501 Primrose Road, Burlingame, CA 94010.	Oct. 11, 2024	065019
San Mateo (Interim skipped per FEMA's directive).	City of San Mateo (23-09-1024P).	The Honorable Lisa Diaz Nash, Mayor, City of San Mateo, 330 West 20th Avenue, San Mateo, CA 94403.	Public Works Department, 330 West 20th Avenue, San Mateo, CA 94403.	Oct. 11, 2024	060328
Ventura (FEMA Docket No.: B-2451).	City of Simi Valley (23-09-0719P).	The Honorable Fred D. Thomas, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	City Hall, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	Oct. 22, 2024	060421

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Ventura (FEMA Docket No.: B–2451).	Unincorporated Areas of Ventura County (24–09–0380P).	Kelly Long, Chair, Ventura County Board of Supervisors, 1203 Flynn Road, Suite 220, Camarillo, CA 93012.	Ventura County, Public Works Agency, 800 South Victoria Avenue, Ventura, CA 93009.	Nov. 4, 2024	060413
Hawaii: Hawaii (Interim skipped per FEMA's directive).	Unincorporated Areas of Hawaii County (24–09–0518P).	The Honorable Mitchell D. Roth, Mayor, Hawaii County, 25 Aupuni Street, Suite 2603, Hilo, HI 96720.	Hawaii County Department of Public Works, Engineering Division, 101 Pauahi Street, Suite 7, Hilo, HI 96720.	Nov. 11, 2024	155166
Idaho: Ada (FEMA Docket No.: B–2451).	City of Boise (23–10–0877P).	The Honorable Lauren McLean, Mayor, City of Boise, P.O. Box 500, Boise, ID 83701.	City Hall, 150 North Capitol Boulevard, 2nd Floor, Boise, ID 83701.	Oct. 31, 2024	160002
Oregon: Marion (FEMA Docket No.: B–2451).	City of Salem (23–10–0633P).	The Honorable Chris Hoy, Mayor, City of Salem, City Council, 555 Liberty Street Southeast, Room 220, Salem, OR 97301.	City Hall, 555 Liberty Street Southeast, Room 325, Salem, OR 97301.	Nov. 4, 2024	410167
Washington: Kittitas (FEMA Docket No.: B–2451).	City of Ellensburg (24–10–0037P).	The Honorable Rich Elliott, Mayor, City of Ellensburg, City Hall, 501 North Anderson Street, Ellensburg, WA 98926.	City Hall, 501 North Anderson Street, Ellensburg, WA 98926.	Oct. 16, 2024	530234
Kittitas (FEMA Docket No.: B–2451).	Unincorporated Areas of Kittitas County (24–10–0037P).	Laura Osiadacz, Chair, Kittitas County Board of Commissioners, 205 West 5th Avenue, Suite 108, Ellensburg, WA 98926.	Kittitas County Department of Public Works, 411 North Ruby Street Suite 1, Ellensburg, WA 98926.	Oct. 16, 2024	530095

[FR Doc. 2025–00240 Filed 1–7–25; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2024–0029]

Notice of Availability of Security Requirements for Restricted Transactions Under Executive Order 14117

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), DHS.

ACTION: Notice of availability

SUMMARY: CISA is announcing publication of finalized security requirements for restricted transactions pursuant to Executive Order (E.O.) 14117, “Preventing Access to Americans’ Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern.” In October 2024, CISA published proposed security requirements for restricted transactions which would apply to classes of restricted transactions identified in regulations issued by the Department of Justice (DOJ). CISA solicited comment on those proposed security requirements and considered that public feedback when developing the final security requirements. This notice also provides CISA’s responses to the public comments received.

DATES: January 8, 2025.

ADDRESSES: *Docket:* For access to the docket to read background documents or comments received, go to www.regulations.gov, and insert the

docket number, CISA–2024–0029, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Alicia Smith, Senior Policy Counsel, Cybersecurity and Infrastructure Security Agency, EOSecurityReqs@cisa.dhs.gov, 202–316–1560.

SUPPLEMENTARY INFORMATION:

I. Background

On February 28, 2024, the President issued E.O. 14117 entitled “Preventing Access to Americans’ Bulk Sensitive Personal Data and U.S. Government-Related Data by Countries of Concern” (the “Order”), pursuant to his authority under the Constitution and laws of the United States, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (“IEEPA”), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of Title 3, United States Code. In the Order, the President expanded the scope of the national emergency declared in E.O. 13873 of May 15, 2019, “Securing the Information and Communications Technology and Services Supply Chain,” and further addressed the national emergency with additional measures in E.O. 14034 of June 9, 2021, “Protecting Americans’ Sensitive Data from Foreign Adversaries.” Specifically, Section 2(a) of E.O. 14117 directs the Attorney General, in coordination with the Secretary of Homeland Security and in consultation with the heads of relevant agencies, to issue, subject to public notice and comment, regulations that prohibit or otherwise restrict United States persons from engaging in any acquisition, holding, use, transfer, transportation, or exportation of, or

dealing in, any property in which a foreign country or national thereof has any interest (“transaction”), where the transaction: (i) involves bulk sensitive personal data or United States Government-related data, as defined by final rules implementing the Order; (ii) is a member of a class of transactions that has been determined by the Attorney General to pose an unacceptable risk to the national security of the United States because the transactions may enable countries of concern or covered persons to access bulk sensitive personal data or United States Government-related data in a manner that contributes to the national emergency described in the Order; and (iii) meets other criteria specified by the Order.¹

Among other things, the Order, at Section 2(c), instructs the Attorney General, in coordination with the Secretary of Homeland Security and in consultation with the heads of relevant agencies, to issue regulations identifying specific categories of transactions (“restricted transactions”) that meet the criteria described in (ii) above for which the Attorney General determines that security requirements, to be established by the Secretary of Homeland Security through the Director of CISA, adequately mitigate the risks of access by countries of concern or covered persons² to bulk sensitive personal data

¹ The other criteria do not directly impact the development of the security requirements but are related to DOJ’s implementation of the Order’s directive via their regulations. See E.O. 14117, sec. 2(a)(iii)–(v), 89 FR 15421, 15423 (Mar. 1, 2024).

² Section 2(c)(iii) of the Order requires the Attorney General to identify, with the concurrence of the Secretaries of State and Commerce, countries

or United States Government-related data. In turn, Section 2(d) directs the Secretary of Homeland Security, acting through the Director of CISA, to propose, seek public comment on, and publish those security requirements. Section 2(e) delegates to the Secretary of Homeland Security the President's powers under IEEPA as necessary to carry out Section 2(d).

On October 29, 2024, CISA published a **Federal Register** notice, Request for Comment on Security Requirements for Restricted Transactions Under Executive Order 14117 (the "October 29 Request for Comment"), announcing the release of the "Proposed Security Requirements for Restricted Transactions"³ directed by E.O. 14117 Section 2(d) and requesting public comment on the proposal. *See* 89 FR 85976. The proposed security requirements were developed to apply to the classes of restricted transactions identified in DOJ's notice of proposed rulemaking (NPRM), "Provisions Pertaining to Preventing Access to U.S. Sensitive Personal Data and Government-Related Data by Countries of Concern or Covered Persons," and published in the **Federal Register** on the same day as the proposed security requirements. *See* 89 FR 86116.

The DOJ NPRM proposed to require, consistent with E.O. 14117, that United States persons engaging in restricted transactions must comply with the final security requirements by incorporating the standards by reference. *See* proposed 28 CFR 202.248, 202.401, 202.402.

The security requirements were divided into two sections: organizational- and covered system-level requirements (Section I) and data-level requirements (Section II). The listed requirements were selected with the intent of directly mitigating the risk of access to covered data, with additional requirements included to ensure effective governance of that access, as well as approaches for establishing an auditable basis for compliance purposes. The security requirements further included a definitions section. To the extent the requirements used a term already proposed to be defined in the DOJ rulemaking, CISA's use of that term in the security requirements would carry the same meaning. The October 29 Request for Comment described the proposed security requirements and

definitions, and further provided a non-exhaustive list of twelve questions to assist members of the public in formulating their comments.

CISA received 24 comments on the proposed security requirements and considered them while developing the final security requirements. Comments submitted in response to the October 29 Request for Comment are available in the docket associated with this notice available at <https://www.regulations.gov> (Docket CISA-2024-0029). DOJ's NPRM received 75 comments, which are available in the docket associated with that NPRM at <https://www.regulations.gov> (Docket DOJ-NSD-2024-0004-0001). DOJ shared comments with CISA that DOJ received in response to the NPRM that provided feedback that could impact the security requirements. These comments include one confidential comment that contained CISA equities and was provided to DOJ by a foreign government.

II. Response to Public Comments

A. In General

CISA reviewed and considered all comments received in response to the October 29 Request for Comment. Overall, many commenters appreciated the flexibility that CISA provided regarding implementation of the security requirements as well as the use of existing frameworks. Some commenters, however, felt that application of the security requirements as proposed may be burdensome. Others requested clarification of certain definitional terms and the scope of the security requirements. Some commenters also provided specific feedback on technical elements of the proposed security requirements. CISA addresses those comments in the following sections and explains where CISA made changes to its proposal to address the feedback received.⁴

B. Specific Topics

1. Responses to Questions in CISA's Notice

In the October 29 Request for Comment, CISA included a non-exhaustive list of twelve questions to assist the public in providing comments in response to the notice. *See* 89 FR 85980. The comments CISA received on those questions, and CISA's

adjudication of those comments, are summarized below.

Robustness, Burden, and Flexibility of Proposed Security Requirements

In the October 29 Request for Comment, CISA solicited comments on whether the proposed security requirements were sufficiently robust to mitigate the risks of access to Americans' bulk sensitive personal data or government-related data by countries of concern (question 1). CISA also asked whether the security requirements provided sufficient flexibility for the types of restricted transactions typically engaged in by U.S. entities to avoid overburdening commercial activities not involving covered data (question 3).⁵

Many commenters either suggested or explicitly stated that the security requirements were sufficiently robust to mitigate the risk of access to covered data by countries of concern, but may be too prescriptive or burdensome to implement.⁶ For instance, while commenters generally appreciated CISA's use of established frameworks like the National Institute of Standards and Technology (NIST) Cybersecurity Framework (CSF), a small number of commenters questioned whether CISA's security requirements extend beyond those frameworks and suggest more prescriptive mandates that may be difficult to implement.⁷ Other commenters acknowledged that organizations that will be required to comply with this rule already employ some level of sophisticated cyber defense measures, but it will take time for organizations to understand, interpret, and fully implement the requirements,⁸ particularly for small- and medium-sized businesses.⁹ One financial sector association noted that, for financial institutions with large, diverse networks, implementation would be resource-intensive and may not be feasible in some circumstances.¹⁰

Several commenters expressed appreciation for the flexibility embedded in the data-level requirements in Section II, noting that flexibility encourages a risk-based but

⁵ Other aspects of question 3 related to the clarity and specificity of the security requirements are addressed separately below.

⁶ *See, e.g.*, Comment submitted by Information Technology Industry Council, CISA-2024-0029-0015; Comment submitted by ACT/The App Association, CISA-2024-0029-0001.

⁷ *See, e.g.*, Comment submitted by Bank Policy Institute, CISA-2024-0029-0011.

⁸ *See, e.g.*, Comment submitted by U.S. Chamber of Commerce, CISA-2024-0029-0017.

⁹ *See, e.g.*, Comment submitted by Consumer Technology Association, CISA-2024-0029-0013.

¹⁰ *See, e.g.*, Comment submitted by Bank Policy Institute, CISA-2024-0029-0011.

of concern and, as appropriate, classes of covered persons for the purposes of the Order.

³ The proposed security requirements were posted at <https://www.cisa.gov/resources-tools/resources/proposed-security-requirements-restricted-transactions>.

⁴ CISA also participated in several stakeholder engagement sessions organized by DOJ. While CISA did not receive written feedback during these sessions, many points raised by stakeholders in these sessions were echoed in the written comments received in response to the October 29 Request for Comment.

tailored approach to securing transactions, and would help ensure the requirements stay up-to-date as standards are updated and technology advances.¹¹ For that reason, many commenters encouraged CISA to extend such flexibility to the organizational- and system-level requirements in Section I.¹²

Some commenters suggested that organizations be permitted to employ alternative compensating controls on covered systems where requirements are otherwise infeasible.¹³ Others urged CISA to model the security requirements on existing regulatory regimes administered by other U.S. government agencies (*e.g.*, the Federal Communications Commission and the Department of Commerce), which direct organizations to develop cyber risk management plans aligned with the CSF, or create avenues for reciprocity in instances where U.S. entities entering into restricted transactions are subject to and have demonstrated compliance with certain existing data or cybersecurity regulatory regimes.¹⁴ Commenters suggested that not providing the requested flexibility, modeling, or reciprocity would increase the burden on parties engaged in restricted transactions.¹⁵

CISA considered these options but ultimately concluded that the overall structure and approach of the original security requirements provide as much flexibility as reasonably practicable while still addressing the national security risks identified by DOJ. CISA assesses that granting reciprocity where U.S. entities entering into restricted transactions are subject to and have demonstrated compliance with certain existing data or cybersecurity regulatory regimes is not a workable solution to address the national security risks associated with restricted transactions.

Other regulatory regimes are not necessarily designed to address the specific risks at issue here. Therefore, CISA cannot assume that a cyber risk management plan developed to comply with another regulatory regime will necessarily be designed in a way that mitigates the risk of covered persons or countries of concern gaining access to covered data. Further, even if CISA were to do a comparison to map the security requirements against the requirements in other regulatory regimes and identify existing regulatory regimes that cover all of the security requirements today, CISA could not control for the possibility that those regulations may be changed to no longer align with the security requirements, particularly in light of the different goals of these regulations.

That said, CISA is taking a number of steps to make the final security requirements less burdensome and address specific concerns about technical feasibility or ease of implementation with respect to individual requirements. Specifically in the following sections of the security requirements:

- I.A.1.a: CISA acknowledges the challenge of maintaining an accurate asset inventory in dynamic environments, and revises I.A.1.a to require documented inventories only “to the maximum extent practicable,” and eliminated the requirement to inventory MAC addresses, which is not possible in some situations such as cloud environments. CISA also clarified that these inventories can themselves be dynamically curated.

- I.A.3: CISA addresses commenters’ concerns about the rigidity, utility, and feasibility of the proposed vulnerability remediation timelines, and substantially revises the vulnerability remediation timelines to prioritize critical assets and allow entities engaged in restricted transactions to remediate vulnerabilities within a risk-informed span of time. CISA assesses that these new requirements appropriately balance the risks of exploitation of vulnerable covered systems with the operational burden of patching systems.

- I.A.5: In response to comments about the level of effort required to implement the security requirements across large enterprises,¹⁶ CISA revises the requirement for any network interfacing with a covered system to facilitate visibility into connections between assets to be implemented “to the extent technically feasible” instead of “to the maximum extent practicable.”

- I.A.6: To grant organizations additional flexibility in how they choose to perform change management, CISA significantly reduces the burden around installation of new hardware and/or software by removing the reference to “firmware” and requirements for either allowlists or approvals to address specific software versions.¹⁷

- I.B.2: CISA seeks to introduce flexibility and alleviate confusion around the meaning of the term “immediately” by revising the requirement to revoke access to covered systems for terminated employees or employees with changed roles from “immediately” to “promptly,” with clarifying examples of what would be considered “promptly.” CISA recognizes the ambiguity of “immediately” and assesses that the clarifying examples appropriately balance operational complexity and the security benefits of promptly revoking access to covered data upon termination or change of an employee’s role.

- I.B.3: Acknowledging the term “disabled” is ambiguous and that commenters requested CISA clarify that the requirement was to implement a process, CISA clarifies language around security log retention to state that organizations are required to implement a notification process when security logs are not being produced and/or retained as expected rather than referring to logs being disabled.

- I.B.4 [removed]: To reduce burden on implementing organizations, CISA removes the requirement to maintain organizational policies and processes to ensure that unauthorized media and hardware are not connected to covered assets. CISA assesses that in light of CISA’s updates to the definition of the term “covered system,” the other requirements are sufficient to protect covered systems, and this requirement is no longer necessary. [Note that, as a result of this deletion, requirements I.B.5 and 6 are now I.B.4 and 5.]

- I.B.5 [renumbered I.B.4] CISA clarifies that deploying “deny by default” is not as burdensome as some commenters assumed by noting the idea of “deny by default” does not only include the use of network firewalls but may also be implemented in other ways, such as via authentication of users and other information systems to the covered system. CISA assesses that, as clarified, this requirement is important to ensure that unauthorized systems and users do not inappropriately have access to data within covered systems.

¹¹ See, *e.g.*, Comment submitted by Workday, CISA–2024–0029–0019.

¹² See, *e.g.*, Comment submitted by U.S. Chamber of Commerce, CISA–2024–0029–0017; Comment submitted by Workday, CISA–2024–0029–0019; Comment submitted by Information Technology Industry Council, CISA–2024–0029–0015; Comment submitted by ACT|The App Association, CISA–2024–0029–0001.

¹³ See, *e.g.*, Comment submitted by Information Technology Industry Council, CISA–2024–0029–0015.

¹⁴ See, *e.g.*, Comment submitted by CTIA—The Wireless Association and NCTA—The Internet & Television Association, CISA–2024–0029–0021; Comment submitted by USTelecom—The Broadband Association, CISA–2024–0029–0018.

¹⁵ See, *e.g.*, Comment submitted by Information Technology Industry Council, CISA–2024–0029–0015; Comment submitted by U.S. Chamber of Commerce, CISA–2024–0029–0017; Comment submitted by Workday, CISA–2024–0029–0019; Comment submitted by Oracle, CISA–2024–0029–0014.

¹⁶ See, *e.g.*, Comment submitted by U.S. Chamber of Commerce, CISA–2024–0029–0017.

¹⁷ See, *e.g.*, Comment submitted by Bank Policy Institute, CISA–2024–0029–0011.

At the same time, when crafting the proposed security requirements, CISA did so with the goal of balancing regulatory burden, technical feasibility, and flexibility with the underlying national security needs. As such, CISA determined that certain recommendations, such as extending the flexible implementation approach in the data-level requirements to the organizational- and system-level requirements, would undermine security to the detriment of the overall regime. CISA notes that the organizational- and system-level requirements are scoped only to a limited subset of covered systems that interact with data of particular sensitivity (per the DOJ rule) and are neither considered nor intended to comprise the entirety of an effective cybersecurity program; rather, they are a selected set of practices and preconditions that CISA concluded are necessary to effectively implement the data-level requirements.

Clarifying Terms and Applications

CISA asked whether the security requirements were sufficiently clear for organizations to verify compliance (question 3) and/or sufficient to provide U.S. persons engaged in restricted transactions confidence that the logical and physical access controls are sufficiently managed to deny access to covered persons or countries of concern (question 2). CISA also asked about areas where additional interpretive guidance would be helpful to U.S. entities in determining which data-level requirements should be applied based on the nature of the transaction and the data at hand (question 6).

Some commenters requested that CISA clarify the definition of “covered system,” specifically as it relates to endpoints (e.g., workstations/laptops), to make clear that the definition only applies to systems that handle covered data qualified as bulk under DOJ’s definition.¹⁸ One commenter observed that “this interpretation is of critical importance as it represents the difference between organizations considering how they secure a collection of specific systems as opposed to an enterprise-wide retooling, the latter of which would be extremely challenging and unnecessarily burdensome.”¹⁹

In response, CISA revises the definition of “covered system” to reflect that a covered system is limited to

systems that interact with covered data in bulk form and not user endpoints that ordinarily read or view sensitive personal data (other than sensitive personal data that constitutes government-related data) but do not ordinarily interact with sensitive personal data in bulk form. Of note, because government-related data is not subject to any bulk data threshold in the DOJ rulemaking, any system that interacts with government-related data would still be considered a covered system. Organizations implementing the security requirements need to carefully consider how this clarification applies to their particular information systems, transactions, and manners of interacting with covered data.

CISA also received comments requesting that, in defining “covered systems” and “covered data,” CISA include an explicit reference to exempt transactions by specifically exempting data that is subject to an exemption from the definition of covered systems and covered data.²⁰

CISA notes that both definitions in the security requirements require the system and/or data to be used “as part of a restricted transaction.” Per the definitions in the DOJ rulemaking, an exempt transaction is definitionally not a restricted transaction and thus an information system that *exclusively* participates in transactions with covered persons that are exempt (e.g., an internal human resources system that only deals in data subject to the corporate group exemption) would not be considered a covered system under the definition. Because CISA assesses that the definition already excludes such systems, CISA does not make any changes to the definition in response to these comments. However, consistent with changes to the DOJ rulemaking to switch the order of the terms “government-related data” and “bulk U.S. sensitive personal data” to avoid the possibility of confusion as to whether the bulk thresholds apply to government-related data, CISA has revised the definition of “covered data” to switch the order of these terms in the definition.

Mapping to Other Frameworks

In the October 29 Request for Comment, CISA inquired about the utility of mapping requirements to other standards, such as ISO/IEC 27001 or NIST Special Publication 800–171 (question 12). Some commenters recommended this approach, noting that such mapping would be helpful to allow

organizations to better understand how existing processes or controls they are already using can be applied and understood in the context of the security requirements.²¹ Other commenters suggested additional candidates (e.g., CISA’s Encrypted DNS Implementation Guidance).²²

CISA determined additional mapping is better suited to interpretive guidance because these frameworks include detailed security control sets, and such guidance will need to further clarify the intent and extent of the mapping to these controls. CISA decided not to include additional mapping in the final security requirements themselves but remains open to providing additional mapping through future interpretive guidance.

2. Other Comments on the Security Requirements

Extent to Which Covered Persons May Access Covered Data

Several commenters inquired if CISA’s security requirements were intended to prevent all access to covered data by covered persons or to prevent unauthorized or unmitigated access.²³ That is, commenters sought clarity on whether any degree of access by covered persons to covered data is permissible when implementing the security requirements. Commenters noted, for instance, that the chapeau of Section II of the security requirements indicated that entities were required to prevent covered persons or countries of concern from gaining access to covered data, which would appear to render the transaction no longer covered by DOJ’s rule.²⁴ Commenters explained that under their reading, the requirement to prevent access to covered data by covered persons or countries of concern arguably takes the transaction out of the DOJ rule’s definition of restricted transaction altogether.²⁵ Commenters noted, however, that CISA’s security requirements were developed to suggest the efficacy of controls such as data minimization, masking, and privacy-enhancing techniques in mitigating the

²¹ See, e.g., Comment submitted by Information Technology Industry Council, CISA–2024–0029–0015; Comment submitted by ACT/The App Association, CISA–2024–0029–0023.

²² See, e.g., Comment submitted by Infoblox, CISA–2024–0029–0020.

²³ See, e.g., Comment submitted by U.S. Chamber of Commerce, CISA–2024–0029–0017; Comment submitted by the Consumer Technology Association, CISA–2024–0029–0013; Comment submitted by National Foreign Trade Council, CISA–2024–0029–0022.

²⁴ See, e.g., Comment submitted by U.S. Chamber of Commerce, CISA–2024–0029–0017.

²⁵ See, e.g., Comment submitted by Bank Policy Institute, CISA–2024–0029–0011.

¹⁸ See, e.g., Comment submitted by U.S. Chamber of Commerce, CISA–2024–0029–0017.

¹⁹ Comment submitted by U.S. Chamber of Commerce, CISA–2024–0029–0017.

²⁰ See, e.g., Comment submitted by WorkDay, CISA–2024–0029–0019.

risk of access to covered data by covered persons or countries of concerns.

To address the feedback raised in these comments, CISA affirms that the security requirements are meant to prevent access to covered data by countries of concern unless specific efforts outlined in the security requirements are taken to mitigate the national security risks associated with such access.

More specifically, in the chapeau to the data-level requirements in Section II, CISA proposed that U.S. persons should “implement a combination of the following mitigations that, taken together, is sufficient to fully and effectively prevent access to covered data by covered persons and/or countries of concern.” CISA proposed that this approach would mitigate the national security risks associated with access to covered data by covered persons and/or countries of concern. As described in the Order, DOJ’s NPRM, and CISA’s proposed security requirements and the October 29 Request for Comment, access to covered data by covered persons and/or countries of concern poses a range of threats to national security and foreign policy, including providing countries of concern with information they need or can use to engage in malicious cyber-enabled activities and malign foreign influence; blackmail and espionage against U.S. persons; intimidate activists, academics, journalists, dissidents, political figures, or members of non-governmental organizations or marginalized communities; curb political opposition; limit freedoms of expression, peaceful assembly, or association; or enable other forms of suppression of civil liberties. *See* 89 FR 85978. In the security requirements, CISA proposed to address these risks at the data level by requiring that covered persons be denied access to the underlying covered data—either by denying access outright or by only allowing covered persons access to covered data that had been manipulated in a way (e.g., encryption, de-identification) that would effectively mitigate the risks from permitting direct access to the underlying data.

In response to comments on this issue, CISA clarifies the chapeau language for the data-level requirements in the final security requirements to state that U.S. persons should “implement a combination of the following mitigations that, taken together, is sufficient to fully and effectively prevent access to covered data that is linkable, identifiable, unencrypted, or decryptable using commonly available technology by

covered persons and/or countries of concern.” This clarification establishes that the adoption of the data-level requirements does not mean no access to covered data is permissible, but that certain data-level requirements must be implemented to achieve a level of minimization of that access and/or covered data sufficient to mitigate the national security risks identified by DOJ.

Under the DOJ regulation, covered data transactions include regulated categories of transactions that involve covered person or country of concern access to covered data, regardless of whether the data is encrypted, anonymized, pseudonymized, or de-identified. As DOJ explains in its rulemaking, encryption, pseudonymization, and de-identification are not completely effective in all cases and can in some cases be reversed or undermined. At the same time, the transactions identified by DOJ as restricted have important economic value relative to their national security risk and are allowed to proceed if they meet the CISA-developed security requirements. CISA was thus tasked with determining an appropriate balance on mitigating the national security risks associated with such access to covered data.

While CISA considered whether it could adopt other options for data-level requirements that would still permit access to at least some unmitigated covered data to covered persons, CISA ultimately determined that allowing covered persons or countries of concern access to covered data without application of an effective combination of techniques identified in the data-level requirements (such as pseudonymization, de-identification, aggregation, and encryption) would not effectively mitigate the unacceptable national security risks identified by DOJ resulting from enabling access to such data by covered persons and countries of concern. Thus, the final security requirements permit organizations to undertake restricted transactions either by directly denying covered person/country of concern access to covered data itself or by applying techniques such as pseudonymization, de-identification, aggregation, and encryption in the manner prescribed in the security requirements to reduce the risks to national security while still allowing for a form of access to an appropriately mitigated version of the covered data (in conjunction with implementation of the organizational- and system-level requirements).

As noted in the DOJ regulation’s definition of access, the implementation

of data processing techniques (as outlined in the data-level requirements) before sharing data is irrelevant to the determination of whether a transaction involves “access” and is thus a covered data transaction. However, restricted transactions are explicitly permitted to proceed through application of the security requirements, effectively mitigating the national security risks identified by DOJ.

The following examples discuss several applicable scenarios. In all cases (with the exception of example 4), these examples assume that the organization has conducted the required data risk assessment required in Section I.C of the security requirements and determined that the specific requirements implemented are sufficient to “fully and effectively prevent access to covered data that is linkable, identifiable, unencrypted, or decryptable using commonly available technology by covered persons and/or countries of concern.” The examples (with the exception of example 4) also assume that the organization complies with other applicable requirements in the DOJ’s rule.

Example 1: A U.S. person retains a cloud provider headquartered in a country of concern to store encrypted covered data through a vendor agreement. Per the DOJ rulemaking, the cloud provider is a covered person, and such a transaction would constitute a covered data transaction. The U.S. person implements the security requirements, including the requirements around encryption and encryption keys. Such a transaction could proceed if the U.S. person fully implements the security requirements.

Example 2: A U.S. business that deals in covered data is executing an investment agreement with a covered person. The investment agreement provides that the U.S. business will share with the covered person investor sensitive personal data about individual consumers that meets DOJ’s relevant bulk threshold. The organization implements the security requirements before sharing data with the covered person investor (for example by aggregating data and/or de-identifying it along with implementing the other security requirements). Such data is still considered covered data. The sharing of data in the investment agreement is still a restricted transaction but can proceed due to the implementation of the security requirements.

Example 3: A U.S. organization hires a covered person in a country of concern (or retains their services by contract) into a role whose duties include access to covered data. As part

of entering into the employment agreement (or vendor agreement), the organization implements the security requirements (including the organizational- and system-level requirements) and only shares de-identified covered data with the covered person in a way that minimizes linkability in accordance with the security requirements. Such a restricted transaction would be allowed to proceed.

Example 4: Same as Example 3, except that instead of de-identifying the covered data, the organization knowingly authorizes the employee or vendor to have access to covered data (e.g., to bulk U.S. sensitive personal data) without applying efforts to de-identify, pseudonymize, encrypt, or otherwise implement the data-level security requirements. In this example, the U.S. organization knowingly gave a covered person access to covered data through an employment or vendor agreement without implementing the security requirements. As such, the U.S. organization knowingly engaged in a restricted transaction that fails to comply with the requirements of subpart D of 28 CFR part 202 and thus is engaged in a covered data transaction that is not authorized pursuant to 28 CFR 202.401.

Example 5: Same as Example 3, except the employee or vendor's duties do not require access to covered data but do include general access to the organization's networks and information systems, including potentially covered systems, within which covered data may be stored. The organization implements the security requirements, including the data-level requirement of denying access to covered data for that covered person. Because the transaction could afford a covered person access to covered data, but the organization employed controls to prevent it, such an employment or vendor agreement could proceed as a restricted transaction.

Vulnerability Management (I.A.3)

In the proposed security requirements, CISA proposed that organizations should patch vulnerabilities that are known to be exploited, critical, or high within an outlined timeframe. CISA proposed this approach for consistency with the standard to which Federal Agencies are held under Binding Operational Directives (BOD) 22–01 and 19–02. CISA received several comments on this subject suggesting that CISA's approach was technically challenging to implement and not sufficiently risk-

based.²⁶ One commenter, for instance, stated that the remediation timelines proposed were too aggressive, and noted that NIST Special Publication 800–53 directs remediation to occur in accordance with a risk-assessment rather than prescribing specific timelines.²⁷ Another commenter recommended that CISA change the timelines for remediation to no shorter than 30 days, stating that CISA's proposed timeframes of 14 and 15 days were unreasonable and impracticable.²⁸ Commenters indicated that this requirement may cause organizations to expend their limited resources addressing vulnerabilities that do not necessarily pose the greatest risk to their organizations.²⁹

CISA considered this feedback carefully and concluded that an alternate approach to vulnerability management could effectively respond to the identified risks while being less burdensome in implementation. In the final security requirements, CISA adopts a new approach that requires organizations to remediate known exploited vulnerabilities (KEVs) in internet-facing systems in a risk-based manner that prioritizes the most critical assets first, with all such vulnerabilities remediated within 45 calendar days. This approach is based on the approach to patching outlined in the CISA Cross-Sector Cybersecurity Performance Goals (CPGs) and the CSF. To compensate for the additional flexibility being provided through the revised requirement, CISA determined that it was necessary to require that entities engaged in restricted transactions establish a process to evaluate, after patching, whether any internet-facing covered systems with KEVs were compromised prior to the patch being applied. Based on its operational experience, CISA notes that KEVs on internet-facing systems are commonly exploited with access persisting beyond the time of patching. A KEV is a vulnerability that is currently being exploited, based on information known to CISA.³⁰ Through

this change, CISA intends to reduce the operational burden of vulnerability management and maximize its impact on addressing known cybersecurity risks to covered systems.

Multi-Factor Authentication and Password Length (I.B.1)

In the proposed security requirements, CISA proposed that organizations should implement multi-factor authentication (MFA) for access to covered systems or, if not technically feasible and/or enforced, implement passwords of a minimum of 16 characters. CISA proposed this approach based on the CSF and the CISA CPGs. Commenters suggested that CISA's approach would be clearer if CISA incorporated NIST Special Publication 800–63B (SP 800–63B)'s definition of Authentication Assurance Levels (AALs) and only required 16-character passwords if technically feasible.³¹

In the final security requirements, CISA added a reference to NIST's AAL definition to clarify that CISA considers any authenticator that implements AAL2 or AAL3 (as defined in the latest version of SP 800–63B or any of its supplements) as qualifying as MFA for purposes of this requirement. This includes syncable cryptographic authenticators (colloquially known as “passkeys”). However, CISA notes that “Multi-factor authentication” is a broadly understood term in the industry and declines to remove its use from the security requirements. CISA also updates the requirement for 16-character passwords to instead require 15-character passwords in situations without MFA. This change reduces burden on organizations and aligns CISA's requirement with the CPGs. However, CISA declines to further reduce the number of required characters, even where 15-character passwords are not technically feasible. This requirement is taken from the CISA CPGs where sufficiently strong passwords are suggested for all password-protected IT assets, with an understanding that some operational technology (OT) assets may not be able to technically support such passwords. CISA does not believe such OT assets are likely to host covered data and did not receive any comments suggesting otherwise. CISA concludes that information systems that host covered data be required to either implement

²⁶ See, e.g., Comment submitted by Bank Policy Institute, CISA–2024–0029–0011; Comment submitted by Consumer Technology Association, CISA–2024–0029–0013; Comment submitted by USTelecom, CISA–2024–0029–0018; Comment submitted by Information Technology Industry Council, CISA–2024–0029–0015.

²⁷ See, e.g., Comment submitted by Bank Policy Institute, CISA–2024–0029–0011.

²⁸ See, e.g., Comment submitted by Consumer Technology Association, CISA–2024–0029–0013.

²⁹ See, e.g., Comment submitted by the Bank Policy Institute, CISA–2024–0029–0011.

³⁰ See generally Cybersecurity and Infrastructure Security Agency, Reducing the Significant Risk of Known Exploited Vulnerabilities, <https://www.cisa.gov/known-exploited-vulnerabilities> (last

visited Dec. 1, 2024) (listing CISA's requirements for listing a KEV).

³¹ See, e.g., Comment submitted by Workday, CISA–2024–0029–0019; Comment submitted by USTelecom—The Broadband Association, CISA–2024–0029–0018.

MFA (including “passwordless” methods) or have 15-character minimum passwords in instances where MFA is not technically feasible and/or enforced (such as when MFA is partially enforced due to technical limitations). CISA believes that organizations should implement MFA in all situations where it is technically feasible to do so and where it is not, must ensure 15-character passwords are used in covered systems. CISA assesses that this approach is a reasonable requirement that is well grounded in industry best practices. Technologies such as password managers may be used to reduce the operational burden of such passwords.

Access To Log Systems (I.B.3)

One commenter³² requested that CISA clarify whether authorized access to the security logging system is intended to be limited to those users who are authorized to access the covered system itself or, more generally, users performing security duties in the organization.

CISA declines to make any changes to the text of the final security requirements in response to this comment, but notes that the security requirements specify that users who access or modify such log data are only required to be “authorized and authenticated.” CISA does not intend that individuals who are “authorized and authenticated” to access or modify collected logs must also be authorized to access covered systems.

Data Risk Assessment (I.C)

Several commenters raised questions and concerns about the data risk assessment. Some commentors were concerned about whether the risk assessment was to be shared with DOJ or CISA, while others had some concerns about the potential cost impact and compliance burden of developing it. Others also noted that DOJ included audit and reporting requirements in its rule and that the addition of another compliance report under CISA’s requirements would be too burdensome.³³

In response to these comments, and to deconflict with DOJ’s audit and reporting requirements, CISA makes minor changes to this requirement, specifically clarifying this risk assessment is intended for internal use only as a tool to inform data protection (not for documentation or disclosure to

a government agency), and, to further reduce implementation burden, that documenting the assessment is not required.³⁴ CISA also supplies additional detail specifying that the plan be reviewed internally by the organization.

Data-Level Requirements and What Constitutes “Sufficiency” (II, Chapeau)

Comments pertaining to the data-level requirements were largely positive, noting an appreciation for the level of flexibility that was perceived by many to be in contrast with the system-level requirements. For instance, one commenter said that allowing organizations flexibility to determine which combination of data-level requirements are sufficient to address risks, based on their unique risk profile “presents the best chance of achieving Executive Order 14117’s ultimate objective to secure” sensitive U.S. data.³⁵ However, some commenters took issue with the requirement to *fully* and effectively prevent access to covered data, and requested guidance and/or clarification about what constitutes a “sufficient” combination of data-level requirements to prevent access. CISA also received some feedback from interagency partners on further clarifying the specific encryption requirements.

Given that commenters generally agreed that the data-level requirements as written achieved their intended aim, CISA made only minor revisions. Commenters asked CISA to clarify that requirements around the version of Transport Layer Security (TLS) used were limited to connections that were already using TLS, which CISA clarified by including requirements for the version of TLS in II.B.1 rather than as a separate requirement (II.B.2). CISA also consulted with other federal agency partners on the topic of encryption and is adding an explanation of what level of encryption CISA considers sufficient for the purposes of these security requirements based on these consultations. CISA recognizes the appeal of a prescriptive (and predictable) standard but maintains there is no one-size-fits-all solution given the varied nature of restricted transactions. Additionally, the question of what is sufficient to prevent access is a compliance matter and not a technical implementation matter. E.O. 14117 sec. 2(d)(ii) gives the Attorney General

authority to issue enforcement guidance regarding these security requirements, in consultation with the Director of CISA. CISA will coordinate with DOJ if it determines further guidance on the meaning of “sufficient” is appropriate.

Framework Mapping

Many commenters expressed appreciation for the fact that CISA leveraged existing, well-known cybersecurity and privacy frameworks, and found the mapping between frameworks and specific requirements especially helpful. However, some commenters expressed concern that CISA’s approach was not conducive to harmonizing cyber regulations to the greatest degree practicable across the government and suggested that CISA’s mapping to the CSF, NIST’s Privacy Framework (PF), and CPGs may be confusing, noting that the CSF is the primary risk management framework used by some organizations.

After considering these comments, CISA continues to assess that its method of mapping the security requirements to the CSF, PF, and CPGs is the optimal way to minimize the burden on organizations while still allowing as much flexibility in implementation as possible.

First, as noted in the proposed security requirements and as CISA has preserved in the final security requirements, references to these frameworks are intended to help readers understand which aspects of existing frameworks, guidance, or other resources the security requirements are based upon; understanding and applying the security requirements *does not* require a reader to understand and apply those references. As such, the references should only serve to be a helpful reference where readers find them useful, while those who find the references confusing or who do not use these other resources as part of their organizational compliance structure can disregard the mapping.

Second, the Order requires CISA to base its security requirements on the CSF and the PF. CISA has evidenced compliance with this requirement by reference to these frameworks explicitly. This means that the only framework CISA could eliminate the mapping to is the CPGs. Given that many commenters expressed appreciation for the CPG mapping and that the CPGs are, themselves, based on the CSF, CISA assesses that the inclusion of the CPGs should not be overly difficult or confusing, especially for the cybersecurity personnel and designated accountable officials responsible for ensuring that U.S. entities engaging in

³² See Comment submitted by The Business Software Alliance, CISA–2024–0029–0024.

³³ See, e.g., Comment submitted by The Consumer Technology Association, CISA–2024–0029–0013.

³⁴ CISA defers to DOJ regarding whether such a risk assessment may be subject to audit or other review as part of compliance aspects of the DOJ rulemaking.

³⁵ See, e.g., Comment submitted by Bank Policy Institute, CISA–2024–0029–0011.

restricted transactions adhere to the final security requirements.

3. Out of Scope or Related to DOJ's NPRM

Several commenters raised questions, concerns, or feedback that were outside of the authorities and direction provided to CISA in E.O. 14117. Commenters also raised issues that were related to the implementation of DOJ's regulations rather than the proposed security requirements themselves.

While CISA reviewed this feedback and shared relevant comments with DOJ to consider as they drafted their final rule, issues specific to the DOJ rule itself are beyond the scope of this notice. Conversely, in some instances, DOJ received comments on its NPRM that more directly related to CISA's proposed security requirements. Where DOJ shared such comments with CISA, CISA reviewed and considered this feedback as part of developing the final security requirements, as reflected above.

4. Continued Stakeholder Engagement

CISA also received a few comments requesting additional stakeholder engagement on the development of these security requirements. For example, one comment requested an extension of the comment period by 17 days to provide stakeholders extra time to provide robust and considered input.

CISA appreciates the commenters' desire to provide the most useful, robust, and thoughtful feedback possible in the time allotted for comments. However, CISA decided not to extend the comment period given the pressing national security interests underlying the need for DOJ's rule, and E.O. 14117's requirement that the rule incorporate CISA's security requirements.

Other commenters requested that CISA establish an ongoing stakeholder engagement process to receive continued feedback on the security requirements even after they have been finalized. Some of the commenters noted that these security requirements could be burdensome to implement effectively, and others emphasized that experience applying the security requirements could lead stakeholders to identify areas for improvement.

CISA appreciates stakeholder interest in ensuring that the security requirements remain current and applicable over time and will consider the best way to receive and incorporate relevant feedback in the future to the extent changes to the security requirements become necessary or desirable. However, at this time, CISA

does not intend to establish a formal process for receiving additional feedback on the security requirements given that the comment period has closed, and CISA must finalize the security requirements so that they can be incorporated by reference into DOJ's final rule.

One commenter expressed concern about the security requirements being a "quasi-rule," indicating that CISA could change the security requirements at any point in the future without "procedural protections" for impacted entities.³⁶

CISA appreciates the concern raised by the commenter and confirms that CISA has no intention of changing these security requirements without providing the public notice of any future changes. As discussed above, CISA notes that while the Order directed DOJ to propose a rule and finalize that rule to implement its directive, the Order did not provide the same direction to CISA for promulgating the security requirements. By design, the security requirements themselves are not a rule governed by the process laid out in the Administrative Procedure Act, 5 U.S.C. 553. While this allows CISA to update the security requirements quickly, tracking new developments in technology and data security, such updated security requirements will not be enforceable against entities regulated by DOJ's rule unless DOJ updates its rule to change the version of the security requirements incorporated therein by reference. In other words, commenters can be assured that they will not be subjected to new security requirements without receiving requisite procedural protections for implementing the change, as required by law.

III. Description of Final Security Requirements

The security requirements are intended to address national-security and foreign-policy threats that arise when countries of concern³⁷ and covered persons access U.S. government-related data or bulk U.S. sensitive personal data that may be implicated by the categories of restricted transactions. Additional background on the purpose for these security requirements was included in CISA's notice announcing the release of the proposed security requirements. See 89 FR 85978. The DOJ Final Rule requires, consistent with E.O. 14117, that United

States persons engaging in restricted transactions comply with the final security requirements by incorporating the security requirements by reference into the regulations. 28 CFR 202.401.

The security requirements remain divided into two sections: organizational- and covered system-level requirements (Section I) and data-level requirements (Section II). The listed requirements were selected with the intent of directly mitigating the risk of access to covered data, with additional requirements included to ensure effective governance of that access, as well as approaches for establishing an auditable basis for compliance purposes. Requirements that directly mitigate the risk of access include I.B.1–2, I.B.4–5, and all data-level requirements (II.A, II.B, II.C, and II.D). Requirements included as a mechanism for ensuring proper implementation and governance of those access controls include all controls in I.A. Additional requirements incorporated as a mechanism for ensuring auditable compliance of the aforementioned access controls include I.B.3 and I.C. These requirements reflect a minimum set of practices that CISA assesses are required for effective data protection, as informed by CISA's operational experience. These requirements were designed to be representative of broadly accepted industry best practices and are intended to address the needs of national security without imposing an unachievable burden on industry.

The final security requirements largely maintain the same design as the proposed security requirements. The security requirements are designed to mitigate the risk of sharing U.S. government-related data or bulk U.S. sensitive personal data with countries of concern or covered persons through restricted transactions.³⁸ They do this by imposing conditions specifically on the *covered data* that may be accessed

³⁶ CISA notes that the security requirements are, as required by the Order, designed to "address the unacceptable risk posed by restricted transactions, as identified by the Attorney General." E.O. 14117 Sec. 2(d). They are not intended to reflect a comprehensive cybersecurity program. For example, several areas addressed in CISA's CPGs, available at <https://www.cisa.gov/cross-sector-cybersecurity-performance-goals>, are not reflected in the proposed data security requirements, even though the CPGs themselves are a common set of protections that CISA recommends all critical infrastructure entities voluntarily implement to meaningfully reduce the likelihood and impact of known risks and adversary techniques. As the operational lead for federal cybersecurity and national coordinator for critical infrastructure security and resilience, CISA recommends that all U.S. persons implement cybersecurity best practices in light of the risk and potential consequence of cyber incidents.

³⁷ See, e.g., Comment submitted by The Business Software Alliance, CISA–2024–0029–0024.

³⁸ Terms used in CISA's security requirements that are defined in the DOJ rulemaking have the same meaning in the security requirements as provided in the DOJ rulemaking.

as part of a restricted transaction, on the *covered systems* more broadly (both terms CISA defines within the security requirements), and on the organization as a whole. While the requirements on covered systems and on an organization's governance of those systems apply more broadly than to the data at issue and the restricted transaction itself, CISA continues to assess that implementation of these requirements is necessary to validate that the organization has the technical capability and sufficient governance structure to appropriately select, successfully implement, and continue to apply the data-level security requirements in a way that addresses the risks identified by DOJ for the restricted transactions. For example, to ensure and validate that a covered system denies covered persons access to covered data, it is necessary to maintain audit logs of accesses as well as organizational processes to utilize those logs. Similarly, it is necessary for an organization to develop identity management processes and systems to establish an understanding of which persons may have access to different data sets.

In addition to requirements on covered systems, applying security requirements on the covered data itself that may be accessed in a restricted transaction is also necessary to address the risks. The specific requirements that are most technologically and logistically appropriate for different types of restricted transactions may vary. For example, some transactions may be amenable to approaches that minimize data or process it in such a way that does not reveal covered data to covered persons. In other cases, techniques such as access control and encryption may be more appropriate to deny any access by covered persons to unmitigated covered data. The security requirements provide multiple options to mitigate risk, though all the options build upon the foundation of the requirements imposed on covered systems and the organization as a whole. While U.S. persons³⁹ engaging in restricted transactions will be required to implement all the

organizational- and system-level requirements, such persons will have some flexibility to determine which combination of data-level requirements are sufficient to fully and effectively prevent access to covered data that is linkable, identifiable, unencrypted, or decryptable using commonly available technology by covered persons and/or countries of concern, based on the nature of the transaction and the data at issue.

Finally, the security requirements include a definitions section. To the extent the requirements use a term already defined in the DOJ rulemaking, CISA's use of that term in the security requirements would carry the same meaning. For the purpose of these security requirements, CISA includes definitions for five terms used exclusively in the security requirements:

- *Asset*. CISA defines the term to mean data, personnel, devices, systems, and facilities that enable the organization to achieve business purposes. This definition is derived from the CSF version 1.1, which defined asset as “[t]he data, personnel, devices, systems, and facilities that enable the organization to achieve business purposes.”

- *Covered data*. CISA defines the term to mean the two categories of data identified by the Order and that DOJ is regulating through its rulemaking—government-related data or bulk U.S. sensitive personal data.

- *Covered system*. CISA defines this term as a specific type of information system that is used to conduct a number of activities related to covered data as part of a restricted transaction. These activities are drawn from a combination of the activities in the definition of information system in the security requirements and the activities in the DOJ rulemaking's definition of access. See 28 CFR 202.201. The term means an information system used to obtain, read, copy, decrypt, edit, divert, release, affect, alter the state of, view, receive, collect, process, maintain, use, share, disseminate, or dispose of (collectively, “interact with”) covered data as part of a restricted transaction, regardless of whether the data is encrypted, anonymized, pseudonymized, or de-identified. “Covered system” does not include an information system (e.g., an end user workstation) that has the ability to view or read sensitive personal data (other than sensitive personal data that constitutes government-related data) but does not ordinarily interact with such data in bulk form.

- *Information system*. CISA defines this term consistent with the definition

in the Paperwork Reduction Act (PRA), 44 U.S.C. 3502.⁴⁰ The term means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

- *Network*. CISA defines this term, which CISA developed consistent with the definition of the term in NIST Special Publication 800–171 rev. 3, *Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations*. The term would mean a system of interconnected components, which may include routers, hubs, cabling, telecommunications controllers, key distribution centers, and technical control devices.

The publication of the finalized security requirements for restricted transactions pursuant to Executive Order (E.O.) 14117, “Preventing Access to Americans’ Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern” can be found on CISA’s website: <https://www.cisa.gov/resources-tools/resources/EO-14117-security-requirements>. The Director of CISA, Jennie M. Easterly, has delegated the authority to approve and electronically sign this document to Nitin Natarajan, who is the Deputy Director of CISA, for purposes of publication in the **Federal Register**.

Nitin Natarajan,

Deputy Director, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7080–C–64]

30-Day Notice of Proposed Information Collection: Application for the Community Development Block Grant (ICDBG) Program for Indian Tribes and Alaska Native Villages; Correction; OMB Control No.: 2577–0191

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

⁴⁰ 6 U.S.C. 650(14) (which applies to all of Title XXII of the Homeland Security Act of 2002, which, in turn, contains most of CISA’s authorities) defines Information System as having the meaning given the term in the Paperwork Reduction Act, 44 U.S.C. 3502, and specifically includes “industrial control systems, such as supervisory control and data acquisition systems, distributed control systems, and programmable logic controllers.” 6 U.S.C. 650(14). However, given CISA’s assumption that this type of operational technology is unlikely to be implicated by DOJ’s regulations, CISA is not including the operational technology-related prong here.

³⁹ As noted above, for the purposes of the security requirements, to the extent CISA uses a term that is defined in the DOJ rulemaking, CISA uses that definition. Therefore, CISA is using the term U.S. persons as defined by the DOJ Final Rule. That definition reads “any United States citizen, national, or lawful permanent resident; any individual admitted to the United States as a refugee under 8 U.S.C. 1157 or granted asylum under 8 U.S.C. 1158; any entity organized solely under the laws of the United States or any jurisdiction within the United States (including foreign branches); or any person in the United States.” 28 CFR 202.256.

ACTION: Notice, correction.

SUMMARY: HUD is publishing this notice to correct the heading on the notice that was published in the **Federal Register** on December 26, 2024. The heading should read 30-day Notice of Proposed Information Collection.

FOR FURTHER INFORMATION CONTACT:

Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna.P.Guido@hud.gov, telephone 202-402-5534. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: HUD published an information collection notice in the **Federal Register** at 89 FR 105064 entitled “Indian Community Development Block Grant Information Collection”. This notice corrects the heading to read “30-Day Notice of Proposed Information Collection.”

Nacheshia Foxx,

Federal Register Liaison, Office of General Counsel.

[FR Doc. 2025-00217 Filed 1-7-25; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-HQ-IA-2024-0202; FXIA16710900000-245-FF09A30000]

Endangered Species; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued permits to conduct certain activities with endangered species. We issue these permits under the Endangered Species Act (ESA).

ADDRESSES: Information about the applications for the permits listed in this notice is available online at <https://www.regulations.gov>. See **SUPPLEMENTARY INFORMATION** for details.

FOR FURTHER INFORMATION CONTACT:

Timothy MacDonald, by phone at 703-358-2185 or via email at DMAFR@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, the U.S. Fish and Wildlife Service (Service), have issued permits to conduct certain

activities with endangered and threatened species in response to permit applications that we received under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

After considering the information submitted with each permit application and the public comments received, we issued the requested permits subject to certain conditions set forth in each permit. For each application for an endangered species, we found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Availability of Documents

The permittees' original permit application materials, along with public comments we received during public comment periods for the applications, are available for review. To locate the application materials and received comments, go to <https://www.regulations.gov> and search for the appropriate permit number (e.g., 12345C) provided in the following table:

ePermit No.	Applicant	Permit issuance date
PER4417242	Toledo Zoological Society	July 9, 2024.
PER10276124 ...	Gunner B. Peterson	July 10, 2024.
PER7757383	Emory University	July 12, 2024.
PER10272760 ...	Southwest Fisheries Science Center	July 15, 2024.
PER10289648 ...	Saginaw Valley Zoological Society	July 16, 2024.
PER1012710	Milwaukee County Zoo	July 23, 2024.
PER10215681 ...	Kootenai Tribe of Idaho	July 25, 2024.
PER10145205 ...	Delaware Museum of Nature and Science	August 5, 2024.
PER10970319 ...	Cornell University Animal Health Diagnostic Center and NYS Veterinary Diagnostic Laboratory.	August 15, 2024.
PER5817086	University of New Orleans	August 15, 2024.
PER10200447 ...	The Peregrine Fund	August 20, 2024.
PER10535315 ...	Duke University	August 21, 2024.
PER11439122 ...	DNCR State of North Carolina Zoo dba North Carolina Zoo	September 19, 2024.
PER11444722 ...	Daniel Pearson	September 19, 2024.
PER12806337 ...	Tanner Glidden	September 23, 2024.
PER11642225 ...	William Laird Hamberlin	September 23, 2024.
PER11541207 ...	Tony Boles	September 24, 2024.
PER11541505 ...	Zachary Boles	September 24, 2024.
PER11546525 ...	Paul Hansen	September 24, 2024.
PER11641654 ...	Sullivan Atkinson	September 25, 2024.
PER11750395 ...	John Howell	September 25, 2024.
PER11295255 ...	Tulsa Zoo	September 25, 2024.
PER11277351 ...	Staten Island Zoo	October 3, 2024.
PER1162024.8 ..	Smithsonian's National Zoo and Conservation Biology Institute	October 4, 2024.
PER9328605	David Kanellis	November 4, 2024.
PER2858327	Vernon Bret Padgett	May 2, 2024.
PER2919227	Vernon Bret Padgett	May 1, 2024.

ePermit No.	Applicant	Permit issuance date
PER12017464 ...	Keith R. Warren	November 18, 2024.
PER12448370 ...	Michael Merchant	November 18, 2024.
PER12034356 ...	Daniel Macerelli	November 18, 2024.
PER12331219 ...	Robert Arthur Sparks	November 18, 2024.
PER12540160 ...	Drew O'Connor Dennison	November 18, 2024.
PER12540321 ...	Max S. Buck	November 18, 2024.
PER11200311 ...	East Coast Zoological Society of Florida, Inc.	November 19, 2024.
PER12289890 ...	Georgia Safari Conservation Park	November 19, 2024.
PER12275493 ...	Zoo Atlanta	November 19, 2024.
PER11846441 ...	San Diego Zoo Wildlife Alliance	December 4, 2024.
PER12575644 ...	Fresno's Chafee Zoo	December 4, 2024.

Authorities

We issue this notice under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Timothy MacDonald,

Government Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2025-00226 Filed 1-7-25; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R8-ES-2024-0188; FXES1114080000-256-FF08EVEN00]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Coastal California Gnatcatcher, Ventura County, CA; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Angie Harbin, Director—Natural Resources, Rincon Consultants, Inc., on behalf of Comstock Homes (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed coastal California gnatcatcher (*Poliophtila californica californica*) incidental to residential development in the City of Moorpark, in Ventura County, California. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the

Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a low-effect screening form. The HCP and low-effect screening form are available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before February 7, 2025.

ADDRESSES:

Obtaining Documents: The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS-R8-ES-2024-0188 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-R8-ES-2024-0188.
- **U.S. mail:** Public Comments Processing; Attn: Docket No. FWS-R8-ES-2024-0188; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Dellith, Senior Fish and Wildlife Biologist, by email at chris_dellith@fws.gov, via phone at 805-644-1766, or by U.S. mail at 2493 Portola Road, Suite B, Ventura, CA 93003. 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 Fish and Wildlife Service (Service), announce receipt of an application from Angie Harbin, Director—Natural

Resources, Rincon Consultants, Inc., on behalf of Comstock Homes (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally threatened coastal California gnatcatcher (*Poliophtila californica californica*) incidental to the development of a mixed-density residential community (project) in the City of Moorpark, Ventura County, California. We request public comment on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as low effect, and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a low-effect screening form, also available for public review.

Background

On March 30, 1993 (58 FR 16742), the Service listed the coastal California gnatcatcher (*Poliophtila californica californica*) as threatened. Section 9 of the ESA prohibits "take" of fish and wildlife species listed as endangered (16 U.S.C. 1538), where take is defined to include the following activities: "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532). The take prohibitions of section 9 are extended to species listed as threatened at the discretion of the Secretary of the Department of the Interior and were extended to coastal California gnatcatcher, with exceptions. The Service published a 4(d) rule, which includes exceptions to incidental take associated land-use activities addressed in an approved Natural Community Conservation Planning Act program

undertaken by the State of California and local governments (December 10, 1993; 58 FR 65088).

Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered and threatened species are in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 17.32, respectively. Issuance of an ITP also must not jeopardize the existence of federally listed fish, wildlife, or plant species. The permittee would receive assurances under our “No Surprises” regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

Applicant's Proposed Activities

The applicant has applied for a permit for incidental take of the coastal California gnatcatcher. The take would occur in association with activities necessary for the development of a largely vacant 277.30-acre (ac) site by constructing residences, a neighborhood park site, and flood-control facilities, as well as enhancement of disturbed coastal sage scrub vegetation on 52.77 ac of conserved land for the coastal California gnatcatcher.

The HCP includes avoidance and minimization measures for the coastal California gnatcatcher, and mitigation for unavoidable loss of occupied habitat. The applicant will commensurately offset impacts by placing conservation easements over approximately 29.44 ac of the project site and enhancing 23.33 ac on adjacent parcels of conserved open space areas owned by the City of Moorpark.

Public Availability of Comments

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 hardcopy 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 hardcopy document to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's

proposed project would individually and cumulatively have a minor effect on the coastal California gnatcatcher and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a “low-effect” ITP that individually or cumulatively would have a minor effect on the species and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A “low-effect” ITP is one that would result in (1) minor or nonsignificant effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonable foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested ITP. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue an ITP to the applicant.

Authority

We provide this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Catherine Darst,

Acting Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2025–00230 Filed 1–7–25; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[256A2100DD/AAKC001030/
AOA501010.999900]

Indian Gaming; Approval by Operation of Law Tribal-State Class III Gaming Compact Amendment Between the Ho Chunk Nation and the State of Wisconsin

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the approval by operation of law the 2024 Amendments to the Ho Chunk Nation and the State of Wisconsin Gaming Compact of 1992, as Amended in 1999, 2003, and 2008 governing the operation and regulation of class III gaming activities. The 2024 Amendment adds event wagering and geofenced remote wagering as authorized class III gaming, provides for minimum internal control standards to conduct event wagering, changes exclusivity payment deduction limits and types of qualifying expenses, and adds additional class III facility locations.

DATES: The Amendment takes effect on January 8, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, IndianGaming@bia.gov; (202) 219–4066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2701 *et seq.*, (IGRA) provides the Secretary of the Interior (Secretary) with 45 days to review and approve or disapprove the Tribal-State compact governing the conduct of class III gaming activity on the Tribe's Indian lands. *See* 25 U.S.C. 2710(d)(8). If the Secretary does not approve or disapprove a Tribal-State compact within the 45 days, IGRA provides the Tribal-State compact is considered to have been approved by the Secretary, but only to the extent the compact is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(D). The IGRA also requires the Secretary to publish a notice in the **Federal Register** of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. *See* 25 U.S.C. 2710(d)(8)(D). The Department's regulations at 25 CFR 293.4 require all compacts and amendments to be reviewed and approved by the Secretary prior to taking effect. The Secretary took no action on the 2024 Amendments to

the Ho Chunk Nation and the State of Wisconsin Gaming Compact of 1992, as Amended in 1999, 2003, and 2008 within the 45-day statutory review period. Therefore, the Compact is considered to have been approved, but only to the extent it is consistent with IGRA. See 25 U.S.C. 2710(d)(8)(C).

Wizipan Garriott,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising by Delegation the Authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2025–00121 Filed 1–7–25; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO4820000251]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Color-of-Title Application

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 February 7, 2025.

ADDRESSES: Written comments and recommendations for the proposed Information Collection Request (ICR) 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: To request additional information about this ICR, contact Jeff Holdren by email at jholdren@blm.gov, or by telephone at (703) 360–9739. 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), we provide the general public and other Federal agencies with an opportunity 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.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on July 29, 2024 (89 FR 60912).

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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 BLM collects and uses the information to determine the

validity of a claim under the Color-of-Title Act. The following forms comprise an application in support of a Color-of-Title claim: (a) 2540–001, Color-of-Title Application; (b) 2540–002, Conveyances Affecting Color or Claim of Title; and (c) 2540–003, Color-of-Title Tax Levy and Payment Record. OMB control number 1004–0029 is scheduled to expire on April 30, 2025. This request is for OMB to renew this OMB control number for an additional three (3) years.

Title of Collection: Color-of-Title Application (43 CFR Subparts 2540 and 2541).

OMB Control Number: 1004–0029.

Form Numbers: 2540–001; 2540–002, and 2540–003.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public:

Individuals, groups, or corporations that wish to claim title to a tract of public land on grounds that such land has been held in good faith and in peaceful, adverse possession under claim or color of title, and have placed valuable improvements on such land or some part thereof has been reduced to cultivation for an amount of time sufficient under the Color-of-Title Act, 43 U.S.C. 1068, *et seq.*

Total Estimated Number of Annual Respondents: 8.

Total Estimated Number of Annual Responses: 8.

Estimated Completion Time per Response: 3 hours.

Total Estimated Number of Annual Burden Hours: 24.

Respondent’s Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour

Burden Cost: \$80.

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 A. King,

Information Collection Clearance Officer.

[FR Doc. 2025–00132 Filed 1–7–25; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO #4820000251]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: Filing is applicable at 10 a.m. Pacific Time on the dates indicated below.

FOR FURTHER INFORMATION CONTACT:

Clarence D. Strickland, Chief Cadastral Surveyor for Nevada, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., Reno, NV 89502–7147, phone: 775–861–6490. 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:

1. The Plat of Survey of the following described land was officially filed at the BLM Nevada State Office, Reno, Nevada, on September 24, 2024.

The plat, in 2 sheets, representing the dependent resurvey of a portion of the east boundary, Township 16 North, Range 26 East; a portion of the west boundary, Township 16 North, Range 28 East; portions of the south boundary, Township 17 North, Range 27 East; and a portion of the subdivisional lines, Township 16 North, Range 27 East, Mount Diablo Meridian, Nevada, under Group No. 1005, was accepted September 20, 2024. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

2. The Plat of Survey of the following described lands was officially filed at the BLM Nevada State Office, Reno, Nevada, on September 24, 2024.

The dependent resurvey of a portion of the east boundary was executed concurrently under Group No. 1005.

The plat, in 1 sheet, representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines and the subdivision of sections 1 and 2, Township 16 North, Range 26 East, Mount Diablo Meridian, Nevada, under Group No. 1006, was accepted September 20, 2024. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

3. The Plat of Survey of the following described lands was officially filed at the BLM Nevada State Office, Reno, Nevada, on September 20, 2024.

The plat, in 1 sheet, representing the dependent resurvey of a portion of the

west boundary and a portion of the subdivisional lines, Township 18 North, Range 27 East, Mount Diablo Meridian, Nevada, under Group No. 1007, was accepted September 20, 2024. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

4. The Plat of Survey of the following described lands was officially filed at the BLM Nevada State Office, Reno, Nevada, on September 24, 2024.

The dependent resurvey of a portion of the north boundary of Township 16 North, Range 26 East was executed concurrently under Group No. 1006.

The plat, in 3 sheets, representing the dependent resurvey of a portion of the south boundary of Township 18 North, Range 26 East and a portion of the subdivisional lines and the survey of the east boundary, a portion of the subdivisional lines and the subdivision of sections 11, 14, 23, 26 and 35, Township 17 North, Range 26 East, Mount Diablo Meridian, Nevada, under Group No. 1008, was accepted September 20, 2024. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

The surveys and supplemental plats listed above are now the basic record for describing the lands for all authorized purposes. These records have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information.

(Authority: 43 U.S.C. chapter 3)

Clarence Strickland,

Chief Cadastral Surveyor for Nevada.

[FR Doc. 2025–00130 Filed 1–7–25; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[PO4820000251]

Notice of Segregation of Public Land for the Bonanza Solar Project, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: Through this notice the Bureau of Land Management (BLM) is segregating public lands for the Bonanza Solar Project right-of-way application from appropriation under the public land laws, including the Mining Law, but not the Mineral Leasing or Material Sales Acts, for a period of 2 years from the date of publication of this notice, subject to valid existing rights. This

segregation is to allow for the orderly administration of the public lands to facilitate the consideration of development of renewable energy resources. The public lands segregated by this notice total 6,239 acres.

DATES: This segregation for the lands identified in this notice is effective on January 8, 2025.

FOR FURTHER INFORMATION CONTACT: For further information, and/or to have your name added to the mailing list, send requests to: Katy Paiva, Project Manager, at telephone 775–861–6723; 1340 Financial Boulevard, Reno, NV 89502; or email kpaiva@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 will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Regulations found at 43 CFR 2091.3–1(e) and 43 CFR 2804.25(f) allow the BLM to temporarily segregate public lands within a right-of-way application area for solar energy development from the operation of the public land laws, including the Mining Law, by publication of a **Federal Register** notice. The BLM uses this temporary segregation authority to preserve its ability to approve, approve with modifications, or deny proposed rights-of-way, and to facilitate the orderly administration of the public lands. This temporary segregation is subject to valid existing rights. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature that would not impact lands identified in this notice may be allowed with the approval of an authorized officer of the BLM during the segregation period. The lands segregated under this notice are legally described as follows:

Mount Diablo Meridian, Nevada

T. 16 S., R. 54 E.,

Sec. 12, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 13, NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$,

E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$,

N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, and NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 16 S., R. 55 E.,

Sec. 7, lots 3 and 4, S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$,

SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, and

S $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 8, S $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, and

S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 9, S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$,

S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 10, S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 11, SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, and S $\frac{1}{2}$;
 Sec. 12, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$;
 Sec. 13, W $\frac{1}{2}$;
 Secs. 14 thru 17;
 Sec. 18, lots 1 thru 3, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 19, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 20, N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, and N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 21, NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, and N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 22, N $\frac{1}{2}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, and N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 23, N $\frac{1}{2}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, and N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 24, NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, and N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$.

The area described contains 6,458.56 acres, according to the official plats of the surveys of the said lands, on file with the BLM.

As provided in the regulations, the segregation of lands in this notice will not exceed 2 years from the date of publication unless extended for an additional 2 years through publication of a new notice in the **Federal Register**. The segregation period will terminate and the land will automatically reopen to appropriation under the public land laws, including the mining laws, at the earliest of the following dates: upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a right-of-way; without further administrative action at the end of the segregation provided for in the **Federal Register** notice initiating the segregation; or upon publication of a **Federal Register** notice terminating the segregation.

Upon termination of the segregation of these lands, all lands subject to this segregation would automatically reopen to appropriation under the public land laws, including the mining laws.

Authority: 43 CFR 2091.3–1(e) and 43 CFR 2804.25(f)

Bruce Sillitoe,

Field Manager—Las Vegas Field Office.

[FR Doc. 2025–00199 Filed 1–7–25; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO4820000251]

Public Meetings of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) California Desert District Advisory Council (Council) will meet as indicated below.

DATES: The Council will participate in a field tour on March 28, 2025, and a meeting on March 29, 2025; participate in a field tour on July 11, 2025, and a meeting on July 12, 2025; and participate in a field tour on November 14, 2025, and a meeting on November 15, 2025. The field tours and meetings will be from 9 a.m. to 3 p.m. Pacific Time and virtual participation options will be available for the meetings. If weather or other circumstances arise, the meetings may be held virtually via Zoom and the field tours may not occur.

ADDRESSES: The meetings will be held, and the field tours will commence and conclude at the BLM California Desert District Office, 1201 Bird Center Drive, Palm Springs, CA 92262.

FOR FURTHER INFORMATION CONTACT: Kate Miyamoto, BLM California Desert District Office; telephone: 760–883–8528, email: kmiyamoto@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.

SUPPLEMENTARY INFORMATION: The Council provides recommendations to the Secretary of the Interior concerning the planning and management of public land resources in the BLM's California Desert District and offers advice on implementing the comprehensive, long-range plan for management, use, development, and protection of the public lands within the California Desert Conservation Area. The March field tour will be to sites within the Barstow Field Office. Agenda topics for the March meeting may include a

presentation on the Barstow Field Office business plan, a presentation from the U.S. Forest Service on the San Bernardino National Forest fee proposal, a presentation on the wild horse and burro program in the Ridgecrest Field Office, and overviews from the district and field offices and fire program. The July field tour will be to sites within the Needles Field Office. Agenda topics for the July meeting may include presentations on the McCain Valley Resource Conservation Area and Imperial Sand Dunes Recreation Area operations, and overviews from the district and field offices and fire program. The November field tour will be to sites within the Ridgecrest Field Office. Agenda topics for the November meeting may include presentations on the Dos Palmas Preserve and Santa Rosa and San Jacinto National Monument, and overviews from the district and field offices and fire program.

Members of the public are welcome on field tours but must provide their own transportation and meals and register to attend 7 days in advance. Final agendas, virtual meeting registration, and field tour registration information will be posted on the BLM web page 15 days in advance at: <https://www.blm.gov/get-involved/rac/california/california-desert-district>.

All Council meetings are open to the public and a public comment period will be offered each meeting day. Written comments for the Council may be sent electronically in advance of the meetings to Public Affairs Officer Kate Miyamoto at kmiyamoto@blm.gov or in writing to BLM California Desert District/Public Affairs, 1201 Bird Center Drive, Palm Springs, CA 92262. Written comments will also be accepted at the time of the public meeting.

Before including your address, phone number, email address, or other personal identifying information in your comment, 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.

Requests for Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least 14 business days prior to the meeting to give the Department of the Interior sufficient

time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

(Authority: 43 CFR 1784.4–2)

Michelle Lynch,

California Desert District Manager.

[FR Doc. 2025–00155 Filed 1–7–25; 8:45 am]

BILLING CODE 4331–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO4820000251]

Rocky Mountain Resource Advisory Council Announces 2025 Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Colorado's Rocky Mountain Resource Advisory Council (RAC) is announcing its 2025 meeting dates.

DATES: The Rocky Mountain RAC will meet virtually on February 13, 2025, from 9 a.m. to noon Mountain Time (MT); meet in person with a virtual participation option on June 26, 2025, from 10 a.m. to 4 p.m. MT, and participate in a field tour on June 27, 2025, from 9 a.m. to noon MT; and meet virtually on October 23, 2025, from 9 a.m. to noon MT. The meetings and field tour are open to the public.

ADDRESSES: The Feb. 13 meeting will be held virtually on the Zoom platform.

The June 26 meeting and the field tour will commence and conclude at the Royal Gorge Field Office, 3028 E Main Street, Canon City, CO 81212, as well as virtually through the Zoom platform. The Oct. 23 meeting will be held virtually on the Zoom platform.

Registration, participation guidelines, and final agendas for all meetings will be available on the RAC's web page 30 days in advance of the meetings at <https://www.blm.gov/get-involved/resource-advisory-council/near-you/colorado/rocky-mountain-rac>.

FOR FURTHER INFORMATION CONTACT: Levi Spellman, Public Affairs Specialist; BLM Rocky Mountain District Office, 3028 E Main St., Canon City, CO, 81212; telephone: (719) 269–8553; email: lsPELLMAN@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.

SUPPLEMENTARY INFORMATION: The 15-member Rocky Mountain RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues in the Rocky Mountain District of Colorado, including the Royal Gorge Field Office, San Luis Valley Field Office, and Browns Canyon National Monument. Agenda topics for each meeting will include field office updates, and a time reserved for open discussion, followed by a public comment period. Comments may be limited due to time constraints. The June 27 field tour will be to sites within the Royal Gorge Field Office. Members of the public are welcome to participate but must provide their own transportation and meals.

The public may present written comments to the Rocky Mountain RAC at least two weeks in advance of the meeting to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Please include “RAC Comment” in your submission. Before including your address, phone number, email address, or other personal identifying information in your comment, please be aware that your entire comment—including your personally identifying information—may be made publicly available at any time. While individuals may request their personally identifying information to be withheld from public view, we cannot guarantee that we will be able to do so.

Requests for Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least 14 business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Summary minutes for the RAC meetings will be maintained in the Rocky Mountain District Office and will be available for public inspection and reproduction during regular business hours within 90 days following the meeting. Previous minutes and agendas are also available on the RAC's web

page listed in the **ADDRESSES** section of this notice.

(Authority: 43 CFR 1784.4–2)

Douglas J. Vilsack,

BLM Colorado State Director.

[FR Doc. 2025–00216 Filed 1–7–25; 8:45 am]

BILLING CODE 4331–16–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–TA–1661 (Final)]

Glass Wine Bottles From Chile; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The subject investigation was requested in petitions filed on December 29, 2023, by the U.S. Glass Producers Coalition, which is comprised of Ardagh Glass Inc., Indianapolis, Indiana and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Pittsburgh, Pennsylvania. On December 10, 2024, counsel for the petitioner filed with the Department of Commerce a request to withdraw its petition regarding imports of glass wine bottles from Chile. On December 30, 2024, the Department of Commerce published notice in the **Federal Register** of the termination of its subject investigation concerning glass wine bottles from Chile (89 FR 106425). Accordingly, the antidumping duty investigation concerning glass wine bottles from Chile (Investigation No. 731–TA–1661 (Final)) is terminated.

DATES: December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Charles Cummings (202–708–1666), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

Authority: This investigation is being terminated under authority of title VII of

the Tariff Act of 1930 and pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)). This notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: January 3, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025-00225 Filed 1-7-25; 8:45 am]

BILLING CODE 7020-02-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 Dryer Wall Exhaust Vent Assemblies and Components Thereof, DN 3800*; 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 InOvate Acquisition Company on December 31, 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 dryer wall exhaust vent assemblies and components thereof. The complaint names as a respondent: Xiamen Dirongte Trading Co., Ltd. of China. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondent 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. 3800") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at EDIS3Help@usitc.gov.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

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: January 2, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025–00184 Filed 1–7–25; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[MISC–050]

Request for Public Input on Presentation of Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Request for comments.

SUMMARY: The United States International Trade Commission invites public input on specific ways in which it could improve its presentation of the Harmonized Tariff Schedule of the United States (HTS).

DATES: To be assured of consideration, comments must be submitted by 5:15 p.m. on or before February 7, 2025.

ADDRESSES: All Commission offices are in the United States International Trade Commission Building, 500 E Street SW, Washington, DC. You may submit comments identified by docket number MISC–050, via the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). All submissions should be addressed to the Secretary and must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures (https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf) require that interested parties file documents electronically on or before the filing deadline. Persons with questions regarding filing should contact the Secretary at EDIS3Help@usitc.gov.

SUPPLEMENTARY INFORMATION: The U.S. International Trade Commission

(Commission or USITC) is an independent and nonpartisan federal agency with specific responsibilities in adjudicating and enforcing certain U.S. trade laws, providing relevant and timely analyses to the President and Congress on trade issues, and maintaining the Harmonized Tariff Schedule of the United States (HTS).

Subtitle B of Title I of the Omnibus Trade and Competitiveness Act of 1988 (1988 Act) (19 U.S.C. 3001 *et seq.*) requires the Commission to compile and publish the HTS, at appropriate intervals, and also requires the Commission to keep the HTS under continuous review. Section 1207(b) of the 1988 Act specifies the types of information that the Commission must include in the HTS that it compiles and publishes. It provides that the publications described in section 1207(a) shall contain, in whatever format—

(1) the then current Harmonized Tariff Schedule;

(2) statistical annotations and related statistical information formulated under [19 U.S.C 1484(f)]; and

(3) such other matters as the Commission considers to be necessary or appropriate to carry out the purposes enumerated in the Preamble to the Convention.

In 2015, the Commission deployed a document-oriented database application to fulfill its statutory mission of maintaining the HTS. This application is accessible to the public at <https://hts.usitc.gov>. The goal was to ensure accuracy and reliability through internal controls and process consistency.

Pursuant to its strategic objective to manage and leverage data as an asset, the Commission is currently considering ways to improve or replace the existing application and the manner in which the Commission provides HTS and related tariff information. To this end, the Commission is seeking input from the public on user experience of the HTS and related tariff information. Namely, we are looking for comments on the following topics:

- Your ability to navigate between parts of the HTS to find the information you need.
- Your ability to use HTS information for your needs.
- Your ability to compare changes in the HTS.
- Your ability to find and access HTS information.

Written submissions: To be assured of consideration by the Commission, written submissions related to the Commission's request for public input should be submitted at the earliest

practical date and should be received not later than 5:15 p.m., February 7, 2025. All written submissions must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), as temporarily amended by 85 FR 15798 (March 19, 2020). Under that rule waiver, the Office of the Secretary will accept only electronic filings at 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 electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802), or consult the Commission's *Handbook on Filing Procedures*.

Confidential business information: Do not submit confidential business information (CBI) or otherwise sensitive or protected information.

By order of the Commission.

Issued: January 2, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025–00157 Filed 1–7–25; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–727 and 731–TA–1695 (Final)]

Disposable Aluminum Containers, Pans, Trays, and Lids From China; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–727 and 731–TA–1695 (Final) pursuant to the Tariff Act of 1930 (“the Act”) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of disposable aluminum containers, pans, trays, and lids from China, provided for in statistical reporting number 7615.10.7125 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

(“Commerce”) to be subsidized and sold at less-than-fair-value.

DATES: December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Keysha Martinez ((202) 205–2136) or Camille Bryan ((202) 205–2811), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as “disposable aluminum containers, pans, trays, and lids produced primarily from flat-rolled aluminum. The subject merchandise includes disposable aluminum containers, pans, trays, and lids regardless of shape or size and whether or not wrinkled or smooth.

The term “disposable” is used to identify an aluminum article that is designed to be used once, or for a limited number of times, and then recycled or otherwise disposed. “Containers, pans, and trays” are receptacles for holding goods.

The subject disposable aluminum lids are intended to be used in combination with disposable containers produced from aluminum or other materials (e.g., paper or plastic). Where a disposable aluminum lid is imported with a non-aluminum container, only the disposable aluminum lid is included in the scope . . .”¹

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of § 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of disposable aluminum containers, pans, trays, and lids, and that such products are being sold in the

United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on May 16, 2024, by the Aluminum Foil Container Manufacturers Association, Lexington, Kentucky, and its individual members Durable Packaging International, Wheeling, Illinois; D&W Fine Pack, LLC, Wood Dale, Illinois; Handi-Foil Corp., Wheeling, Illinois; Penny Plate, LLC, Fishersville, Virginia; Reynolds Consumer Products, LLC, Lake Forest, Illinois; Shah Foil Products, Inc., Piscataway Township, New Jersey; Smart USA, Inc., Bay Shore, New York; and Trinidad/Benham Corp., Denver, Colorado.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission’s Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission’s rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

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.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission’s rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice.

Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on March 4, 2025, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission’s rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on March 18, 2025. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 12, 2025. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the investigation, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3:00 p.m. the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission’s website at <https://www.usitc.gov/calendarpad/calendar.html>.

A nonparty who has testimony that may aid the Commission’s deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on March 17, 2025. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than noon on March 17, 2025. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission’s rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission.

¹ For Commerce’s complete scope, please see 89 FR 85495, October 28, 2024, and 89 FR 106433, December 30, 2024.

Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is March 11, 2025. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 25, 2025. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before March 25, 2025. On April 7, 2025, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 9, 2025, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 2, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025–00156 Filed 1–7–25; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Bankruptcy Rules; Hearing of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Bankruptcy Rules; notice of cancellation of open hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Bankruptcy Procedure has been canceled: Bankruptcy Rules Hearing on January 31, 2025.

DATES: January 31, 2025.

FOR FURTHER INFORMATION CONTACT: H. Thomas Byron III, Esq., Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, RulesCommittee_Secretary@ao.uscourts.gov.

SUPPLEMENTARY INFORMATION: The announcement for this hearing was previously published in the **Federal Register** on July 31, 2024 at 89 FR 61498.

(Authority: 28 U.S.C. 2073.)

Dated: January 3, 2025.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2025–00192 Filed 1–7–25; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Appellate Rules; Hearing of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Appellate Rules; notice of cancellation of open hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Appellate Procedure has been canceled: Appellate Rules Hearing on January 10, 2025.

DATES: January 10, 2025.

FOR FURTHER INFORMATION CONTACT: H. Thomas Byron III, Esq., Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, RulesCommittee_Secretary@ao.uscourts.gov.

SUPPLEMENTARY INFORMATION: The announcement for this hearing was previously published in the **Federal Register** on July 31, 2024 at 89 FR 61498.

(Authority: 28 U.S.C. 2073.)

Dated: January 3, 2025.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2025–00191 Filed 1–7–25; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Advisory Board on Toxic Substances and Worker Health

AGENCY: Office of Workers' Compensation Programs.

ACTION: Announcement of meeting of the Advisory Board on Toxic Substances and Worker Health (Advisory Board) for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

SUMMARY: The Advisory Board will meet February 5–6, 2025, in Richland, Washington, near the Hanford Site covered facility.

Submission of comments, requests to speak, materials for the record, and requests for special accommodations: You must submit comments, materials, requests to speak at the Advisory Board meeting, and requests for accommodations by January 29, 2025, identified by the Advisory Board name and the meeting date of February 5–6, 2025, by any of the following methods:

- *Electronically:* Send to:

EnergyAdvisoryBoard@dol.gov (specify in the email subject line, for example “Request to Speak: Advisory Board on Toxic Substances and Worker Health”).

- *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S–3522, 200 Constitution Ave. NW, Washington, DC 20210.

Instructions: Your submissions must include the Agency name (OWCP), the committee name (the Advisory Board), and the meeting date (February 5–6, 2025). Due to security-related procedures, receipt of submissions by regular mail may experience significant delays. For additional information about submissions, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OWCP will make available publicly, without charge, any comments, requests to speak, and speaker presentations, including any personal information that you provide. Therefore, OWCP cautions interested parties against submitting personal information such as Social Security numbers and birthdates.

ADDRESSES: The Advisory Board will meet at the Red Lion Hotel and Conference Center Pasco, 2525 N 20th Avenue, Pasco, Washington 99301, phone 866–994–8737.

FOR FURTHER INFORMATION CONTACT: For press inquiries: Ms. Laura McGinnis, Office of Public Affairs, U.S.

Department of Labor, Room S–1028, 200 Constitution Ave. NW, Washington, DC 20210; telephone (202) 693–4672; email McGinnis.Laura@DOL.GOV.

SUPPLEMENTARY INFORMATION: The Advisory Board will meet: Tuesday, February 4, 2025, for a fact-finding site visit to the Hanford Site covered facility, accompanied by the Designated Federal Officer; Wednesday, February 5, 2025, from 9:00 a.m. to 5:00 p.m. Pacific time; and Thursday, February 6, 2025, from 8:30 a.m. to 11:00 a.m. Eastern Daylight time in Richland, Washington. Some Advisory Board members may attend the meeting by teleconference. The teleconference number and other details for participating remotely will be posted on the Advisory Board's website, <http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm>, 72 hours prior to the commencement of the first meeting date. Advisory Board meetings are open to the public.

Public comment session: Wednesday, February 5, from 4:15 p.m. to 5:00 p.m. Pacific time. Please note that the public comment session ends at the time indicated or following the last call for comments, whichever is earlier. Members of the public who wish to provide public comments should plan to either be at the meeting location or call in to the public comment session at the start time listed.

The Advisory Board is mandated by Section 3687 of EEOICPA. The Secretary of Labor established the Board under this authority and Executive Order 13699 (June 26, 2015). The purpose of the Advisory Board is to advise the Secretary with respect to: (1) the Site

Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under Part B of EEOICPA related to lung disease; (4) the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency; (5) the claims adjudication process generally, including review of procedure manual changes prior to incorporation into the manual and claims for medical benefits; and (6) such other matters as the Secretary considers appropriate. The Advisory Board sunsets on December 19, 2029.

The Advisory Board operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. 10) and its implementing regulations (41 CFR part 102–3).

Agenda: The tentative agenda for the Advisory Board meeting includes:

- Review and follow-up on Advisory Board's previous recommendations, data requests, and action items;
- Review responses to submitted Board questions;
- Review requested categories of claims;
- Working group presentations;
- Review of Board tasks, structure and work agenda;
- Consideration of any new issues; and
- Public comments.

OWCP transcribes and prepares detailed minutes of Advisory Board meetings. OWCP posts the transcripts and minutes on the Advisory Board web page, <http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm>, along with written comments, speaker presentations, and other materials submitted to the Advisory Board or presented at Advisory Board meetings.

Public Participation, Submissions and Access to Public Record

Advisory Board meetings: All Advisory Board meetings are open to the public. Information on how to participate in the meeting remotely will be posted on the Advisory Board's website.

Submission of comments: You may submit comments using one of the methods listed in the **SUMMARY** section. Your submission must include the Agency name (OWCP) and date for this Advisory Board meeting (February 5–6, 2025). OWCP will post your comments on the Advisory Board website and

provide your submissions to Advisory Board members.

Because of security-related procedures, receipt of submissions by regular mail may experience significant delays.

Requests to speak and speaker presentations: If you want to address the Advisory Board at the meeting you must submit a request to speak, as well as any written or electronic presentation, by January 29, 2025, using one of the methods listed in the **SUMMARY** section. Your request may include:

- The amount of time requested to speak;
- The interest you represent (e.g., business, organization, affiliation), if any; and
- A brief outline of the presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats. The Advisory Board Chair may grant requests to address the Board as time and circumstances permit.

Electronic copies of this **Federal Register** notice are available at <http://www.regulations.gov>. This notice, as well as news releases and other relevant information, are also available on the Advisory Board's web page at <http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm>.

For further information regarding this meeting, you may contact Ryan Jansen, Designated Federal Officer, at jansen.ryan@dol.gov, or Carrie Rhoads, Alternate Designated Federal Officer, at rhoads.carrie@dol.gov, U.S. Department of Labor, 200 Constitution Avenue NW, Suite S–3524, Washington, DC 20210, telephone (202) 343–5580.

This is not a toll-free number.

Signed at Washington, DC.

Christopher Godfrey,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2025–00201 Filed 1–7–25; 8:45 am]

BILLING CODE 4510–CR–P

LEGAL SERVICES CORPORATION

Notice of Availability of Calendar Year 2025 Competitive Grant Funds for the Technology Initiative Grant Program

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) issues this Notice describing the conditions for submitting a pre-application for 2025 Technology Initiative Grants (TIGs), and for applying under TIG categories that do not require pre-applications.

DATES: The deadline to submit a Pre-Application is 11:59 p.m. eastern standard time on Friday, March 21, 2025.

ADDRESSES: Pre-Applications must be submitted electronically via LSC's unified grants management system, GrantEase.

FOR FURTHER INFORMATION CONTACT: Eric Mathison, TIG Special Grants Coordinator, Office of Program Performance, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 295-1535 or mathisone@lsc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Since 2000, Congress has provided an annual appropriation to LSC to award special funding for client self-help and information technology projects. LSC's TIG program funds technology tools that help achieve LSC's goal of increasing the quantity and quality of legal services available to eligible persons. Projects funded under the TIG program develop, test, and replicate innovative technologies that can enable grant recipients and State justice communities to improve low-income persons' access to high-quality legal assistance through an integrated and well-managed technology system. The TIG program also supports effective technology planning and management at LSC-funded organizations through the use of targeted assessment grants focused on improvements to technology systems and information security.

II. Funding Opportunity Information

A. Eligible Applicants

To be eligible for Technology Initiative Grants, applicants must be current grantees of LSC Basic Field-General, Basic Field-Migrant, or Basic Field-Native American grants. In addition, applicants must receive basic field funding of at least a one-year term, be up to date on reporting on any existing TIG-funded projects, and not have had a previous TIG terminated in the past three years for reporting or other performance issues.

B. Technology Initiative Grant Purpose and Key Goals

Since LSC's TIG program was established in 2000, LSC has made over 923 grants totaling over \$91 million. This grant program encourages organizations to use technology in innovative ways to:

1. Effectively and efficiently provide high-quality legal assistance to low-income persons and to promote access

to the judicial system through legal information, advice, and representation.

2. Improve service delivery, quality of legal work, and management and administration of grantees.

3. Develop, test, and replicate innovative strategies that can enable grantees and State justice communities to improve clients' access to high-quality legal assistance.

C. Funding Categories

1. General Technology Initiative Grants

Projects in this category (1) implement new or innovative approaches for using technology in legal services delivery; (2) enhance the effectiveness and efficiency of existing technologies so that they may be better used to increase the quality and quantity of services to clients; or (3) replicate, adapt, or provide added value to the work of prior technology projects. This includes, but is not limited to, the implementation and improvement of tested methodologies and technologies from previous TIG projects. We also encourage replication of proven technologies from non-LSC-funded legal aid organizations as well as sectors outside the legal aid community. Applicants seeking continuation funding for their own existing TIG initiatives may wish to apply under the Sustainability, Enhancement, and Adoption (SEA) Grants category discussed below.

LSC recommends a minimum amount for funding requests in this category of \$40,000, but projects with lower budgets will be considered. There is no maximum amount for TIG funding requests that are within the total appropriation for TIG.

All applicants in this category must submit a pre-application according to the process and requirements outlined in this notice. LSC will open the application system and provide guidance for this project category by January 29, 2025. The pre-application deadline is March 21, 2025, and the full application deadline is June 18, 2025.

2. Technology Improvement Projects

LSC recognizes that grantees need sufficient technology infrastructure in place before they can take on a more innovative TIG project. This grant category is for applicants who need to improve their basic technology infrastructure or their information security posture. The maximum funding amount for this category is \$35,000.

Technology Improvement Projects (TIP) do not require a pre-application. LSC will open the application system and provide guidance for this project

category by April 1, 2025. The application deadline for Technology Improvement Projects is May 23, 2025.

3. Sustainability, Enhancement, and Adoption Grants

Sustainability, Enhancement, and Adoption (SEA) Grants allow successful TIG grantees to further build upon a specific project and its technologies, ensure that their TIG-funded work is effectively integrated into the service delivery system, and complete the project activities necessary to ensure the initiative's long-term success. These grants were formerly known as Adoption, Expansion, and Enhancement Grants.

SEA Grants are available to current TIG recipients and to recipients of recently completed TIG projects. Applicants seeking to enhance a non-TIG initiative or replicate another organization's project should apply under the General category. LSC encourages all prospective applicants to meet with their regional TIG program manager to discuss whether an SEA Grant may be a good fit. Applicants should be able to clearly demonstrate that their current or prior TIG project was successful and that they have a reasonable plan for building on that success.

LSC recommends a minimum amount for funding requests in this category of \$40,000, but projects with lower budgets will be considered. There is no maximum amount for TIG funding requests that are within the total appropriation for TIG.

SEA Grants will require a pre-application for 2025. LSC will open the application system and provide guidance for this project category by January 29, 2025. The pre-application deadline is March 21, 2025, and the full application deadline is June 18, 2025.

D. Available Funds for 2025 Grants

The amount of funds available for TIG awards for FY2025 depends on LSC's final appropriation. LSC currently operates under a Continuing Resolution for FY2025, which funds the Federal Government through March 14, 2025. The Continuing Resolution maintains funding at \$5,000,000. TIG award decisions for FY2025 will be made in the summer of 2025. LSC anticipates publicizing the total amount available for TIG awards when Congress enacts the FY2025 appropriation.

LSC will not designate fixed or estimated amounts for the three different funding categories and will make grant awards within the total amount of funding available.

E. Grant Terms

Applicants to the TIG program may propose grant terms between 12 and 36 months for general category projects and between 12 and 18 months for Technology Improvement Projects. For SEA Grants, the grant term is set at 24 months. The grant terms for projects in the General TIG and SEA categories will begin on January 1, 2026. TIP Grants will have a start date of October 1, 2025. Alternate start dates may be available.

III. Grant Application Process

A. Technology Initiative Grant Application Process

The TIG application process will be administered in LSC's unified grants management system, GrantEase. Applicants in the General TIG and SEA categories must first submit a pre-application to LSC in GrantEase by March 21, 2025, at 11:59 p.m. ET, to be considered for a grant. After review by LSC staff, LSC's president decides which applicants will be asked to submit a full application. Applicants will be notified of approval to submit a full application by late April 2025. Full applications are due to LSC in the GrantEase system on June 18, 2025, at 11:59 p.m. ET. Once received, full applications will undergo a rigorous review by LSC staff. LSC's president makes the final decisions on funding for the TIG program.

As noted above, applicants applying for TIP funding are not required to submit pre-applications. LSC will launch the online application system for TIP by April 1, 2025, and set a submission deadline of May 23, 2025, at 11:59 p.m. ET. LSC follows a similar review process for applications in these categories, which includes LSC staff conducting a rigorous review of all proposals and the LSC president making final funding decisions.

B. Late or Incomplete Applications

LSC may consider a request to submit a pre-application after the deadline, but only if the applicant has submitted an email to techgrants@lsc.gov explaining the circumstances that caused the delay prior to the pre-application deadline. Communication with LSC staff, including assigned program liaisons, is not a substitute for sending a formal request and explanation to techgrants@lsc.gov. At its discretion, LSC may consider incomplete applications. LSC will determine whether it will consider late or incomplete applications on a case-by-case basis.

C. Multiple Pre-Applications

Applicants may submit multiple pre-applications. If applying for multiple grants that require pre-applications, applicants should submit separate pre-applications for each funding request.

D. Additional Information and Guidelines

Additional guidance and instructions on the pre-application and application processes for Technology Initiative Grants will be available and regularly updated at <https://www.lsc.gov/grants/technology-initiative-grant-program>.

(Authority: 42 U.S.C. 2996g(e).)

Dated: January 3, 2025.

Stefanie Davis,

Deputy General Counsel, Legal Services Corporation.

[FR Doc. 2025-00214 Filed 1-7-25; 8:45 am]

BILLING CODE 7050-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities

Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: Federal Council on the Arts and the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts Domestic Indemnity Panel.

DATES: The meeting will be held on Wednesday, February 5, 2025, from 12:00 p.m. until adjourned.

ADDRESSES: The meeting will be held by videoconference originating at the National Endowment for the Arts, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506, (202) 606-8322; evoyatzis@neh.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning on or after April 1, 2025. Because the meeting will consider proprietary financial and commercial data provided

in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified and the methods of transportation and security measures confidential, I have determined that that the meeting will be closed to the public pursuant to subsection (c)(4) of section 552b of Title 5, United States Code. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 15, 2016.

Dated: January 3, 2025.

Jessica Graves,

Paralegal Specialist, National Endowment for the Humanities.

[FR Doc. 2025-00239 Filed 1-7-25; 8:45 am]

BILLING CODE 7536-01-P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; National Science Foundation Research Infrastructure Guide

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement of the Paperwork Reduction Act of 1995, the National Science Foundation (NSF) is providing opportunity for public comment on revisions to the NSF Research Infrastructure Guide (RIG).

DATES: Written comments should be received by March 10, 2025, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314, or by email to splimpto@nsf.gov.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292-7556 or send email to splimpto@nsf.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Research Infrastructure Guide.

OMB Approval Number: 3145–0239.

Expiration Date of Approval: June 30, 2025.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The revision to the *Research Infrastructure Guide (RIG)* aims to enhance guidance for the Construction Stage and implementation, focusing on planning and execution, and improve guidance for Operations Stage planning. It introduces contextual guidance for tailoring, scaling, and progressively elaborating planning efforts across all life cycle stages of Major Facilities and Mid-scale Research Infrastructure (RI). The updates provide more comprehensive project management guidance, including risk management, contingency estimating and management, and performance measurement. Additionally, the revision offers enhanced supplemental guidance on cyberinfrastructure, information assurance, partnerships, and Agile methodology for NSF projects. The draft version of the NSF RIG is available on the NSF website at: <https://new.nsf.gov/bfa/rio/resources>.

To facilitate review, a section called *List of Changes* with brief descriptions of the changes is provided in the RIG. NSF is particularly interested in public comment on the new content provided in Sections 2.9 Mid-scale Research Infrastructure Guidance, 3.5 Construction Stage and Implementation Planning, and 3.6 Operations Stage Planning.

The National Science Foundation Act of 1950 (Pub. L. 81–507) set forth NSF's mission and purpose:

“To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. * * *”

The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;
- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

Among Federal agencies, NSF is a leader in providing the academic community with advanced instrumentation needed to conduct state-of-the-art research and to educate

the next generation of scientists, engineers, and technical workers. The knowledge generated by these tools sustains U.S. leadership in science and engineering to drive the U.S. economy and secure the future. A crucial part of NSF's responsibility is to ensure that the research and education communities have access to these resources and to provide the support needed to utilize them optimally and implement timely upgrades.

The scale of advanced instrumentation spans from small research tools to large, shared resources or facilities accessible to entire scientific communities. Demand for such instrumentation is rapidly growing, driven by the accelerating pace of discovery. The need for shared Research Infrastructure (RI) is especially high, and this demand is expected to increase further as more researchers and educators depend on these expansive facilities, instruments, and databases to achieve the next significant intellectual breakthroughs.

NSF defines RI as any combination of facilities, equipment, instrumentation, computational hardware and software, and the necessary human capital in support of the same. Historically, NSF has supported diverse types of RI, including particle accelerators, detectors, radio and optical telescopes, remote research stations, research vessels and aircraft, high-performance computing, and geographically distributed observatories, as well as large-scale surveys and data sets.

NSF currently provides support for facility construction through the Major Research Equipment and Facility Construction (MREFC) account and the Research and Related Activities (R&RA) account. The MREFC account, established in FY1995, is an agency-wide capital account that provides funding for the Construction Stage of Major Facilities with a Total Project Cost (TPC) of \$100M or greater for construction, and Mid-scale RI with a TPC of \$20–\$100M.

The growth and diversification of Major Facility and Mid-scale RI require that NSF remain attentive to the ever-changing issues and challenges inherent in their planning, construction, operation, management, and oversight. Most importantly, dedicated, competent NSF and Awardee staff are needed to manage and oversee these RI, giving the attention and oversight that good practice dictates and that proper accountability to taxpayers and Congress demands. To this end, there is also a need for consistent, documented requirements and procedures to be

understood and used by NSF program managers and awardees for all such RI.

Use of the Information: Research Infrastructure (RI) is a crucial component of the science and engineering enterprise, and supporting it is one of NSF's primary responsibilities. NSF provides awards to external entities—primarily universities, university consortia, or non-profit organizations—to construct, manage, and operate these facilities. These awards are typically made through cooperative agreements. While NSF does not directly build or operate the facilities it funds, it remains responsible for overseeing their development, management, and overall performance.

The *Research Infrastructure Guide (RIG)* is intended to:

- Articulate NSF's oversight policies, processes, and procedures at each life cycle stage for Major Facilities and Mid-scale RI.
- Provide guidance to organizations for proposal development and effective management of funded activities, following established program and project management best practices.

This version of the *RIG* provides enhanced guidance for planning across all life cycle stages, including Development, Design, Construction and implementation, Operations, and Disposition. It offers detailed instructions on tailoring, appropriately scaling, and progressively elaborating plans to align with the scale and complexity of the RI. Additionally, key project management elements are improved to ensure stronger oversight.

The *RIG* does not replace the formal procedures outlined in the *Proposal & Award Policies and Procedures Guide (PAPPG)*, which are required for all NSF awards. Instead, it supplements the *PAPPG* by providing specific guidance on NSF policies and procedures for the planning, management, and oversight of Major Facilities and Mid-scale RI. All RI require merit and technical review, as well as approval of specific deliverables. The level of review and approval for these projects differs significantly from standard grants, as does the degree of oversight necessary to ensure proper accountability for federal funds. The *RIG*'s requirements, recommended procedures, and best practices apply to any RI substantial enough to require ongoing, close interaction with NSF and the National Science Board.

NSF will update the *RIG* periodically to reflect requirements, policies, and/or procedures changes. Awardees are expected to monitor and adopt the requirements and best practices included in the *RIG*, which aim to improve management and oversight of

Major Facility and Mid-scale RIs and enable the most efficient and cost-effective delivery of tools to the research and education communities.

Submitting proposals and subsequent documentation related to the development, design, construction or implementation, and operations of a Major Facility or Mid-scale RI to NSF is part of the information collected that NSF uses to fulfill its responsibility to support merit-based research and education projects in all the scientific and engineering disciplines. NSF is also committed to providing oversight on RI, which they must balance against monitoring its information collection to identify and address any excessive reporting burdens.

NSF has approximately 25 Major Facilities in various stages of Development, Design, Construction, Operations, and Disposition. Major Facilities undergoing a significant upgrade may be classified in both design or construction and operations at the same time. Two to four new construction awards are made approximately every five years based on science community RI needs and availability of funding. Among the 25 Major Facilities, there are approximately seven (7) facilities annually that are either in Design or Construction Stages. These stages require the highest level of reporting and management documentation per the *RIG*. Currently, there are approximately 27 Mid-scale Research Infrastructure in the Track1 Program and nine in the Track 2 Program.

Burden on the Public: NSF estimates that approximately five Full Time Equivalents (FTEs) are necessary for each Major Facility in design or construction to respond to NSF performance and financial reporting and project management documentation requirements on an annual basis; or 10,400 hours per year. NSF estimates approximately one and half (1.5) FTE for a Major Facility in operations to respond to performance and financial reporting on an annual basis; or 3,120 hours per year. For Mid-scale RI, NSF estimates approximately one (1) FTE is necessary for each Mid-Scale RI to respond to NSF project management documentation requirements on an annual basis; or 2,080 hours per year. With seven (7) Major Facilities in design or construction and twenty-one (20) in operations and four (4) Mid-scale RI, this equates to roughly 150,000 public burden hours annually.

Comments: In addition to the previously mentioned types of comments, feedback is also invited on the following:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility;

(b) the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Dated: January 3, 2025.

Suzanne H. Plimpton,
Reports Clearance Officer, National Science Foundation.

[FR Doc. 2025-00197 Filed 1-7-25; 8:45 am]

BILLING CODE 7555-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2023-204; K2025-100; MC2025-1013 and K2025-1012; MC2025-1014 and K2025-1013; MC2025-1015 and K2025-1014; MC2025-1016 and K2025-1015; MC2025-1017 and K2025-1016; MC2025-1018 and K2025-1017; MC2025-1019 and K2025-1018; MC2025-1020 and K2025-1019; MC2025-1021 and K2025-1020; MC2025-1022 and K2025-1021; MC2025-1023 and K2025-1022; MC2025-1024 and K2025-1023; MC2025-1030 and K2025-1029; MC2025-1031 and K2025-1030; MC2025-1032 and K2025-1031; MC2025-1033 and K2025-1032; MC2025-1034 and K2025-1033; MC2025-1035 and K2025-1034; MC2025-1036 and K2025-1035]

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 10, 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
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I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a

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).

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).*: CP2023–204; *Filing Title*: USPS Request Concerning Amendment Two to Priority Mail, First-Class Package Service & Parcel Select Contract 39, with Material Filed Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 CFR 3035.105, 39 CFR 3041.310, and 39 CFR 3041.505; *Public Representative*: Gregory Stanton; *Comments Due*: January 10, 2025.

2. *Docket No(s).*: K2025–100; *Filing Title*: USPS Request Concerning Amendment One to Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 491, with Material Filed Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 CFR 3035.105, 39 CFR 3041.310, and 39 CFR 3041.505; *Public Representative*: Gregory Stanton; *Comments Due*: January 10, 2025.

3. *Docket No(s).*: MC2025–1013 and K2025–1012; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 572 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Christopher Mohr; *Comments Due*: January 10, 2025.

4. *Docket No(s).*: MC2025–1014 and K2025–1013; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 573 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Christopher Mohr; *Comments Due*: January 10, 2025.

5. *Docket No(s).*: MC2025–1015 and K2025–1014; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 574 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Kenneth Moeller; *Comments Due*: January 10, 2025.

6. *Docket No(s).*: MC2025–1016 and K2025–1015; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 575 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jana Slovinska; *Comments Due*: January 10, 2025.

7. *Docket No(s).*: MC2025–1017 and K2025–1016; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 576 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jana Slovinska; *Comments Due*: January 10, 2025.

8. *Docket No(s).*: MC2025–1018 and K2025–1017; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 577 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: January 10, 2025.

9. *Docket No(s).*: MC2025–1019 and K2025–1018; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 578 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: January 10, 2025.

10. *Docket No(s).*: MC2025–1020 and K2025–1019; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1214 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: January 10, 2025.

11. *Docket No(s).*: MC2025–1021 and K2025–1020; *Filing Title*: USPS Request

to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1215 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: January 10, 2025.

12. *Docket No(s).*: MC2025–1022 and K2025–1021; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1216 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Katalin Clendenin; *Comments Due*: January 10, 2025.

13. *Docket No(s).*: MC2025–1023 and K2025–1022; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1217 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Katalin Clendenin; *Comments Due*: January 10, 2025.

14. *Docket No(s).*: MC2025–1024 and K2025–1023; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1218 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: January 10, 2025.

15. *Docket No(s).*: MC2025–1030 and K2025–1029; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 580 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: January 10, 2025.

16. *Docket No(s).*: MC2025–1031 and K2025–1030; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 581 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: January 10, 2025.

17. *Docket No(s)*: MC2025–1032 and K2025–1031; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1223 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: January 10, 2025.

18. *Docket No(s)*: MC2025–1033 and K2025–1032; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1224 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: January 10, 2025.

19. *Docket No(s)*: MC2025–1034 and K2025–1033; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1225 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: January 10, 2025.

20. *Docket No(s)*: MC2025–1035 and K2025–1034; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1226 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: January 10, 2025.

21. *Docket No(s)*: MC2025–1036 and K2025–1035; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 579 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: January 10, 2025.

III. Summary Proceeding(s)

None. See Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2025–00151 Filed 1–7–25; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List. **DATES:** *Date of required notice:* January 8, 2025.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on January 2, 2025, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 582 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–1038, K2025–1037.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2025–00135 Filed 1–7–25; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List. **DATES:** *Date of required notice:* January 8, 2025.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on January 2, 2025, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1227 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–1037, K2025–1036.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2025–00136 Filed 1–7–25; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102095; File No. SR–PEARL–2024–59]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Fee Discount Program for the Open-Close Report

January 2, 2025.

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 20, 2024, MIAX PEARL, LLC (“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 the MIAX Pearl Options Exchange Fee Schedule (the “Fee Schedule”) to

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.

establish a fee discount program for the Open-Close Report.

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 <https://www.miaxglobal.com/markets/us-options/pearl-options/rule-filings>, and on the Commission's website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-PEARL-2024-59.

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.⁵ 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-PEARL-2024-59) or by sending an email to rule-comments@sec.gov. Please include file number SR-PEARL-2024-59 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-PEARL-2024-59. 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-PEARL-2024-59). 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-PEARL-2024-59 and should be submitted on or before January 23, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2025-00181 Filed 1-7-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102081; File No. SR-CBOE-2024-057]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Increase Its Monthly Fee for Purge Ports

January 2, 2025.

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 20, 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 amend its Fees Schedule, effective January 2, 2025, to increase its monthly fee for Purge Ports. 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://](http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx)

www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx), and on the Commission's website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-CBOE-2024-057.

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.⁵ 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-2024-057) or by sending an email to rule-comments@sec.gov. Please include file number SR-CBOE-2024-057 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-CBOE-2024-057. 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-2024-057). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2024-057 and should be submitted on or before January 29, 2025.

⁵ 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.

⁶ 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 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.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2025–00174 Filed 1–7–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102083; File No. SR–C2–2024–024]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Increase Its Monthly Fee for Purge Ports

January 2, 2025.

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 20, 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 amend its Fees Schedule, effective January 2, 2025, to increase its monthly fee for Purge Ports. 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/options/regulation/rule_filings/ctwo/), and on

the Commission’s website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-C2-2024-024.

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.⁵ 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-C2-2024-024) or by sending an email to rule-comments@sec.gov. Please include file number SR–C2–2024–024 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–C2–2024–024. 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-C2-2024-02). 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–C2–2024–024 and should be submitted on or before January 29, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2025–00175 Filed 1–7–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102076; File No. SR–DTC–2024–016]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Settlement Service Guide

January 2, 2025.

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 20, 2024, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I below, which Item has been prepared by the DTC. DTC has designated this proposal for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b–4(f)(4) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change⁵ consists of amendments to the DTC Settlement Service Guide (“Settlement Guide”)⁶ relating to processes designed to optimize the number of transactions processed for settlement (“Settlement Optimization”). More specifically, references to and descriptions of the Night Batch Process⁷ will be removed

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)(4). 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 Each capitalized term not otherwise defined herein has its respective meaning as set forth the Rules, By-Laws and Organization Certificate of DTC (the “Rules”), available at www.dtcc.com/legal/rules-and-procedures.

⁶ Available at www.dtcc.com/-/media/Files/Downloads/legal/service-guides/Settlement.pdf. The Settlement Guide is a Procedure of DTC. Pursuant to the DTC Rules, the term “Procedures” means the Procedures, service guides, and regulations of DTC adopted pursuant to DTC Rule 27, as amended from time to time. See DTC Rule 1, Section 1, *supra* note 5. They are binding on DTC and each Participant in the same manner that they are bound by the DTC Rules.

⁷ See Settlement Guide, *supra* note 6 at 66.

⁶ 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 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.

⁶ 17 CFR 200.30–3(a)(12).

and replaced with text that provides (i) more flexibility regarding the application of the Settlement Optimization processes and (ii) more clarity around DTC's settlement cycles and the processes run during those cycles, all of which better reflect current settlement processing at DTC, as described in greater detail below.

The proposed rule change, including the DTC's statement of the purpose of, and statutory basis for, the proposed rule change, is available on the DTC's website at <https://www.dtcc.com/legal/rules-and-procedures> and on the Commission's website at <http://www.sec.gov/rules/sro.shtml>.

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.⁸ Comments may be submitted electronically by using the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>) or by sending an email to rule-comments@sec.gov. Please include file number SR-DTC-2024-016 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-DTC-2024-016. 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 (<http://www.sec.gov/rules/sro.shtml>). 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-DTC-2024-016 and should be submitted on or before January 29, 2025.

⁸ 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.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2025-00170 Filed 1-7-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102096; File No. SR-EMERALD-2024-28]

Self-Regulatory Organizations; MIAX EMERALD, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Fee Discount Program for the Open-Close Report

January 2, 2025.

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 20, 2024, MIAX EMERALD, LLC ("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 the MIAX Emerald Options Exchange Fee Schedule (the "Fee Schedule") to establish a fee discount program for the Open-Close Report.

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 <https://www.miaxglobal.com/markets/us->

[options/miax-options/rule-filings](https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings), and on the Commission's website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-EMERALD-2024-28.

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.⁵ 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-EMERALD-2024-28) or by sending an email to rule-comments@sec.gov. Please include file number SR-EMERALD-2024-28 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-EMERALD-2024-28. 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-EMERALD-2024-28). 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-EMERALD-2024-28 and should be submitted on or before January 29, 2025.

⁵ 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.

⁹ 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.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2025–00182 Filed 1–7–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102073; File No. SR–BOX–2024–31]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Industry Members Related to Reasonably Budgeted CAT Costs of the National Market System Plan Governing the Consolidated Audit Trail for 2025

January 2, 2025.

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 20, 2024, BOX Exchange LLC (“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 the Fee Schedule to establish fees for Industry Members⁵ related to

reasonably budgeted CAT costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) for 2025. These fees would be payable to Consolidated Audit Trail, LLC (“CAT LLC” or the “Company”) and referred to as CAT Fee 2025–1, and would be described in a section of the Exchange’s Fee Schedule entitled “Consolidated Audit Trail Funding Fees.” The fee rate for CAT Fee 2025–1 would be \$0.000022 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for CAT Fee 2025–1 in February 2025 calculated based on their transactions as CAT Executing Brokers for the Buyer (“CEBB”) and/or CAT Executing Brokers for the Seller (“CEBS”) in January 2025. CAT Fee 2025–1 is anticipated to be in place for six months, and is anticipated to recover approximately one-half of the costs set forth in the reasonably budgeted CAT costs for 2025. CAT LLC intends for CAT Fee 2025–1 to replace CAT Fee 2024–1 (which has a fee rate of \$0.000035).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 <https://rules.boxexchange.com/rulefilings>, at the principal office of the Exchange, and on the Commission’s website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-BOX-2024-31.

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

rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. See BOX Rule Series 16000 (CONSOLIDATED AUDIT TRAIL COMPLIANCE RULE).

⁶ See paragraph A.3. of Consolidated Audit Trail Funding Fees. See BOX Fee Schedule, Section VIII.A.3. (CAT Fee 2024–1). See also Securities Exchange Act Rel. No. 100829 (Aug. 27, 2024), 89 FR 71448 (Sept. 3, 2024) (“Fee Filing for CAT Fee 2024–1”).

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.

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-BOX-2024-31) or by sending an email to rule-comments@sec.gov. Please include file number SR–BOX–2024–31 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–BOX–2024–31. 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-BOX-2024-31). 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–BOX–2024–31 and should be submitted on or before January 29, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2025–00169 Filed 1–7–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102092; File No. SR–NASDAQ–2024–088]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Definitions of “Class” and “Series” To Harmonize Terms With Affiliated Exchanges

January 2, 2025.

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 20, 2024, The Nasdaq Stock Market LLC (“Exchange”) filed with the Securities and Exchange Commission

⁸ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

⁶ 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 An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See BOX Rule 16010 (Consolidated Audit Trail—Definitions). See also Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this

(“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 The Nasdaq Options Market LLC (“NOM”) Rules at Options 1, Section 1, Definitions, to amend the definitions of “class” and “series”.

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 <https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings> and on the Commission’s website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-NASDAQ-2024-088.

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.⁵ 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-NASDAQ-](https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-NASDAQ-2024-088)

2024-088) or by sending an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-088 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-NASDAQ-2024-088. 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-NASDAQ-2024-088). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-088 and should be submitted on or before January 29, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2025-00178 Filed 1-7-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-102078; File No. SR-BX-2024-060]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Definitions of “Class” and “Series” To Harmonize Terms With Affiliated Exchanges

January 2, 2025.

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 20, 2024, Nasdaq BX, 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 Options 1, Section 1, Definitions, to amend the definitions of “class” and “series”.

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 <https://listingcenter.nasdaq.com/rulebook/bx/rulefilings> and on the Commission’s website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-BX-2024-060.

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.⁵ 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-BX-2024-060) or by sending an email to rule-comments@sec.gov. Please include file number SR-BX-2024-060 on the subject line. Alternatively, paper comments may be sent to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC

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 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.

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 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.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

20549–1090. All submissions should refer to file number SR–BX–2024–060. 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-BX-2024-060). 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–BX–2024–060 and should be submitted on or before January 29, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2025–00172 Filed 1–7–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102084; File No. SR–CboeEDGX–2024–087]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Increase Its Monthly Fee for Purge Ports

January 2, 2025.

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 20, 2024, Cboe EDGX 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 its Fees Schedule, effective January 2, 2025, to increase its monthly fee for Purge Ports.

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 https://markets.cboe.com/us/options/regulation/rule_filings/edgx/ and on the Commission’s website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-CboeEDGX-2024-087.

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.⁵ 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-CboeEDGX-2024-087) or by sending an email to rule-comments@sec.gov. Please include file number SR–CboeEDGX–2024–087 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–CboeEDGX–2024–087. 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->

If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

⁵ 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.

[regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-CboeEDGX-2024-087](https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-CboeEDGX-2024-087)). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR–CboeEDGX–2024–087 and should be submitted on or before January 29, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2025–00176 Filed 1–7–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102077; File No. SR–NSCC–2024–013]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NSCC Rules & Procedures With Respect to the Receipt of CNS Securities

January 2, 2025.

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 20, 2024, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Item I below, which Item has been prepared by the clearing agency. NSCC has designated this proposal for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b–4(f)(4) thereunder.⁴ The Commission is publishing this notice to solicit

⁶ 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)(4). 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.

⁶ 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.

comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the NSCC Rules & Procedures ("Rules") concerning the receipt of securities from NSCC's Continuous Net Settlement system ("CNS") to improve the overall clarity of NSCC's Rules concerning CNS long allocations.⁵

The proposed rule change, including the NSCC's statement of the purpose of, and statutory basis for, the proposed rule change, is available on the NSCC's website at <https://www.dtcc.com/legal/rules-and-procedures> and on the Commission's website at <https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>.

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>) or by sending an email to rule-comments@sec.gov. Please include file number SR-NSCC-2024-013 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-SRO-2024-013. 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>).

⁵ Capitalized terms not defined herein shall have the meaning assigned to such terms in the Rules, available at www.dtcc.com/legal/rules-and-procedures.

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.

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-NSCC-2024-013 and should be submitted on or before January 29, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2025-00171 Filed 1-7-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102072; File No. SR-IEX-2024-29]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Industry Members Related to Reasonably Budgeted CAT Costs of the National Market System Plan Governing the Consolidated Audit Trail for 2025

January 2, 2025.

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 20, 2024, Investors Exchange LLC ("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.

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for Industry Members⁵ related to reasonably budgeted CAT costs of the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan") for 2025. These fees would be payable to Consolidated Audit Trail, LLC ("CAT LLC" or the "Company") and referred to as CAT Fee 2025-1, and would be described in a section of the Exchange's fee schedule entitled "Consolidated Audit Trail Funding Fees." The fee rate for CAT Fee 2025-1 would be \$0.000022 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for CAT Fee 2025-1 in February 2025 calculated based on their transactions as CAT Executing Brokers for the Buyer ("CEBB") and/or CAT Executing Brokers for the Seller ("CEBS") in January 2025. CAT Fee 2025-1 is anticipated to be in place for six months, and is anticipated to recover approximately one-half of the costs set forth in the reasonably budgeted CAT costs for 2025. CAT LLC intends for CAT Fee 2025-1 to replace CAT Fee 2024-1 (which has a fee rate of \$0.000035).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 www.iextrading.com, at the principal office of the Exchange, and on the Commission's website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-IEX-2024-29.

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

⁵ An "Industry Member" is defined as "a member of a national securities exchange or a member of a national securities association." See IEX Rule 11.610(u). See also Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. See IEX Rule Series 11.600.

⁶ See paragraph (a)(3) of Consolidated Audit Trail Funding Fees. See also Securities Exchange Act Release No. 100834 (August 27, 2024), 89 FR 71747 (September 3, 2024) (SR-IEX-2024-14) ("Fee Filing for CAT Fee 2024-1"); IEX Fee Schedule, available at <https://www.iexexchange.io/resources/trading/fee-schedule>.

⁷ Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Continued

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-IEX-2024-29) or by sending an email to rule-comments@sec.gov. Please include file number SR-IEX-2024-29 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-IEX-2024-29. 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-IEX-2024-29). 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-IEX-2024-29 and should be submitted on or before January 29, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2025-00168 Filed 1-7-25; 8:45 am]

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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. 34-102094; File No. SR-MIAX-2024-46]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Fee Discount Program for the Open-Close Report

January 2, 2025.

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 20, 2024, Miami International Securities Exchange, LLC ("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 the MIAX Options Exchange Fee Schedule (the "Fee Schedule") to establish a fee discount program for the Open-Close Report.

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 <https://www.miaxglobal.com/markets/us-options/all-options-exchanges/rule-filings>, and on the Commission's website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-MIAX-2024-46.

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.

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.⁵ 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-MIAX-2024-46) or by sending an email to rule-comments@sec.gov. Please include file number SR-MIAX-2024-46 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-MIAX-2024-46. 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-MIAX-2024-46). 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-MIAX-2024-46 and should be submitted on or before January 29, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2025-00180 Filed 1-7-25; 8:45 am]

BILLING CODE 8011-01-P

⁵ 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.

⁶ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102093; File No. SR–FINRA–2024–007]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™))

January 2, 2025.

I. Introduction

On May 1, 2024, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission” or “SEC”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “SEA”),¹ and Rule 19b–4 thereunder,² a proposed rule change to adopt the new FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™)) to (1) require reporting of securities loans; and (2) provide for the public dissemination of loan information. The proposed rule change was published for comment in the **Federal Register** on May 7, 2024.³ On June 10, 2024, the Commission extended until August 5, 2024, the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁴ On August 5, 2024, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, and allow for additional analysis of, and input from commenters with respect to, the scope and implementation of the proposed rules.⁵ On October 28, 2024, the Commission designated January 2, 2025, as the date by which the Commission shall either approve or disapprove the proposed rule change.⁶ On November 14, 2024, FINRA filed a partial amendment to the original proposed rule change. On November 15, 2024, the Commission published notice of Partial

Amendment No. 1.⁷ The Commission received comment letters in response to publications of the Notice, OIP, and Partial Amendment No. 1,⁸ as well as a response letter from FINRA.⁹ This order approves the proposed rule change, as modified by Partial Amendment No. 1 (collectively, “Proposal”).¹⁰

II. Description of the Proposed Rule Change, as Modified by Partial Amendment No. 1

As described in more detail in the Notice¹¹ and in Partial Amendment No. 1,¹² FINRA stated that it proposed, consistent with Exchange Act Rule 10c–1a (“Rule 10c–1a”),¹³ to adopt the new FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™)) to establish reporting requirements for Covered Securities Loans and to provide for the dissemination of individual and aggregate Covered Securities Loan information and loan rate statistics. These proposed rules would define key terms for the reporting of Covered Securities Loans and specify the reporting requirements with respect to both Initial Covered Securities Loans and Loan Modifications. FINRA stated its intent to file, and has filed, separately a proposed rule change to establish Covered Securities Loan reporting fees and securities loan data products and associated fees.¹⁴

According to FINRA, the proposed Rule 6500 Series is designed to improve transparency and efficiency in the securities lending market, consistent with Section 15(A)(b)(6) of the Exchange Act, Rule 10c–1a, and Section 984 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹⁵ FINRA stated that the proposed rule change would do so by facilitating the collection of specified securities loan information from Covered Persons and Reporting Agents, both of which may

include non-FINRA members, and providing access to such information to market participants, the public, and regulators.¹⁶

A. Reporting Initial Covered Securities Loans

Proposed Rule 6530(a) would govern the reporting requirements applicable to Covered Persons for reporting Initial Covered Securities Loans.¹⁷ Proposed Rule 6510¹⁸ would define “Initial Covered Securities Loan” as a new Covered Securities Loan not previously reported to SLATE. The definitions of “Covered Person” and “Covered Securities Loan” for the purposes of this proposed rule change would be the same as set forth in Rule 10c–1a. Initial Covered Securities Loans would be required to be reported within the time periods outlined in proposed Rule 6530(a)(1) (When and How Initial Covered Securities Loans Are Reported). Specifically, as modified by Partial Amendment No. 1, for Initial Covered Securities Loans effected on a business day at or after 12:00:00 a.m. Eastern Time (“ET”) through 7:00:00 p.m. ET the required information must be reported the same day by 11:59:59 p.m. ET.¹⁹ Additionally, as modified by Partial Amendment No. 1, for Initial Covered Securities Loans effected on a business day after 7:00:00 p.m. ET, the required information must be reported no later than the next business day (T+1) by 11:59:59 p.m. ET;²⁰ Initial Covered Securities Loans effected on a Saturday, a Sunday, a federal or religious holiday, or other day on which SLATE is not open at any time during that day (determined using ET) must be reported the next business day (T+1) by 11:59:59 p.m. ET.²¹

¹⁶ Notice, 89 FR 38213.

¹⁷ As described in more detail in the Notice, as well as below, in Part II.C, a Covered Person may engage a Reporting Agent to comply with the reporting obligations on its behalf.

¹⁸ Partial Amendment No. 1 modified originally proposed Rule 6510 by removing the subparagraph providing the definition of “Affiliate,” re-lettering all subsequent subparagraphs under proposed Rule 6510, and updating cross-references in proposed Rule 6510 to other SLATE provisions.

¹⁹ See proposed Rule 6530(a)(1)(A). As originally proposed in the Notice, an Initial Covered Securities Loan effected on a business day at or after 12:00:00 a.m. ET through 7:45:00 p.m. ET would have been reported the same day before 8:00:00 p.m. ET.

²⁰ See proposed Rule 6530(a)(1)(B). As originally proposed in the Notice, an Initial Covered Securities Loan effected on a business day after 7:45:00 p.m. ET would have been reported no later than the next business day (T+1) before 8:00:00 p.m. ET.

²¹ See proposed Rule 6530(a)(1)(C). As originally proposed in the Notice, an Initial Covered Securities Loan effected on a Saturday, a Sunday, a federal or religious holiday, or other day on which

Continued

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 100046 (May 1, 2024), 89 FR 38203 (May 7, 2024) (“Notice”).

⁴ See Securities Exchange Act Release No. 100305 (June 10, 2024), 89 FR 50644 (June 14, 2024).

⁵ See Securities Exchange Act Release No. 100655 (August 5, 2024), 89 FR 65441 (August 9, 2024) (“OIP”).

⁶ See Securities Exchange Act Release No. 101450 (October 28, 2024), 89 FR 87448 (November 1, 2024).

⁷ See Securities Exchange Act Release No. 101645 (November 15, 2024), 89 FR 92228 (November 21, 2024) (“Partial Amendment No. 1”). All defined terms herein have the same meaning as they do in the Notice and in Partial Amendment No. 1, as applicable.

⁸ Comments are available at: <https://www.sec.gov/comments/sr-finra-2024-007/srfinra2024007.htm>.

⁹ See Letter from Racquel L. Russell, Senior Vice President, Director of Capital Markets Policy, Office of General Counsel, FINRA (November 14, 2024), available at <https://www.sec.gov/comments/sr-finra-2024-007/srfinra2024007-540615-1548002.pdf> (“FINRA Letter”).

¹⁰ The term “Proposal” as used herein refers to the proposed rule change, as amended by Partial Amendment No. 1.

¹¹ See Notice, 89 FR 38204–06.

¹² See Partial Amendment No. 1, 89 FR 92229.

¹³ 17 CFR 240.10c–1a.

¹⁴ Notice, 89 FR 38206. See *infra* Part III.I.

¹⁵ Notice, 89 FR 38213.

Proposed Rule 6530(a)(2) (Loan Information To Be Reported) would specify the items of information that must be reported to FINRA. Specifically, as modified by Partial Amendment No. 1,²² proposed Rule 6530(a)(2)(A) through (L) would require that Initial Covered Securities Loan reports must contain the below non-confidential data elements:

(A) The legal name of the security issuer and the Legal Entity Identifier (“LEI”) of the issuer (if the issuer has a non-lapsed LEI);

(B) Security symbol, CUSIP, ISIN, or FIGI, or other security identifier;²³

(C) The date the Covered Securities Loan was effected;

(D) The time the Covered Securities Loan was effected;

(E) The name of the platform or venue where the Covered Securities Loan was effected;²⁴

(F) The amount of the Reportable Securities loaned;²⁵

(G) The type of collateral used to secure the Covered Securities Loan;

(H) For a Covered Securities Loan collateralized by cash, the rebate rate or any other fee or charges;²⁶

(I) For a Covered Securities Loan not collateralized by cash, the securities lending fee or rate, or any other fee or charges;²⁷

(J) The percentage of collateral to value of Reportable Securities loaned required to secure such Covered Securities Loan;

(K) The termination date of the Covered Securities Loan;²⁸

(L) Whether the borrower is a Broker or Dealer, a customer (if the person lending securities is a Broker or Dealer), a Clearing Agency, a Bank, a Custodian, or other person.²⁹

As modified by Partial Amendment No. 1,³⁰ proposed Rule 6530(a)(2)(M) through (U) would also require that Initial Covered Securities Loan reports contain the below confidential data elements:

(M) If known, the market participant identifier (“MPID”) of the Covered Person;³¹

(N) If known, the legal name of each party to the Covered Securities Loan (other than the customer from whom a Broker or Dealer borrows fully paid or

excess margin securities pursuant to SEA Rule 15c3–3(b)(3));

(O) If known, the CRD Number or Investment Adviser Registration Depository (“IARD”) Number of each party to the Covered Securities Loan;³²

(P) If known, the MPID of each party to the Covered Securities Loan;

(Q) If known, the LEI of each party to the Covered Securities Loan;

(R) If known, whether each party to the Covered Securities Loan is the lender, the borrower, or an intermediary between the lender and the borrower;

(S) If the person lending securities is a Broker or Dealer and the borrower is its customer, whether the security is loaned from the Broker’s or Dealer’s securities inventory to a³³ customer of such Broker or Dealer;

(T) If known, whether the Covered Securities Loan is being used to close out a fail to deliver pursuant to Rule 204 of SEC Regulation SHO or to close out a fail to deliver outside of Regulation SHO; and³⁴

(U) Where a Covered Person’s daily submission includes two or more reports related to the same Covered Securities Loan (e.g., an Initial Covered Securities Loan and a Loan Modification to terminate the Covered Securities Loan) and FINRA has not yet assigned a unique identifier to the Initial Covered Securities Loan, a unique identifier assigned to the Covered Securities Loan by the Covered Person responsible for reporting the loan to SLATE.³⁵

FINRA originally proposed six modifiers and indicators set forth in proposed Rule 6530(c), which would have applied to specific scenarios where additional detail is appropriate to clarify the information required to be reported pursuant to proposed Rule 6530(a)(2) and (b)(2).³⁶ These modifiers or indicators would have been appended to all SLATE reports.³⁷ FINRA stated that it planned to use these modifiers for data validation purposes (e.g., in instances where FINRA’s data

SLATE is not open at any time during that day (determined using ET) would have been reported the next business day (T+1) before 8:00:00 p.m. ET.

²² As originally proposed in the Notice, each SLATE report would have contained the expected settlement date of the Covered Securities Loan. Partial Amendment No. 1 removed this proposed data element. In addition, as originally proposed in the Notice, each SLATE report would have contained the data element “[a]ny other fees or charges” separately from the data element concerning the rebate rate, as applicable to a Covered Securities Loan collateralized by cash or a Covered Securities Loan not collateralized by cash. FINRA stated that, when reporting a rebate rate or lending fee pursuant to (originally) proposed Rule 6530(a)(2)(I) or (J), respectively, a Covered Person must report the rebate rate or lending fee as a percentage, and separately report the dollar cost of any other fees or charges. *See* Notice, 89 FR 38206 n.30. The data element “[a]ny other fees or charges” has been removed by Partial Amendment No. 1. In light of the removal of these data elements, Partial Amendment No. 1 re-lettered the paragraphs under proposed Rule 6530(a)(2). Changes from Partial Amendment No. 1 regarding specific data elements are discussed below with respect to such data elements.

²³ Partial Amendment No. 1 added the text “or other security identifier” to this list.

²⁴ Partial Amendment No. 1 added the text “name of the” before the word “platform.” FINRA stated that it will make available a list of platforms/venues and their associated identifiers for reporting purposes; if a loan occurs on a platform/venue not yet included on the FINRA list, the Covered Person must enter the name of the platform/venue in the SLATE report. *See* Notice, 89 FR 38206 n.28.

²⁵ Proposed Rule 6530(a)(3) specifies that, for a Covered Securities Loan of a security reportable to CAT, a Covered Person must report the number of shares loaned. For a Covered Securities Loan of a security reportable to Trade Reporting and Compliance Engine (“TRACE”) or the Municipal Securities Rulemaking Board’s Real-Time Transaction Reporting System (“RTRS”), a Covered Person must report the total par value of the securities loaned. Notice, 89 FR 38206 n.29.

²⁶ Partial Amendment No. 1 modified this proposed data element by adding the text “or any other fee or charges.”

²⁷ Partial Amendment No. 1 modified this proposed data element by adding the text “or rate, or any other fee or charges.”

²⁸ As originally proposed in the Notice, such information would have been provided in connection with a Covered Securities Loan with a specified term. Partial Amendment No. 1 modified this data element by removing the modifying text “[f]or a Covered Securities Loan with a specified term.”

²⁹ Proposed Rule 6510 would define the terms “Broker,” “Dealer,” “Clearing Agency,” “Bank,” and “Custodian” by reference to their respective definitions under section 3(a) of the Exchange Act. *See* Notice, 89 FR 38207 nn.32–36.

³⁰ As originally proposed in the Notice, each SLATE report would have specified whether the Covered Person is the lender, borrower or intermediary; if the Covered Securities Loan is an allocation of an omnibus loan effected pursuant to an agency lending agreement, the unique internal identifier for the associated omnibus loan assigned by the Covered Person responsible for reporting the Covered Securities Loan to SLATE; and such modifiers and indicators as required by either the Rule 6500 Series or the SLATE Participant (defined in proposed Rule 6510(g)) specification. Partial Amendment No. 1 removed these proposed data elements. Changes from Partial Amendment No. 1 regarding specific data elements are discussed below with respect to such data elements.

³¹ Partial Amendment No. 1 added this data element to the list of loan information to be reported. FINRA stated that the conforming change to proposed Rule 6530(a)(2) to require a Covered Person to submit their MPID, if known, when reporting an Initial Covered Securities Loan, consistent with the requirement in proposed Rule 6530(b)(2)(C) for Loan Modification reports, will identify in the audit trail the party on whose behalf a SLATE report is submitted. Partial Amendment No. 1, 89 FR 92231.

³² Partial Amendment No. 1 removed the text “if applicable” at the end of this data element.

³³ Partial Amendment No. 1 replaced the word “the” with the word “a” before the text “customer of such Broker or Dealer.”

³⁴ Partial Amendment No. 1 added the word “and” between originally proposed paragraphs (a)(2)(T) and (a)(2)(U).

³⁵ As originally proposed in the Notice, this data element would have provided the following: “The unique internal identifier assigned to the Covered Securities Loan by the Covered Person responsible for reporting the loan to SLATE.”

³⁶ *See* Notice, 89 FR 38207–08.

³⁷ These modifiers and indicators would have been the following: Exclusive Arrangement; Loan to Affiliate; Unsettled Loan; Terminated Loan; Rate or Fee Adjustment; and Basket Loan. For a discussion of each of these modifiers and indicators, *see* Notice, 89 FR 38208.

validation logic identified the reported rate as potentially erroneous).³⁸ Partial Amendment No. 1 removed the proposed requirement to append to each SLATE report specified modifiers and indicators. Partial Amendment No. 1 also modified proposed Rule 6510 (Definitions) by removing the definition of the term “affiliate” because that term is no longer needed given the deletion of the related indicator.³⁹

Partial Amendment No. 1 added proposed Rule 6530(a)(4) (Reporting Loan Rates Based on a Spread to a Benchmark or Reference Rate) to permit Covered Persons to—as an alternative to reporting the rebate rate or lending fee or rate for a Covered Securities Loan—report the spread and identity of the benchmark or reference rate for Covered Securities Loans that are priced based on a spread to a benchmark or reference rate. Specifically, new proposed Rule 6530(a)(4)(B) would provide that, where a rebate rate or lending fee or rate is determined based on a spread to a benchmark or reference rate, a Covered Person may report: (1) the rebate rate or lending fee or rate as of the date the Covered Securities Loan was effected; (2) the spread; and (3) the identity of the benchmark or reference rate. Alternatively, a Covered Person may report only the rebate rate or lending fee or rate.

B. Reporting Securities Loan Modifications

Proposed Rule 6530(b) would govern the reporting requirements applicable to Covered Persons for reporting Loan Modifications. Proposed Rule 6510 would define “Loan Modification” as a change to any “Data Element” with respect to a Covered Securities Loan (irrespective of whether such Covered Securities Loan was previously reported to SLATE), where “Data Element” refers to the required non-confidential data elements reported pursuant to proposed Rule 6530(a)(2). Proposed Rule 6530(b)(1) (When and How Loan Modifications Are Reported) would require that Loan Modifications be reported within the same timeframes applicable to the reporting of Initial Covered Securities Loans. Specifically, as modified by Partial Amendment No. 1, for Loan Modifications effected on a business day at or after 12:00:00 a.m. ET through 7:00:00 p.m. ET, the required information must be reported the same day by 11:59:59 ET.⁴⁰ As modified by

Partial Amendment No. 1, for Loan Modifications effected on a business day after 7:00:00 p.m. ET, the required information must be reported no later than the next business day (T+1) by 11:59:59 ET;⁴¹ Loan Modifications effected on a Saturday, a Sunday, a federal or religious holiday, or other day on which SLATE is not open at any time during that day (determined using ET) must be reported the next business day (T+1) by 11:59:59 ET.⁴²

Proposed Rule 6530(b)(2) (Loan Modifications—Information To Be Reported) would specify the items of information that must be reported to FINRA. Specifically, as modified by Partial Amendment No. 1,⁴³ proposed Rule 6530(b)(2)(A) through (E) would require that each Loan Modification report contain the information below:

(A) The unique identifier assigned by FINRA to the Initial Covered Securities Loan, or where a Covered Person’s daily submission includes two or more reports related to the same Covered Securities Loan and FINRA has not yet assigned a unique identifier to the Covered Securities Loan, the identifier reported pursuant to paragraph (a)(2)(U) of this Rule;⁴⁴

have been reported the same day by 8:00:00 p.m. ET.

⁴¹ As originally proposed in the Notice, a Loan Modification effected on a business day after 7:45:00 p.m. ET would have been reported no later than the next business day (T+1) by 8:00:00 p.m. ET.

⁴² As originally proposed in the Notice, a Loan Modification effected on a Saturday, a Sunday, a federal or religious holiday, or other day on which SLATE is not open at any time during that day (determined using ET) would have been reported the next business day (T+1) by 8:00:00 p.m. ET.

⁴³ As originally proposed in the Notice, for Loan Modifications, each SLATE report would have contained the following data elements: if the Covered Securities Loan is an allocation of an omnibus loan effected pursuant to an agency lending agreement, the unique internal identifier for the associated omnibus loan; the expected settlement date for modifications to the loan amount (if the expected settlement date is a date other than the date of the Loan Modification), or the effective date for all other Loan Modifications (if the effective date is a date other than the date of the Loan Modification); whether the Covered person is the lender, borrower or intermediary; and such modifiers and indicators as required by either the Rule 6500 Series or the SLATE Participant specification. Partial Amendment No. 1 removed these proposed data elements. In light of the removal of these data elements, Partial Amendment No. 1 re-lettered the paragraphs under proposed Rule 6530(b)(2). Changes from Partial Amendment No. 1 regarding specific data elements are discussed below with respect to such data elements.

⁴⁴ As originally proposed in the Notice, the following information concerning this requirement would have been reported with respect to Loan Modifications: the unique identifier assigned by FINRA to the Initial Covered Securities Loan, or, if a unique identifier has not yet been assigned by FINRA, the unique internal identifier assigned to the Covered Securities Loan by the Covered Person responsible for reporting the loan to SLATE.

(B) If known, the MPID of the Covered Person;⁴⁵

(C) The date of the Loan Modification;

(D) The time of the Loan

Modification; and ⁴⁶

(E) (i) If the Loan Modification occurs after the Data Elements for such Covered Securities Loan are reported to SLATE, and results in a change to information previously required to be reported to SLATE, the specific modification and the specific Data Elements being modified, or (ii) If the Loan Modification is to a Covered Securities Loan for which reporting to SLATE was not required on the date the loan was agreed to or last modified and results in a change to any of the Data Elements, all Data Elements as of the date of modification and an identifier described in paragraph (a)(2)(U) of this Rule.⁴⁷

As originally proposed in the Notice, Rule 6530.01 (Intraday Loan Modifications) would have addressed a Covered Person’s reporting obligations when multiple Loan Modifications occur on a given day. Specifically, if a Covered Securities Loan (whether or not previously reported to SLATE) were modified multiple times throughout the day, proposed Rule 6530.01 would have set forth the requirement for a Covered Person to report each Loan Modification that occurred on a given day as set forth in proposed Rule 6530(b).⁴⁸ Partial Amendment No. 1 removed proposed Rule 6530.01.

As originally proposed in the Notice, Rule 6530.02 (Changes to the Parties to a Covered Securities Loan) would have provided that, with respect to a previously reported Covered Securities Loan, following the addition or removal of a party required to be identified pursuant to Rule 6530(a)(2)(O) a Covered Person must: (1) report the termination of the previously reported Covered Securities Loan as a Loan Modification pursuant to Rule 6530(b) that reflects the date and time the party was added or removed and select the Terminated Loan indicator; and (2) report an Initial Covered Securities Loan pursuant to Rule 6530(a) that reflects the new parties to the loan, if known (other than the customer from whom a Broker or Dealer borrows fully paid or

⁴⁵ Partial Amendment No. 1 added the text “[i]f known” to the beginning of this data element.

⁴⁶ Partial Amendment No. 1 added the word “and” between paragraphs (b)(2)(D) and (b)(2)(E).

⁴⁷ As originally proposed in the Notice, this data element would have concerned “[t]he modified Data Elements for a Loan Modification to a Covered Securities Loan previously reported to SLATE or all Data Elements for a Loan Modification to a Covered Securities Loan that was not previously required to be reported to SLATE.” Partial Amendment No. 1 replaced that text with the text included above.

⁴⁸ See Notice, 89 FR 38209.

³⁸ See Notice, 89 FR 38208.

³⁹ See *supra* note 18.

⁴⁰ As originally proposed in the Notice, a Loan Modification effected on a business day at or after 12:00:00 a.m. ET through 7:45:00 p.m. ET would

excess margin securities pursuant to SEA Rule 15c3-3(b)(3)). Partial Amendment No. 1 removed originally proposed Rule 6530.02.

C. Compliance With Reporting Obligations

FINRA proposed to adopt, as modified by Partial Amendment No. 1, proposed Rule 6530(c) (Compliance with Reporting Obligations) to implement provisions regarding Covered Persons' ongoing reporting obligations and the use of third parties in meeting Exchange Act Rule 10c-1a and FINRA 6500 Rule Series obligations.⁴⁹ Specifically, proposed Rule 6530(c)(1) provides that Covered Persons (other than Covered Persons that engage a Reporting Agent) have an ongoing obligation to report Initial Covered Securities Loans and Loan Modifications to FINRA timely, accurately, and completely. In addition, a Covered Person may employ an agent for the purpose of submitting loan information to SLATE; however, unless the Covered Person has retained a Reporting Agent as permitted under Exchange Act Rule 10c-1a, the primary responsibility for the timely, accurate, and complete reporting of loan information to SLATE remains the non-delegable duty of the Covered Person with the reporting obligation. Similar to requirements that exist with respect to reporting obligations under other FINRA rules,⁵⁰ proposed Rule 6530(c)(2) provides that a member's pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

As originally proposed in the Notice, even where a member employs a Reporting Agent consistent with Rule 10c-1a(a)(2), the member would nonetheless have been required to take reasonable steps to ensure that the Reporting Agent is in fact complying with the securities lending reporting requirements of Rule 10c-1a and proposed FINRA Rule 6530 on its behalf. Originally proposed Rule 6530(d)(3)⁵¹ would have provided that a member relying on a Reporting Agent has an obligation under FINRA Rule 3110 (Supervision) to take reasonable steps to ensure that the Reporting Agent is complying with Rule 10c-1a and FINRA Rule 6530 on its behalf. Partial

Amendment No. 1 removed this proposed requirement.

As modified by Partial Amendment No. 1, proposed Rule 6530(c)(3)⁵² would provide that, if a Covered Person makes a good faith determination that it has a reporting obligation under Rule 10c-1a,⁵³ the Covered Person or Reporting Agent, as applicable, must report the Covered Securities Loan as provided in proposed Rule 6530. If the Reportable Security is not entered into the SLATE system, proposed Rule 6530(c)(3) would also require the Covered Person or Reporting Agent, as applicable, to promptly notify and provide FINRA Operations, in the form and manner required by FINRA, the information specified in Rule 6530(a)(2)(A) and (B), along with such other information as FINRA deems necessary to enter the Reportable Security for reporting through SLATE. FINRA stated that this requirement would enable FINRA to set the security up in its systems and facilitate reporting of the Covered Securities Loan to SLATE, as required by Rule 10c-1a and proposed Rule 6530.⁵⁴

D. Participation in SLATE

Proposed Rule 6520 (Participation in SLATE) would establish the requirements applicable to Covered Persons and Reporting Agents with respect to participation in SLATE. Rule 6510 would define a "SLATE Participant" as "any person that reports securities loan information to SLATE, directly or indirectly." "SLATE Participant" therefore would include both persons who connect to SLATE directly to report Covered Securities Loan information, including Reporting Agents, as well as any Covered Person who has engaged a Reporting Agent or other agent.

Paragraph (1) of proposed Rule 6520(a) (Mandatory Participation) would provide that participation in SLATE is mandatory for purposes of reporting Covered Securities Loans. Such mandatory participation would obligate a Covered Person to submit Covered Securities Loan information to SLATE in conformity with Rule 10c-1a and the FINRA Rule 6500 Series. Proposed Rule 6520(a)(2) would provide that participation in SLATE would be

conditioned on the SLATE Participant's initial and continuing compliance with specified requirements. Specifically, SLATE Participants must: (1) obtain an MPID for reporting Covered Securities Loans to SLATE; (2) execute and comply with the SLATE Participant application agreement and all applicable rules and operating procedures of FINRA and the SEC; and (3) maintain the physical security of the equipment located on the premises of the SLATE Participant to prevent unauthorized entry of information into SLATE. Proposed Rule 6520(a)(3) would provide that SLATE Participants would be obligated to inform FINRA of non-compliance with, or changes to, any of the participation requirements set forth in paragraph (a)(2) of this Rule.

Proposed Rule 6520(b) (Reporting Agents) would set forth the participation requirements specific to Reporting Agents. Proposed Rule 6520(b) would require a SLATE Participant acting as a Reporting Agent to provide FINRA with a list naming each Covered Person on whose behalf the Reporting Agent is providing information to SLATE and any updates⁵⁵ to the list of such persons by the end of the day on which any such change occurs, in the form and manner specified by FINRA. FINRA stated that this requirement is consistent with Rule 10c-1a(b)(4).⁵⁶

Finally, proposed Rule 6520(c) (SLATE Participant Obligations) would provide that, upon execution and receipt by FINRA of the SLATE Participant application agreement, a SLATE Participant may commence input of Covered Securities Loan reports into SLATE. Proposed Rule 6520(c) also would require that a SLATE Participant must report Covered Securities Loan information using its MPID and would provide that a SLATE Participant may access SLATE via a FINRA-approved facility during SLATE System Hours.⁵⁷

E. Dissemination of Loan Information

Proposed Rule 6540 (Dissemination of Loan Information) would provide for the public dissemination of securities loan data reported to SLATE and information pertaining to the aggregate loan transaction activity and distribution of loan rates for each Reportable Security.

⁴⁹ Partial Amendment No. 1 re-lettered this provision paragraph to (c).

⁵⁰ See, e.g., FINRA Rule 6380A(a)(4); FINRA Rule 6622(a)(4); FINRA Rule 6623; FINRA Rule 6730(f).

⁵¹ See *supra* note 49.

⁵² As originally proposed in the Notice, this paragraph would have been (d)(4). Partial Amendment No. 1 re-lettered and re-numbered this paragraph to (c)(3).

⁵³ As originally proposed in the Notice, this requirement would have applied with respect to a reporting obligation under both Rule 10c-1a and SLATE. Partial Amendment No. 1 removed the text "and this Rule 6500 Series" from proposed Rule 6530(c)(3).

⁵⁴ Notice, 89 FR 38210.

⁵⁵ Partial Amendment No. 1 changed the word "changes," as originally proposed in the Notice, to "updates."

⁵⁶ Notice, 89 FR 38210.

⁵⁷ As originally proposed in the Notice, SLATE System Hours would have meant the hours SLATE is open, which would be 6:00:00 a.m. ET through 7:59:59 p.m. ET on a business day, unless otherwise announced by FINRA. Partial Amendment No. 1 modified this proposed text from "7:59:59 p.m. Eastern Time" to "11:59:59 p.m. Eastern Time."

The publicly available data would include: (1) next day (T+1) loan-level data dissemination for Initial Covered Securities Loans and Loan Modifications (except for the loan amount); (2) T+20 dissemination of the loan amount for Initial Covered Securities Loans and Loan Modifications; and (3) daily loan statistics (*i.e.*, aggregate loan activity and distribution of loan rates).

1. T+1 Loan-Level Data Dissemination

Under proposed Rule 6540(a) (Next Day Dissemination), as modified by Partial Amendment No. 1, for each Initial Covered Securities Loan and Loan Modification reported to SLATE on a given business day, no later than the morning of the next business day, FINRA would make publicly available: (1) for an Initial Covered Securities Loan,⁵⁸ the unique identifier assigned by FINRA to the Covered Securities Loan; (2) for a Loan Modification, the unique identifier assigned by FINRA to the Covered Securities Loan if reported to SLATE or otherwise identified by FINRA;⁵⁹ (3) the security identifier(s) specified in Rule 6530(a)(2)(A) or (B) that FINRA determines is appropriate to disseminate; and (4) the requisite Data Elements,⁶⁰ except the amount of Reportable Securities loaned.⁶¹

2. T+20 Loan Amount Dissemination

As discussed in greater detail in the Notice,⁶² and as described in Partial Amendment No. 1,⁶³ pursuant to Rule 6540(b) (Delayed Dissemination), for each Initial Covered Securities Loan and Loan Modification reported to SLATE, 20 business days after the date on which the Initial Covered Securities Loan was effected or the loan amount was modified, FINRA would make publicly available: (1) for an Initial Covered Securities Loan,⁶⁴ the unique identifier assigned by FINRA to the Covered Securities Loan; (2) for a Loan Modification, the unique identifier assigned by FINRA to the Covered Securities Loan if reported to SLATE or otherwise identified by FINRA;⁶⁵ (3) the

security identifier(s) specified in Rule 6530(a)(2)(A) or (B) that FINRA determines is appropriate to disseminate; and (4) the amount of Reportable Securities loaned reported to SLATE. FINRA stated that, for Initial Covered Securities Loans, the 20-day delay period would begin the day after the Covered Securities Loan is effected (even in the case of late reports).⁶⁶

3. Daily Loan Statistics

In addition to T+1 loan-level data disseminated pursuant to proposed Rule 6540(a), FINRA would disseminate statistics regarding Covered Securities Loans reported to FINRA, including aggregate loan activity and distribution of loan rebate rates and lending fees.

Pursuant to paragraph (1) (Aggregate Loan Transaction Activity) of proposed Rule 6540(c), for each Reportable Security for which an Initial Covered Securities Loan or Loan Modification is reported to SLATE on a given business day, FINRA would disseminate, no later than the morning of the next business day, aggregated loan activity in the Reportable Security (along with the security identifier specified in Rule 6530(a)(2)(A) or (B) that FINRA determines is appropriate to disseminate). As modified by Partial Amendment No. 1, the aggregated data would include, for each Reportable Security, under proposed Rule 6540(c)(1), the aggregate volume of securities⁶⁷ subject to an Initial Covered Securities Loan or modification to the amount of Reportable Securities loaned, reported on the prior business day.

FINRA stated that these data would provide the public with useful information concerning the daily lending activity in Reportable Securities, including insight into how this activity is distributed across collateral types.⁶⁸ To that end, proposed Rule 6540.01 (De Minimis Loan Transaction Activity), as modified by Partial Amendment No. 1, would state that FINRA will not include aggregate volume information for a Reportable Security unless there were reports submitted to SLATE on the prior business day for at least ten distinct Covered Securities Loans in the Reportable Security (represented by different FINRA-assigned unique loan identifiers).⁶⁹

Partial Amendment No. 1 also removed four other originally proposed provisions related to FINRA's dissemination of aggregate loan transaction activity. As originally proposed in the Notice, the aggregated loan transaction activity data disseminated pursuant to proposed Rule 6540(c)(1) would also have included under: (1) proposed Rule 6540(c)(1)(B), the aggregate volume of securities (both in total and broken down by collateral type) subject to a rebate rate or fee modification reported on the prior business day; (2) proposed Rule 6540(c)(1)(C), the aggregate volume of securities subject to an Initial Covered Securities Loan or modification to the amount of Reportable Securities loaned subject to a loan with a specified term and subject to a loan without a specified term reported on the prior business day; (3) proposed Rule 6540(c)(1)(D), the aggregate volume of securities subject to an Initial Covered Securities Loan or modification to the amount of Reportable Securities loaned to one or more borrower types specified in Rule 6530(a)(2)(N) reported on the prior business day; and (4) proposed Rule 6540(c)(1)(E), the aggregate number of Initial Covered Securities Loans and terminated Covered Securities Loans (both in total and broken down by collateral type) reported on the prior business day.

Pursuant to paragraph (2) (Loan Rate Distribution Data) of proposed Rule 6540(c), for each Reportable Security for which an Initial Covered Securities Loan or Loan Modification is reported to SLATE on a business day, FINRA would also disseminate, not later than the morning of the next business day, the security identifier (specified in Rule 6530(a)(2)(A) or (B)) that FINRA determines is appropriate to identify the relevant Reportable Security and information pertaining to the distribution of loan rebate rates or lending fees or rates, as applicable,⁷⁰ including: the highest rebate rate, lowest rebate rate, and volume weighted average of the rebate rates by U.S. currency and non-U.S. currency, as applicable,⁷¹ reported to SLATE for

Reportable Securities for which there were three or fewer types of Initial Covered Securities Loan and Loan Modification events reported to SLATE in total on the prior business day. Notice, 89 FR 38212 n.74.

⁷⁰ FINRA stated that, in addition to the items of information specified in paragraphs (A) and (B) of proposed Rule 6540(c)(2), FINRA may, in its discretion, publish or distribute additional metrics regarding loan rebate rates and lending fees free of charge. Notice, 89 FR 38212 n.79.

⁷¹ Partial Amendment No. 1 added the text "by U.S. currency and non-U.S. currency, as

⁵⁸ Partial Amendment No. 1 added the text "for an Initial Covered Securities Loan."

⁵⁹ Partial Amendment No. 1 added this paragraph (a)(2) to proposed Rule 6540 and re-numbered the subsequent paragraphs under proposed Rule 6540(a).

⁶⁰ See Notice, 89 FR 38211.

⁶¹ See Partial Amendment No. 1, 89 FR 92234–35.

⁶² See Notice, 89 FR 38211.

⁶³ See Partial Amendment No. 1, 89 FR 92235.

⁶⁴ Partial Amendment No. 1 added the text "for an Initial Covered Securities Loan."

⁶⁵ Partial Amendment No. 1 added this paragraph (b)(2) to proposed Rule 6540 and re-lettered the subsequent paragraphs under proposed Rule 6540(b).

⁶⁶ Notice, 89 FR 38211.

⁶⁷ Partial Amendment No. 1 removed the text "(both in total and by collateral type)" following the word "securities."

⁶⁸ Notice, 89 FR 38212.

⁶⁹ As originally proposed in the Notice, Rule 6540.01 (De Minimis Loan Transaction Activity) would have provided that FINRA may omit from the aggregate loan activity volume information for

Initial Covered Securities Loans collateralized by cash and, separately, for Loan Modifications collateralized by cash (where the Loan Modification involved a change to the rebate rate). FINRA would also disseminate the highest lending fee or rate, lowest lending fee or rate, and volume weighted average of the lending fees or rates reported for Initial Covered Securities Loans not collateralized by cash and, separately, for Loan Modifications not collateralized by cash (where the Loan Modification involved a change to the lending fee or rate). FINRA stated that these rate distribution metrics would provide market participants with both an overall view of the range of daily loan pricing for each Reportable Security, as well as insight into the relationship between loan rates/fees and loan amounts.⁷²

Proposed Rule 6540(d) (Loan Transaction Information Not Disseminated), as modified by Partial Amendment No. 1, would specify that FINRA will not disseminate any Confidential Data Elements reported to SLATE.⁷³ As proposed in Rule 6540.02 (Means of Data Dissemination), FINRA would make the data pursuant to proposed Rule 6540(a) through (c) available on FINRA's website free of charge for personal, non-commercial purposes only. For other uses, FINRA would publish or distribute SLATE data for fees that have been filed with the SEC pursuant to Rule 19b-4 under the Exchange Act.

F. Other Provisions

Proposed Rule 6550 (Emergency Authority) would provide that, as market conditions may warrant, FINRA, in consultation with the Commission, may suspend the reporting or dissemination of certain Covered Securities Loans, or the reporting of certain Data Elements or Confidential Data Elements or the dissemination of certain Data Elements for such period of time as FINRA deems necessary. FINRA stated that this proposed rule is consistent with FINRA's rules governing

applicable." FINRA stated that the modification made by Partial Amendment No. 1 is appropriate because the currency used as collateral will impact the rebate rate reported to SLATE and, therefore, separating the rate information by U.S. currency collateral and non-U.S. currency collateral will make the disseminated information more useful. Partial Amendment No. 1, 89 FR 92232.

⁷² Notice, 89 FR 38212.

⁷³ As originally proposed in the Notice, FINRA would not have disseminated any modifier or indicator required by either the Rule 6500 Series or the SLATE Participant specification that FINRA determines shall not be publicly disseminated. Partial Amendment No. 1 removed this language.

other reporting facilities that it operates.⁷⁴

FINRA stated that, if the Commission approves the proposed rule change, unless an extension is provided pursuant to Commission order, the implementation date of the proposed FINRA rules establishing the reporting requirements will be January 2, 2026; and the implementation date of the proposed FINRA rules establishing the dissemination requirements will be April 2, 2026.⁷⁵

III. Summary of Comments, FINRA's Response, and Commission Findings

After reviewing the Notice, Partial Amendment No. 1, and comment letters received, the Commission finds that the Proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.⁷⁶ In particular, the Commission finds that the Proposal is consistent with Section 15A(b)(6) of the Exchange Act,⁷⁷ which requires, among other things, that FINRA rules be designed 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 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the Proposal is consistent, in particular, with Section 15A(b)(9) of the Exchange Act,⁷⁸ which requires that FINRA rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In adopting Rule 10c-1a, the Commission stated that the rule's requirements are designed to increase the transparency of information available to brokers, dealers, and investors with respect to loans or borrowing securities.⁷⁹ Rule 10c-1a requires, among other things, that

FINRA implement rules regarding the format and manner of its collection of information described in Rule 10c-1a(c) through (e) and make publicly available such information in accordance with rules promulgated pursuant to Section 19(b) and Rule 19b-4.⁸⁰ Rule 10c-1a also requires that FINRA make publicly available, in accordance with Rule 10c-1a's specified timeframes, certain securities loan information that FINRA receives.⁸¹ As discussed in greater detail below, in Part III, the Proposal is consistent with these requirements.

Price transparency plays a fundamental role in promoting fairness and efficiency of U.S. capital markets. The Proposal, by implementing the applicable requirements of Rule 10c-1a, would increase transparency in the securities lending market through improvements to the comprehensiveness, breadth, accuracy, and accessibility of securities lending data.⁸² The loan information filed in SLATE reports and disseminated by FINRA will be more comprehensive and include additional data fields than the data currently offered by commercial data vendors.⁸³ Moreover, this information will be available to all market participants.⁸⁴ This increased transparency will, among other things, allow end borrowers and beneficial owners to determine the extent to which their broker-dealers and lending agents are obtaining terms that are better, worse, or consistent with current market conditions for loans with similar characteristics.⁸⁵ The Proposal would facilitate this comparison by providing comprehensive transaction-by-transaction information about the cost to borrow and other loan characteristics that are currently mostly unavailable to end borrowers and beneficial owners.⁸⁶ Furthermore, the Proposal, by implementing the applicable requirements of Rule 10c-1a, will increase transparency in the securities lending market, which will have positive effects on capital formation, in particular, by improving price discovery in securities markets and improving balance sheet management by financial institutions.⁸⁷

⁸⁰ 17 CFR 240.10c-1a(f).

⁸¹ See 17 CFR 240.10c-1a(g).

⁸² See Rule 10c-1a Adopting Release, 88 FR 75706.

⁸³ See Rule 10c-1a Adopting Release, 88 FR 75706-7.

⁸⁴ See Rule 10c-1a Adopting Release, 88 FR 75707.

⁸⁵ See Rule 10c-1a Adopting Release, 88 FR 75707.

⁸⁶ See Rule 10c-1a Adopting Release, 88 FR 75707.

⁸⁷ See Rule 10c-1a Adopting Release, 88 FR 75724.

⁷⁴ Notice, 89 FR 38212 (citing FINRA Rule 6770).

⁷⁵ Notice, 89 FR 38213.

⁷⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). See also *infra* Part III.E.

⁷⁷ 15 U.S.C. 78o-3(b)(6).

⁷⁸ 15 U.S.C. 78o-3(b)(9).

⁷⁹ Reporting of Securities Loans, Securities Exchange Act Release No. 98737 (October 13, 2023), 88 FR 75644 (November 3, 2023) ("Rule 10c-1a Adopting Release"), at 75646.

The Proposal, by improving transparency and efficiency in the securities lending market consistent with Rule 10c–1a, would thus help protect investors and promote just and equitable principles of trade, consistent with Section 15A(b)(6). By implementing the requirements of Rule 10c–1a, the Proposal would improve upon current data sources that identifies the parties to the loans, indicates when a broker-dealer loans its own securities to its customers, and indicates whether the purpose of such a loan was to close out a failure to deliver.⁸⁸ Further, the improved access and comprehensiveness and reduced bias of the publicly available data will also accrue to FINRA and the Commission, as well as any other regulators using these data.⁸⁹ This access will benefit investors by enhancing regulatory tools employed to promote fair and orderly securities markets. In particular, investors may benefit from improved surveillance and enforcement uses, market reconstruction uses, and market research uses.⁹⁰

The disclosure of party identities and purpose information under the Proposal may facilitate better surveillance by FINRA for regulatory compliance by its members and may improve its ability to enforce such regulations. For example, for FINRA, the information on whether the security is loaned from a broker-dealer's securities inventory to its customer may assist FINRA in determining whether a broker-dealer is charging lending fees or paying rebates commensurate with the market. Thus, beneficial owners and end borrowers, who engage in securities lending transactions, will be better protected against potential unfair pricing of securities loans by broker-dealers.⁹¹ FINRA's enhanced surveillance capabilities facilitated by the Proposal could better protect investors by helping to ensure that entities engaging in certain securities lending transactions are authorized to do so and are in compliance with applicable regulations.⁹² FINRA can also use the information to monitor when broker-dealers are building up risk, thereby protecting broker-dealers' customers

against potential instabilities.⁹³ FINRA can use data on the identity and activity of its members to provide an early warning with regard to the behavior of its members during a short squeeze.⁹⁴

The Commission received comments on the proposed rule change.⁹⁵ Some commenters expressed general support for the proposed rule change.⁹⁶ One commenter stated that the proposed rule change will “aid in the protection of investors by ensuring they are appropriately informed about the terms of securities loans and the parties involved” and that the proposed “requirement to report comprehensive data elements will contribute to a fair and orderly market.”⁹⁷ Another commenter stated that the proposed rule change “is a great idea.”⁹⁸ One commenter stated its agreement with the proposed rule change and that it will “build a stronger market.”⁹⁹ Comments regarding specific aspects of the proposed rule change are discussed below, in Parts III.A through III.J.

A. Loan Information To Be Reported

1. Data Elements Not Included in Rule 10c–1a

Some commenters stated that the proposed rule change, as originally proposed in the Notice, would impose on market participants reporting requirements that go beyond the requirements of Rule 10c–1a.¹⁰⁰ Some

commenters identified the data elements that would be required to be reported under the proposed rule change, as originally proposed in the Notice, that they stated were not included under Rule 10c–1a, including: (1) the expected settlement date of the Covered Securities Loan; (2) any other fees or charges (*i.e.*, the dollar cost of any other fees or charges in addition to the rebate rate or securities lending fee separately required to be reported);¹⁰¹ (3) whether the Covered Person is the lender, borrower, or intermediary; (4) if the Covered Securities Loan is an allocation of an omnibus loan effected pursuant to an agency lending agreement, the unique internal identifier for the associated omnibus loan assigned by the Covered Person responsible for reporting the Covered Securities Loan to SLATE; (5) the expected settlement date for modifications to the loan amount (if the expected settlement date is a date other than the date of the Loan Modification), or the effective date for all other Loan Modifications (if effective date is a date other than the date of the Loan Modification); (6) such modifiers and indicators as are required by FINRA under the Rule 6500 Series or the SLATE Participant specification; and (7) the unique internal identifier assigned to the Covered Securities Loan by the Covered Person responsible for reporting the loan to SLATE.¹⁰² Some commenters stated that the additional data and information requirements that are not specifically mentioned in Rule should be removed.¹⁰³ Some commenters stated that the proposed

Letter from Fran Garritt, Head of Business, and Mark Whipple, Chairman of the Board of Directors, International Securities Lending Association Americas (July 16, 2024) (“ISLA Americas Letter 1”), at 4; Letter from Tony Holland, Director of Market Practice, International Securities Lending Association (May 28, 2024) (“ISLA Letter 1”), at 2–3; Letter from Jennifer W. Han, Executive Vice President, Chief Counsel and Head of Global Regulatory Affairs, Managed Funds Association (July 31, 2024) (“MFA Letter”), at 2; Letter from Lindsey Weber Keljo, Esq., Head—Asset Management Group, and William C. Thum, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association Asset Management Group (May 28, 2024) (“SIFMA AMG Letter 1”), at 2; Letter from William C. Thum, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association Asset Management Group (July 31, 2024) (“SIFMA AMG Letter 2”), at 2; Letter from Matt Billings, President, Robinhood Financial, LLC and Robinhood Securities, LLC (August 30, 2024) (“Robinhood Letter”), at 2; Letter from Robert Sloan, Managing Partner, S3 Partners, LLC (August 5, 2024) (“S3 Partners Letter”), at 4.

¹⁰¹ See Notice, 89 FR 38206 n.30.

¹⁰² See SIFMA Letter, at 3–4. See also EquiLend Letter 1, at 6–7; ISLA Letter 1, at 2, 5, 8.

¹⁰³ See, e.g., EquiLend Letter 1, at 1, 6–7; SIFMA Letter, at 4; ICI Letter, at 2–3; MFA Letter, at 7.

⁸⁸ See Rule 10c–1a Adopting Release, 88 FR 75715–16.

⁸⁹ See Rule 10c–1a Adopting Release, 88 FR 75716.

⁹⁰ See Rule 10c–1a Adopting Release, 88 FR 75716.

⁹¹ See Rule 10c–1a Adopting Release, 88 FR 75716.

⁹² See Rule 10c–1a Adopting Release, 88 FR 75716.

⁹³ See Rule 10c–1a Adopting Release, 88 FR 75716.

⁹⁴ See Rule 10c–1a Adopting Release, 88 FR 75716.

⁹⁵ See *supra* note 8.

⁹⁶ See, e.g., Letter from Anonymous (May 14, 2024); Letter from Jimit Raithatha (August 7, 2024); Letter from Patrick O'Ney (August 9, 2024); Letter from Heinrich M. (August 9, 2024); Letter from Corey (September 12, 2024); Letter from Anonymous (September 16, 2024). See also Form Letter A; Form Letter D; Form Letter E; Letter from Freddy Lo (August 9, 2024); Letter from Graham Ladner (August 9, 2024); Letter from Kevin McNulty, Managing Director, Head of RegTech, EquiLend Holdings LLC (August 27, 2024) (“EquiLend Letter 2”), at 1; Letter from Jane Plumberg (September 10, 2024); Letter from Traci Olafson (September 12, 2024).

⁹⁷ Letter from Jennifer (May 15, 2024).

⁹⁸ Letter from Suzanne Shatto (May 22, 2024). See also Letter from Suzanne Shatto (August 21, 2024).

⁹⁹ Letter from Derek Madden (September 12, 2024).

¹⁰⁰ See, e.g., Letter from Robert Toomey, Managing Director and Associate General Counsel, and Joseph Corcoran, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (May 28, 2024) (“SIFMA Letter”), at 3; Letter from Sarah A. Bessin, Deputy General Counsel, Investment Company Institute, et al. (May 24, 2024) (“Associations Collective Letter”), at 2; Letter from Paul Cellupica, General Counsel and Kimberly Thomasson Assistant General Counsel, Investment Company Institute, et al. (July 30, 2024) (“ICI Letter”), at 2; Letter from Brian P. Lamb, CEO, EquiLend Holdings LLC (May 28, 2024) (“EquiLend Letter 1”), at 6–7;

rule change, as originally proposed in the Notice, would result in the disclosure of highly sensitive information and contribute to significant increased costs, burdens, and complexity for implementation and compliance due to the introduction of additional data elements that go beyond the requirements of Rule 10c-1a.¹⁰⁴

Some commenters stated that the “increased complexity” of the securities loan information in the proposed rule change, as originally proposed in the Notice, as compared to the Rule 10c-1a information, could increase Covered Persons’ reliance on Reporting Agents for compliance purposes, which could increase costs and data security risks for the industry.¹⁰⁵ One commenter stated that the expansion of the number of reportable fields under the proposed rule change, as originally proposed in the Notice, could require Covered Persons using a Reporting Agent to share with that Reporting Agent “very sensitive transaction level details, including the identity of each party to the transaction.”¹⁰⁶ The commenter also stated its concern that, if this data were to become exposed by a data security incident, “lenders would choose to restrict lending, which could negatively impact lendable supply and market liquidity.”¹⁰⁷

One commenter stated that some of the additional data fields in the proposed rule change, as originally proposed in the Notice, may not currently be captured by market participants at the trade level and were not considered in the Commission’s cost-benefit analysis of Rule 10c-1a.¹⁰⁸ Another commenter stated that the addition of these data elements in the proposed rule change, as originally proposed in the Notice, “would constitute an impermissible end-run around the Commission rulemaking process . . . without being subject to the public comments and economic analyses required to be performed under such rulemaking process.”¹⁰⁹ Another commenter stated that the proposed rule change, as originally proposed in the Notice, “significantly exceed[s]” FINRA’s rulemaking mandate under

Rule 10c-1a.¹¹⁰ Another commenter stated that “the significant increase in reportable fields and complexity” of the proposed rule change, as originally proposed in the Notice, warrants “a proper cost-benefit analysis as required under Federal agency rulemaking.”¹¹¹

In response, Partial Amendment No. 1 removed the following data elements from the proposed rule change’s reporting requirements for Initial Covered Securities Loans and Loan Modifications: (1) the expected settlement date of the Covered Securities Loan; (2) any other fees or charges (*i.e.*, the dollar cost of any other fees or charges in addition to the rebate rate or securities lending fee separately required to be reported); (3) whether the Covered Person is the lender, borrower, or intermediary;¹¹² (4) if the Covered Securities Loan is an allocation of an omnibus loan effected pursuant to an agency lending agreement, the unique internal identifier for the associated omnibus loan assigned by the Covered Person responsible for reporting the Covered Securities Loan to SLATE; (5) the expected settlement date for modifications to the loan amount (if the expected settlement date is a date other than the date of the Loan Modification), or the effective date for all other Loan Modifications (if effective date is a date other than the date of the Loan Modification); and (6) such modifiers and indicators as are required by FINRA under the Rule 6500 Series or the SLATE Participant specification. With the exception of the data element concerning the unique identifier assigned to the Covered Securities Loan by the Covered Person responsible for reporting the loan to SLATE, where a Covered Person’s daily submission includes two or more reports related to the same Covered Securities Loan, and

FINRA has not yet assigned a unique identifier to the Initial Covered Securities Loan,¹¹³ all of the additional data elements listed above that commenters objected to as being beyond the scope of Rule 10c-1a were removed in Partial Amendment No. 1.

In light of the removal of the text “any other fees or charges” as a data element that must be reported separately from the rebate rate (for a Covered Securities Loan collateralized by cash) or the securities lending fee (for a Covered Securities Loan not collateralized by cash), as applicable, Partial Amendment No. 1 also added the text “or any other fee or charges” to the Covered Securities Loan information specified in proposed Rule 6530(a)(2)(H) and the text “or rate, or any other fee or charges” to the Covered Securities Loan information specified in proposed Rule 6530(a)(2)(I). Proposed Rules 6530(a)(2)(H) and 6530(a)(2)(I) mirror Rule 10c-1a(c)(8) and (c)(9), respectively, which helps to ensure the collection of data elements required to be reported pursuant to Rule 10c-1a(c) through (e). The Proposal is reasonably designed to facilitate the collection of pricing information, which is a material term of a Covered Securities Loan, consistent with Rule 10c-1a.¹¹⁴

FINRA stated that, while Partial Amendment No. 1 removed several of the originally proposed fields and the indicators and modifiers to facilitate a timely initial implementation of SLATE, the absence of these elements may impact the quality and completeness of the resultant SLATE data.¹¹⁵ FINRA stated that, in some cases, FINRA has identified alternative means of addressing the data gap.¹¹⁶ In other cases, FINRA plans to reassess the need for the data after gaining experience

¹¹⁰ MFA Letter, at 2–3.

¹¹¹ ISLA Americas Letter 1, at 4–5. *See also* SIFMA AMG Letter 2, at 7–8; Hagerty Letter, at 1–3. FINRA rule filings are not agency rulemakings. As discussed above, in Part I, FINRA filed the Proposal with the Commission pursuant to Section 19(b)(1) Exchange Act and Rule 19b-4 thereunder.

¹¹² FINRA stated that the removal of this data element is appropriate because it simplifies the initial reporting framework. FINRA also stated that the file submission process would provide information sufficient to allow FINRA to identify the submitting party and therefore the ability to ascertain whether a SLATE report is being submitted by the Covered Person, a Reporting Agent, or another party. *See* Partial Amendment No. 1, 89 FR 92231. Some commenters supported Partial Amendment No. 1’s removal of originally proposed Rules 6530(a)(2)(V) and 6530(b)(2)(G). *See* Letter from Fran Garritt, Head of Business, and Mark Whipple, Chairman of the Board of Directors, International Securities Lending Association Americas (Dec. 6, 2024) (“ISLA Americas Letter 2”), at 5; Letter from Robert Toomey, Managing Director and Associate General Counsel, et al. (December 6, 2024) (“SIFMA and SIFMA AMG Letter”), at 3.

¹¹³ *See infra* Part III.A.3 (discussing why the Proposal’s data element concerning the unique identifier assigned to the Covered Securities Loan by the Covered Person responsible for reporting the loan to SLATE is necessary to be reported in order for FINRA to comply with the requirements of Rule 10c-1a(g)).

¹¹⁴ *See* Rule 10c-1a Adopting Release, 88 FR 75669.

¹¹⁵ Partial Amendment No. 1, 89 FR 92229 n.21.

¹¹⁶ FINRA Letter, at 4. FINRA provided the example that a Covered Person that agrees to a Covered Securities Loan that ultimately does not settle would still be required to report the termination of that loan pursuant to proposed Rule 6530(b)(2) by submitting a Loan Modification to terminate a Covered Securities Loan. However, because the securities were never transferred to the borrower, the Loan Modification termination report would not modify the loan amount to zero (unlike in the case of a loan that was terminated because the shares were returned, which would modify the loan amount to zero), which would allow FINRA to identify the loan as being terminated because it was unsettled as opposed to a return of shares. FINRA Letter, at 4 n.19.

¹⁰⁴ *See, e.g.*, SIFMA AMG Letter 1, at 2; SIFMA AMG Letter 2, at 2, 4–6; SIFMA Letter, at 4; ISLA Letter 1, at 2; ISLA Americas Letter 1, at 4, 9; ICI Letter, at 3–4; EquiLend Letter 1, at 1, 6–7. *See also* Associations Collective Letter, at 2; MFA Letter, at 2; Letter from Senator Bill Hagerty (October 25, 2024) (“Hagerty Letter”), at 1.

¹⁰⁵ *See* ISLA Americas Letter 1, at 8–9; ISLA Letter 1, at 7; SIFMA AMG Letter 2, at 7.

¹⁰⁶ ISLA Americas Letter 1, at 9.

¹⁰⁷ ISLA Americas Letter 1, at 9.

¹⁰⁸ *See* EquiLend Letter 1, at 7.

¹⁰⁹ SIFMA Letter, at 4. *See also* Robinhood Letter, at 2; MFA Letter, at 2–3.

with the operation of SLATE and the initial data set and will revisit whether changes are appropriate,¹¹⁷ including to improve the quality and completeness of SLATE data, and that any such efforts would be subject to a separate proposed rule change filed with the Commission and subject to notice and comment.¹¹⁸

The data elements required to be included in SLATE reports are consistent with the data elements required to be reported pursuant to Rule 10c–1a. Further, as discussed below, in Part III.A.3, the data element concerning the unique identifier assigned to the Covered Securities Loan by the Covered Person responsible for reporting the loan to SLATE is consistent with Rule 10c–1a. The Proposal is reasonably designed to facilitate the collection of loan information consistent with Rule 10c–1a. FINRA’s inclusion of the data elements in proposed Rules 6530(a)(2) and 6530(b)(2) is reasonably designed to facilitate the timely implementation of SLATE while helping to ensure the collection of data elements required to be reported pursuant to Rule 10c–1a(c) through (e) and the publication of data required pursuant to Rule 10c–1a(g).

2. Modifiers and Indicators Not Included in Rule 10c–1a

Commenters identified modifiers and indicators in the proposed rule change, as originally proposed in the Notice, as data elements that they stated were not specified in Rule 10c–1a: (1) Exclusive Arrangement; (2) Loan to Affiliate; (3) Unsettled Loan; (4) Terminated Loan; (5) Rate or Fee Adjustment; and (6) Basket Loan.¹¹⁹ Some commenters stated that the additional data and information requirements that are not specifically mentioned in Rule 10c–1a should be removed.¹²⁰

Some commenters stated that the Loan to Affiliate indicator would not provide useful information and could potentially expose confidential information.¹²¹ Some commenters stated that the intermediary negotiating a loan may not be aware of an affiliate relationship between the borrower and lender, requiring additional resources to monitor whether an affiliate relationship was established.¹²² Another

commenter stated that, because requiring the reporting of the Loan to Affiliate indicator “may be costly” and require “additional resources” for compliance, this proposed requirement “at least warrants a cost-benefit analysis.”¹²³ One commenter stated that the inclusion of the Unsettled Loan indicator will greatly increase reporting complexity and increase the odds that reported data will be “unclear or confusing.”¹²⁴ The commenter stated that the Unsettled Loan indicator is unnecessary because, according to the commenter, it is “generally accepted market practice to cancel loans that remain unsettled” and because the cancellation of a previously reported trade is already contemplated elsewhere within the proposed rule change.¹²⁵

In the Notice, FINRA stated that it planned to use the proposed modifiers for data validation purposes.¹²⁶ One commenter stated that there is “increased complexity” and that “significantly increasing the number of reportable data fields, requiring the reporting of all intraday activity, and imposing a data validation process has created commercial opportunities for data service providers at the expense of market participants, and ultimately end investors.”¹²⁷ One commenter requested clarification of the use of the Rate or Fee Adjustment modifier for data validation and whether “FINRA will be performing validation testing to a defined tolerance level and a rejection/correction process.”¹²⁸ The commenter stated that, if FINRA were to perform such validations, “there is the potential for a large number of rejections that could result in a substantial amount of manual intervention.”¹²⁹

In response, Partial Amendment No. 1 removed the originally proposed requirement to append the applicable modifiers or indicators as specified by FINRA to all SLATE reports: (1) Exclusive Arrangement; (2) Loan to Affiliate; (3) Unsettled Loan; (4) Terminated Loan;¹³⁰ (5) Rate or Fee

Adjustment; and (6) Basket Loan. FINRA stated that it removed these modifiers and indicators in the interest of achieving the timely implementation of SLATE and the new Rule 6500 Series.¹³¹ In proposing the inclusion of these modifiers and indicators in SLATE reports, FINRA stated that it intended to use the modifiers and indicators to provide regulators and the public with important information regarding the reported securities loan.¹³² In later removing this proposed requirement, FINRA stated its plans to (1) reassess the need for the data after gaining experience with the operation of SLATE and the initial data set and (2) revisit whether changes are appropriate. FINRA stated that any such efforts would be subject to a separate proposed rule change filed with the Commission and as such, subject to notice and comment.¹³³ All of the modifiers and indicators listed above that commenters objected to as being beyond Rule 10c–1a were removed in Partial Amendment No. 1. Some commenters supported Partial Amendment No. 1’s removal of these modifiers and indicators.¹³⁴

The Proposal is reasonably designed to facilitate the collection of loan information consistent with Rule 10c–1a. The list of data elements in proposed Rules 6530(a)(2) and 6530(b)(2) is reasonably designed to facilitate the timely implementation of SLATE while helping to ensure the collection of data elements required to be reported pursuant to Rule 10c–1a(c) through (e).

3. Data Elements Modified by Partial Amendment No. 1

The Commission received comments on the proposed rule change, as originally proposed in the Notice, addressing the reporting to SLATE of rebate rates based on a spread to a benchmark. Commenters requested flexibility to report the loan fees as a lending fee, a loan rebate rate, or a spread to a benchmark rate along with the associated benchmark rate, reducing the number of modifications that would be required to be reported as a result of fluctuations in the benchmark.¹³⁵ Some commenters stated that FINRA should allow for the reporting of a spread and

termination date field blank; when reporting an Initial Covered Securities Loan that is a term loan, a Covered Person would report the loan’s termination date in the termination date field. Partial Amendment No. 1, 89 FR 92229 n.20.

¹³¹ See FINRA Letter, at 4.

¹³² See Notice, 89 FR 38208.

¹³³ Partial Amendment No. 1, 89 FR 92229 n.21. See FINRA Letter, at 4.

¹³⁴ See ISLA Americas Letter 2, at 4; SIFMA and SIFMA AMG Letter, at 2.

¹³⁵ See ISLA Americas Letter 1, at 12; ICI Letter, at 7; SIFMA AMG Letter 2, at 7; FIF Letter, at 7.

¹¹⁷ FINRA Letter, at 4.

¹¹⁸ Partial Amendment No. 1, 89 FR 92229 n.21. See FINRA Letter, at 4.

¹¹⁹ See, e.g., SIFMA Letter, at 3–4; EquiLend Letter 1, at 6–7; ICI Letter, at 2–3. See also ISLA Americas Letter 1, at 13–14.

¹²⁰ See, e.g., EquiLend Letter 1, at 1, 6–7; SIFMA Letter, at 4; ICI Letter, at 2–3; MFA Letter, at 7.

¹²¹ See ISLA Americas Letter 1, at 14; SIFMA AMG Letter 2, at 6; ISLA Letter 1, at 8.

¹²² See ISLA Letter 1, at 8; ICI Letter, at 4–5; ISLA Americas Letter 1, at 14; SIFMA AMG Letter 2, at 6. See also S3 Partners Letter, at 5.

¹²³ ISLA Americas Letter 1, at 14.

¹²⁴ ISLA Americas Letter 1, at 11.

¹²⁵ ISLA Americas Letter 1, at 11.

¹²⁶ See Notice, 89 FR 38208.

¹²⁷ ISLA Americas Letter 1, at 9.

¹²⁸ ISLA Letter 1, at 7. See Robinhood Letter, at 2.

¹²⁹ ISLA Letter 1, at 7.

¹³⁰ FINRA stated that, while FINRA removed the requirement that Covered Persons append a Terminated Loan indicator, FINRA is retaining the requirement that Covered Persons populate a field with the termination date of the Covered Securities Loan, which is expressly required to be reported to an RNSA under Rule 10c–1a(c)(11). Accordingly, FINRA stated that, when reporting to SLATE an Initial Covered Securities Loan that is an open loan, a Covered Person would be required to leave the

a benchmark rate because reporting benchmark rate changes would be onerous and costly and would not provide useful information.¹³⁶ In addition, one commenter recommended that FINRA ensure that SLATE can accommodate negative rebates, stating that even for cash collateral loans, there may be scenarios where the loan is negotiated at a fee rather than a rebate (e.g., when a security is particularly hard to borrow).¹³⁷

In response, Partial Amendment No. 1 added proposed Rule 6530(a)(4) to permit Covered Persons to—in addition to reporting the rebate rate or lending fee or rate for a Covered Securities Loan—also report the spread and identity of the benchmark or reference rate for Covered Securities Loans that are priced based on a spread to a benchmark. Specifically, proposed Rule 6530(a)(4)(B) provides that, where a rebate rate or lending fee or rate is determined based on a spread to a benchmark or reference rate, a Covered Person may report: (1) the rebate rate or lending fee or rate as of the date the Covered Securities Loan was effected; (2) the spread; and (3) the identity of the benchmark or reference rate. Alternatively, a Covered Person may report only the rebate rate or lending fee or rate. One commenter on Partial Amendment No. 1 supported proposed Rule 6530(a)(4).¹³⁸

FINRA stated that this will provide Covered Persons with additional options regarding the manner in which they may report a rebate rate or lending fee or rate, and that these proposed amendments are appropriate to provide Covered Persons flexibility with how they must report the rebate rate or lending fee.¹³⁹ FINRA stated that this flexibility should address commenters' concern that Covered Persons would be required to report loan rate modifications when the rebate rate changes solely as a result of a change to the underlying benchmark rate (where there is no change in the negotiated spread or identity of the benchmark). To

accommodate market practices and rebate rate variability, FINRA stated that it intends to accept negative values in the rebate rate field if the collateral type is reported as cash. SLATE's validation logic will accept a wide range of values in the rebate rate/lending fee or rate fields, and SLATE will not reject reports because a cash collateral loan is reported with a negative rebate rate.¹⁴⁰

Proposed Rule 6530(a)(4) (Reporting Loan Rates Based on a Spread to a Benchmark or Reference Rate) is reasonably designed to facilitate the collection of pricing information, which is a material term of a Covered Securities Loan.¹⁴¹ It also is consistent with Rule 10c–1a(c)(8).¹⁴² Proposed Rule 6530(a)(4) is reasonably designed to provide the flexibility that commenters requested while helping to ensure the collection of data elements required to be reported pursuant to Rule 10c–1a(c) through (e).

As discussed above in Part III.A.2, commenters stated that the internal loan and omnibus loan identifiers, as originally proposed in the Notice, extended beyond the data elements specified in Rule 10c–1a and increased the proposed rule change's complexity and implementation burdens.¹⁴³ In response, Partial Amendment No. 1 removed these provisions.¹⁴⁴ However, to allow FINRA to link same-day T+0 reports that relate to the same Covered Securities Loan in fulfilling its data dissemination obligations under Rule 10c–1a(g), Partial Amendment No. 1 added proposed Rule 6530(a)(2)(U), which is a targeted provision providing that, where a Covered Person's daily submission includes two or more reports related to the same Covered Securities Loan (e.g., an Initial Covered Securities Loan and a Loan Modification to terminate the Covered Securities

Loan), and FINRA has not yet assigned a unique identifier to the Initial Covered Securities Loan, the Covered Person must report a unique identifier assigned to the Covered Securities Loan by the Covered Person responsible for reporting the loan to SLATE. FINRA stated that this requirement is limited to instances where a Covered Person's daily submission includes two or more T+0 reports related to the same Covered Securities Loan—which is the circumstance that gives rise to the audit trail gap sought to be addressed by the requirement.¹⁴⁵ Similarly, with respect to Loan Modifications, where a Covered Person's daily submission includes two or more T+0 reports related to the same Covered Securities Loan, the Covered Person must report the identifier that was provided with respect to the associated same-day report for that Covered Securities Loan. One commenter supported proposed Rule 6530(a)(2)(U).¹⁴⁶

FINRA stated that, without a way to link such reports, it would be unable to accurately incorporate modifications into the daily loan statistics where FINRA cannot identify the amount of securities impacted by the modification.¹⁴⁷ Further, it would be unable to determine the information necessary to incorporate the modification into the volume information described in proposed Rule 6540(c)(1). FINRA stated that this requirement involving a unique identifier is appropriate and necessary in that it streamlines initial SLATE reporting requirements while continuing to allow FINRA to accurately record and disseminate information on transactions reported pursuant to Rule 10c–1a. FINRA stated that this requirement is necessary to allow FINRA to link same-day reports that relate to the same Covered Securities Loan, which allows FINRA to accurately record transactions reported pursuant to Rule 10c–1a and to incorporate modifications into the daily loan statistics.¹⁴⁸

Proposed Rule 6530(a)(2)(U) is reasonably designed to allow FINRA to link same-day reports that relate to the same Covered Securities Loan and accurately record transactions reported pursuant to Rule 10c–1a.¹⁴⁹ The Proposal addresses comments that the originally proposed internal loan and omnibus loan identifiers reporting

¹³⁶ See SIFMA AMG Letter 2, at 7; ICI Letter, at 7; FIF Letter, at 7.

¹³⁷ ISLA Americas Letter 1, at 11.

¹³⁸ See ISLA Americas Letter 2, at 4–5.

¹³⁹ See Partial Amendment No. 1, 89 FR 92230. FINRA stated that a Covered Person would be required to report a Loan Modification pursuant to proposed Rule 6530(b)(2) in the event of a change to the negotiated spread or to the identity of the benchmark or reference rate. Partial Amendment No. 1, 89 FR 92230 n.29. See Rule 10c–1a Adopting Release, 88 FR 75672 (stating that if a registered national securities association ("RNA") chooses to allow market participants to report a spread and a benchmark, then no modification would be required to be reported from day to day unless there were a change in the negotiated spread or benchmark).

¹⁴⁰ See FINRA Letter, at 8.

¹⁴¹ See Rule 10c–1a Adopting Release, 88 FR 75669.

¹⁴² See Rule 10c–1a Adopting Release, 88 FR 75668–71.

¹⁴³ See, e.g., SIFMA Letter, at 3; ICI Letter, at 2.

As originally proposed in the Notice, Rules 6530(a)(2)(W) and 6530(b)(2)(A) would have required Covered Persons to report the unique internal identifier assigned to the covered securities loan. With respect to an allocation of an omnibus loan effected pursuant to an agency lending agreement, proposed Rules 6530(a)(2)(X) and 6530(b)(2)(B) would have required Covered Persons to report the unique internal identifier for the associated omnibus loan.

¹⁴⁴ See Partial Amendment No. 1, 89 FR 92231. FINRA stated that it had intended originally to use the reported information to identify where multiple loan reports were related to a single omnibus loan, thereby providing additional clarity in the loan activity statistics disseminated to the public and to improve the completeness of the audit trail available to regulators. Partial Amendment No. 1, 89 FR 92231.

¹⁴⁵ See Partial Amendment No. 1, 89 FR 92231.

¹⁴⁶ See ISLA Americas Letter 2, at 5.

¹⁴⁷ Partial Amendment No. 1, 89 FR 92231.

¹⁴⁸ FINRA Letter, at 5.

¹⁴⁹ See Rule 10c–1a Adopting Release, 88 FR 75667 n.365.

requirements are not included in Rule 10c–1a while helping to ensure the collection of data elements required to be reported pursuant to Rule 10c–1a(c) through (e) and the publication of data required by Rule 10c–1a(g). Rule 10c–1a(g) requires that an RNA, as soon as practicable, and not later than the morning of the business day after the covered securities loan is effected, assign a unique identifier to the covered securities loan and make certain information publicly available.¹⁵⁰ In adopting Rule 10c–1a, the Commission stated that the assignment of unique identifiers is necessary for an RNA to easily track certain covered securities loans and facilitate the identification and reporting of any subsequent modifications.¹⁵¹ Although the data element in proposed Rule 6530(a)(2)(U) does not mirror a particular data element included in Rule 10c–1a, as one commenter stated,¹⁵² its reporting is necessary for FINRA to accurately record, incorporate, and disseminate modifications to daily loan statistics to fulfill the requirements of Rule 10c–1a(g). The Proposal is reasonably designed to facilitate the collection and dissemination of loan information consistent with Rule 10c–1a.

4. Data Elements Not Modified by Partial Amendment No. 1

One commenter stated that the proposed data element concerning the LEI of the issuer should be removed or made optional to include in a SLATE report because, according to the commenter, issuer LEIs are not easily accessible and are not always available.¹⁵³ Another commenter stated that it would be “highly costly” for market participants to build out their systems to obtain LEI information (as compared to using existing identifiers) because LEI information is “not available to market participants in a systematic way.”¹⁵⁴ One commenter stated that it should be optional to use the LEI of a “third-country issuer” (*i.e.*, a non-European Union (“EU”) issuer) because “a large percentage of third-country issuers have not obtained LEIs.”¹⁵⁵ Another commenter requested that FINRA clarify whether a Covered Person would be permitted to report an

issuer’s LEI even if such LEI has lapsed.¹⁵⁶

In response, FINRA stated that the comments regarding the reporting of an issuer’s LEI, if the issuer has a non-lapsed LEI, are examples of requirements that are established directly by Rule 10c–1a and cannot be amended by FINRA.¹⁵⁷ FINRA also stated that proposed Rule 6530(a)(2)(A)’s requirement to report the LEI of an issuer, if non-lapsed, mirrors the requirement in Rule 10c–1a(c)(1).¹⁵⁸ The Commission agrees that this proposed requirement that the LEI of the issuer must be included in a SLATE report if the issuer has a non-lapsed LEI is consistent with Rule 10c–1a(c)(1). FINRA’s proposed limitation for SLATE regarding the LEI of an issuer, which requires reporting only if the issuer has a non-lapsed LEI (*i.e.*, instead of including lapsed LEIs, too), is consistent with the requirements of Rule 10c–1a(c)(1).¹⁵⁹ The reporting of the issuer’s LEI, to the extent the issuer has a non-lapsed LEI, facilitates the identification of the security about which the Covered Securities Loan information is being provided. The proposed inclusion of an issuer’s LEI, if the issuer has a non-lapsed LEI, is reasonably designed to facilitate the collection and dissemination of loan information consistent with Rule 10c–1a.¹⁶⁰

One commenter recommended that, as opposed to each SLATE reporter tracking the status of a Covered Securities Loan, the SLATE system “should perform the calculations of loan status” (*e.g.*, Initial Covered Securities Loan, Loan Modification, pre-existing Loan Modifications) and other derived information, centrally.¹⁶¹ This commenter stated that “[c]entralization within SLATE of these functions should not only reduce costs but also increase data quality.”¹⁶² The commenter’s suggestion that SLATE should “perform the calculations of loan status” would require the daily reporting of the full list of loan positions, including those that were effected prior to SLATE implementation, and those that have not changed. Such information is not included in the securities loan information that is required to be reported pursuant to Rule 10c–1a nor did FINRA include it in its proposal. As discussed above, in Parts III.A.1 and III.A.2, the Proposal aligns the loan

information reported to SLATE with the data elements in Rule 10c–1a(c) through (e) and is reasonably designed to facilitate the timely implementation of SLATE while helping to ensure the collection of data elements required to be reported pursuant to Rule 10c–1a(c) through (e). Rule 10c–1a requires, among other things, that Covered Persons provide to FINRA specified loan information that relates to the loan status.¹⁶³ Further, the reporting of loan information as it relates to loan status is necessary for FINRA to link reports and disseminate volume information as is required in Rule 10c–1a(g)(5). The Proposal, which requires Covered Persons to track the status of a reported Covered Securities Loan, is reasonably designed to facilitate the collection and dissemination of loan information consistent with Rule 10c–1a.

Some commenters stated, without providing any specificity, that “broader transparency measures” than those required by Rule 10c–1a are necessary and beneficial to the market.¹⁶⁴

Rule 10c–1a sets forth a list of specified loan information that Covered Persons must report and that FINRA must collect and make publicly available. Further, the Commission also agrees with the comment discussed above that the proposed rule change will “aid in the protection of investors by ensuring they are appropriately informed about the terms of securities loans and the parties involved” and that the proposed “requirement to report comprehensive data elements will contribute to a fair and orderly market.”¹⁶⁵ The Proposal’s list of required data elements is appropriately tailored to help increase the transparency of information available to brokers, dealers, and investors with respect to the loan or borrowing of securities consistent with the transparency goals of Rule 10c–1a.¹⁶⁶

5. Requests for Clarification

One commenter on the proposed rule change, as originally proposed in the Notice, requested confirmation whether, if FINRA does not generate a “UTI” for a Covered Securities Loan, the Covered Person responsible for reporting it would be required to generate a UTI.¹⁶⁷

¹⁶³ See, *e.g.*, 17 CFR 240.10c–1a(d)(1), (d)(2).

¹⁶⁴ See Form Letter D; Letter from Freddy Lo (August 9, 2024); Letter from Jane Plumberg (September 10, 2024); Letter from Traci Olafson (September 12, 2024); Letter from Anonymous (September 16, 2024).

¹⁶⁵ Letter from Jennifer (May 15, 2024).

¹⁶⁶ See Rule 10c–1a Adopting Release, 88 FR 75715.

¹⁶⁷ ISLA Letter 1, at 9. The proposed FINRA rules do not use the acronym “UTI,” which the

¹⁵⁰ See Rule 10c–1a(g)(1)(i)(A), (g)(3).

¹⁵¹ See Rule 10c–1a Adopting Release, 88 FR 75685.

¹⁵² See SIFMA Letter, at 3–4.

¹⁵³ ISLA Letter 1, at 7. See EquiLend Letter 2, at 2; SIFMA AMG Letter 2, at 7.

¹⁵⁴ SIFMA AMG Letter 2, at 7.

¹⁵⁵ ISLA Americas Letter 1, at 15. See ISLA Americas Letter 2, at 8.

¹⁵⁶ FIF Letter, at 10.

¹⁵⁷ FINRA Letter, at 10.

¹⁵⁸ FINRA Letter, at 10 n.39.

¹⁵⁹ See 17 CFR 240.10c–1a(c)(1).

¹⁶⁰ See Rule 10c–1a Adopting Release, 88 FR 75670–71.

¹⁶¹ See S3 Partners Letter, at 2.

¹⁶² S3 Partners Letter, at 2–3.

The commenter also stated that, under the EU's Securities Finance Transaction Regulation ("SFTR"), firms agree which party will be responsible for generating and distributing the UTI prior to a trade.¹⁶⁸ The commenter recommended that FINRA "follow the SFTR waterfall protocol, where possible for generation and distribution of UTI's, as many firms will already be familiar with this method for the purposes of reporting their EU securities loans."¹⁶⁹

As discussed above, proposed Rule 6530(a)(2)(U) would provide that, where a Covered Person's daily submission includes two or more reports related to the same Covered Securities Loan for which FINRA has not yet assigned a unique loan identifier, the Covered Person must report a unique identifier assigned to the Covered Securities Loan by the Covered Person responsible for reporting the loan to SLATE. This is the only scenario in which the Covered Person is responsible for generating and reporting a unique loan identifier. In response to the commenter's suggestion that FINRA follow the SFTR waterfall protocol, the assignment of a unique identifier may be appropriate for consistency with FINRA's rules and systems, even if a Covered Securities Loan already has an identifier that is reported to the SFTR.¹⁷⁰ FINRA is required by Rule 10c-1a(g)(1) to assign a unique identifier to each covered securities loan. Proposed Rule 6530(a)(2)(U) is reasonably designed to facilitate the dissemination of accurate loan information consistent with Rule 10c-1a(g).

B. Timing for SLATE Reports

One commenter on the proposed rule change, as originally proposed in the Notice, recommended that "FINRA develop the SLATE system so that it can accept files transmitted outside of [the SLATE system] hours for processing the

commenter did not define but may refer to the term "unique transaction identifier" and, under the proposed rule change, as originally proposed in the Notice, the "unique internal identifier assigned to the Covered Securities Loan by the Covered Person responsible for reporting the loan to SLATE." Notice, 89 FR 38207, 39209.

¹⁶⁸ ISLA Letter 1, at 9.

¹⁶⁹ ISLA Letter 1, at 9. Another commenter recommended that FINRA "assign a Submission Unique Identifier based on the concatenation of fields in the full data inventory file that will uniquely identify a submission." S3 Partners Letter, at 3. As discussed in the Rule 10c-1a Adopting Release, it is appropriate to allow the administrative details of the process of assigning a unique identifier under Rule 10c-1a to be left to the discretion of an RNSA. See Rule 10c-1a Adopting Release, 88 FR 75685.

¹⁷⁰ See Rule 10c-1a Adopting Release, 88 FR 75685.

following business day."¹⁷¹ The commenter stated that restricting SLATE file submissions to U.S. hours, given the "extra-territorial scope" of Rule 10c-1a, could cause compliance difficulties because firms have staff located outside of the U.S.¹⁷² Other commenters also recommended an expansion of the SLATE reporting hours in the proposed rule change, as originally proposed in the Notice.¹⁷³ One commenter asked whether the SLATE system would provide feedback outside of the SLATE system hours.¹⁷⁴

In response, Partial Amendment No. 1 extended the reporting deadline to 11:59:59 p.m. ET and made a corresponding change to the definition of "SLATE System Hours" in proposed Rule 6510 to specify that the SLATE system is open through 11:59:59 p.m. ET. FINRA stated that the extension of SLATE System Hours is appropriate to provide additional time to process SLATE submissions at the end of the day. FINRA stated that, while the SLATE system will provide reporters feedback on submissions that are submitted during SLATE System Hours, the SLATE system will not accept reports submitted after the close of the SLATE system.¹⁷⁵ One commenter on Partial Amendment No. 1 stated that the extension of the SLATE System Hours will ease the reporting burden on covered firms.¹⁷⁶ Another commenter on Partial Amendment No. 1 stated that it appreciates that FINRA extended the cut-off time for SLATE reports to be filed.¹⁷⁷ The Proposal's timing requirements for filing a SLATE report regarding an Initial Covered Securities Loan are reasonably designed to facilitate the collection of transaction data. FINRA's response to the comments regarding the extension of SLATE System Hours to provide additional time to process SLATE submissions, as well as provide reporters feedback on such submissions, at the end of the day, is reasonable and appropriate, as well as consistent with Rule 10c-1a's end-of-day reporting requirements for covered

¹⁷¹ ISLA Americas Letter 1, at 17. Other commenter letters provided similar comments on Partial Amendment No. 1. See ISLA Americas Letter 2, at 7; SIFMA and SIFMA AMG Letter, at 7 (providing an alternative that the SLATE system could open at 6:00:00 a.m. ET).

¹⁷² ISLA Americas Letter 1, at 17.

¹⁷³ See FIF Letter, at 4-5 (stating that SLATE should accept files until 11:59 p.m. ET); EquiLend Letter 2, at 1-2 (stating that the reporting deadline should be extended to 8:30 p.m. ET for Reporting Agents to allow for additional time to collect and prepare Covered Persons' data).

¹⁷⁴ See FIF Letter, at 4.

¹⁷⁵ FINRA Letter, at 9 n.34.

¹⁷⁶ See ISLA Americas Letter 2, at 7.

¹⁷⁷ See SIFMA and SIFMA AMG Letter, at 7.

securities loans. Additionally, the Proposal's timing requirements for filing a SLATE report, including those with respect to filing a SLATE report outside of SLATE System Hours, are consistent with FINRA's experience in establishing and maintaining systems that are designed to capture transaction reporting.¹⁷⁸

Some commenters stated that the originally proposed 7:45:00 p.m. ET cut-off time for same-day reporting would not capture certain end-of-day activity, which would make end of day processes challenging.¹⁷⁹ One commenter stated that the cut-off time for same-day reporting should be moved up to 4:00 p.m. ET to align with the "close of trading" such that loans effected after 4:00 p.m. would not need to be reported until the next business day.¹⁸⁰

In response, Partial Amendment No. 1 changed the reporting cut-off time in proposed Rule 6530(a)(1)(A) and (b)(1)(A) to 7:00:00 p.m. ET. FINRA stated that the modification of the proposed loan cut-off time from 7:45:00 p.m. ET to 7:00:00 p.m. ET would provide additional time to report loans that are effected near the end of the day, including time to complete any necessary security set up in SLATE.¹⁸¹ The Proposal's inclusion of 7:00:00 p.m. ET instead of 4:00 p.m. ET, as the commenter suggested, for the cut-off time for same-day reporting is reasonable because it provides, in response to comments,¹⁸² additional time to process submissions to SLATE (that contain Rule 10c-1a information) and to provide feedback on such submissions, at the end of the day.¹⁸³ Thus, the Proposal is reasonably designed to facilitate the collection of loan information consistent with Rule 10c-1a.

¹⁷⁸ See, e.g., Rule 10c-1a Adopting Release, 88 FR 75682, 75685; FINRA Rule 6730(a); FINRA Rule 6273.

¹⁷⁹ See EquiLend Letter, at 1; FIF Letter, at 4-5.

¹⁸⁰ See FIF Letter, at 5.

¹⁸¹ See Partial Amendment No. 1, 89 FR 92232.

¹⁸² See, e.g., EquiLend Letter, at 1; FIF Letter, at 4-5.

¹⁸³ Rule 10c-1a Adopting Release, 88 FR 75648 n.72. FINRA stated that, given the operation of the securities lending market, including that many loans will not be finalized until after the traditional 4:00 p.m. ET close of the U.S. equities markets, FINRA does not believe it would be appropriate to move the cut-off time for same-day reporting to 4:00 p.m. ET. FINRA also stated that the fixed income markets generally have later trading hours, and the same-day reporting cut-off time for transactions in many TRACE-eligible securities is 6:15:00 p.m. ET. FINRA Letter, at 9 n.34.

C. When and How Loan Information Is Reported

1. Initial Covered Securities Loans

One commenter on the proposed rule change, as originally proposed in the Notice, requested a “clear and concise” definition of the term “effected.”¹⁸⁴ The commenter stated that it would like to understand if the term “effected” means (1) “an ‘event date’ file *i.e.*, the event date that the trade took place,” (2) “an execution timestamp that would carry both date and time,” or (3) the date when a trade is verbally agreed upon.¹⁸⁵ Another commenter recommended that the “interpretation for time ‘effected’ and ‘agrees to a covered securities loan’ is prior to loan settlement but only once all contractual terms, including the identity of the lender, are agreed.”¹⁸⁶ The commenter further stated that, until all contractual terms of a securities loan, including the final details related to the identity of the lender, are agreed between the lending agent, as agent for the lender and the borrower, the trading desk will view the borrower’s offer discussions as a “*potential loan*—not an actual loan” and will book the securities loan into its system when all contractual terms are agreed upon.¹⁸⁷ This commenter stated that “[o]nly when the securities loan is booked into the lending agent’s trading system, will the lending agent view it to be ‘effected’—an actual securities loan pending settlement.”¹⁸⁸ Whether a securities loan must be reported as an Initial Covered Securities Loan will depend upon the facts and circumstances, including the structure of such lending program.¹⁸⁹

The requirement for covered persons to report to FINRA, by the end of the day on which a covered securities loan is effected, specified loan information—which includes, among others, the date the covered securities loan was effected, the time the covered securities loan was effected, and the name of the platform or venue where the covered securities loan was effected—is established by Rule 10c–1a(c)(3)–(c)(5). In adopting Rule 10c–1a, the Commission stated that whether or not a loan has been effected is a legal/factual question, and a delay in settlement (or if one of the agreed to loan terms is modified the next day) does not impact the initial requirement to report all loans (and modifications)

within the required timeframes under Rule 10c–1a.¹⁹⁰

Further, the Commission stated that use of the term “agrees to” in the definition of covered person under Rule 10c–1a clarifies that covered securities loans are required to be reported after the parties agree to the loan, which is before settlement.¹⁹¹ Parties to a securities loan may agree to some of the basic terms initially, but some or many of the securities loan terms may not be agreed to (or may be updated throughout the day and, thus, not finalized) until the end of the day.¹⁹² The Proposal’s requirement for end-of-day reporting after a Covered Securities Loan has been “effected” is consistent with the requirement in Rule 10c–1a(c) that a covered person shall provide specified loan information to FINRA by the end of the day on which the covered securities loan is effected. The Proposal’s end-of-day reporting requirement, therefore, is reasonably designed and is appropriately balanced to facilitate the collection of timely information while helping to prevent an excessive number of incomplete or slightly modified reports that otherwise would occur throughout the day yet without providing sufficient incremental value.¹⁹³

One commenter stated that a Covered Person should instead be required to file a SLATE report only for a loan that has been settled, whereby the Covered Person would report the date and time that it recorded the Covered Securities Loan in its books and records.¹⁹⁴ The commenter stated that in many cases where a lending agent is involved, the parties to the loan do not know the identity of the counterparty until the loan is settled.¹⁹⁵

Consistent with the requirements of Rule 10c–1a, an Initial Covered Securities Loan is required to be reported prior to settlement.¹⁹⁶ As discussed above, in this Part, settlement does not impact the initial requirement to report all loans (and modifications) within the required timeframes under Rule 10c–1a.¹⁹⁷ With respect to the comment that the parties to the loan do not know the identity of the

counterparty until the loan is settled,¹⁹⁸ proposed Rule 6530(a)(2)(N) uses the qualifier “if known” with respect to the requirement for a SLATE report for an Initial Covered Securities Loan to include the legal name of each party to the Covered Securities Loan (other than the customer from whom a Broker or Dealer borrows fully paid or excess margin securities pursuant to Rule 15c3–3(b)(3)). FINRA’s use of the qualifier “if known” in proposed Rule 6530(a)(2)(N) mirrors that used in Rule 10c–1a(e)(1), which concerns the legal name of each party to a covered securities loan. Proposed Rule 6530(a)(2)(N), therefore, is reasonably designed to facilitate the collection of loan information consistent with Rule 10c–1a(e)(1).

One commenter on Partial Amendment No. 1 stated that unsettled loans are not transactions because no loan transaction “occurs” and that, therefore, unsettled loans should not be required to be reported to SLATE.¹⁹⁹ The commenter stated that a Covered Person may have to incur incremental costs to report unsettled loans to SLATE, given that these “unconsummated transactions” may not be captured on the books and records of the Covered Person “comparably to how consummated loan transactions are recorded.”²⁰⁰

The term “Covered Securities Loan” under proposed Rule 6510(j) mirrors the definition under Rule 10c–1a, which means a transaction in which any person on behalf of itself or one or more other persons lends a reportable security to another person. In adopting Rule 10c–1a, the Commission stated that the reporting requirement did not require “that the loan be settled” and also acknowledged that various entities will incur costs in developing recording and reporting systems to comply with Rule 10c–1a.²⁰¹ The Proposal’s requirement regarding the reporting of unsettled loans that are Covered Securities Loans is consistent with Rule 10c–1a. The Proposal is reasonably designed to facilitate the collection of loan information consistent with Rule 10c–1a.

2. Loan Modifications

Proposed Rules 6530.01 (Intraday Loan Modifications) and 6530.02 (Changes to the Parties to a Covered Securities Loan), as originally proposed in the Notice, included a requirement

¹⁸⁴ ISLA Letter 1, at 4.

¹⁸⁵ ISLA Letter 1, at 3–4.

¹⁸⁶ ISLA Americas Letter 1, at 6.

¹⁸⁷ ISLA Americas Letter 1, at 6.

¹⁸⁸ ISLA Americas Letter 1, at 6.

¹⁸⁹ See, e.g., Rule 10c–1a Adopting Release, at 88 FR 75664.

¹⁹⁰ See Rule 10c–1a Adopting Release, 88 FR 75681.

¹⁹¹ See Rule 10c–1a Adopting Release, 88 FR 75666, 75666 n.358.

¹⁹² See, e.g., Rule 10c–1a Adopting Release, 88 FR 75680–81.

¹⁹³ See Rule 10c–1a Adopting Release, 88 FR 75680.

¹⁹⁴ See FIF Letter, at 4.

¹⁹⁵ See FIF Letter, at 4.

¹⁹⁶ See Rule 10c–1a Adopting Release, 88 FR 75666.

¹⁹⁷ See Rule 10c–1a Adopting Release, 88 FR 75681.

¹⁹⁸ See FIF Letter, at 4.

¹⁹⁹ See SIFMA and SIFMA AMG Letter, at 4.

²⁰⁰ SIFMA and SIFMA AMG Letter, at 4.

²⁰¹ See Rule 10c–1a Adopting Release, 88 FR 75662, 75662 n.288, 75717.

that all intraday changes to a Covered Securities Loan be reported as Loan Modifications, which several commenters stated is inconsistent with the requirements of Rule 10c-1a.²⁰² One commenter stated that the proposed rule change's inclusion of intraday activity as required reporting would be misleading to the public.²⁰³ One commenter stated that the intraday reporting requirements in the proposed rule change, as originally proposed in the Notice, are "costly and burdensome" and that "the costs and complexity of reporting these intraday loan modifications greatly undermines any purported utility."²⁰⁴ Another commenter stated that it is not clear that FINRA has "adequately analyzed the costs and benefits" of the proposed rule change's intraday reporting requirement.²⁰⁵ One commenter recommended consolidating Loan Modification and Loan Correction events, as well as Loan Cancellation and Delete Loan events, stating that tracking multiple event types would be complex and burdensome.²⁰⁶

In response, FINRA stated that Covered Persons must report Loan Modifications consistent with Rule 10c-1a.²⁰⁷ FINRA stated that proposed Rule 6530 is not intended to alter when loan events are required to be reported as Loan Modifications (including terminations) or when new loans must be reported under Rule 10c-1a.²⁰⁸ To the extent a loan event is not reportable under Rule 10c-1a, there would likewise be no SLATE reporting obligations. FINRA stated that, to make this clearer, Partial Amendment No. 1 removed originally proposed Rules 6530.01 (Intraday Loan Modifications) and 6530.02 (Changes to the Parties to a Covered Securities Loan).²⁰⁹ Some commenters supported Partial Amendment No. 1's removal of these two originally proposed provisions.²¹⁰

The Commission agrees that the Proposal's inclusion of an end-of-day reporting requirement for Initial

Covered Securities Loans and Loan Modifications is consistent with the requirements of Rule 10c-1a. Consistent with Rule 10c-1a, which requires the individual reporting of the specific modification and the specific data element being modified,²¹¹ under proposed Rule 6510(e), the term Loan Modification means a change to any Data Element with respect to a Covered Securities Loan (irrespective of whether such Covered Securities Loan was previously reported to SLATE). This definition is reasonably designed to facilitate the collection of Loan Modification information and is consistent with the requirements of paragraphs (d)(1)(ii) and (d)(2) of Rule 10c-1a, which require the reporting of modified data elements by the end of the day on which a covered securities loan is modified.

Commenters on the proposed rule change, as originally proposed in the Notice, recommended that FINRA clarify that loan information concerning intraday events is not required to be reported until all terms of a loan are agreed upon.²¹² In response, FINRA stated its understanding that, based on the Rule 10c-1a Adopting Release, Loan Modifications are required to be reported to an RNSA pursuant to Rule 10c-1a once the Loan Modification is finalized, and that indicative terms are not reportable.²¹³ FINRA stated that the Rule 10c-1a Adopting Release explains that Rule 10c-1a's "final end-of-day requirement was intended to better capture *final* loan information."²¹⁴ FINRA also stated that whether or not a loan has been effected is a legal/factual question and that Covered Persons must report loan events, including Loan Modifications, in a manner consistent with Rule 10c-1a.²¹⁵ FINRA's response regarding the reporting of information concerning Loan Modifications, as well as the Proposal's requirement for the reporting of information concerning Loan Modifications, are consistent with the requirements of Rule 10c-1a. Further, the Proposal is reasonably designed to facilitate the collection of information regarding Loan Modifications consistent with Rule 10c-1a.

One commenter on the proposed rule change, as originally proposed in the Notice, requested clarification as to

whether intraday reporting of "lifecycle events" is required, and whether there is a specific sequence in which firms must report.²¹⁶ As discussed above, in this Part, FINRA stated that Covered Persons must report Loan Modifications consistent with Rule 10c-1a.²¹⁷ The Proposal is consistent with Rule 10c-1a's requirement for the end-of-day reporting of same-day loan modifications. In adopting Rule 10c-1a, the Commission stated that whether there is a change that will trigger the reporting of a Loan Modification data element may involve a facts-and-circumstances-based determination.²¹⁸ There may be certain lifecycle events in the course of an open-ended loan and that some market participants may view as a modification to an existing loan that other market participants might view as a termination of an existing loan and the entry into a new loan.²¹⁹ In these cases, the Covered Person (or Reporting Agent) may elect to report the required information as either a termination (and therefore a modification) of an existing loan and a creation of a new loan, or as two modifications to an open-ended loan.²²⁰ SLATE does not impose a timing sequence for the reporting of Loan Modifications that are effected on the same day, as the commenter asked,²²¹ and the Proposal would not prohibit a Covered Person (or its Reporting Agent) from reporting Loan Modifications in chronological order so long as such reporting is done in accordance with the Proposal and Rule 10c-1a.

One commenter stated that it sought clarity as to whether a market participant who "books a loan" that is not reported "at the time," and such loan is modified that same day, could report the Initial Covered Securities Loan along with all "subsequent lifecycle events," at 6:00 p.m., by reporting the Initial Covered Securities Loan and Loan Modification.²²² Proposed Rule 6530(a)(2)(U) and proposed Rule 6530(a)(b)(A) are designed to permit such reporting (*i.e.*, reporting the Initial Covered Securities Loan along with all "subsequent lifecycle events," at 6:00 p.m., by reporting the Initial Covered Securities

²⁰² See ISLA Americas Letter 1, at 6-8; ISLA Letter 1, at 4; SIFMA AMG Letter 1, at 2; SIFMA AMG Letter 2, at 2-4; SIFMA Letter, at 4-6; Associations Collective Letter, at 2; ICI Letter, at 5-7; FIF Letter, at 2-3; Robinhood Letter, at 2. See also S3 Partners Letter, at 2.

²⁰³ See ISLA Americas Letter 1, at 8.

²⁰⁴ ISLA Americas Letter 1, at 8. See ICI Letter, at 6-7; Robinhood Letter, at 2.

²⁰⁵ Associations Collective Letter, at 2.

²⁰⁶ See ISLA Americas Letter 1, at 17; ISLA Americas Letter 2, at 8.

²⁰⁷ See Partial Amendment No. 1, 89 FR 92229.

²⁰⁸ See Partial Amendment No. 1, 89 FR 92229.

²⁰⁹ See Partial Amendment No. 1, 89 FR 92229. See also FINRA Letter, at 5.

²¹⁰ See ISLA Americas Letter 2, at 3-4; SIFMA and SIFMA AMG Letter, at 2.

²¹¹ See Rule 10c-1a Adopting Release, 88 FR 75671.

²¹² See ICI Letter, at 8. See also FIF Letter, at 3.

²¹³ FINRA Letter, at 6 (citing Rule 10c-1a Adopting Release, 88 FR 75679-80).

²¹⁴ FINRA Letter, at 6 (citing Rule 10c-1a Adopting Release, 88 FR 75679-80).

²¹⁵ FINRA Letter, at 6 (citing Rule 10c-1a Adopting Release, 88 FR 75681).

²¹⁶ ISLA Letter 1, at 9-10 (suggesting that reporting "lifecycle events" be done in "chronological order for ease").

²¹⁷ See FINRA Letter, at 6.

²¹⁸ See, e.g., Rule 10c-1a Adopting Release, 88 FR 75672.

²¹⁹ See Rule 10c-1a Adopting Release, 88 FR 75672.

²²⁰ See Rule 10c-1a Adopting Release, 88 FR 75672.

²²¹ See ISLA Letter 1, at 9-10.

²²² See ISLA Letter 1, at 9.

Loan and Loan Modification) while allowing FINRA to link same-day reports that relate to the same Covered Securities Loan, accurately record transactions reported pursuant to Rule 10c–1a, and incorporate Loan Modification information into the daily loan statistics.²²³ The Proposal is reasonably designed to facilitate end-of-day reporting for same-day Initial Covered Securities Loans and Loan Modifications not previously reported consistent with Rule 10c–1a.

One commenter suggested that, to differentiate from “other securities lending industry participants, such as prime brokers, engage[d] in intraday activities that could be reported as lifecycle events, . . . FINRA and the Commission . . . [should] consider the inclusion of a flag that identifies a party as a lending agent, in which case, such intraday lifecycle events would not need to be reported.”²²⁴ As discussed above, in this Part, FINRA stated that Covered Persons must report Loan Modifications consistent with Rule 10c–1a.²²⁵ The commenter’s suggested flag is not required by Rule 10c–1a to be reported to an RNSA. FINRA’s decision not to include a flag that identifies a party as a lending agent, as suggested by the commenter,²²⁶ is consistent with Rule 10c–1a.²²⁷

Another commenter sought clarification on the “treatment of corporate actions” under the proposed rule change, as originally proposed in the Notice, where, according to the commenter, firms may need to adjust the terms of an existing Covered Securities Loan (e.g., during a tender offer).²²⁸ This commenter stated that FINRA should “propose specific guidelines that recognize such changes and adjustments and consider the utility to investors of reporting based on what may be outlier events and that may occur long after the actual lending activity,” without providing any specificity as to what the “guidelines” should address.²²⁹ FINRA’s decision not to include in the Proposal “specific guidelines,” as the commenter suggested, is reasonable because covered Persons must report Loan Modifications consistent with Rule 10c–

1a, and Loan Modifications are required to be reported once they are finalized.²³⁰ The Proposal is reasonably designed to facilitate the reporting of Loan Modification information consistent with Rule 10c–1a(d).

With regard to allocations of securities loans by lending agents, one commenter stated that, “until the reallocation is finalized, there is no utility to requiring a covered person to report *potential* loan modifications.”²³¹ Another commenter requested confirmation that an intermediary would not report a block (i.e., omnibus) transaction to SLATE and would instead report the allocations for the block transaction once the allocations have been finalized.²³² One commenter stated that requiring the reporting of allocations of an omnibus loan contradicted the Commission’s decision in Rule 10c–1a “not to treat reallocations among a pooled loan’s underlying constituents as a new covered loan or as a modification.”²³³

As discussed above, FINRA stated its understanding that, under Rule 10c–1a(d), loan modifications are required to be reported once they are finalized, and that indicative terms are not reportable.²³⁴ FINRA stated that, in the context of omnibus loans and reallocations, proposed Rule 6530 does not alter which entities must be reported as parties to a loan, whether a change to the parties to a loan triggers a reporting obligation, or whether such report must reflect a modification or a new loan (and therefore, also a termination of the prior loan); rather, these obligations are prescribed by Rule 10c–1a as discussed in the Rule 10c–1a Adopting Release.²³⁵ FINRA stated its understanding that Rule 10c–1a generally requires that a change in the parties to a loan be reported as a termination of the prior loan and the initiation of a new loan (reflecting the new parties, if known).²³⁶ In adopting

Rule 10c–1a, the Commission stated that whether a reallocation of a loan among participants in a lending program requires the reporting of a new covered securities loan depends upon the facts and circumstances, including the structure of such lending program.²³⁷ The Proposal’s information reporting requirements concerning omnibus loans that are Covered Securities Loans, by mirroring the requirements in Rule 10c–1a(e)(1), are reasonably designed to facilitate the collection of loan information consistent with Rule 10c–1a.²³⁸

Another commenter stated that the proposed rule change, as originally proposed in the Notice, would require that “all Partial and Full Returns to be checked for settlement first, prior to being reported.”²³⁹ This commenter suggested to align SLATE with the SFTR, which the commenter stated “only requests the final close out of a trade to be reported, i.e., under SFTR, partials only have to be reported on a contractual settlement basis as opposed to an actual settlement basis.”²⁴⁰ The commenter stated that, under the proposed rule change, as originally proposed in the Notice, “market participants would have to consider how to monitor settlement separately to what they are reporting for regulatory purposes,” which the commenter stated would be challenging for systems from a books a records perspective.²⁴¹ The commenter also stated that “[i]ncluding partials that follow the settlement driven reporting requirement i.e., the need to check for successful settlement prior to regulatory reporting, is going to create several challenges for market participants.”²⁴²

As discussed above in Part III.A.1, Partial Amendment No. 1 removed the originally proposed requirement for the reporting of certain information, including the Unsettled Loan indicator, the expected settlement date for Covered Securities Loans, and the expected settlement date for modifications to the loan amount (if the expected settlement date is a date other than the date of the loan modification). FINRA stated that it eliminated the settlement-related elements in the interest of achieving the timely

²³⁰ See Rule 10c–1a Adopting Release, 88 FR 75667 n.365.

²³¹ ISLA Americas Letter 1, at 6.

²³² FIF Letter, at 6.

²³³ ICI Letter, at 7. See FIF letter, at 6 (requesting confirmation that an intermediary would not be required to report an omnibus transaction to SLATE and would report only finalized allocations). In response, FINRA cited the Rule 10c–1a Adopting Release, which states that “[w]hether the parties to a covered securities loan change for purposes of the reporting requirements under final Rule 10c–1a(e)(1) depends on how a pool or lending program is structured (e.g., whether the pool or lending program itself or the individual underlying participants are the party or parties identified as the lender for the loan).” Rule 10c–1a Adopting Release, 88 FR 75664 (citation omitted).

²³⁴ FINRA Letter, at 6.

²³⁵ FINRA Letter, at 7.

²³⁶ FINRA Letter, at 7 (citing Rule 10c–1a Adopting Release, 88 FR 75664).

²³⁷ See Rule 10c–1a Adopting Release, 88 FR 75664.

²³⁸ See Rule 10c–1a Adopting Release, 88 FR 75664.

²³⁹ ISLA Letter 1, at 4.

²⁴⁰ ISLA Letter 1, at 4.

²⁴¹ ISLA Letter 1, at 4. See S3 Partners Letter, at 4.

²⁴² ISLA Letter 1, at 4–5.

²²³ See FINRA Letter, at 5.

²²⁴ ISLA Americas Letter 1, at 8.

²²⁵ See Rule 10c–1a Adopting Release, 88 FR 75681–82.

²²⁶ ISLA Americas Letter 1, at 8.

²²⁷ See Rule 10c–1a Adopting Release, 88 FR 75667 n.365 (describing Rule 10c–1a as allowing FINRA “the necessary flexibility to propose and implement rules regarding the format and manner with respect to the collection of information”).

²²⁸ See Robinhood Letter, at 2.

²²⁹ Robinhood Letter, at 2.

implementation of SLATE.²⁴³ FINRA also stated that it plans to reassess the need for some data after gaining experience with the operation of SLATE and the initial data set, and that any such efforts would be subject to a separate proposed rule change filed with the Commission and as such, subject to notice and comment. SLATE is designed to be consistent with Rule 10c-1a, which imposes a unique and different regulatory regime from the SFTR, with differences in their underlying objectives.²⁴⁴ FINRA's decision in the Proposal not to require the reporting of settlement-related data elements—the Unsettled Loan indicator, the expected settlement date for Covered Securities Loans, and the expected settlement date for modifications to the loan amount (if the expected settlement date is a date other than the date of the loan modification)—addresses comments concerning the potential need to monitor the settlement of Covered Securities Loans.²⁴⁵ Further, the Proposal is consistent with Rule 10c-1a because above-mentioned settlement-related data elements are not required to be reported pursuant to Rule 10c-1a(c) through (e).

Commenters stated that the proposed rule change, as originally proposed in the Notice, should allow reporters to submit a single, consolidated daily file. One commenter stated that the proposed rule change should “implement the single, consolidated, end-of-day reporting requirement contemplated by SEC Rule 10c-1a.”²⁴⁶ Another commenter recommended to allow reporters to submit a single daily file of all required elements associated with their current inventory” including “every loan required to be reported including new and modified loans.”²⁴⁷ FINRA's decision not to accept SLATE reports in the form of a single daily file is reasonable. In adopting Rule 10c-1a, the Commission provided FINRA with the necessary flexibility to propose and implement rules regarding the format and manner with respect to the collection of information.²⁴⁸ As such, the Proposal's requirements concerning the manner of reporting are consistent with FINRA's experience in establishing and maintaining systems that are designed to capture transaction

reporting²⁴⁹ as well as the requirements of Rule 10c-1a.²⁵⁰ As discussed above, in Part III.C.2, the Proposal's requirement for reporting information concerning Loan Modifications is consistent with the requirements of Rule 10c-1a.

D. Definitions

One commenter stated that the proposed rule change, as originally proposed in the Notice, appears to sustain “the ongoing lack of clarity regarding whether certain uses of securities that are not documented or priced as securities loans in the market may nonetheless be reportable under Rule 10c-1a as ‘covered securities loans.’”²⁵¹ The commenter stated that rehypothecating shares to make delivery on short positions should not be treated as a Covered Securities Loan for purposes of Rule 10c-1a.²⁵² Another commenter stated that the delivery by a broker-dealer of securities to settle a short sale—and the consequent carrying of a short position in a brokerage account—is not reportable under Rule 10c-1a as a “covered securities loan.”²⁵³

In response, FINRA stated that whether a particular transaction is a “covered securities loan” is an example of an issue that is not related to determinations that FINRA has made regarding the proposed reporting requirements or dissemination provisions of SLATE.²⁵⁴ FINRA stated that these comments are addressed in the Rule 10c-1a Adopting Release. Further, FINRA stated that, with respect to a Covered Securities Loan used to close out a fail-to-deliver pursuant to Rule 204 of Regulation SHO, where the broker-dealer is complying by entering into a bona fide arrangement to borrow the security by no later than the beginning of regular trading hours on the settlement day following the settlement date in question, firms would view such loans as having been agreed to in the morning consistent with the timing parameters of Rule 204 of Regulation SHO (albeit that the loan is not required to be reported until the end of the day under Rule 10c-1a).²⁵⁵ One commenter on Partial Amendment No. 1 sought clarity on whether certain conduct constitutes “effecting,

accepting, or facilitating” a lending transaction.²⁵⁶

The Commission agrees with FINRA that the definition of “covered securities loan” is addressed by Rule 10c-1a(j)(2) and is discussed in the Rule 10c-1a Adopting Release.²⁵⁷ In adopting Rule 10c-1a, the Commission stated that the definition of covered securities loan excludes the use of margin securities by a broker or dealer (e.g., rehypothecation) other than the lending of such margin securities by a broker or dealer, as well as a position at a clearing agency that results from certain central counterparty or central securities depository services.²⁵⁸ Because the definitions of Covered Securities Loan and Reportable Security in SLATE mirror the definitions of “covered securities loan” and “reportable security” in Rule 10c-1a, respectively, FINRA has reasonably set forth the scope of SLATE reports and distinguished Covered Securities Loans from other types of transactions that are not required to be reported.²⁵⁹ The definitions under the Proposal are reasonably designed to facilitate compliance with, and clarify the scope of, SLATE reporting consistent with Rule 10c-1a.

Commenters on the proposed rule change, as originally proposed in the Notice, sought clarity on the jurisdictional scope of the proposed rule change, including the applicability to foreign entities and foreign securities.²⁶⁰ One commenter asked whether securities that are traded within the U.S. and have “‘F-share’ tickers” are Reportable Securities under Rule 10c-1a.²⁶¹ With regard to foreign securities traded outside of the U.S., the commenter asked if a transaction would be reportable under Rule 10c-1a in the U.S. if the security has multiple SEDOLs/tickers, where only one of which is Consolidated Audit Trail (“CAT”) reportable, and the securities lending trade references one of the other SEDOLs/tickers (i.e., the foreign ticker traded on a foreign exchange, and thus not the “F-shares ticker”).²⁶²

²⁵⁶ See Letter from Tony Holland, Director of Market Practice, International Securities Lending Association (December 20, 2024).

²⁵⁷ See, e.g., Rule 10c-1a Adopting Release, 88 FR 75658, 75661–67, 75689.

²⁵⁸ Rule 10c-1a Adopting Release, 88 FR 75649.

²⁵⁹ See Rule 10c-1a Adopting Release, 88 FR 75666–67.

²⁶⁰ See, e.g., SIFMA Letter, at 8; ISLA Letter 1, at 2.

²⁶¹ Letter from Tony Holland, Director of Market Practice, International Securities Lending Association (July 16, 2024) (“ISLA Letter 2”), at 2–3.

²⁶² ISLA Letter 2, at 4–5. The acronym “SEDOL” stands for “Stock Exchange Daily Official List,” which is a list of security identifiers used in the United Kingdom and Ireland for clearing purposes.

²⁴³ FINRA Letter, at 4.

²⁴⁴ See Rule 10c-1a Adopting Release, 88 FR 75681.

²⁴⁵ See, e.g., ISLA Letter 1, at 4; S3 Partners Letter, at 4.

²⁴⁶ See SIFMA Letter, at 6. See also Robinhood Letter, at 2; SIFMA AMG Letter 2, at 3.

²⁴⁷ S3 Partners Letter, at 1.

²⁴⁸ See Rule 10c-1a Adopting Release, 88 FR 75667 n.365.

²⁴⁹ See, e.g., Rule 10c-1a Adopting Release, 88 FR 75682, 75685; FINRA Rule 6730.

²⁵⁰ See Rule 10c-1a Adopting Release, 88 FR 75671.

²⁵¹ MFA Letter, at 5.

²⁵² See MFA Letter, at 5.

²⁵³ SIFMA Letter, at 8–9.

²⁵⁴ See FINRA Letter, at 9–10.

²⁵⁵ FINRA Letter, at 6–7. The Commission agrees with FINRA. See 17 CFR 242.204(b).

In response, FINRA listed these comments as examples of issues not related to determinations that FINRA has made regarding the proposed reporting requirements or dissemination provisions of SLATE but instead are addressed in the Rule 10c–1a Adopting Release.²⁶³ As discussed above, in this Part, Rule 10c–1a(j) defines the terms “reportable security,” which in part sets the scope of Rule 10c–1a(a). Accordingly, a security is a “reportable security” under Rule 10c–1a if it is a security or class of an issuer’s securities for which information is reported or required to be reported to the consolidated audit trail as required by Rule 613 of the Exchange Act and the CAT NMS Plan, TRACE, or RTRS, or any reporting system that replaces one of these systems.²⁶⁴ With respect to the cross-border application of Rule 10c–1a, the Commission stated that, section 10(c) of the Exchange Act, by its terms, requires reporting when, directly or indirectly, a person has “effect[ed], accept[ed], or facilitate[d]” a transaction involving the loan or borrowing of securities.²⁶⁵ Based on that language, the Commission concluded in the Rule 10c–1a Adopting Release that the relevant domestic conduct that triggers the Commission’s regulatory authority under section 10(c) is conduct within the U.S. that comprises (in whole or in part) effecting, accepting, or facilitating of a borrowing or lending transaction.²⁶⁶ The Commission further stated that, because Rule 10c–1a is intended to be co-extensive with the regulatory scope of section 10(c), it is of the view that Rule 10c–1a’s reporting requirements will generally be triggered whenever a covered person effects, accepts, or facilitates (in whole or in part) in the U.S. a lending or borrowing transaction.²⁶⁷

E. Compliance With Reporting Obligations

One commenter stated that the proposed rule change, as originally proposed in the Notice, differs from Rule 10c–1a because the proposed rule change would allow third-party service providers, who may not be registered in any capacity with the Commission, to provide the same service as a Reporting Agent “without the oversight or regulatory responsibility of a Reporting Agent,” whereas Rule 10c–1a “specifically allows for Covered Persons to use the services of a Reporting Agent

only.”²⁶⁸ The commenter stated that “the permissible activities” of these third-party service providers “demands further clarification and an express set of qualification criteria that distinguishes such permissible activities from those that are inherent” with respect to Reporting Agents and Covered Persons to avoid providing “a back door” through which the third-party service providers “can escape SEC and FINRA oversight and liability” as a Reporting Agent.²⁶⁹

In response, FINRA stated that nothing in the Proposal modifies the parameters the Commission set forth regarding the use of a “reporting agent,” which is a defined term under Rule 10c–1a(j), for purposes of reporting loan information pursuant to Rule 10c–1a. FINRA stated that, while the Commission established the role of a reporting agent (in the Rule 10c–1a Adopting Release), it did not preclude firms from using other types of third parties to facilitate reporting (albeit that covered persons may not rely on such other parties in the same manner reserved for reporting agents under Rule 10c–1a).²⁷⁰

The Commission agrees with FINRA that the Proposal does not, and cannot, modify Rule 10c–1a’s definition of “reporting agent.” In adopting the definition of “reporting agent” under Rule 10c–1a, the Commission stated that the definition strikes a balance between increasing participation and competition in the marketplace for such services, while applying the definition only to entities over which the Commission has direct oversight.²⁷¹ The ability to use a Reporting Agent does not prevent Covered Persons from contracting privately with third-party vendors to assist in reporting. The use of other third-party vendors that are not Reporting Agents would not relieve a Covered Person of its obligation to report Rule 10c–1a information to FINRA, as reliance on a Reporting Agent would.²⁷² Allowing clearing agencies, as well as brokers or dealers, to act as reporting agents under Rule 10c–1a should help facilitate low-cost service providers, introduce more competition, and not unduly restrict the market for Reporting Agent services to only brokers or dealers.²⁷³

²⁶⁸ See EquiLend Letter 1, at 1.

²⁶⁹ EquiLend Letter 1, at 6.

²⁷⁰ See FINRA Letter, at 15 (citing Rule 10c–1a Adopting Release, 88 FR 75655).

²⁷¹ See Rule 10c–1a Adopting Release, 88 FR 75655.

²⁷² See 17 CFR 240.10c–1a(a)(2); Rule 10c–1a Adopting Release, 88 FR 75655.

²⁷³ Rule 10c–1a Adopting Release, 88 FR 75655.

Commenters on the proposed rule change addressed Rule 6530(c)(3),²⁷⁴ which requires, among other things, that, if a Covered Person makes a good faith determination that it has a reporting obligation under Rule 10c–1a and the Rule 6500 Series, the Covered Person or Reporting Agent, as applicable, must report the Covered Securities Loan as provided in proposed Rule 6530, and if a Reportable Security is not entered into the SLATE system, the Covered Person or Reporting Agent, as applicable, must promptly notify and provide FINRA Operations, in the form and manner required by FINRA, the information specified in Rule 6530(a)(2)(A) and (B), along with such other information as FINRA deems necessary to enter the Reportable Security for reporting through SLATE.²⁷⁵ Commenters stated that requiring a Covered Person or Reporting Agent to notify FINRA to add securities to SLATE would be burdensome,²⁷⁶ inefficient,²⁷⁷ open to manual error,²⁷⁸ and duplicative and unnecessary.²⁷⁹ One commenter stated that this is a highly manual process that could “lead to a time-lag when setting up new static data that does not already exist within the SLATE system.”²⁸⁰ One commenter recommended that the notification requirement be revised or removed, and stated that it is “not an appropriate delegation of duties” to require a Covered Person to notify FINRA Operations of Reportable Securities not included in the SLATE system.²⁸¹ One commenter stated that FINRA should have primary responsibility for adding Reportable Securities to the SLATE system and not impose this obligation on Covered Persons.²⁸² One commenter requested clarification on if the Covered Person could be subject to “liability” for failing to notify FINRA about Reportable Securities not entered into SLATE.²⁸³ Another commenter stated that FINRA should consider the example of the CAT, where, the commenter stated, “there is no separate process for an

²⁷⁴ As originally proposed in the Notice, this provision was included as proposed Rule 6530(d)(4). See *supra* Part IIC.

²⁷⁵ ISLA Letter 1, at 3; ISLA Americas Letter 1, at 15; ISLA Americas Letter 2, at 9; ICI Letter, at 8.

²⁷⁶ ICI Letter, at 8; ISLA Americas Letter 1, at 15; ISLA Americas Letter 2, at 9.

²⁷⁷ ICI Letter, at 8; ISLA Letter 1, at 3; ISLA Americas Letter 1, at 15.

²⁷⁸ ISLA Letter 1, at 3.

²⁷⁹ FIF Letter, at 8–9.

²⁸⁰ See ISLA Letter 1, at 3.

²⁸¹ ISLA Americas Letter 1, at 15. See ISLA Americas Letter 2, at 9.

²⁸² ICI Letter, at 8.

²⁸³ ISLA Letter 1, at 13.

²⁶³ See FINRA Letter, at 9–10.

²⁶⁴ See 17 CFR 240.10c–1a(j)(3).

²⁶⁵ Rule 10c–1a Adopting Release, 88 FR 75689.

²⁶⁶ Rule 10c–1a Adopting Release, 88 FR 75689.

²⁶⁷ Rule 10c–1a Adopting Release, 88 FR 75689.

industry member to request that a symbol be added to CAT.”²⁸⁴

In response, FINRA stated that, under Rule 10c–1a, it is the covered person’s (or, where applicable, a reporting agent’s) responsibility to ensure that it submits required reports in compliance with applicable rules; Rule 10c–1a does not assign to an RNSA the responsibility to identify all reportable securities.²⁸⁵ FINRA stated that, as FINRA typically does with its other over-the-counter facilities, FINRA intends to create a SLATE security list that it will make available to Covered Persons and other SLATE participants (leveraging reference data from the CAT NMS list, TRACE, and the MSRB).²⁸⁶ FINRA stated, however, that a Covered Person remains obligated to determine whether a securities loan transaction that it has engaged in is reportable under Rule 10c–1a, regardless of whether the security appears on FINRA’s SLATE security list.²⁸⁷ FINRA stated that, for this reason, proposed Rule 6530(c)(3), as modified by Partial Amendment No. 1, requires that, if a Covered Person makes a good faith determination that it has a reporting obligation under Rule 10c–1a with respect to a securities loan, and the Reportable Security is not already entered into the SLATE system, the Covered Person (or its Reporting Agent) must promptly notify FINRA and work with FINRA Operations to enter the Reportable Security into the SLATE system.²⁸⁸ One commenter on Partial Amendment No. 1 stated that FINRA should publish a SLATE securities list daily based on a consolidated feed of TRACE, RTRS, and CAT eligible securities.²⁸⁹

FINRA’s decision to require Covered Persons or Reporting Agents, as applicable, to promptly notify and provide FINRA Operations with a Reportable Security that is not entered into the SLATE system is reasonable.²⁹⁰ In proposing Rule 6530(c)(3), FINRA stated that the requirement would enable FINRA to set the security up in its systems and facilitate reporting of the Covered Securities Loan to SLATE, as required by Rule 10c–1a and proposed

Rule 6530.²⁹¹ The proposed requirement to add Reportable Securities to the SLATE system is reasonably designed to facilitate the collection of loan information consistent with Rule 10c–1a.²⁹²

Some commenters addressed the statement in the Notice that “the member must nonetheless take reasonable steps to ensure that the Reporting Agent is in fact complying with the securities lending reporting requirements of SEA Rule 10c–1a and proposed FINRA Rule 6530 on its behalf.”²⁹³ One commenter stated that such a requirement deviates from Rule 10c–1a and could impact “the very point of engaging a reporting agent” because it “shift[s] reporting compliance (outside of a written agreement and timely access to data) back to the covered person creating a reconciliation loop that will be time consuming, costly and operationally intensive.”²⁹⁴ Another commenter stated that the costs of increased reliance on Reporting Agents for compliance purposes would be compounded by the proposed requirement that Covered Persons ensure that Reporting Agents file timely, accurate, and complete data.²⁹⁵

In response, Partial Amendment No. 1 removed from the proposed rule change the requirement that a Covered Person take reasonable steps to ensure that the Reporting Agent is in fact complying with the securities lending reporting requirements of Rule 10c–1a. In doing so, FINRA stated that, in its oversight of member compliance with Rule 10c–1a, in addition to reviewing whether members have complied with the requirements of Rule 10c–1a(a)(2) with respect to the use of Reporting Agents, FINRA also will review the timeliness and accuracy of SLATE reports submitted by Reporting Agents in light of a Reporting Agent’s obligations under Rule 10c–1a(b) and the underlying requirements of Rule 10c–1a. FINRA stated that, after gaining experience with the SLATE program, FINRA will reevaluate whether any additional measures are appropriate.²⁹⁶ Any such efforts would be subject to a separate proposed rule change filed with the Commission and subject to notice and comment. Some commenters supported Partial Amendment No. 1’s removal of this originally proposed requirement.²⁹⁷

The Proposal, which is consistent with Rule 10c–1a²⁹⁸ and similar requirements in rules concerning other FINRA trade reporting systems,²⁹⁹ is reasonably designed to facilitate the oversight of compliance with Rule 10c–1a, given FINRA’s expertise in administering other FINRA trade reporting systems.³⁰⁰

F. Participation in SLATE

One commenter requested that FINRA confirm its enforcement rules for non-U.S. firms for incorrect reporting.³⁰¹ This commenter requested clarity on FINRA’s proposed enforcement policy on non-FINRA members, specifically as it related to compliance for reporting to the SLATE system and violations or failures to pay SLATE reporting fees.³⁰² The commenter also asked, from a cybersecurity perspective, what processes, policies, or procedures FINRA members have in place and whether the proposed requirement in Rule 6520(a)(2)(C) regarding the maintenance of the physical security of the equipment located on the premises of the SLATE Participant would apply to both domestic and non-U.S. trading parties.³⁰³

In response to comments regarding incorrect reporting, FINRA stated that it will review the timeliness and accuracy of reports to the SLATE system in light of the requirements under Rule 10c–1a(b) and the underlying requirements of Rule 10c–1a. FINRA also stated that, after gaining experience with the SLATE program, FINRA will reevaluate whether any additional measures are appropriate.³⁰⁴ Any such efforts would be subject to a separate proposed rule change filed with the Commission and subject to notice and comment. Further, in the Notice, FINRA stated that it may validate and reject submissions to SLATE that FINRA believes are noncompliant or otherwise inconsistent with Rule 10c–1a or with the form and manner specified by FINRA for the data (as provided in FINRA rules, guidance, and technical documents and specifications), and may exclude any such information from disseminated SLATE data. FINRA stated that it may also block or reject any activity to the extent such activity puts the normal functioning of the SLATE system at risk.³⁰⁵

²⁸⁴ See FIF Letter, at 8–9.

²⁸⁵ See FINRA Letter, at 15.

²⁸⁶ FINRA Letter, at 15–16.

²⁸⁷ FINRA Letter, at 16.

²⁸⁸ FINRA Letter, at 16.

²⁸⁹ SIFMA and SIFMA AMG Letter, at 5.

²⁹⁰ See Rule 10c–1a Adopting Release, 88 FR 75667 n.365. In adopting Rule 10c–1a, the Commission stated that there may be costs for reporting entities associated with determining whether a loan is a covered securities loan, including whether a particular security is a reportable security. Rule 10c–1a Adopting Release, 88 FR 75718 n.974.

²⁹¹ Notice, 89 FR 38210.

²⁹² See Rule 10c–1a Adopting Release, 88 FR 75667 n.365.

²⁹³ See Notice, 89 FR 38210.

²⁹⁴ ISLA Americas Letter 1, at 10.

²⁹⁵ SIFMA AMG Letter 2, at 7.

²⁹⁶ Partial Amendment No. 1, 89 FR 92229 n.21.

²⁹⁷ See ISLA Americas Letter 2, at 5; SIFMA and SIFMA AMG Letter, at 3.

²⁹⁸ See 17 CFR 240.10c–1a(a), (b).

²⁹⁹ See, e.g., FINRA Rule 6730(f).

³⁰⁰ See Rule 10c–1a Adopting Release, 88 FR 75683.

³⁰¹ ISLA Letter 1, at 2.

³⁰² ISLA Letter 1, at 14.

³⁰³ ISLA Letter 1, at 13.

³⁰⁴ FINRA Letter, at 4 n.18.

³⁰⁵ Notice, 89 FR 38206.

Incorrect reporting can result in a violation of Rule 10c-1a.³⁰⁶ The Proposal, which contains security- and confidentiality-related provisions that supplement existing FINRA cybersecurity-related rules for certain SLATE Participants,³⁰⁷ is reasonably designed to address cybersecurity concerns regarding the SLATE system. The proposed requirement for a SLATE Participant to maintain the physical security of the equipment located on its premises to prevent unauthorized entry of information into SLATE is reasonably designed to help prevent risk to the SLATE system that could hamper access to information regarding securities loans or compromise the integrity of the data reported to and disseminated by SLATE. The Proposal is consistent with the requirement in Rule 10c-1a(h)(4) that FINRA establish, maintain, and enforce reasonably designed written policies and procedures to maintain the security and confidentiality of the confidential information required to be reported to it. It also is reasonably designed to address the risk that disclosure of certain loan information would identify market participants or reveal information about the internal operations of market participants.³⁰⁸ The Proposal is reasonably designed to facilitate and enforce the integrity of the collected data that is designed to improve transparency and efficiency in the securities lending market consistent with Rule 10c-1a.

G. Dissemination of Loan Information

Under the proposed rule change, as originally proposed in the Notice, FINRA would have disseminated, by the morning of the next business day, aggregate loan transaction activity, including information broken down into several subcategories (*e.g.*, by borrower

type or whether a loan is an open or term loan).³⁰⁹ Some commenters addressed the granularity of the aggregated data that FINRA would disseminate pursuant to the proposed rule change, as originally proposed in the Notice. Two commenters stated that, in Rule 10c-1a, the Commission had afforded FINRA deference as to the manner in which aggregate information is compiled and presented publicly.³¹⁰ One commenter stated that such “deference is limited to the manner in which aggregate data at the level of the entire dataset of reported covered securities loans is reported,” without permitting FINRA to break down the dataset into smaller published subsets, or “slices,” based on specific criteria.³¹¹ Some commenters also stated such granular data (*e.g.*, data broken down by borrower type) raises significant concerns that sensitive, proprietary trading strategy information may be disclosed.³¹² Commenters stated their concerns that the publication of more granular aggregated data potentially could allow market participants to “extrapolate” or “back into” individual loan amounts on a T+1 basis.³¹³ One commenter stated that the proposed rule change’s breakdown for aggregate transaction activity and distribution of loan rates should have been included in the proposing release for Rule 10c-1a and subjected to a cost-benefit analysis and formal rulemaking notice and comment period.³¹⁴ The commenter recommended that FINRA “reevaluate its proposed structure and instead propose a revised, less granular structure.”³¹⁵

In response, Partial Amendment No. 1 removed the subcategories of volume data from the aggregate loan transaction activity to be disseminated until experience is gained with the impact of disseminating volume data.³¹⁶ In particular, Partial Amendment No. 1 removed paragraphs (c)(1)(A) through (E) and amended proposed Rule 6540(c)(1) to provide that FINRA will disseminate the aggregate volume of securities subject to an Initial Covered Securities Loan or Modification to the amount of Reportable Securities loaned,

reported on the prior business day. In the FINRA Letter, FINRA stated that Rule 10c-1a requires an RNSA to disseminate “information pertaining to the aggregate transaction activity and distribution of loan rates for each reportable security.”³¹⁷ FINRA stated that the Commission did not specify the precise manner in which aggregate transaction activity or the distribution of loan rates would be compiled and disseminated by an RNSA, thereby providing FINRA with discretion as to the formulation of the data (so long as the “aggregate transaction activity” represented the absolute value of loan transactions).³¹⁸ FINRA stated that, in determining what aggregate data is appropriate for public dissemination, it remains very sensitive to concerns regarding potential information leakage.³¹⁹

Further, in response to comments, FINRA stated that this change is appropriate and that FINRA would revisit the possibility of enhancing the aggregate loan transaction activity in the future, after gaining experience with the impact of disseminating volume data and analyzing what additional information could be useful (while continuing to be sensitive to potential information leakage concerns).³²⁰ FINRA stated that any future amendments to the dissemination provisions would be subject to a separate proposed rule change filed with the Commission and subject to notice and comment. Some commenters supported Partial Amendment No. 1’s removal of the subcategories of volume data from the aggregate loan transaction activity to be publicly disseminated,³²¹ one of whom supported FINRA’s decision to revisit SLATE’s dissemination provisions.³²² The Proposal is reasonably designed to facilitate access to data that market participants can use to mitigate information asymmetries while taking account of commenter concerns regarding data security and confidentiality. The Proposal also is consistent with the requirements for the publication of data in Rule 10c-1a(g) and the broader transparency goals of Rule 10c-1a.³²³

³⁰⁶ See Rule 10c-1a(a).

³⁰⁷ Cybersecurity, FINRA (last visited December 16, 2024), <https://www.finra.org/rules-guidance/key-topics/cybersecurity#rules>. In adopting Rule 10c-1a, the Commission stated that the rule collects sensitive information and that the costs of a data breach could be substantial. See Rule 10c-1a Adopting Release, 88 FR 75721 n.1011. While Reporting Agents that are not FINRA members (*e.g.*, registered clearing agencies and certain brokers or dealers) are not subject to these cybersecurity-related FINRA rules, they nevertheless may be subject, as applicable, to existing Commission rules designed to address cybersecurity-related concerns, such as Regulation SCI, which has provisions requiring, among other things, that policies and procedures be in place to help ensure the robustness and resiliency of market technology systems, see 17 CFR 242.1001(a)(1), or Regulation S-P, which has provisions requiring policies and procedures aimed at protecting customer records or information and customer report information, see 17 CFR 248.30.

³⁰⁸ See Rule 10c-1a Adopting Release, 88 FR 75687.

³⁰⁹ See Notice, 89 FR 38212.

³¹⁰ See SIFMA Letter, at 7; ISLA Americas Letter 1, at 16.

³¹¹ SIFMA Letter, at 7. See SIFMA AMG Letter 2, at 5.

³¹² SIFMA Letter, at 7. See ICI Letter, at 9; SIFMA AMG Letter 2, at 5; Hagerty Letter, at 3.

³¹³ See SIFMA Letter, at 7; ISLA Americas Letter 1, at 16; MFA Letter, at 5–6.

³¹⁴ See SIFMA Letter, at 6–7.

³¹⁵ SIFMA Letter, at 7. See MFA Letter, at 7; SIFMA AMG Letter 2, at 5.

³¹⁶ See FINRA Letter, at 14.

³¹⁷ FINRA Letter, at 13 (citing 17 CFR 240.10c-1a(g)(5)).

³¹⁸ FINRA Letter, at 14 (citing Rule 10c-1a Adopting Release, 88 FR 75684).

³¹⁹ FINRA Letter, at 14.

³²⁰ See Partial Amendment No. 1, 89 FR 92232.

³²¹ See ISLA Americas Letter 2, at 6; SIFMA and SIFMA AMG Letter, at 3.

³²² See ISLA Americas Letter 2, at 6.

³²³ See Rule 10c-1a Adopting Release, 88 FR 75726. See also Rule 10c-1a Adopting Release, 88 FR 75707 n.849.

The Proposal is reasonably tailored to help ensure that the absolute value of transactions is disseminated such that net position changes should not be discernable in the data. This should help to address commenter concerns regarding potential exposure of proprietary information while still providing volume transparency to market participants. The Proposal is reasonably designed to facilitate the dissemination of loan information consistent with Rule 10c–1a.

One commenter on Partial Amendment No. 1 stated that the Commission and FINRA should require that unsettled loans be excluded from any public dissemination of individual loan transaction data pursuant to proposed Rule 6540(a) and (b) and from any daily loan statistics published pursuant to proposed Rule 6540(c).³²⁴ The commenter stated that it does not see the value to the market in publishing data regarding unsettled loans and that including unsettled loans in publicly disseminated loan information “would be misleading and cause investor confusion.”³²⁵ The Commission disagrees that the inclusion of unsettled loans (that are Covered Securities Loans) in data disseminated pursuant to proposed Rule 6540 would be misleading and cause investor confusion, as the commenter suggested and instead believes that the omission of this data would be inconsistent with Rule 10c–1a’s broader transparency goals.³²⁶ For instance, the dissemination of data regarding unsettled loans that are Covered Securities Loans would provide information regarding the material terms of securities loans that have been agreed to.³²⁷ FINRA’s decision to disseminate, pursuant to proposed Rule 6540, data regarding unsettled loans that are Covered Securities Loans is consistent with Rule 10c–1a(g), which applies to “covered securities loans,” generally, without distinguishing those that are unsettled.

Some commenters stated that the *de minimis* loan transaction activity threshold, as originally proposed in the Notice, was set too low.³²⁸ One commenter stated that the threshold of three loans is too low, “especially when viewed in conjunction with the possibility that FINRA will publish

granular volume buckets.”³²⁹ Commenters stated that FINRA should consider whether the application of the threshold “should be mandatory and not an optional exclusion for confidentiality reasons.”³³⁰ Another commenter stated that the discretionary authority to exclude *de minimis* loan transaction activity would “have no mitigating effect whatsoever” on the consequences of publicly disclosing sensitive, granular loan information.³³¹ One commenter requested clarification as to whether FINRA “will” or “may” omit *de minimis* loan transaction activity.³³²

In response, Partial Amendment No. 1 modified proposed Rule 6540.01 to clarify that FINRA’s application of the *de minimis* threshold will be non-discretionary and to provide that FINRA will not include aggregate volume information for a security unless there were reports submitted to SLATE on the prior business day for at least 10 distinct Covered Securities Loans in the Reportable Security (represented by different FINRA-assigned unique loan identifiers).³³³ In the FINRA Letter, FINRA stated that the *de minimis* exclusion was not intended to provide FINRA with discretion on a case-by-case basis as to whether to omit volume information that met the *de minimis* criteria.³³⁴ Some commenters supported Partial Amendment No. 1’s increase to the *de minimis* threshold and clarification that application of the *de minimis* threshold is non-discretionary.³³⁵ One commenter stated that FINRA should consider further whether 10 distinct Covered Securities Loans may still be too low of a threshold.³³⁶ The commenter stated, without providing any support for its suggested figure, that a higher threshold of 25 distinct Covered Securities Loans

would be more appropriate to address concerns that sophisticated market participants could use the aggregated volume information to extrapolate sensitive information by pairing the aggregate transaction activity data with data on individual loan transactions.³³⁷ Another commenter, however, stated that the threshold of 10 distinct Covered Securities Loans—in addition to the provision’s use of the phrase “will not include” to clarify that the application of the *de minimis* threshold is non-discretionary—will facilitate the prevention of information leakage and enhance the integrity of securities loan reporting.³³⁸ The Commission agrees with this comment and that the Proposal’s *de minimis* threshold of 10 distinct Covered Securities Loans is reasonable. The threshold of 10 distinct Covered Securities Loans will facilitate the prevention of information leakage and is less likely than the commenter’s suggested threshold of 25 distinct Covered Securities Loans to reduce the transparency value of the disseminated information. The Proposal is consistent with the publication of data requirements of Rule 10c–1a(g), the data protection requirements in Rule 10c–1a(h)(4), and the broader transparency goals of Rule 10c–1a.³³⁹

H. Other Provisions

1. Emergency Authority

Some commenters stated that the proposed suspension of the reporting or dissemination of certain Covered Securities Loans or Data Elements for periods deemed necessary by FINRA, as discussed above in Part II.F, would undermine the transparency that the proposed FINRA Rule 6500 Series aims to promote.³⁴⁰ These commenters stated that the proposed suspension “would inadvertently create an information asymmetry, thus disadvantaging end borrowers and beneficial owners who rely on this data for making prudent investment decisions” and “strongly advocate[d] for stringent guidelines governing the suspension of reporting requirements to avoid undermining these goals.”³⁴¹ Another commenter “strongly advocate[d] for . . . the publication of the reasons and timeframe for suspension to avoid undermining [the proposed rule’s] goals.”³⁴²

³²⁴ See SIFMA and SIFMA AMG Letter, at 4.

³²⁵ SIFMA and SIFMA AMG Letter, at 4.

³²⁶ See, e.g., Rule 10c–1a Adopting Release, 88 FR 75707.

³²⁷ See Rule 10c–1a Adopting Release, 88 FR 75662 n.288.

³²⁸ See, e.g., ISLA Letter 1, at 10; ISLA Americas Letter 1, at 16; ICI Letter, at 9; SIFMA AMG Letter 2, at 5.

³²⁹ ISLA Americas Letter 1, at 16.

³³⁰ ISLA Letter 1, at 10. See ICI Letter, at 9.

³³¹ MFA Letter, at 6.

³³² ISLA Americas Letter 1, at 16.

³³³ FINRA stated that it will not have insight into all of the relevant loan details necessary to generate the statistics described in proposed Rule 6540(c) with respect to modifications to loans for which reporting was not required pursuant to Rule 10c–1a(c) at the time the loan was agreed to or last modified (i.e., modifications reported to SLATE pursuant to Rule 10c–1a(d)(2)). FINRA stated that, therefore, the daily loan statistics that FINRA will publish will only reflect modifications to Covered Securities Loans that were previously reported to SLATE.

³³⁴ FINRA Letter, at 14 n.52. This proposed *de minimis* provision is intended to address potential information leakage in circumstances where there are multiple reported events associated with the same loan on a given day. Partial Amendment No. 1, 89 FR 92233 n.49.

³³⁵ See ISLA Americas Letter 2, at 6; SIFMA and SIFMA AMG Letter, at 7.

³³⁶ SIFMA and SIFMA AMG Letter, at 7.

³³⁷ SIFMA and SIFMA AMG Letter, at 7.

³³⁸ See ISLA Americas Letter 2, at 6.

³³⁹ See Rule 10c–1a Adopting Release, 88 FR 75726. See also Rule 10c–1a Adopting Release, 88 FR 75687–88, 75707 n.849.

³⁴⁰ See, e.g., Form Letter A; Form Letter D.

³⁴¹ See, e.g., Form Letter A; Form Letter D.

³⁴² Letter from Jennifer (May 15, 2024).

In response, FINRA stated that it does not believe that the proposed provision, which would provide FINRA with limited, emergency authority regarding the suspension of the reporting or dissemination of certain Covered Securities Loans or Data Elements, would reduce the transparency intended to be provided under Rule 10c–1a. FINRA stated that, should the proposed emergency authority be used, any such action would be taken only as market conditions warrant and only in consultation with the SEC.³⁴³ FINRA stated that it has similar authority in connection with other transaction reporting facilities that it operates, and that it believes that such emergency authority is appropriate to maintain fair and orderly markets.³⁴⁴ This emergency authority is consistent with existing FINRA rules governing other transparency regimes.³⁴⁵ The Commission agrees that the proposed Emergency Authority provision of SLATE is reasonably designed to maintain fair and orderly markets as market conditions may warrant. Such authority, pursuant to proposed Rule 6550, could be exercised only in consultation with the Commission, which should help to ensure that the emergency authority is used in a manner consistent with the requirements and goals of Rule 10c–1a.

I. Costs and RNSA Fees

Commenters stated that FINRA has yet to publish information about its contemplated Covered Securities Loan reporting fees and securities loan data products and associated fees, and requested that FINRA provide such information.³⁴⁶ Commenters stated that market participants and the Commission cannot adequately assess the costs and benefits of the Proposal without knowing what reporting fees FINRA plans to charge.³⁴⁷ Commenters also requested time to consider FINRA's contemplated SLATE reporting fees and data product fees.³⁴⁸ One commenter recommended in the absence of a proposed fee schedule “that any final rule promulgated by FINRA be

conditional upon publication of proposed costs and public comment.”³⁴⁹

On November 20, 2024, FINRA filed this proposed rule change with the Commission. Specifically, pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder, FINRA filed a proposed rule change to set forth in new FINRA Rule 7720 securities loan reporting fees and securities loan data products with associated fees.³⁵⁰ FINRA designated the SLATE Fee Filing as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act and Rule 19b–4(f)(2) thereunder, which renders it effective upon filing with the Commission. In addition, within the SLATE Fee Filing, FINRA estimates the costs it expects, at this juncture, to incur to build and operate SLATE, as well as the revenues it expects to receive from its proposed fees.³⁵¹ To solicit comments on the proposed rule change from interested persons, the Commission published notice of the SLATE Fee Filing on its website on November 21, 2024, and publication of

that notice in the **Federal Register** occurred on November 27, 2024, with a 21-day comment period beginning on the date of **Federal Register** publication and expiring on December 18, 2024.³⁵² The SLATE Fee Filing is responsive to commenters seeking the ability and time to understand what fees FINRA proposes to charge in connection with SLATE reporting and public dissemination of SLATE data, and what costs FINRA expects to incur, at this juncture, to build and operate SLATE.

Commenters on the Proposal also expressed views on how FINRA should allocate, via SLATE fees, the SLATE costs that it incurs.³⁵³ One commenter recommended that the Commission ensure FINRA imposes “the costs of building and operating the reporting system equally on lenders and borrowers, instead of solely on lenders.”³⁵⁴ Similarly, another commenter stated that the SLATE fees should “be borne by market participants more broadly” rather than solely by Covered Persons submitting data.³⁵⁵ One commenter expressed concern regarding the “disproportionate allocation of compliance costs” to lenders and urged FINRA to exempt lenders (including lenders who may pool their data) from any fees associated with accessing SLATE data for commercial purposes to ensure equitable access to industry wide-data.³⁵⁶

That FINRA will incur costs to build and maintain SLATE and proposes to pass them to market participants through SLATE fees is consistent with Rule 10c–1a and what the Commission stated when adopting the rule, and also consistent with the Exchange Act.³⁵⁷ Rule 10c–1a requires Covered Persons to report to an RNSA the required data elements set forth in the rule for Covered Securities loans, and requires the RNSA to make reported data publicly available. In the Adopting Release, the Commission stated that Rule 10c–1a will impose costs on an

³⁴³ ISLA Americas Letter, at 11.

³⁵⁰ See Securities Exchange Act Release No. 101697 (Nov. 21, 2024), 89 FR 93750 (Nov. 27, 2024) (“SLATE Fee Filing”). With respect to reporting, proposed FINRA Rule 7720 sets forth fees for: (1) SLATE system connectivity; (2) Initial Covered Securities Loan reporting; (3) Loan Modification reporting; (4) late reporting; and (5) reporting cancellations, corrections, or deletions. These reporting fees would be paid by SLATE Participants. See SLATE Fee Filing, 89 FR 93751. With respect to data products, proposed FINRA Rule 7720 sets forth fees for: (1) SLATE Loan-Level Data and Daily Loan Statistics, which refers to the data described in proposed FINRA Rule 6540(a)–(c); and (2) Historic SLATE Data, which refers to SLATE Loan-Level Data and Daily Loan Statistics from the beginning of SLATE data reporting through the end of the most recent calendar year. See SLATE Fee Filing, 89 FR 93751. These data product fees would be paid by any person or organization subscribing to receive from FINRA downloadable files of SLATE data for commercial purposes. See SLATE Fee Filing, 89 FR 93751. Pursuant to proposed FINRA Rule 6540.02, which is part of the Proposal, FINRA would display (*i.e.*, make viewable) SLATE data free of charge on its website for personal, non-commercial uses. See SLATE Fee Filing, 89 FR 93751. Additional detail regarding FINRA's proposed SLATE reporting fees and SLATE data product fees, as well as FINRA's related cost and revenue estimates, can be found in the SLATE Fee Filing.

³⁵¹ SLATE Fee Filing, 89 FR 93753. FINRA stated in the SLATE Fee Filing that it intends to reassess the SLATE reporting fees and data products and associated fees after the commencement of SLATE reporting and dissemination and obtaining additional information regarding reporting volumes and data product subscription interest. See SLATE Fee Filing, 89 FR 93753. And FINRA stated that, to the extent it determines that a change to the SLATE fee structure would be appropriate to better align SLATE revenues with the incremental direct ongoing costs incurred in connection with the SLATE program, FINRA would file a proposed rule change with the Commission to revise the proposed SLATE fees. See SLATE Fee Filing, 89 FR 93753.

³⁵² See SLATE Fee Filing, 89 FR 93750.

Comments received in response to the SLATE Fee Filing can be found on the Commission's website at <https://www.sec.gov/comments/sr-finra-2024-020/srfinra2024020.htm>.

³⁵³ See, *e.g.*, ICI Letter, at 9–10; ISLA Letter 1, at 12, 14; Letter from David Schwartz, Executive Director, Center for the Study of Financial Market Evolution (May 28, 2024) (“CSFME Letter”), at 2–3. See also ISLA Americas Letter 2, at 9.

³⁵⁴ ICI Letter, at 9–10.

³⁵⁵ ISLA Letter 1, at 12, 14.

³⁵⁶ CSFME Letter, at 2–3.

³⁵⁷ As stated elsewhere herein, the Commission has found that the Proposal, by implementing Rule 10c–1a, would help protect investors and promote just and equitable principles of trade, consistent with Section 15A(b)(6) of the Exchange Act. See, *e.g.*, *supra* Part III.

³⁴³ FINRA Letter, at 13.

³⁴⁴ FINRA Letter, at 13.

³⁴⁵ See, *e.g.*, FINRA Rule 6770 (Emergency Authority); Securities Exchange Act Release No. 60726 (September 28, 2009), 74 FR 50991 (October 2, 2009), at 50996.

³⁴⁶ See Notice, 89 FR 38206. See, *e.g.*, ISLA Letter 1, at 12; Associations Collective Letter, at 3; MFA Letter, at 2 n.7; Robinhood Letter, at 3 n.14; EquiLend Letter 1, at 7; SIFMA AMG Letter 1, at 2.

³⁴⁷ See Associations Collective Letter, at 3; ICI Letter, at 9; ISLA Americas Letter, at 5.

³⁴⁸ See SIFMA Letter, at 7–8; SIFMA AMG Letter 1, at 2; EquiLend Letter 1, at 7.

RSNA, and that the RNSA may pass on these costs by imposing fees on entities that provide Rule 10c–1a information to the RNSA and/or consumers of the Rule 10c–1a data.³⁵⁸ This is what FINRA, the lone RNSA, has proposed to do in the SLATE Fee Filing. The proposed SLATE reporting fees would be paid by SLATE Participants under the SLATE Fee Filing, the effect of which may be that SLATE reporting fees are paid primarily by, and related SLATE costs borne by, Covered Person lenders and lending agents, *i.e.*, entities that will provide Rule 10c–1a information to FINRA. And the proposed SLATE data product fees would be paid by, and related SLATE costs borne by, any person or organization subscribing to receive from FINRA downloadable files of SLATE data for commercial purposes, *i.e.*, consumers of the Rule 10c–1a data.

To the extent commenters express views on what SLATE fees FINRA should charge or how FINRA should allocate SLATE fees,³⁵⁹ these comments are relevant to the Slate Fee Filing and not to this Proposal. Pursuant to the Section 19(b)(3)(A) and Rule 19b-4 procedures applicable to the SLATE Fee Filing, the Commission will separately consider whether the proposed fees set forth in the SLATE Fee Filing are consistent with Section 15A of the Exchange Act, and in particular Section 15A(b)(5),³⁶⁰ which requires that FINRA's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which FINRA operates or controls. If it appears to the Commission that it is necessary or appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, the Commission summarily

may temporarily suspend the SLATE Fee Filing and institute proceedings to determine whether the SLATE Fee Filing should be approved or disapproved.³⁶¹

J. Other Issues Raised by Commenters Regarding the Proposal

1. Comment Period Extension

Commenters on the proposed rule change, as originally proposed in the Notice, stated that the length of the comment period for FINRA's proposed rule change was too short, requesting that the comment period be extended.³⁶² Commenters stated that a longer comment period was necessary to consider certain aspects of the proposed rule change, as originally proposed in the Notice.³⁶³ One commenter stated that, given that the proposed rule change, as originally proposed in the Notice, included requirements beyond those of Rule 10c–1a, “it is especially important for the Commission to ensure it takes the time necessary to closely review FINRA's proposed rules and obtain fulsome public feedback.”³⁶⁴

As discussed above, in Part I, the Commission extended until August 5, 2024, the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change. On August 5, 2024, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, and allow for additional analysis of, and input from commenters with respect to, the scope and implementation of the proposed rules. On October 28, 2024, the Commission designated January 2, 2025, as the date by which the Commission shall either approve or disapprove the proposed rule change.

Following the Commission's publication of its *Notice of Designation*

of a Longer Period for Commission Action on a Proposed Rule Change to Adopt the FINRA Rule 6500 Series, some commenters submitted comments stating their concerns about—what commenters called—a 45-day “delay” in implementing SLATE. Some commenters opposed the Commission's designation of a longer period within which to take action on FINRA's proposed rule change.³⁶⁵ Some commenters called the extension “unacceptable” or stated that the delay in the implementation of the FINRA rules could undermine the stability and transparency of the financial system and weaken investor confidence.³⁶⁶ The Commission's publication of its *Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change to Adopt the FINRA Rule 6500 Series* did not delay the implementation of SLATE. Pursuant to Rule 10c–1a, the date for the Proposal to be effective is no later than 12 months after the effective date of Rule 10c–1a, which is January 2, 2025.³⁶⁷

2. SLATE Compliance Period(s)

One commenter recommended that FINRA provide SLATE Participants with six months of user acceptance testing.³⁶⁸ The commenter stated that such testing “will be a critical component of the development lifecycle—reducing risk and increasing the quality of submissions.”³⁶⁹ Whether FINRA decides to provide for such testing, taking account of the applicable Rule 10c–1a compliance periods, is within FINRA's discretion to structure its systems and processes as it sees fit.³⁷⁰

A commenter stated that the Commission should pause the Rule 10c–1a compliance dates until the legal challenge regarding Rule 10c–1a is resolved.³⁷¹ Another commenter stated that the SEC and FINRA should “avoid pursuing” the Proposal until the legal challenge is adjudicated.³⁷² In general, the filing of a legal challenge to an agency rule does not itself alter the

³⁵⁸ See Rule 10c–1a Adopting Release, 88 FR 75693. The Commission also understands that lenders may pass on their reporting costs to their customers. See Rule 10c–1a Adopting Release, 88 FR 75693. In addition, a commenter has stated that it is more than likely that lending agents will pass on any fees that they bear. See ISLA Americas Letter 2, at 9. The Commission believes, however, that investors will ultimately benefit from the improved transparency provided by SLATE, as a result of enhanced price discovery and an improved ability to determine the extent to which their broker-dealers and lending agents are obtaining terms consistent with market conditions for loans with similar characteristics. See *supra* notes 79–90 and accompanying text.

³⁵⁹ See, *e.g.*, ISLA Americas Letter 2, at 9 (urging the Commission and FINRA to ensure that the cost structure related to the reporting of covered securities loans is equitable, and expressing an intention to submit comments with respect to the SLATE Fee Filing in a separate letter); CSFME Letter at 2–3 (urging that lenders be exempt from fees for SLATE data products to ensure equitable access to data).

³⁶⁰ See 15 U.S.C. 78o–3(b)(5).

³⁶¹ See 15 U.S.C. 78s(b)(3)(C), 78s(b)(2)(B). The proposed SLATE reporting fees would not be implemented before January 2, 2026, and the proposed SLATE data product fees would not be implemented before April 2, 2026. See SLATE Fee Filing, 89 FR 93753–54 (stating that implementation of SLATE reporting fees and data product fees will correspond with Rule 10c–1a's compliance dates for the commencement of reporting to SLATE and SLATE data dissemination, respectively); Rule 10c–1a Adopting Release, 88 FR 75691 (setting forth Rule 10c–1a's compliance schedule). Should the Commission determine to suspend and institute proceedings on the SLATE Fee Filing, those proceedings would conclude before the January 2, 2026, implementation date for SLATE reporting fees. See 15 U.S.C. 78s(b)(3)(C), 78s(b)(2)(B).

³⁶² See, *e.g.*, ISLA Letter 1, at 1–2; SIFMA AMG Letter 1, at 2; Associations Collective Letter, at 3; SIFMA AMG Letter 2, at 2, 8.

³⁶³ See SIFMA AMG Letter 1, at 2; SIFMA Letter, at 7–8.

³⁶⁴ Associations Collective Letter, at 3.

³⁶⁵ See, *e.g.*, Form Letter C.

³⁶⁶ See, *e.g.*, Form Letter C.

³⁶⁷ See Rule 10c–1a Adopting Release, 88 FR 75691 (requiring that the proposed FINRA rules are effective no later than 12 months after the effective date of final Rule 10c–1a, and that covered persons must start reporting Rule 10c–1a information to an RNSA starting on the first business day 24 months after the effective date of final Rule 10c–1a).

³⁶⁸ S3 Partners Letter, at 5.

³⁶⁹ S3 Partners Letter, at 5.

³⁷⁰ See, *e.g.*, Rule 10c–1a Adopting Release, 88 FR 75667 n.365.

³⁷¹ See Robinhood Letter, at 3 (referencing *Nat'l Ass'n. Priv. Fund Mgr. v. SEC*, No. 23–60626 (5th Cir.)).

³⁷² See Hagerly Letter, at 3.

compliance date(s) set forth in the rule. Accordingly, the challenge to Rule 10c–1a does not change the compliance date(s) set forth therein or the need for affected parties to comply with Rule 10c–1a.

Another commenter stated that the Commission should work with FINRA to afford FINRA an appropriate amount of additional time to address the feedback FINRA may receive on Partial Amendment No. 1, such as by allowing FINRA to consent to additional time for Commission consideration of the Proposal.³⁷³ As discussed above, in Parts I and III.J.1, January 2, 2025, is the date by which the Commission shall either approve or disapprove the Proposal and is the compliance date under Rule 10c–1a for the Proposal to be effective. The commenter's suggestion to allow additional time for the Proposal to be considered would extend consideration of the Proposal beyond, and therefore would be inconsistent with, the Rule 10c–1a compliance date for the Proposal to be effective.

K. Issues Outside the Scope of the Proposal

The Commission received comments on the Draft SLATE Participant Reporting Specifications.³⁷⁴ The SLATE Participant Reporting Specifications were not filed or required to be filed with the Commission as part of the Proposal. These issues are outside the scope of the Proposal, which, as discussed above in Parts III.A through III.J, is consistent with Section 15A(b)(6) of the Exchange Act. FINRA responded to comments regarding the Technical Specifications for SLATE Reporting in the FINRA Letter.³⁷⁵

³⁷³ See SIFMA and SIFMA AMG Letter, at 2. The commenter suggested that the Commission “allow[] FINRA to consent to additional time for Commission consideration of the SLATE proposal under Section 19(b)(2)(B)(ii) of the Exchange Act.” SIFMA and SIFMA AMG Letter, at 2.

³⁷⁴ See, e.g., ISLA Americas Letter 1, at 13–14, 17; ISLA Americas Letter 2, at 4, 8; FIF Letter, at 3–4. See also FIF Letter, at 6, 8. FINRA has included on its website additional information regarding SLATE, including the Participation Specification for Securities Lending and Transparency Engine (SLATE™). See Securities Lending and Transparency Engine, FINRA (last visited December 19, 2024), <https://www.finra.org/filing-reporting/slate>. Some commenters stated that reporting the data elements in proposed Rule 6530(a)(2)(I) and (J) will not always enable Covered Persons to provide a complete depiction of the specific fee arrangement used for certain reported covered securities loans within the limited space of the SLATE field for the rebate rate or lending fee. See SIFMA and SIFMA AMG Letter, at 4–5; ISLA Americas Letter 2, 6–7. The structuring of particular data fields within a SLATE report is discussed in the SLATE Participant Reporting Specifications, which were not filed or required to be filed with the Commission as part of the Proposal.

³⁷⁵ See FINRA Letter, at 11–12.

L. Consultation With the Treasury Department

Pursuant to Section 19(b)(6) of the Act,³⁷⁶ the Commission has considered the sufficiency and appropriateness of existing laws and rules applicable to government securities brokers, government securities dealers, and their associated persons in approving the proposed rule change. Pursuant to Section 19(b)(5) of the Act,³⁷⁷ the Commission consulted with and considered the views of the Treasury Department in determining whether to approve the proposed rule change. The Treasury Department did not object to the proposed rule change.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁷⁸ that the proposed rule change (SR–FINRA–2024–007), as modified by Partial Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷⁹

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2025–00179 Filed 1–7–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102080; File No. SR–Phlx–2024–75]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Definitions of “Class” and “Series” To Harmonize Terms With Affiliated Exchanges

January 2, 2025.

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 20, 2024, Nasdaq PHLX LLC (“Exchange”) filed with the Securities and Exchange Commission

³⁷⁶ 15 U.S.C. 78s(b)(6).

³⁷⁷ 15 U.S.C. 78s(b)(5) (providing that the Commission “shall consult with and consider the views of the Secretary of the Treasury prior to approving a proposed rule filed by a registered securities association that primarily concerns conduct related to transactions in government securities, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor”).

³⁷⁸ 15 U.S.C. 78s(b)(2).

³⁷⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

(“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 Options 1, Section 1, Applicability, Definitions and References, to amend the definitions of “class” and “series.”

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 <https://listingcenter.nasdaq.com/rulebook/phlx/rulefilings> and on the Commission's website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-Phlx-2024-75.

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.⁵ 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-Phlx-2024-75) or by sending an email to rule-

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 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.

comments@sec.gov. Please include file number SR-Phlx-2024-75 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-Phlx-2024-75. 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-Phlx-2024-75). 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-Phlx-2024-75 and should be submitted on or before January 29, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2025-00173 Filed 1-7-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102086; File No. SR-IEX-2024-30]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Transaction Pricing Schedule for Securities Priced Below \$1.00

January 2, 2025.

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 20, 2024, Investors Exchange LLC ("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 the fees and rebates applicable to Members⁵ (the "Fee Schedule"), pursuant to IEX Rule 15.110(a) and (c) to (i) provide a rebate of 0.15% of the total dollar value of an execution in a security priced below \$1.00 to an order that provides displayed liquidity, and (ii) increase the fee from 0.09% of the total dollar value of the execution to 0.15% of the total dollar value of the execution in a security priced below \$1.00 to an order that removes displayed liquidity. No other fee changes are proposed. Changes to the Fee Schedule pursuant to this proposal are effective upon filing,⁶ and will be operative on January 1, 2025.

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 <https://www.iexexchange.io/resources/regulation/rule-filings> and on the Commission's website at https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/national-securities-exchanges?file_number=SR-IEX-2024-30.

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

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 See IEX Rule 1.160(s).

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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 the Exchange.

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-IEX-2024-30) or by sending an email to rule-comments@sec.gov. Please include file number SR-IEX-2024-30 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-IEX-2024-30. 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-IEX-2024-30). 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-IEX-2024-30 and should be submitted on or before January 29, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2025-00177 Filed 1-7-25; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20946 and #20947; OREGON Disaster Number OR-20006]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Oregon

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oregon (FEMA-4854-DR), dated January 1, 2025.

Incident: Wildfires.

DATES: Issued on January 1, 2025.

Incident Period: July 10, 2024 through August 23, 2024.

Physical Loan Application Deadline Date: March 3, 2025.

⁸ 17 CFR 200.30-3(a)(12).

⁶ 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).

Economic Injury (EIDL) Loan Application Deadline Date: October 1, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street, SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on January 1, 2025, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Gilliam, Grant, Umatilla, Wasco, Wheeler.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
<i>For Economic Injury:</i>	
Non-Profit Organizations without Credit Available Elsewhere ...	3.250

The number assigned to this disaster for physical damage is 209465 and for economic injury is 209470.

(Catalog of Federal Domestic Assistance Number 59008)

Alejandro C. Contreras,

Acting Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2025-00152 Filed 1-7-25; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20948 and #20949; Missouri Disaster Number MO-20009]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Missouri

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Missouri (FEMA-4855-DR), dated January 1, 2025.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

DATES: Issued on January 1, 2025.

Incident Period: November 3, 2024 through November 9, 2024.

Physical Loan Application Deadline Date: March 3, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: October 1, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street, SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on January 1, 2025, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Carter, Crawford, Dent, Douglas, Howell, Oregon, Ozark, Phelps, Pulaski, Reynolds, Shannon, Texas, Washington, Wright.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations with Credit Available Elsewhere ...	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.625
<i>For Economic Injury:</i>	
Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 20948C and for economic injury is 209490.

(Catalog of Federal Domestic Assistance Number 59008)

Alejandro C. Contreras,

Acting Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2025-00148 Filed 1-7-25; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[License No. 03/03-0265]

New York Credit SBIC Fund L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company license number 03/03-0265 issued to New York Credit SBIC Fund L.P., said license is hereby declared null and void.

Thomas Morris,

Director, Patient Capital Investments, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2025-00134 Filed 1-7-25; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 01/01-0416]

Brookside Mezzanine Fund II, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company license number 01/01-0416 issued to Brookside Mezzanine Fund II, L.P., said license is hereby declared null and void.

Thomas Morris,

Director, Patient Capital Investments, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2025-00131 Filed 1-7-25; 8:45 am]

BILLING CODE P

SOCIAL SECURITY ADMINISTRATION**[Docket No: SSA-2025-0001]****Agency Information Collection
Activities: Comment Request**

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA.

(SSA) Social Security Administration, OLC, Attn: Reports Clearance Director, Mail Stop 3253 Altmeyer, 6401 Security Blvd., Baltimore, MD 21235.

Fax: 833-410-1631.

Email address:

OR.Reports.Clearance@ssa.gov.

Or you may submit your comments online through <https://www.reginfo.gov/public/do/PRAMain> by clicking on Currently under Review—Open for Public Comments and choosing to click on one of SSA's published items. Please reference Docket ID Number [SSA-2025-0001] in your submitted response.

I. SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than February 7, 2025. Individuals can obtain copies of these OMB clearance packages by writing to the

OR.Reports.Clearance@ssa.gov.

1. *Integrated Registration Services (IRES) System—20 CFR 401.45—0960-0626*. IRES is an internet-based application that replaces the respondent's handwritten paper-based signature with a user identification number (User ID) and a password. IRES provides registration, authentication, and authorization gateway services for Business-to-Government (B2G) suites of services, including, but not limited to:

- a. Business Services Online (BSO)
- Claimant Representative Services
- b. Government Services Online (GSO) (OMB#0960-0757)

- Office of Child Support Enforcement (OCSE) Services
- Secure exchange of information between SSA and third parties in support of SSA and other federal government-supported programs
- c. Customer Support Application (CSA)
- CSA provides customer support service for IRES. CSA allows users to complete the registration process via a telephone interview with a Social Security customer service representative.

The IRES System verifies the identity of individuals, businesses, organizations, entities, and government agencies seeking to use SSA's secured internet and telephone applications. Individuals need this verification to electronically request and exchange business data with SSA. Requestors provide SSA with the information needed to establish their identities. Once SSA verifies identity, the IRES system issues the requestor a user identification number and a password to conduct business with SSA. Respondents are employers; employees; third party submitters of wage data business entities providing taxpayer identification information; appointed representatives; representative payees; and data exchange partners conducting business in support of SSA programs.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
IRES Internet Registrations	266,210	1	5	22,184	*\$37.63	**\$834,784
IRES Internet Requestors	14,472,710	1	2	482,424	*37.63	**18,153,615
IRES CS (CSA) Registrations	2,216	1	11	406	*37.63	**15,278
Totals	14,741,136			505,014		**19,003,677

* We based this figure on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm); hourly wages for Information and Record Keeping Analysts hourly salary, as reported by Bureau of Labor Statistics data. (<https://www.bls.gov/oes/current/oes434199.htm>); and average hourly wages for paralegals/legal assistants and lawyers as posted by the U.S. Bureau of Labor Statistics (https://www.bls.gov/oes/current/oes_nat.htm).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. *Notification of a Social Security Number (SSN) to an Employer for Wage Reporting Purposes—20 CFR 422.103(a)—0960-0778*. Individuals applying for employment must provide a SSN or indicate they have applied for one. However, when an individual applies for an initial SSN, there is a delay between the assignment of the number and the delivery of the SSN card. At an individual's request, SSA

uses Form SSA-132 to send the individual's SSN to an employer. Mailing this information to the employer: (1) ensures the employer has the correct SSN for the individual; (2) allows SSA to receive correct earnings information for wage reporting purposes; and (3) reduces the delay in the initial SSN assignment and delivery of the SSN information directly to the employer. It also enables SSA to verify

the employer as a safeguard for the applicant's personally identifiable information. The respondents are individuals applying for an initial SSN who ask SSA to mail confirmation of their application or the SSN to their employers.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA-132	361,902	1	5	30,159	*\$31.48	** 24	***\$5,506,482

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on the average FY 2025 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: January 2, 2025

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2025-00128 Filed 1-7-25; 8:45 am]

BILLING CODE 4191-02-P

SURFACE TRANSPORTATION BOARD

[Docket No. MCF 21127]

TIP Minnesota Coaches Acquisition LLC, TIP MN Investments LP, and Tiger Infrastructure Partners Fund IV AIV LP—Acquisition of Control—Marschall Line, Inc., Minnesota Coaches, Inc., Rehbein Transit Co., Inc., Ready Bus Company, Inc., Voyageur Bus Company, Inc., Minn-Dakota Coaches, Inc., and Faribault Transportation Service, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving and authorizing finance transaction.

SUMMARY: TIP Minnesota Coaches Acquisition LLC, TIP MN Investments LP, and Tiger Infrastructure Partners Fund IV AIV LP (Applicants) filed an application seeking authority to acquire control of seven interstate passenger motor carriers: Marschall Line, Inc. (Marschall Line), Minnesota Coaches, Inc. (Minnesota Coaches), Rehbein Transit Co., Inc. (Rehbein), Ready Bus Company Inc. (Ready Bus), Voyageur Bus Company, Inc. (Voyageur Bus), Minn-Dakota Coaches, Inc. (Minn-Dakota), and Faribault Transportation Service, Inc. (FTS) (collectively, the Subject Carriers). The Board is tentatively approving and authorizing the transaction. If no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by February 24, 2025. If any comments are filed, Applicants may file a reply by March 10, 2025. If no opposing comments are filed by February 24, 2025, this notice shall be effective on February 25, 2025.

ADDRESSES: Comments, referring to Docket No. MCF 21127, may be filed with the Board either via e-filing on the Board's website or in writing addressed

to: Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001. In addition, send one copy of comments to Applicants' representative: Richard G.S. Lee, Cooley LLP, 1299 Pennsylvania Avenue NW, Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT:

Brian O'Boyle at (202) 245-0364. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: According to the application, TIP Minnesota Coaches Acquisition LLC (TIP Minn. Coaches) is a Delaware limited liability company headquartered in New York, N.Y., and is not a federally regulated motor carrier, nor does it operate or have a controlling interest in any federally regulated motor carriers. (Appl. 2.) TIP Minn. Coaches is wholly owned by TIP MN Investments LP (TIP MN Investments), a Delaware limited partnership headquartered in New York. (*Id.*) TIP MN Investments is in turn wholly owned by Tiger Infrastructure Partners Fund IV AIV LP, a fund and Delaware limited partnership, headquartered in New York.¹ (*Id.* at 3.) Applicants state that neither TIP MN Investments, Tiger Infrastructure Partners Fund IV AIV LP, Tiger Infrastructure Associates GP IV LP, nor Tiger Infrastructure Partners LP are federally regulated motor carriers, nor do they operate or have a controlling interest in any federally regulated motor carriers. (*Id.* at 3-4.)

Applicants state that, under the proposed transaction, TIP Minn. Coaches would acquire control of the Subject Carriers from Patrick O. Regan (Seller) and other minority shareholders² by purchasing a majority

¹ Applicants state that Tiger Infrastructure Partners Fund IV AIV LP is managed by Tiger Infrastructure Associates GP IV LP, a noncarrier Delaware limited partnership headquartered in New York. (Appl. 3.) More information about these entities and Tiger Infrastructure Fund LP, which is the private equity firm that established Tiger Investment Fund IV AIV LP, is included in the application. (*Id.*)

² Those minority shareholders are Garrett O. Regan, Casey O. Regan, Michael R. Clark, Michael J. Krois, Thomas J. Severson, Michael S. Karlen, Troy J. Nelson, Angela J. Mattingly, and Michael C. Mattingly. (Appl. 4 n.6.)

interest in a to-be-formed Delaware limited partnership called MNC Holdings, LP (Holdings).³ (*Id.* at 1-2.) According to Applicants, Holdings⁴ will ultimately hold 100% ownership of several entities, including the seven Subject Carriers, through 100% ownership of certain intermediate limited liability companies (Intermediate Companies).⁵ (*Id.* at 1-2, 4, 16.) Following the closing of the proposed transaction, Seller would continue to hold a significant stake in the Subject Carriers as well as retain an active role in senior management and as

³ By decision served on November 14, 2024, the Board tentatively approved and authorized an application filed by Seller to control the Subject Carriers through a corporate reorganization in which Seller would become the majority shareholder in MNC Holding Company, a new entity created to serve as a holding company for the Subject Carriers and other noncarrier entities. *Patrick O. Regan—Acquis. of Control—Faribault Transp. Serv., Inc. (Regan)*, MCF 21123, slip op. at 1 (STB served Nov. 14, 2024). Applicants state that they have filed the application in this proceeding based on the presumption that the approval and authority in Docket No. MCF 21123 would become effective and the transactions described there will be consummated. (Appl. 2 n.3.) The Board's approval and authority in Docket No. MCF 21123 became effective on December 31, 2024. *Regan*, MCF 21123, slip op. at 1.

⁴ Applicants note that, in Docket No. MCF 21123, Holdings was referred to as "MNC Holding Company" and "Parent, LLC," while in this proceeding they refer to Holdings as "MNC Holdings, LP." (Appl. 5.) Applicants state that, due to discussions that have taken place since the application in *Regan* was filed, there have been minor changes to the proposed corporate structure described in *Regan*. The Board finds that these differences are immaterial to the approval and authority granted in *Regan* and, therefore, no supplement or additional authority for those transactions is required.

⁵ Specifically, Applicants state that Holdings will hold 100% ownership of a to-be-formed Delaware limited liability company expected to be named MNC Intermediate Holdings, LLC, which in turn will hold 100% ownership of a to-be-formed Delaware limited liability company expected to be named MNC Group Parent, LLC, which in turn will hold 100% ownership of MNC Borrower, LLC, a Delaware limited liability company, which in turn will directly or indirectly hold 100% ownership of the Subject Carriers. (Appl. 4 n.7.) More information about the expected corporate structure of Holdings and its direct and indirect subsidiaries, including the seven Subject Carriers, is included in the application. (*See id.*, Ex. 1.) Applicants note that the names and number of the Intermediate Companies differ from the description provided in *Regan*. (*Id.* at 5.) As explained above, *supra* note 4, the Board finds these differences to be immaterial to its approval and authorization in *Regan*.

an investor in the underlying businesses. (*Id.* at 2.) Applicants state that neither Holdings nor the Intermediate Companies would be passenger motor carriers. (*Id.* at 4.)

The Applicants describe the seven Subject Carriers to be acquired as follows:⁶

Marschall Line, whose principal place of business is in Farmington, Minn., is a direct subsidiary of Family Bus Service Inc. (Family Bus), a noncarrier, which will be a direct subsidiary of MNC Borrower, LLC, and an indirect subsidiary of Holdings. (*Id.* at 5, 6.) Marschall Line exclusively provides school bus transportation services, including general and special education transportation to and from school on a regular schedule, and school bus charter service for extracurricular activities and special trips. (*Id.* at 6–7.) Applicants note that, on limited occasions, the school bus charter service involves trips from Minnesota into Wisconsin and other neighboring states (depending on the location of those activities involving the school bus customers served by Marschall Line). (*Id.* at 7.) Marschall Line (operating in its name and through the assumed name Mid-County Bus Company) operates approximately 110 power units and employs approximately 118 drivers. (*Id.*)

Minnesota Coaches, whose principal place of business is in Hastings, Minn., is also a subsidiary of Family Bus. (*Id.* at 6, 7.) Minnesota Coaches operates in its name and through the assumed names Hasting Bus Company, Big River Bus, and Big River Tours and provides both school bus service and motorcoach service on a charter basis. (*Id.* at 7.) Minnesota Coaches' school bus service includes general and special education transportation to and from school on a regular schedule, and school bus charter service for extracurricular activities and special trips, which, on limited occasions, involve transportation between Minnesota and neighboring states including Wisconsin. (*Id.* at 8.) Minnesota Coaches also offers motorcoach contract service for universities, sports teams, and other business, as well as event-specific charter services for weddings, conventions, and other events, concentrated primarily in the Minneapolis, Minn., St. Paul, Minn., and surrounding Twin Cities area,

although it also has some interstate operations, primarily in Wisconsin, Iowa, Illinois, and Missouri. (*Id.* at 8–9.) Minnesota Coaches operates approximately 196 power units and employs approximately 174 drivers. (*Id.* at 8.)

Rehbein, whose principal place of business is in Circle Pines, Minn., is also a subsidiary of Family Bus. (*Id.* at 6, 9.) Rehbein exclusively provides school bus services, which includes general and special education transportation to and from school on a regular schedule. (*Id.* at 9.) Rehbein also provides school bus charter service for extracurricular activities and special trips, which, on limited occasions, involves trips from Minnesota into Wisconsin or other neighboring states (depending on the location of those activities involving the school bus customers served by Rehbein). (*Id.*) Rehbein operates approximately 97 power units and employs approximately 91 drivers. (*Id.* at 10.)

FTS, whose principal place of business is in Faribault, Minn., will be a direct subsidiary of MNC Borrower, LLC, and an indirect subsidiary to Holdings. (*Id.* at 5, 10.) FTS is exclusively a school bus operator, providing student transportation service including general and special education transportation to and from school on a regular schedule. (*Id.* at 10.) FTS also provides school bus charter service for extracurricular activities and other special trips, which on limited occasions, involves trips from Minnesota into Wisconsin and other neighboring states (depending on the location of those activities). (*Id.*) FTS operates approximately 66 total power units and employs approximately 88 drivers. (*Id.* at 11.)

Voyageur Bus, whose principal place of business is in Duluth, Minn., is a subsidiary of Metro Bus Service, Inc., a noncarrier, which will be a direct subsidiary to MNC Borrower, LLC, and an indirect subsidiary to Holdings. (*Id.* at 6, 11.) Voyageur Bus provides school bus transportation service that includes general and special education transportation to and from school on a regular schedule, and school charter service for extracurricular activities and special trips, with some trips on occasion involving transportation between Minnesota and neighboring states including Wisconsin. (*Id.* at 11.) Voyageur Bus also offers motorcoach contract services for universities, sports teams, and other business, as well as event-specific charter services for weddings, conventions and other events in the greater Duluth area. (*Id.* at 11–12.) Voyageur Bus's motorcoach services are

conducted primarily in Minnesota, with some operations in Wisconsin, Iowa, Illinois, or other states across the U.S. based on customer demand for special event service. (*Id.* at 12.) Applicants state that Voyageur operates approximately 118 power units and employs approximately 125 drivers. (*Id.*) Applicants further note that Voyageur also operates a fleet of motorcoaches owned by Lake Superior Motorcoaches, Inc., a noncarrier subsidiary of Metro Bus Service, Inc., through a revenue-sharing arrangement. (*Id.* at 11 n.14.)

Minn-Dakota, whose principal place of business is in Fergus Falls, Minn., is a direct subsidiary of Ottertail Coaches, Inc., a noncarrier direct subsidiary of Ottertail Transportation, Inc., which will be a direct subsidiary of MNC Borrower, LLC, and an indirect subsidiary of Holdings. (*Id.* at 6, 12–13.) Minn-Dakota provides school bus transportation service that includes general and special education transportation to and from school on a regular schedule, and school charter service for extracurricular activities and special trips. (*Id.* at 13.) Applicants note that some of these trips involve transportation between Minnesota and neighboring states including North Dakota. (*Id.*) Applicants state that Minn-Dakota also offers motorcoach contract service for universities, sports teams, and other business, as well as event-specific charter services for weddings, conventions, and other events in the Fergus Falls area. (*Id.*) Applicants state that some of Minn-Dakota's motorcoach services are conducted out of state, mostly within North Dakota and South Dakota, but a limited amount of activity also occurs in Iowa and Wisconsin, and the remainder is spread out nationally based on customer demand for special event service. (*Id.* at 13–14.) Applicants state that Minn-Dakota operates approximately 14 power units and employs approximately 34 drivers. (*Id.* at 13.)

Ready Bus, whose primary place of business is in Rochester, Minn., will be a direct subsidiary of MNC Borrower, LLC, and an indirect subsidiary to Holdings. (*Id.* at 6.) Ready Bus provides school transportation service that includes general and special education transportation to and from school on a regular schedule, and school charter service for extracurricular activities and special trips. (*Id.* at 14.) Applicants note that, on limited occasions, some of these trips involve transportation between Minnesota and neighboring states including Wisconsin, depending on the location of the customer activity. (*Id.*) Ready Bus also offers motorcoach

⁶ Further information about these motor carriers, including U.S. Department of Transportation (USDOT) numbers, motor carrier numbers, and USDOT safety fitness ratings, can be found in the application. (*See Appl.*, Ex. 2.) Applicants state that, prior to closing, they expect each of these passenger motor carriers to be converted into limited liability companies. (*Id.* at 1 n.1.)

contract service for universities, sports teams, and other business, as well as event-specific charter services for weddings, conventions and other events with service in Minnesota, Wisconsin, and neighboring states. (*Id.*) According to the application, approximately 70% of Ready Bus's motorcoach service is conducted within Minnesota or Wisconsin; most of the remaining service is regionally concentrated in Iowa, Illinois, Missouri, and Indiana, and the rest is spread out nationally based on customer demand for special event service. (*Id.* at 15.) Applicants state that Ready Bus operates approximately 59 power units and employs approximately 56 drivers. (*Id.*)

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least (1) the effect of the proposed transaction on the adequacy of transportation to the public, (2) the total fixed charges resulting from the proposed transaction, and (3) the interest of affected carrier employees. Applicants have submitted the information required by 49 CFR 1182.2, including information demonstrating that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), *see* 49 CFR 1182.2(a)(7), and a jurisdictional statement under 49 U.S.C. 14303(g) that the aggregate gross operating revenues of the involved carriers exceeded \$2 million during the 12-month period immediately preceding the filing of the application, *see* 49 CFR 1182.2(a)(5). (Appl. 16.)

Applicants state that their proposed acquisition of control of the Subject Carriers will be consistent with the public interest. (*Id.* at 17.) Applicants assert that the adequacy of the transportation currently provided by the Subject Carriers will remain intact, as they have no plans to change the nature of the transportation services currently provided by the Subject Carriers or to terminate any of the student or transit transportation contracts currently in place. (*Id.* at 18.) Applicants also assert that neither they nor Tiger Infrastructure Fund LP (including any funds it manages) directly or indirectly control any other federally regulated motor passenger carriers operating in the United States and therefore own no businesses that would compete with the Subject Carriers. (*Id.* at 17.) Applicants further state that the Subject Carriers face significant competition to the school bus services and motorcoach services that they provide in the geographic areas in which they operate. (*Id.*) According to Applicants, they also

plan to expand and modernize the fleet in order to provide reliable service to its current and future customers. (*Id.* at 18.) Applicants also state that they plan to retain the current management of each of the Subject Carriers, including their experienced safety managers at the corporate and local levels, and that the Seller will also retain a position in senior management and board representation, providing Applicants access to Seller's years of knowledge and experience with respect to the Subject Carriers and the industry more broadly. (*Id.*)

With respect to fixed charges, Applicants state that they are financing the cost of the proposed transaction with a combination of debt and equity capital. (*Id.* at 19.) According to Applicants, they do not expect that these fixed charges will impact the Subject Carriers' ability to provide transportation services to the public because the debt used to finance the transaction is a secured credit facility based on customary terms appropriate for the asset value of Holdings; each of the Subject Carriers has a stable revenue stream from contracts with school districts, universities, and other institutional entities, which should be more than adequate to service existing and anticipated future debt; and the proposed transaction will enable the Subject Carriers to maintain future financial stability through access to considerable funds from Tiger Infrastructure Partners LP and its affiliates. (*Id.*)

Applicants state that they do not expect the proposed transaction to adversely affect the interest of Subject Carrier employees, as they currently have no plans for employee layoffs or other staffing reductions, nor do they plan to adversely change any existing employee benefits. (*Id.*)

Based on Applicants' representations, the Board finds that the acquisition of control of the Subject Carriers is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6. If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action in this proceeding.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available at www.stb.gov.

It is ordered:

1. The proposed acquisition of control of the Subject Carriers is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.

3. This notice will be effective February 25, 2025, unless opposing comments are filed by February 24, 2025. If any comments are filed, Applicants may file a reply by March 10, 2025.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW, Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590.

Decided: January 2, 2025.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2025-00200 Filed 1-7-25; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2024-0255]

Agency Information Collection Activities; New Information Collection: Study of Warning Devices for Stopped Commercial Motor Vehicles

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 notice invites comments on a proposed information collection titled "Study of Warning Devices for Stopped Commercial Motor Vehicles." It is an experimental study that requires data collection for evaluating whether warning devices meaningfully influence

crash-relevant aspects of human performance in the presence of a parked or disabled commercial motor vehicle (PDCMV), and if so, how and to what extent. These data collection efforts are expected to require the participation of 256 drivers.

DATES: Comments on this notice must be received on or before March 10, 2025.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2024–0255 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: Samuel White, Research Division, DOT, FMCSA, 1200 New Jersey Avenue SE, West Building, 6th Floor, Washington, DC 20590; 202–366–3068; Samuel.White@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–2024–0255), 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-2024-0255/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

PDCMVs on the road negatively impact traffic operations and safety.¹ To increase the conspicuity of PDCMVs and mitigate crash risk, FMCSA requires specific warning devices to be carried² on all commercial motor vehicles (CMVs) and, except in the case of necessary traffic stops, be deployed³ near the vehicle whenever it is stopped on the road or shoulder. The Federal Motor Carrier Safety Regulations (FMCSRs) prescribe specific rules⁴ concerning how and where the warning devices must be placed, based on road and traffic attributes (e.g., whether the road is straight or curved, whether the vehicle is stopped in a business or residential district, whether the road is divided or undivided, etc.) as well as the presence of conditions affecting visibility (e.g., time of day, physical obstructions, etc.). These requirements follow from the basic notion that increasing the conspicuity of a PDCMV makes it easier to see and recognize,

thereby reducing the risk of a crash involving passing motorists.

In addition, the National Highway Traffic Safety Administration (NHTSA) prescribes performance and design specifications⁵ for warning devices under 49 CFR 571.125 of the Federal Motor Vehicle Safety Standards. For instance, this standard establishes minimum specifications for factors affecting the conspicuity (including reflectivity, color, luminance) of warning triangles, the most commonly utilized type of warning device (due to their reusability, shelf life, and fire-risk safety concerns compared to flares or fuses). The purpose of this standard is “to assure that the warning devices can be readily observed during daytime and nighttime lighting conditions, have a standardized shape for quick message recognition, and perform properly when deployed.”⁶

Public interest in warning device requirements for PDCMVs has increased in recent years for several reasons. For example, advances in automated driving system (ADS) technology have raised critical questions regarding potential barriers to regulatory compliance with warning device safety standards⁷ and regulations⁸ which reference or require a “driver.” In addition, alternative types of warning devices developed by industry, including those intended to increase driver safety during device deployment, have resulted in multiple applications for exemption from the corresponding safety regulations.^{9 10} These recent issues related to warning device requirements also call attention to the historically unresolved questions of whether the use of such devices improves traffic safety and, if so, how and to what extent.

Past attempts by the Federal Highway Administration (FHWA)^{11 12} and other researchers¹³ to answer those questions yielded generally inconclusive or inconsistent results, which possibly influenced NHTSA’s past decision not to pursue conducting its own research on the topic.¹⁴ FMCSA (previously under FHWA) itself has never conducted experimental research on the impact of using warning devices. As the only regulatory authority which still requires CMV operators to use warning devices, the responsibility to answer these questions finally and definitively is best charged to FMCSA.

Given the increasing focus on ADS, questions surrounding the safety of CMV drivers when deploying warning devices, and the availability of new technology and alternative devices since these questions were last explored in the 1980s, there is a need to thoroughly evaluate the effectiveness of warning

devices under current regulations. In addition, advanced research instruments unavailable or not in use at the time of all past research on this topic are now in common use and would permit far more sophisticated analyses of the effects of warning devices on driver behavior. This includes sensors which can precisely measure and record the location of vehicles (e.g., differential GPS), eye-tracking devices which allow the researcher to determine the precise moment when a driver first glanced at a PDCMV, and instrumented vehicles which record accurate, high-frequency data related to drivers' interactions with a vehicle's controls.

FMCSA plans to implement these modern tools in a controlled experiment at a closed-course, state-of-the-art driving research facility that will allow the most comprehensive examination of the effects of warning devices to date. The results of the study may support future rulemaking related to warning devices and provide baseline data necessary to inform Agency decisions on exemption applications for alternative warning device products.

Title: Warning Devices for Stopped Commercial Motor Vehicles.

OMB Control Number: 2126–00XX.

Type of Request: New ICR.

Respondents: Drivers.

Estimated Number of Respondents: 256.

Estimated Time per Response: 2.0 to 2.5 hours.

Expiration Date: This is a new ICR.

Frequency of Response: Once.

Estimated Total Annual Burden: 614.40 hours.

DEFINITIONS: N/A.

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. 2025–00120 Filed 1–7–25; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0233]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Electronic Logging Device (ELD) Vendor Registration

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. FMCSA requests approval to renew an ICR titled, “Electronic Logging Device (ELD) Vendor Registration.” This ICR is necessary for ELD vendors to register their ELDs with the Agency.

DATES: We must receive your comments on or before March 10, 2025.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2024–0233 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:* 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: Jose R. Cestero, Vehicle and Roadside Operations Division, DOT, FMCSA, West Building, 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202)366–5541; jose.cestero@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–2024–0233), 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-2024-0233/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

On December 16, 2015, FMCSA published a final rule titled “Electronic Logging Devices and Hours of Service

Supporting Documents,” (80 FR 78292) that established minimum performance and design standards for hours-of-service (HOS) ELDs; requirements for the mandatory use of these devices by drivers currently required to prepare HOS records of duty status (RODS); requirements concerning HOS supporting documents; and measures to address concerns about harassment resulting from the mandatory use of ELDs.

To ensure consistency among ELD vendors and devices, detailed functional specifications were published as part of the December 2015 final rule. Each ELD vendor developing an ELD technology must register online at a secure FMCSA website where the ELD provider can securely certify that its ELD is compliant with the functional specifications. Each ELD vendor must certify that each ELD model and version has been sufficiently tested to meet the functional requirements in the rule under the conditions in which the ELD would be used.

ELD vendors must self-certify and register their devices with FMCSA online via Form MCSA-5893, “Electronic Logging Device (ELD) Vendor Registration and Certification.” FMCSA expects all respondents to submit their information electronically. Once completed, FMCSA issues a unique identification number that the ELD vendor will embed in their device(s). FMCSA maintains a list on its website of the current ELD vendors and devices that have been certified (by the vendors) to meet the functional specifications. The information is necessary for fleets and drivers to easily find a compliant ELD for their use in meeting the FMCSA regulation requiring the use of ELDs.

Title: Electronic Logging Device (ELD) Vendor Registration.

OMB Control Number: 2126-0062.

Type of Request: Renewal of a currently approved collection.

Respondents: ELD vendors.

Estimated Annual Number of Respondents: 94.

Estimated Time per Response: 15 minutes.

Expiration Date: July 31, 2025.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 71 hours [94 respondents × 1 device per respondent × 3 updates per device × 15 minutes per response].

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 information collection.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator for Research, Technology and Registration.

[FR Doc. 2025-00123 Filed 1-7-25; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2024-0158]

Agency Information Collection Activities; Renewal of an Approved Information Collection Request: Medical Qualification Requirements

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 review and approval. The FMCSA requests approval to renew an ICR titled, “Medical Qualification Requirements,” due to updated information for several of the Information Collections (ICs) discussed. This ICR is needed to ensure that drivers, motor carriers, and the States are complying with the physical qualification requirements of commercial motor vehicle (CMV) drivers. The information collected is used to determine and certify driver medical fitness and must be collected in order for our highways to be safe. On September 17, 2024, FMCSA published a 60-day notice requesting comment on the renewal of this ICR. In response to this notice, no comments were received.

DATES: Comments on this notice must be received on or before February 7, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this information collection by selecting

“Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Medical Qualification Requirements.

OMB Control Number: 2126-0006.

Type of Request: Renewal of a currently approved collection.

Respondents: Commercial motor vehicle drivers, motor carriers, medical examiners, testing centers.

Estimated Number of Respondents: 8,123,976.

Expiration Date: March 31, 2025.

Estimated Total Annual Burden: 3,243,525 hours.

This information collection is comprised of the following seven information collection activities.

Physical Qualification Standards
2,776,978 annual burden hours
7,175,796 annual respondents

Resolution of Medical Conflict
11 annual burden hours
3 annual respondents

Medical Exemptions
293 annual burden hours
1,176 annual respondents

SPE Certificate Program
2,808 annual burden hours
2,567 annual respondents

National Registry of Certified Medical Examiners
462,162 annual burden hours
934,887 annual respondents

Qualification of Drivers; Diabetes Standard

654 annual burden hours
4,906 annual respondents

Qualification of Drivers; Vision Standard

619 annual burden hours
4,641 annual respondents

Background: CMVs (trucks and buses) are longer, heavier, and more difficult to maneuver than automobiles, making them a threat to highway safety if not operated properly by qualified individuals. The public interest in, and right to have, safe highways requires the assurance that drivers of CMVs can safely perform the increased physical and mental demands of their duties. FMCSA’s physical qualification standards provide this assurance by requiring drivers to be examined and medically certified as physically and

mentally qualified to drive. Therefore, information used to determine and certify driver medical fitness must be collected. FMCSA is the Federal government agency authorized to require the collection of this information. FMCSA is required by statute to establish standards for the physical qualifications of drivers who operate CMVs in interstate commerce for non-excepted industries (49 U.S.C. 31136(a)(3) and 31502(b)). The regulations discussing this collection are outlined in the Federal Motor Carrier Safety Regulations (FMCSRs) at 49 CFR 390 through 399.

Below is a brief description of the included IC activities and how the information is used.

Physical Qualification Standards

The FMCSRs at 49 CFR 391.41 set forth the physical qualification standards that interstate CMV drivers who are subject to part 391 must meet, with the exception of commercial driver's license/commercial learner's permit (CDL/CLP) drivers transporting migrant workers (who must meet the physical qualification standards set forth in § 398.3). The FMCSRs covering driver physical qualification records are found at § 391.43, which specify that a medical examination be performed on CMV drivers subject to part 391 who operate in interstate commerce. The results of the examination shall be recorded in accordance with the requirements set forth in that section. The current provisions of §§ 391.51 and 398.3 require that a motor carrier retain the Medical Examiner's Certificate (MEC), Form MCSA-5876, in the driver's qualification (DQ) file for 3 years. The certificate affirms that the driver is physically qualified to drive a CMV in interstate commerce.

Due to potential onset of new conditions or changes in existing conditions that may adversely affect a driver's ability to safely operate a CMV and/or cause incapacitation that could be a risk to public safety, periodic evaluation and certification is required to assess driver physical qualification. MECs may be issued for up to 2 years after the date of examination. However, drivers with certain medical conditions must be certified more frequently than every 2 years. Medical examiners (MEs) have discretion to certify for shorter time periods on a case-by-case basis for medical conditions that require closer monitoring or that are more likely to change over time. In addition, the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (Pub. L. 109-59, 119 Stat. 1144, August 10, 2005) requires MEs to transmit to

FMCSA's Chief Medical Officer, electronically and on a monthly basis, driver information and results of any CMV driver medical examinations conducted during the previous month. MEs are required to maintain records of the CMV driver medical examinations they conduct. FMCSA does not require MEs to maintain these records electronically. However, there is nothing to preclude an ME from maintaining electronic records of the medical examinations they conduct. FMCSA is continuously evaluating new information technology in an attempt to decrease the burden on motor carriers and MEs. Less frequent collection of driver data, Medical Examination Report Forms, MCSA-5875, and MECs, Form MCSA-5876, would compromise FMCSA's ability to determine ME compliance with FMCSA's physical qualification standards and guidelines in performing CMV driver physical qualification examinations, which could result in MEs listed on the National Registry of Certified Medical Examiners (National Registry) who should be removed and possibly drivers that don't meet the physical qualification standards possessing an MEC. Less frequent data collection would also result in decreased validity of the data (*i.e.*, less frequent data submission may increase the error rate due to unintentional omission of examination information). Therefore, less frequent collection of driver examination results is not an option.

Resolution of Medical Conflict

The medical conflict provision provides a mechanism for drivers and motor carriers to request that FMCSA make a final decision to resolve conflicting medical evaluations when either party does not accept the decision of a medical specialist. If two MEs disagree about the medical certification of a driver, the requirements set forth in § 391.47 mandate that the applicant (driver or motor carrier) submit a copy of a report including results of all medical testing and the opinion of an impartial medical specialist in the field in which the medical conflict arose. The applicant may, if they choose to do so, submit the information above using fax and/or email. FMCSA uses the information collected from the applicant, including medical information, to determine if the driver should or should not be qualified. Without this provision and its incumbent driver medical information collection requirements, an unqualified person may be permitted to drive and qualified persons may be prevented from driving.

Medical Exemptions and Skill Performance Evaluation (SPE) Certificates

FMCSA may, on a case-by-case basis, grant a medical exemption from a physical qualification standard set forth in § 391.41, if the Agency determines the exemption is in the interest of the public and would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation. Individuals with limb impairments are permitted to operate a CMV, but only when they are otherwise qualified and are granted an SPE certificate by FMCSA. Section 381.310 establishes the procedures that persons must follow to request exemptions from the FMCSRs. Without an exemption, individuals who do not meet the requirements in § 391.41 would not be qualified to operate a CMV in interstate commerce. The application process for all medical exemptions currently provides for electronic collection of the application information by FMCSA for those applicants that choose to do so. They are able to fax or scan and email documents to FMCSA. In addition, the SPE Certificate Program maintains a database of application information and the Medical Programs Division maintains a database of application information for hearing and seizure exemptions. FMCSA must collect medical information about the driver's medical condition in order to determine eligibility to receive a medical exemption or an SPE certificate. The Agency requires all medical exemptions be renewed every 2 years to ensure that the granting of the exemption does not diminish safety under § 381.310. Exemption holders are required to submit annual medical information for review to ensure the driver continues to meet the physical qualification requirements. In the interest of highway safety, the medical examination, medical exemption, and SPE certificate renewal should not be performed less frequently.

The National Registry requires MEs who perform physical qualification examinations for interstate CMV drivers to complete training concerning FMCSA's physical qualification standards, pass a certification test, and maintain competence through periodic training and testing, all of which require information collection. ME candidates submit demographic and eligibility data in order to register on the National Registry website to begin the certification process. This data is used to provide the public with contact information for those medical

professionals who are certified by FMCSA to perform interstate CMV driver physical qualification examinations. Less frequent collection of ME candidate test results and identity and eligibility information would mean fewer healthcare professionals attempting to become certified which would result in fewer certified MEs being available to the CMV driver and motor carrier population. This could place a huge burden on drivers and motor carriers to find certified MEs to perform their physical qualification examinations. Therefore, less frequent collection of ME candidate test results and identity and eligibility information is not an option. MEs must provide specific driver physical qualification examination information for every driver they examine on driver examination forms required by FMCSA and into the National Registry. Drivers must provide identification and health history information on the driver examination forms required by FMCSA. The purpose for providing this information is to enable the ME to determine if the driver meets the physical qualification standards under § 391.41 and to ensure that there are no disqualifying medical conditions that could adversely affect their safe driving ability or cause incapacitation constituting a risk to the public. If this information were not required, the threat to public safety would be immense and unacceptable.

The National Registry also requires motor carriers to verify the National Registry number of the MEs who certify their drivers and place a note in the DQ file. Less frequent verification of the National Registry numbers by motor carriers would mean drivers may not have been examined by a certified ME listed on the National Registry and they may no longer meet the physical qualifications standards of the FMCSRs even though they were previously certified as physically qualified.

As a follow-on rule to the National Registry, the final rule titled “Medical Examiner’s Certification Integration” (80 FR 22790), modified several of the requirements adopted in the National Registry final rule, some of which had a scheduled compliance date of June 22, 2018. Specifically, it requires (1) FMCSA to electronically transmit from the National Registry to the State Driver’s Licensing Agencies (SDLAs) the driver identification information, examination results, and restriction information from examinations performed for holders of CLPs/CDLs (interstate and intrastate); (2) FMCSA to transmit electronically to the SDLAs the medical variance information for all

CMV drivers; and (3) SDLAs to post the driver identification, examination results, and restriction information received electronically from FMCSA.

However, as the Medical Examiner’s Certification Integration final rule compliance date approached, FMCSA concluded that the information technology infrastructure necessary to implement the portions of the final rule that required the electronic transmission of data would not be available on June 22, 2018. FMCSA extended the compliance two additional times, and that date is now June 23, 2025, for several provisions of the final rule. Since the compliance date for these provisions occurs during this renewal period, the annual burden hours and costs are now being covered as part of this ICR.

Qualifications of Drivers; Diabetes Standard

Under 49 CFR 391.41(b), drivers with a stable insulin regimen and properly controlled Insulin-Treated Diabetes Mellitus (ITDM) are permitted to operate CMVs in interstate commerce. An individual with ITDM is able to obtain an MEC from a certified ME for up to a maximum of 12 months if the (1) Treating Clinician (TC), the healthcare professional who manages and prescribes insulin for the treatment of the individual’s diabetes, completes the Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5870, and attests to the certified ME that the individual maintains a stable insulin regimen and proper control of their diabetes, and (2) the certified ME determines that the individual meets FMCSA’s physical qualification standards.

FMCSA allows TCs to provide the Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5870, to the certified MEs, if the TCs choose to do so, using electronic communication such as fax or email. Consistent with OMB’s commitment to minimizing respondents’ recordkeeping and paperwork burdens, and the increased use of secure electronic modes of communication, the Agency anticipates that approximately 25 percent of the forms will be transmitted electronically.

Qualifications of Drivers; Vision Standard

Under 49 CFR 391.41(b), drivers who do not satisfy, with the worse eye, either FMCSA’s existing distant visual acuity standard with corrective lenses or the field of vision standard, or both, in § 391.41(b)(10) are permitted to be physically qualified to operate a CMV in interstate commerce under specified

conditions. The alternative vision standard adopted in the final rule uses a collaborative process for physical qualification. Before an individual may be medically certified under the alternative vision standard, the individual must have a vision evaluation conducted by an ophthalmologist or optometrist. The ophthalmologist or optometrist records the findings and provides specific medical opinions on the Vision Evaluation Report, Form MCSA–5871. Then, an ME performs an examination, considers the information provided on the Vision Evaluation Report, Form MCSA–5871, and determines whether the individual meets the alternative vision standard, as well as FMCSA’s other physical qualification standards. If the ME determines the individual meets the physical qualification standards, the ME may issue an MEC for up to 12 months.

FMCSA allows ophthalmologists and optometrists to provide the Vision Evaluation Report, Form MCSA–5871, to the certified MEs, if they choose to do so, using electronic communication such as fax or email. Consistent with OMB’s commitment to minimizing respondents’ recordkeeping and paperwork burdens, and the increased use of secure electronic modes of communication, the Agency anticipates that approximately 25 percent of the forms will be transmitted electronically.

On September 17, 2024, FMCSA published a 60-day notice (89 FR 76177) requesting comment on the renewal of this ICR. No comments were received in response to that notice.

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.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2025–00122 Filed 1–7–25; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY**Interest Rate Paid on Cash Deposited To Secure U.S. Immigration and Customs Enforcement Immigration Bonds**

AGENCY: Departmental Offices, Treasury.
ACTION: Notice.

SUMMARY: For the period beginning January 1, 2025, and ending on March 31, 2025, the U.S. Immigration and Customs Enforcement Immigration Bond interest rate is 3 per centum per annum.

DATES: Rates are applicable January 1, 2025, to March 31, 2025.

ADDRESSES: Comments or inquiries may be mailed to Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328.

You can download this notice at the following internet addresses: <http://www.treasury.gov> or <http://www.federalregister.gov>.

FOR FURTHER INFORMATION CONTACT:

Ryan Hanna, Manager, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 261006–1328, (304) 480–5120; Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328, (304) 480–5117.

SUPPLEMENTARY INFORMATION: Federal law requires that interest payments on cash deposited to secure immigration bonds shall be “at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum.” 8 U.S.C. 1363(a). Related Federal regulations state that “Interest on cash deposited to secure immigration bonds will be at the rate as determined by the Secretary of the Treasury, but in no case will exceed 3 per centum per annum or be less than zero.” 8 CFR 293.2. Treasury has determined that interest on the bonds will vary quarterly and will accrue during each calendar quarter at a rate equal to the lesser of the average of the bond equivalent rates on 91-day Treasury bills auctioned during the preceding calendar quarter, or 3 per centum per annum, but in no case less than zero. [FR Doc. 2015–18545]. In addition to this Notice, Treasury posts the current quarterly rate in Table 2b—Interest Rates for Specific Legislation on the Treasury Direct website.

The Deputy Assistant Secretary for Public Finance, Gary Grippo, having reviewed and approved this document, is delegating the authority to electronically sign this document to Heidi Cohen, Federal Register Liaison for the Department, for purposes of publication in the **Federal Register**.

Heidi Cohen,

Federal Register Liaison.

[FR Doc. 2025–00066 Filed 1–7–25; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY**United States Mint****Pricing for the 2025 United States Marine Corps 250th Anniversary Commemorative Coin Program and the 2025 Precious Metals Grid**

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing pricing for the 2025 United States Marine Corps 250th Anniversary Commemorative Coin Program as follows:

Coin	Introductory price	Regular price
Silver Proof	\$91.00	\$96.00
Silver Uncirculated	89.50	94.50
Clad Proof	56.00	61.00
Clad Uncirculated	54.00	59.00

Products containing gold coins will be priced according to the Pricing of Numismatic and Commemorative Gold and Platinum Products Grid posted at www.usmint.gov.

FOR FURTHER INFORMATION CONTACT: Rosa Matos, Acting Sr. Program Manager for Sales and Marketing; United States Mint; 801 9th Street NW, Washington, DC 20220; or call 202–354–7500.

Authority: Public Law 118–10.

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2025–00203 Filed 1–7–25; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 52

Air Plan Approval; AK, Fairbanks North Star Borough; 2006 24-Hour PM_{2.5}
Serious Area and 189(d) Plan; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2024–0595; FRL–12391–02–R10]

Air Plan Approval; AK, Fairbanks North Star Borough; 2006 24-Hour PM_{2.5} Serious Area and 189(d) Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the state implementation plan (SIP) revisions submitted by the State of Alaska (Alaska or the State) on December 4, 2024, to address Clean Air Act requirements for the 2006 24-hour fine particulate matter (PM_{2.5}) national ambient air quality standards in the Fairbanks North Star Borough Serious PM_{2.5} nonattainment area. Alaska's submission includes SIP revisions to meet nonattainment planning requirements for emissions inventories, modeling and sulfur dioxide precursor demonstration for major stationary sources, control measures, attainment projections and progress to attainment and associated motor vehicle emissions budgets, and contingency measures. The EPA is also starting the adequacy process for the budgets.

DATES: *Comments.* Written comments must be received on or before February 7, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2024–0595, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Matthew Jentgen, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, (206) 553–0340, jentgen.matthew@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

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I. Background

In 2009, the EPA designated a portion of the Fairbanks North Star Borough as “nonattainment” for the 2006 24-hour PM_{2.5} National Ambient Air Quality Standards (NAAQS), which is set at the level of 35 micrograms per cubic meter (µg/m³) (Fairbanks PM_{2.5} Nonattainment Area) (74 FR 58688, November 13, 2009).¹ Effective July 2, 2014, the EPA classified the area as “Moderate” (79 FR 31566, June 2, 2014). Subsequently, Alaska submitted, and the EPA approved, a plan to meet the Moderate nonattainment area requirements (82 FR 42457, September 8, 2017) (Fairbanks Moderate Plan).

On May 10, 2017, the EPA determined that the Fairbanks PM_{2.5} Nonattainment Area failed to attain the 2006 24-hour PM_{2.5} NAAQS in the area by the outermost statutory Moderate area attainment date of December 31, 2015 (82 FR 21711). The outermost attainment date is the latest date by which an area can attain the NAAQS per statute. As a result, the Fairbanks PM_{2.5} Nonattainment Area was reclassified as a “Serious” nonattainment area by operation of law.

Upon reclassification as a Serious PM_{2.5} nonattainment area, the State was required to submit a Serious area attainment plan satisfying the

requirements of Clean Air Act (CAA or Act) sections 172, 189(b), and 189(c) and 40 CFR 51.1003(b). In accordance with CAA section 188(c)(2), the outermost attainment date for a Serious area is no later than the end of the tenth calendar year following designation (*i.e.*, December 31, 2019).

Alaska submitted a plan to address the Serious PM_{2.5} nonattainment area requirements on December 13, 2019 (Fairbanks Serious Plan).² Along with the required planning elements, the Fairbanks Serious Plan included more stringent performance and operating requirements for residential and commercial heating devices, new regulations for wood sellers, and some requirements for stationary sources in the nonattainment area. The Fairbanks Serious Plan is comprised of revisions to Title 18, Chapter 50, of the Alaska Administrative Code (18 AAC 50) and the State Air Quality Control Plan, adopted and incorporated by reference into State law at 18 AAC 50.030(a).³ On January 9, 2020, in accordance with CAA section 110(k)(1)(B), the EPA determined that the Fairbanks Serious Plan was administratively and technically complete (85 FR 7760, February 11, 2020).

Within the Fairbanks Serious Plan, the State sought an extension of the otherwise applicable attainment date through CAA section 188(e). On September 2, 2020, the EPA determined that the area failed to attain by the Serious area attainment date and denied the State's Serious area attainment date extension request (85 FR 54509). As a result, Alaska was required to submit a revised SIP submission to meet both the Serious area attainment plan requirements and the additional requirements set forth in CAA section 189(d) by December 31, 2020.⁴ Alaska submitted the revised plan on December 15, 2020 (Fairbanks 189(d) Plan). The Fairbanks 189(d) Plan updated a number of chapters of the narrative portion of the State Air Quality Control Plan, adopted and incorporated by reference into State law at 18 AAC 50.030(a).

On September 24, 2021, the EPA approved the 2013 base year emissions inventory and the PM_{2.5} precursor

² We note that Alaska submitted a SIP revision on October 25, 2018, to address the preconstruction permitting new source review (NSR) requirements for the Fairbanks Serious nonattainment area, among other things. The EPA approved the submission as meeting the nonattainment NSR requirements for the Fairbanks Serious Plan on August 29, 2019 (84 FR 45419).

³ We note that 18 AAC 50.030(a) is not submitted, rather Alaska submits the adopted provisions separately for EPA approval.

⁴ 40 CFR 51.1003(c).

¹ See 40 CFR 81.302.

demonstration elements of the Fairbanks Serious Plan as meeting the Serious area planning requirements (86 FR 52997). In the same action, the EPA approved other plan components as SIP strengthening, including: (1) the updated Fairbanks Emergency Episode Plan⁵ that the State adopted on November 18, 2020, and submitted on December 15, 2020; and (2) the regulatory control measures included in the SIP submissions on October 25,

2018, and November 28, 2018 (in addition to the December 13, 2019, submission).⁶ The EPA did not determine as part of the September 24, 2021, approval whether these SIP strengthening components met specific nonattainment plan requirements, including control strategy requirements in CAA section 189 and 40 CFR 51.1010 or the contingency measure requirements in CAA section 172(c)(9) and 40 CFR 51.1014.

Finally, on December 5, 2023, the EPA acted on the remaining elements required for a Serious nonattainment area that failed to attain by the Serious area attainment date. Table 1 of this preamble provides a summary of the December 5, 2023, final rule approving in part and disapproving in part the Fairbanks Serious Plan and Fairbanks 189(d) Plan.⁷

TABLE 1—SUMMARY OF THE EPA'S DECEMBER 5, 2023, FINAL RULE

Description of CAA planning requirement	Approval	Disapproval
Base year emissions inventory for Serious areas subject to CAA section 189(b) * (CAA section 172(c)(3); ⁸ 40 CFR 51.1008(b)(1)).	Approval of the 2013 base year emissions inventory.	
Base year emissions inventory for areas subject to CAA section 189(d) (CAA section 172(c)(3); 40 CFR 51.1008(c)(1)).	Approval of the 2019 base year emissions inventory.	
Attainment projected emissions inventory (CAA section 172(c)(1); ⁹ 40 CFR 51.1008(c)(2)).	.....	Disapproval.
Serious area nonattainment plan control strategy that ensures that best available control measures (BACM), including best available control technologies (BACT), for the control of direct PM _{2.5} and PM _{2.5} precursors are implemented in the nonattainment area (CAA section 189(b)(1)(B); ¹⁰ 40 CFR 51.1010(a)).	Partial approval of the control strategy as meeting BACM and BACT requirements under CAA section 189(b)(1)(B)¹¹ and 40 CFR 51.1010(a) for the solid fuel home heating device source category and residential and commercial fuel oil combustion source category; Partial approval of the control strategy approved as meeting BACM and BACT requirements under CAA section 189(b)(1)(B)¹² and 40 CFR 51.1010(a) for the charbroiler, used oil burner, and mobile source categories (except for rejection of vehicle anti-idling requirements); Approval of specific regulations under 18 AAC 50.075 through 077 (except the requirements for dry wood sellers under 18 AAC 50.076(k)), and Fairbanks Emergency Episode Plan (except the contingency measure portion); Partial approval as meeting applicable control strategy BACM and BACT requirements (CAA section 189(b)(1)(B) and 40 CFR 51.1010(a)) for ammonia (NH₃) for the Chena Power Plant, Doyon-Fort Wainwright Central Heating and Power Plant, University of Alaska Fairbanks Campus Power Plant, Zehnder Power Plant, and North Pole Power Plant; Partial approval of Alaska's PM_{2.5} and NH₃ BACT determinations for the Doyon-Fort Wainwright Central Heating and Power Plant; PM_{2.5} and NH₃ BACT determination for the University of Alaska Fairbanks Campus Power Plant, except for the three small diesel fired engines (EUs 23, 26, and 27); PM_{2.5} and NH₃ BACT determinations for the Zehnder Power Plant; PM_{2.5} and NH₃ BACT determinations for the North Pole Power Plant.	Disapproval of the control strategy BACM and BACT requirements (CAA section 189(b)(1)(B)¹³ and 40 CFR 51.1010(a)) for the following emissions source categories: (1) Requirements for wood sellers; (2) Coal-fired heating devices; (3) Coffee roasters; (4) Weatherization and energy efficiency measures; (5) Mobile source category (disapproving for lack of vehicle anti-idling requirements); Disapproval of the control strategy BACM and BACT requirements (CAA section 189(b)(1)(B)¹⁴ and 40 CFR 51.1010(a)) for PM_{2.5} and sulfur dioxide (SO₂) for the Doyon-Fort Wainwright Central Heating and Power Plant, University of Alaska Fairbanks Campus Power Plant, Zehnder Power Plant, and North Pole Power Plant.
Additional measures (beyond those already adopted in previous nonattainment plan SIP submissions for the area as RACM/RACT, BACM/BACT, and Most Stringent Measures (MSM) ¹⁵ (if applicable)) that provide for attainment of the NAAQS as expeditiously as practicable and, from the date of such submission until attainment, demonstrate that the plan will at a minimum achieve an annual five percent reduction in emissions of direct PM _{2.5} or any PM _{2.5} plan precursor. (CAA section 189(d); ¹⁶ 40 CFR 51.1010(c)).	.....	Disapproval.
Attainment demonstration and modeling (CAA sections 188(c)(2) and 189(b)(1)(A); ¹⁷ 40 CFR 51.1003(c) and 51.1011).	.....	Disapproval.
Reasonable further progress (RFP) provisions (CAA section 172(c)(2); ¹⁸ 40 CFR 51.1012).	.....	Disapproval.
Quantitative milestones (CAA section 189(c); ¹⁹ 40 CFR 51.1013).	.....	Disapproval.

⁵ State Air Quality Control Plan, Vol. II, section III.D.7.12 (*i.e.*, Alaska's planning chapter related to air quality forecasting and curtailment levels).

⁶ For a description of the specific control measures addressed across the State's SIP submissions, see 86 FR 52997, September 24, 2021.

⁷ 88 FR 84626, December 5, 2023.

TABLE 1—SUMMARY OF THE EPA'S DECEMBER 5, 2023, FINAL RULE—Continued

Description of CAA planning requirement	Approval	Disapproval
Motor vehicle emission budgets (CAA section 176, 40 CFR 51.1003(d) and 93.118).	.....	Disapproval.
An adequate evaluation by the state of sources of all four PM _{2.5} precursors for regulation, and implementation of controls on all such precursors, unless the state provides a demonstration establishing that it is either not necessary to regulate a particular precursor in the nonattainment area at issue in order to attain by the attainment date, or that emissions of the precursor do not make a significant contribution to PM _{2.5} levels that exceed the standard.* (CAA section 189(e); ²⁰ 40 CFR 51.1006).	Approval of the State's comprehensive PM _{2.5} precursor demonstrations for NO _x and VOC emissions.	
Contingency measures applicable to Serious areas subject to CAA section 189(b) (CAA section 172(c)(9)); ²¹ 40 CFR 51.1014).	.....	Disapproval of the contingency measures requirements of CAA section 172(c)(9) ²² and 40 CFR 51.1014 applicable to Serious areas subject to CAA sections 189(b) and 189(d).
Contingency measures applicable to Serious areas subject to CAA section 189(d) (CAA section 172(c)(9); 40 CFR 51.1014).	.....	The EPA finalized a limited disapproval of the Fairbanks 189(d) Plan contingency measure because the contingency measure did not fully meet the contingency measure requirements of CAA section 172(c)(9) and 40 CFR 51.1014 but otherwise strengthened the SIP. ²³
Nonattainment new source review provisions (CAA sections 172(c)(5), 189(b)(3), 189(d), and 189(e), and 40 CFR 51.165, 40 CFR 51.1003(b)(1)(viii), and 40 CFR 51.1003(c)(1)(viii) ²⁴ .	Approval.	

* The EPA finalized approval of this requirement on September 24, 2021 (86 FR 52997).

On December 4, 2024, Alaska made a SIP submission (Fairbanks Revised 189(d) Plan) intended to address the nonattainment requirements that were disapproved as part of the EPA's December 5, 2023, final rule. CAA sections 110(a)(1) and (2) and 110(l) require each state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision to the EPA. To meet this requirement, every SIP submission must include evidence that the state provided adequate public notice and an opportunity for a public hearing consistent with the EPA's implementing regulations in 40 CFR 51.102.

⁸ 42 U.S.C. 7502(c)(3).

⁹ 42 U.S.C. 7502(c)(1).

¹⁰ 42 U.S.C. 7513a(b)(1)(B).

¹¹ 42 U.S.C. 7513a(b)(1)(B).

¹² *Id.*

¹³ 42 U.S.C. 7513a(b)(1)(B).

¹⁴ 42 U.S.C. 7513a(b)(1)(B).

¹⁵ MSM is applicable if the EPA has previously granted an extension of the attainment date under CAA section 188(e) for the nonattainment area and NAAQS at issue. The EPA denied Alaska's request to extend the Serious area attainment date for the Fairbanks PM_{2.5} Nonattainment Area.

¹⁶ 42 U.S.C. 7513a(d).

¹⁷ 42 U.S.C. 7513(c)(2) and 7513a(b)(1)(A).

¹⁸ 42 U.S.C. 7502(c)(2).

¹⁹ 42 U.S.C. 7513a(c).

²⁰ 42 U.S.C. 7513a(e).

²¹ 42 U.S.C. 7502(c)(9).

²² 42 U.S.C. 7502(c)(9).

²³ The EPA finalized a limited approval of the Fairbanks Emergency Episode Plan, State Air Quality Control Plan, Vol. II, section III.D.7.12, as SIP-strengthening on September 24, 2021. 86 FR 52997, September 24, 2021, at pp. 52997, 53004.

²⁴ 42 U.S.C. 7502(c)(5), 7513a(b)(3), 7513a(d), and 7513a(e).

On March 11, 2024, Alaska notified the public of the opportunity to review and comment on proposed regulatory changes related to the Fairbanks nonattainment area and announced two formal public hearings on April 10, 2024. The public comment period closed on May 10, 2024. Later, on August 26, 2024, Alaska opened a public comment period to solicit public review of amendments to numerous SIP sections and appendices and to notify the public of two hearings scheduled on September 26, 2024. On September 20 and 23, 2024, Alaska opened comment periods for the public to review each proposed permit revision to implement the State's proposed regulatory changes. The comment periods closed on October 22 and 25, 2024, respectively. The SIP submission includes evidence of the public notices and copies of written and oral comments received, with the State's associated responses. Therefore, we find that the submission meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l) and 40 CFR 51.102.

CAA section 110(k)(1)(B) requires the EPA to determine whether a SIP submission is complete within 60 days of receipt. This section also provides that any plan that the EPA has not affirmatively determined to be complete or incomplete will become complete by operation of law six months after the date of submission. The EPA reviewed the submission and finds it complete

based on the EPA's SIP completeness criteria in 40 CFR part 51, appendix V.²⁵

Section II of this document summarizes the EPA's review of Alaska's SIP submission against the relevant CAA requirements. The EPA's technical analysis is detailed in technical support documents in the docket for this action.

II. Review of the SIP Revisions to the Fairbanks Serious Plan and Fairbanks 189(d) Plan

A. Emissions Inventory

1. Statutory and Regulatory Requirements

CAA section 172(c)(3) requires that states submit a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the nonattainment area as part of a nonattainment plan for such area. On August 24, 2016, the EPA finalized regulations implementing SIP requirements for states with areas designated as nonattainment for the PM_{2.5} NAAQS.²⁶ This rule is codified at 40 CFR part 51, subpart Z and is referred to herein as the PM_{2.5} SIP Requirements Rule. The PM_{2.5} SIP Requirements Rule at 40 CFR 51.1008 contains the requirements for emissions

²⁵ See "SIP Submittal Checklist for the Fairbanks North Star Borough PM_{2.5} Nonattainment Area—2024 SIP revision," EPA Region 10, Air and Radiation Division, included in the docket for this action.

²⁶ Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements, 81 FR 58010, August 24, 2016, at p. 58149.

inventories.²⁷ The EPA has also issued additional guidance concerning emissions inventories for PM_{2.5} nonattainment areas.²⁸ In accordance with 40 CFR 51.1008, the attainment plan must include a base year emissions inventory and attainment projected emissions inventory.

The base year emissions inventory for a Serious PM_{2.5} nonattainment area must be one of the three years for which the EPA used monitored data to reclassify the area to Serious, or another technically appropriate year justified by the state in its Serious area nonattainment plan SIP submission.²⁹ Similarly, the base year emissions inventory for a nonattainment area subject to CAA section 189(d) must be one of the three years for which monitored data were used by the EPA to determine the area failed to attain the PM_{2.5} NAAQS by the applicable Serious area attainment date, or another technically appropriate year justified by the state in its Serious area nonattainment plan SIP submission.³⁰ The base year emissions inventory should provide a state's best estimate of actual emissions from all sources, *i.e.*, all emissions that contribute to the formation of PM_{2.5}. The emissions must be either annual total emissions, average-season day emissions, or both, as appropriate for the relevant annual versus 24-hour PM_{2.5} NAAQS. The state must include a rationale for providing annual or seasonal emissions inventories, and justification for the period used for any seasonal emissions calculations.³¹

According to 40 CFR 51.1008, the Fairbanks Revised 189(d) Plan must include an attainment projected inventory for the nonattainment area. The year of the projected inventory shall be the most expeditious year for which projected emissions show modeled PM_{2.5} concentrations below the level of the NAAQS. The emissions values shall be projected emissions of the same sources included in the base year inventory for the nonattainment area (*i.e.*, those only within the nonattainment area) and any new sources. The state shall include in this inventory projected emissions growth

and contraction from both controls and other causes during the relevant period. The temporal period of emissions shall be the same temporal period (annual, average-season-day, or both) as the base year inventory for the nonattainment area. The same sources reported as point sources in the base year inventory for the nonattainment area shall be included as point sources in the attainment projected inventory for the nonattainment area. Stationary nonpoint and mobile source projected emissions shall be provided using the same detail (*e.g.*, state, county, and process codes) as the base year inventory for the nonattainment area. The same detail of the emissions included shall be consistent with the level of detail and data elements as in the base year inventory for the nonattainment area (*i.e.*, as required by 40 CFR part 51, subpart A). Consistent with the base year inventory for the nonattainment area, the inventory shall include direct PM_{2.5} emissions, separately reported PM_{2.5} filterable and condensable emissions, and emissions of the scientific PM_{2.5} precursors, including precursors that are not significant PM_{2.5} plan precursors pursuant to a precursor demonstration under 40 CFR 51.1006.

A state's SIP submission must include documentation explaining how it calculated emissions data for the inventory and be consistent with the data elements required by 40 CFR part 51, subpart A.³² In estimating mobile source emissions, a state must use the latest emissions models and planning assumptions available at the time the SIP is developed.³³ States are also required to use the EPA's "Compilation of Air Pollutant Emission Factors" ("AP-42") road dust method for calculating re-entrained road dust emissions from paved roads.^{34 35}

³² 40 CFR 51.1008(c); (a)(1)(v); 81 FR 58010, August 24, 2016, at pp. 58027–29.

³³ See CAA section 172(c)(3).

³⁴ The EPA released an update to AP-42 in January 2011 that revised the equation for estimating paved road dust emissions based on an updated data regression that included new emissions tests results. 76 FR 6328 (February 4, 2011).

³⁵ AP-42 has been published since 1972 as the primary source of the EPA's emission factor information. <https://www.epa.gov/air-emissionsfactors-and-quantification/ap-42-compilation-air-emissions-factors>. It contains emission factors and process information for more than 200 air pollution source categories. A source category is a specific industry sector or group of similar emitting sources. The emission factors have been developed and compiled from source test data, material balance studies, and engineering estimates.

2. Summary of the EPA's Prior Rulemaking Regarding the Emissions Inventory

On December 5, 2023, the EPA finalized approval of the base year emissions inventory, but the EPA finalized disapproval of the projected attainment year emissions inventory. The EPA stated that, due to the insufficient control strategy, the attainment projected emissions inventory did not necessarily take into consideration all required emissions reductions.

3. Summary of the State's Submission Regarding the Emissions Inventory

Based on the EPA's approval of the initial Fairbanks 189(d) Plan's base year emissions inventory, Alaska retained State Air Quality Control Plan, Vol. II, section III.D.7.6.2. However, Alaska has since updated the modeling platform and included a 2020 base year emissions inventory in the Fairbanks Revised 189(d) Plan. The modeling platform includes key elements such as the meteorological modeling, air quality modeling, and model emissions inventories. The base year planning emissions inventory for direct PM_{2.5} and PM_{2.5} precursors (nitrogen oxides (NO_x), SO₂, volatile organic compounds (VOC), and ammonia (NH₃)) and the documentation for the inventory for the Fairbanks PM_{2.5} Nonattainment Area are located in the updated Fairbanks Emissions Inventory section.³⁶

For projecting attainment, the 2020 base year emissions inventory incorporates the ambient monitoring data used to establish the baseline design value. Alaska stated that the 2020 base year emissions inventory accounts for emissions reductions from control measures adopted and implemented through December 31, 2019. Projected control measure-driven emissions reductions are then applied to evaluate the appropriate attainment date. Alaska also noted that, for planning purposes, the base year emissions inventory represents a baseline of nonattainment area emissions to demonstrate five percent per year emissions reductions.

Alaska stated that the Fairbanks Revised 189(d) Plan includes an entirely new photochemical modeling platform and, for the emissions inventory, features a new, more current winter 2019–2020 modeling episode. Episodic emissions for the 2020 base year inventory were based on activity collected to represent this 74-day 2019–2020 period.

³⁶ State Air Quality Control Plan, Vol. II, section III.D.7.6.9.

²⁷ 81 FR 58010, August 24, 2016, at pp. 58078–58079.

²⁸ "Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations," EPA, May 2017 ("Emissions Inventory Guidance"), available at: <https://www.epa.gov/air-emissions-inventories/air-emissions-inventory-guidance-implementation-ozone-and-particulate>.

²⁹ 40 CFR 51.1008(b)(1).

³⁰ 40 CFR 51.1008(c)(1).

³¹ 40 CFR 51.1008.

For point sources, day- and hour-specific fuel use for the new 2019–2020 modeling episode were obtained by Alaska from each of the point source facilities within the nonattainment area. Alaska noted that unlike the base year emissions inventories from earlier versions of the nonattainment plan, which projected episodic emissions from 2008 to 2013 and 2019, respectively, Alaska stated that the 2020 base year point source emissions inventory was based on the actual data during the modeling episodes.

Alaska stated that, for space heating area sources, space heating energy usage estimates for the 2020 base year emissions inventory were based on a comprehensive new Fairbanks Home Heating survey, conducted in the spring of 2023. Respondents were asked to provide information on fuel usage by device in their household for the most recent two calendar years (2021 and 2022) as well as the six-month winter

period between October 2022 and March 2023. Data from this 2023 survey were used to replace projected space heating emissions developed under previous SIP revisions using earlier 2011–2015 surveys. Alaska noted that decreases in the fraction of wood devices used in the nonattainment area and the amount of wood use per device from the survey respondents tracked well with downward trajectories of wood use expected from existing and on-going control programs such as the Fairbanks North Star Borough's (FNSB) Wood Stove Change Out Program and the Alaska DEC's Solid Fuel-Burning Appliance Curtailment Program. Alaska stated that survey results were then back-casted to calendar year 2020 to provide a more realistic estimate of wood-fired heating use for the 2020 base year emissions inventory.³⁷

For on-road and non-road mobile sources, Alaska noted that the previous base year emissions inventories

included on-road vehicle populations and age distributions based on 2014 and 2018 department of motor vehicle (DMV) registration data, respectively. For the Fairbanks Revised 189(d) Plan, 2020 DMV registration data were used to align with the 2020 base year emissions inventory year. For on-road mobile sources, these 2020 DMV data were used to develop vehicle population, age distribution, and fuel type/technology inputs to the MOVES3 vehicle emissions model. For aircraft activity specifically, a recent adjustment to aircraft activity in the initial Fairbanks 189(d) Plan was made to reflect lower aircraft activity during the winter months. Otherwise, the estimates of aircraft activity in the Fairbanks Revised 189(d) Plan were unchanged. Table 2 of this preamble includes a summary of the base year emissions inventory.

TABLE 2—2020 BASE YEAR EPISODE AVERAGE DAILY EMISSIONS BY SOURCE SECTOR

Source sector	2020 base year emissions inventory (tons/day)				
	PM _{2.5}	NO _x	SO ₂	VOC	NH ₃
Point Sources	0.58	13.54	6.63	0.04	0.888
Area, Space Heating	1.97	2.17	3.61	6.66	0.109
Area, Space Heat, Wood	1.89	0.23	0.04	6.55	0.067
Area, Space Heat, Oil	0.06	1.72	3.54	0.10	0.003
Area, Space Heat, Coal	0.00	0.00	0.00	0.00	0.00
Area, Space Heat, Other	0.02	0.22	0.02	0.01	0.039
Area, Other	0.11	0.36	0.03	2.21	0.047
Mobile, On-Road	0.07	1.18	0.000	1.42	0.040
Mobile, Aircraft	0.12	0.43	5.44	0.15	0.000
Mobile, Non-Road excluding aircraft	0.09	0.29	0.00	2.64	0.0001
Totals	2.95	17.96	15.71	13.04	0.285

Source: State Air Quality Control Plan, Vol. II, section III.D.7.6, Table 7.6–9.

Alaska noted for PM_{2.5} overall, the 2020 base year emissions in the Fairbanks Revised 189(d) Plan are nine percent lower than the 2019 base year emissions inventory in the initial Fairbanks 189(d) Plan, with differences coming from space heating and mobile sources that are likely the result of on-going emissions controls.³⁸

Alaska stated that NO_x and SO₂ emissions in the Fairbanks Revised 189(d) Plan are 17 and nine percent higher respectively than in the initial Fairbanks 189(d) Plan. Alaska asserted that these emissions increases are largely driven by changes in the Point (and Other Area) source emissions,

since the new 74-day 2019–2020 modeling episode was based on actual emissions. In addition, the increases in NO_x and SO₂ emissions for the Other Area source sector under the Fairbanks Revised 189(d) Plan are due to moving stationary source emissions from Eielson AFB to this sector. Under the previous base year emissions inventories, stationary source emissions from Eielson were contained in the Point source portion of the inventory.

The reductions in VOC emissions in the Fairbanks Revised 189(d) Plan are due to mobile source sector reductions in the MOVES3 model. The initial Fairbanks 189(d) Plan inventory was

based on an earlier version of MOVES that reflected higher VOC emission factors. In addition, Alaska stated that VOC reductions in the Space Heating sector are likely the result of differences in the mix of wood use by device between the two inventories. The Fairbanks Revised 189(d) Plan inventory reflects higher usage fractions of certified and pellet-based wood burning devices based on data from new 2023 Home Heating survey, and these devices have lower VOC emission factors.

Finally, Alaska noted that the difference in overall NH₃ emissions between the two base year inventories is very modest (one percent lower under

³⁷ For a description of the “back-cast” method, see Kotchenruther, Robert. (November 21, 2024). *Technical support document for Alaska Department of Environmental Conservation's amendments to: State Air Quality Control Plan*,

Emission Inventory Data (version August 19, 2024). U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division, EPA-R10-OAR-2024-0595, section 1.5.

³⁸ For more details of the 2019 base year emissions inventory, see 88 FR 1454, January 10, 2023, at p. 1460.

the Fairbanks Revised 189(d) base year emissions inventory). These source sector-specific variations mirror the adjustments made to PM_{2.5}, SO₂, NO_x, and VOC emissions discussed earlier in this section II.A of this preamble.

Building from Alaska's new 2020 base year emissions inventory, Alaska developed its attainment projections. As a first step, Alaska constructed a 2027 baseline emissions inventory that reflected projected activity growth factors, previously implemented control measures, and other adjustments to point sources and wood usage.³⁹

As a second step, Alaska developed the 2027 projected attainment emissions inventory by adjusting the 2027 baseline inventory to account for projected emissions reductions from the control

strategy included in the Fairbanks Revised 189(d) Plan. For a complete list of measures included in Alaska's control strategy, see Table 4 in section II.D of this preamble below. Notably, as part of the control strategy, the Wood Stove Change Out Program and the Oil-To-Gas Conversion Program are managed by the local Fairbanks North Star Borough. Direct PM_{2.5} reductions from these programs in 2020 through 2026 totaled over 1.3 tons per episode day. The State of Alaska manages the Solid Fuel-Burning Appliance Curtailment Program as well as seven other control measures for which emissions benefits were quantified and incorporated into the 2027 attainment projected inventory. Notably, the State recently increased the stringency of the

curtailment program by lowering the alert stages to 20 µg/m³ and 30 µg/m³, respectively. Alaska also utilized funding from the 2019–2020 Targeted Airshed Grant (TAG) to purchase three dynamic message highway signs and an infrared camera and to expand staffing to increase compliance. For details of these projected emissions reductions, see the spreadsheet calculations in the State Air Quality Control Plan, Vol. III, Appendix III.D.7.6.

Alaska concluded that, after considering the emissions reductions from these control measures, the Fairbanks PM_{2.5} Nonattainment Area could demonstrate attainment by 2027, based on the 2027 attainment year emissions inventory, as summarized in Table 3 of this preamble.

TABLE 3—2027 PROJECTED ATTAINMENT EMISSIONS INVENTORY, AVERAGE DAILY EMISSIONS BY SOURCE SECTOR

Source sector	2027 Projected attainment emissions inventory (tons/day)				
	PM _{2.5}	NO _x	SO ₂	VOC	NH ₃
Point Sources	0.62	14.60	7.15	0.04	0.095
Area, Space Heating	0.74	2.34	1.98	8.01	0.124
Area, Space Heat, Wood	0.70	0.28	0.04	7.90	0.081
Area, Space Heat, Oil	0.02	1.83	1.91	0.10	0.004
Area, Space Heat, Coal	0.00	0.00	0.00	0.00	0.00
Area, Space Heat, Other	0.02	0.22	0.02	0.01	0.039
Area, Other	0.13	0.40	0.03	2.33	0.051
Mobile, On-Road	0.05	0.65	0.00	1.08	0.038
Mobile, Aircraft	0.12	0.45	5.70	0.17	0.000
Mobile, Nonroad excluding aircraft	0.08	0.32	0.00	2.22	0.002
Totals	1.74	18.75	14.86	13.85	0.310

Source: State Air Quality Control Plan, Vol. II, section III.D.7.6, Table 7.6–19.

Alaska observed that the 2027 projected attainment emissions inventory provides reductions in total PM_{2.5} and SO₂ emissions within the nonattainment area of 41 percent and five percent respectively. Within the space heating sector, which has a proportionally higher impact on ambient PM_{2.5}, Alaska noted that the 2027 projected attainment emissions inventory reductions were 63 percent and 45 percent for direct PM_{2.5} and SO₂, respectively.

4. EPA Evaluation and Proposed Action Regarding the Emissions Inventory

a. 2020 Base Year Emissions Inventory

The EPA proposes to approve the 2020 base year emissions inventory as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008. The EPA is proposing to determine that

Alaska has justified that 2020 is a technically appropriate inventory year consistent with 40 CFR 51.1008(c)(1). The base year emissions inventory includes actual emissions of all sources within the nonattainment area. The EPA proposes to determine that a seasonal episode daily average inventory is appropriate for the Fairbanks PM_{2.5} Nonattainment Area because the area experiences episodic elevated concentrations of PM_{2.5} during wintertime cold weather events. The emissions inventory includes direct PM_{2.5} emissions, separately reported as filterable and condensable emissions, as well as all scientific PM_{2.5} precursors (SO₂, NO_x, VOC, and NH₃). Alaska reported emissions for point sources according to the point source emissions thresholds of the Air Emissions Reporting Rule in 40 CFR part 51, subpart A. Finally, the emissions

inventory is consistent with the detail and data elements required by 40 CFR part 51, subpart A. For the EPA's full evaluation, see the EPA's technical evaluation of Alaska's emissions inventory included in the docket for this action.⁴⁰

b. 2027 Projected Attainment Emissions Inventory

The EPA proposes to approve the 2027 projected attainment emissions inventory as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008. The EPA is proposing to determine that 2027 is the most expeditious year for which projected emissions show modeled PM_{2.5} concentrations below the level of the NAAQS. As discussed in section II.D of this preamble, Alaska included a model output for 2026 that resulted in emissions levels exceeding the 2006 24-

³⁹ State Air Quality Control Plan, Vol. II, section III.D.7.6–11.

⁴⁰ Kotchenruther, Robert. (November 21, 2024). *Technical support document for Alaska*

Department of Environmental Conservation's amendments to: State Air Quality Control Plan, Emission Inventory Data (version August 19, 2024). U.S. Environmental Protection Agency, Region 10,

Laboratory Services and Applied Science Division, EPA–R10–OAR–2024–0595.

hour PM_{2.5} NAAQS. The attainment projected inventory includes the sources in the base year emissions inventory and accounts for growth and contraction from both controls and other causes. Consistent with the base year emissions inventory, the attainment projected emissions inventory is based on episode average daily emissions. The attainment projected emissions inventory includes direct PM_{2.5} emissions, separately reported as filterable and condensable emissions, as well as all scientific precursors. The attainment projected emissions inventory includes the same level of emissions detail for the same point sources and for mobile sources reported in the base year emissions inventory. For the EPA's full evaluation, see the EPA's technical evaluation of Alaska's emissions inventory, included in the docket for this action.⁴¹

B. Pollutants Addressed

1. Statutory and Regulatory Requirements Regarding the Pollutants Addressed

Under subpart 4 of part D, title I of the CAA and the PM_{2.5} SIP Requirements Rule, each state containing a PM_{2.5} nonattainment area must evaluate all PM_{2.5} precursors for regulation unless, for any given PM_{2.5} precursor, the state demonstrates to the Administrator's satisfaction that such precursor does not contribute significantly to PM_{2.5} levels that exceed the NAAQS in the nonattainment area.⁴² The provisions of subpart 4 do not define the term "precursor" for purposes of PM_{2.5}, nor do they explicitly require the control of any specifically identified PM_{2.5} precursor. The statutory definition of "air pollutant," however, provides that the term "includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used."⁴³ The EPA has identified SO₂, NO_x, VOCs, and NH₃ as precursors to the formation of PM_{2.5}.⁴⁴ Accordingly, the attainment plan requirements of part D, title I of the CAA and the PM_{2.5} SIP Requirements Rule apply to emissions of all four precursors and direct PM_{2.5} from all

types of stationary, area, and mobile sources, except as otherwise provided in CAA section 189(e).

As noted in the EPA's Final Policy Assessment for the reconsideration of the PM_{2.5} NAAQS, secondary particulate matter is formed in the atmosphere by photochemical oxidation reactions of both inorganic and organic gas-phase precursors. Precursor gases include SO₂, NO_x, NH₃, and VOC gases of anthropogenic or natural origin. Anthropogenic SO₂ and NO_x are the predominant precursor gases in the formation of secondary PM_{2.5} sulfate and nitrate, and NH₃ is the gas-phase precursor for PM_{2.5} ammonium. PM_{2.5} ammonium formation is enhanced by particle acidity resulting from sulfuric acid and nitric acid condensation onto particles. Atmospheric oxidation of VOCs, both anthropogenic and biogenic, is an important source of organic aerosols, particularly in summer. The semi-volatile and nonvolatile products of VOC oxidation reactions can condense onto existing particles or can form new particles.⁴⁵

According to the State, total wintertime PM_{2.5} concentrations in the Fairbanks PM_{2.5} Nonattainment Area are a function of both primary PM_{2.5} emissions and secondary PM_{2.5} formed from precursors (see State Air Quality Control Plan, Vol. II, section III.D.7.8.1).

CAA section 189(e) requires that the control requirements for major stationary sources of direct PM₁₀⁴⁶ and PM_{2.5}⁴⁷ also apply to major stationary sources of PM₁₀ and PM_{2.5} precursors, except where the Administrator determines that such sources do not contribute significantly to PM₁₀ or PM_{2.5} levels that exceed the standard in the area. CAA section 189(e) contains the only express exception to the control requirements under subpart 4 (e.g., requirements for reasonably available control measures (RACM) and reasonably available control technology (RACT), BACM and BACT, Most Stringent Measures (MSM), and New Source Review (NSR) for sources of direct PM_{2.5} and PM_{2.5} precursor

emissions). Although CAA section 189(e) explicitly addresses only major stationary sources, the EPA interprets this provision as authorizing it also to determine, under appropriate circumstances, that regulation of specific PM₁₀ or PM_{2.5} precursors from other source categories in a given nonattainment area is not necessary.⁴⁸ For example, under the EPA's longstanding interpretation of the control requirements that apply to stationary, area, and mobile sources of PM₁₀ precursors in the nonattainment area under CAA section 172(c)(1) and subpart 4,⁴⁹ a state may demonstrate in a SIP submission that control of a certain precursor pollutant is not necessary in light of its insignificant contribution to ambient PM₁₀ or PM_{2.5} levels in the nonattainment area.⁵⁰

Under the PM_{2.5} SIP Requirements Rule, a state may elect to submit to the EPA a "comprehensive precursor demonstration" for a specific nonattainment area to show that emissions of a particular precursor from all existing sources located in the nonattainment area do not contribute significantly to PM_{2.5} levels that exceed the NAAQS at issue in the nonattainment area.⁵¹ If the EPA determines that the contribution of the precursor to PM_{2.5} levels in the area is not significant and approves the demonstration, then the state is not required to control emissions of the relevant precursor from existing sources in the attainment plan.⁵²

Relatedly, under the PM_{2.5} SIP Requirements Rule, a state may submit to the EPA a "major stationary source precursor demonstration" for a specific nonattainment area that shows that emissions of a particular precursor from all existing major stationary sources located in the nonattainment area do not contribute significantly to PM_{2.5} levels that exceed the standard in the area.⁵³ If the EPA approves a major stationary source precursor demonstration, then the state is not required to control emissions of the relevant precursor from existing major stationary sources in the current attainment plan.⁵⁴

⁴¹ Kotchenruther, Robert. (November 21, 2024). *Technical support document for Alaska Department of Environmental Conservation's amendments to: State Air Quality Control Plan, Emission Inventory Data (version August 19, 2024)*. U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division, EPA-R10-OAR-2024-0595.

⁴² 40 CFR 51.1006, 51.1010; See 81 FR 58010, August 24, 2016, at pp. 58017–58020.

⁴³ CAA section 302(g).

⁴⁴ 81 FR 58010, August 24, 2016, at p. 58015.

⁴⁵ "Policy Assessment for the Reconsideration of the National Ambient Air Quality Standards for Particulate Matter" (EPA/452/R-22-004), EPA, May 2022), p. 2–10.

⁴⁶ The requirements for attainment plans for the 2006 24-hour PM_{2.5} NAAQS include the general nonattainment area planning requirements in CAA section 172 of title I, part D, subpart 1 and the additional planning requirements specific to particulate matter in CAA sections 188 and 189 of title I, part D, subpart 4. 81 FR 58010, August 24, 2016, at pp. 58012–58014.

⁴⁷ The general attainment plan requirements of subpart 1, part D, of title I of the CAA in addition to the specific requirements in subpart 4, part D, of Title I of the CAA apply to both PM₁₀ and PM_{2.5}. See 81 FR 58010, August 24, 2016, at pp. 58013.

⁴⁸ 81 FR 58010, August 24, 2016, at pp. 58018–58019.

⁴⁹ State Implementation Plan; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 ("General Preamble"), 57 FR 13498, April 16, 1992, at pp. 13539–42.

⁵⁰ 40 CFR 51.1006. See also 81 FR 58010, 58033. Courts have upheld this approach to the requirements of subpart 4 for PM₁₀. See, e.g., *Assoc. of Irrigated Residents v. EPA*, et al., 423 F.3d 989 (9th Cir. 2005).

⁵¹ 40 CFR 51.1006(a)(1).

⁵² 40 CFR 51.1006(a)(1).

⁵³ 40 CFR 51.1006(a)(2).

⁵⁴ 40 CFR 51.1006(a)(2)(iii).

In addition, in May 2019, the EPA issued the “PM_{2.5} Precursor Demonstration Guidance” (“PM_{2.5} Precursor Guidance”), which provides recommendations to states for analyzing nonattainment area PM_{2.5} emissions and developing such optional precursor demonstrations, consistent with the PM_{2.5} SIP Requirements Rule.⁵⁵

The EPA evaluated the Fairbanks Revised 189(d) Plan in accordance with the presumption embodied within subpart 4 that the State must address all PM_{2.5} precursors in the evaluation and implementation of potential control measures, unless the State adequately demonstrates that emissions of a particular precursor or precursors do not contribute significantly to ambient PM_{2.5} levels that exceed the PM_{2.5} NAAQS in the nonattainment area. In reviewing any determination by the state to exclude a PM_{2.5} precursor from the required evaluation of potential control measures, we consider both the magnitude of the precursor’s contribution to ambient PM_{2.5} concentrations in the nonattainment area and the sensitivity of ambient PM_{2.5} concentrations in the area to reductions in emissions of that precursor.⁵⁶

2. Summary of the EPA’s Prior Rulemaking Regarding the Pollutants Addressed

On December 5, 2023, the EPA finalized approval of Alaska’s precursor demonstration that NO_x and VOCs are not significant precursors to PM_{2.5} formation in the Fairbanks PM_{2.5} Nonattainment Area.⁵⁷

3. Summary of the State’s Submission Regarding the Pollutants Addressed

In the Fairbanks Revised 189(d) Plan, in accordance with 40 CFR 51.1006(a)(2), Alaska included a demonstration that SO₂ emissions from major stationary sources do not significantly contribute to PM_{2.5} formation in the Fairbanks PM_{2.5} Nonattainment Area. As discussed in the State Air Quality Control Plan, Vol. II, section III.D.7.8.15, Alaska stated that it utilized a new model platform that accurately simulated the formation of precursors into PM_{2.5} in the Fairbanks environment. The new model platform also demonstrated marked improvement in the simulation of sulfate formation

from SO₂ emissions as compared to prior platforms used by Alaska. Using the new model platform, Alaska performed a concentration-based contribution analysis using air quality modeling with “zero-out” model runs. Alaska’s analysis showed that major stationary sources contributed 0.21 µg/m³ PM_{2.5} at regulatory monitoring sites in Fairbanks including the North Pole monitor (Hurst Road), which is below the 1.5 µg/m³ PM_{2.5} threshold included in the EPA’s guidance.⁵⁸

According to Alaska, the updated analysis of precursor impacts on PM_{2.5} utilized a photochemical grid model (PGM) that accounted for the non-linear secondary effects of precursor gases. PGMs account for the atmospheric chemistry, transport, and deposition of pollutants using local emissions and meteorological data. The zero-out approach compared a baseline model run with a model run where a precursor’s emissions are set to zero to determine the influence of that precursor on PM_{2.5} formation.

Alaska noted that a concentration-based analysis was completed that excluded all sources of SO₂. The monitored filter sulfate and the concentrations from the 5-year design value showed total sulfate from all sectors was 5.9 µg/m³ or 21 percent of the PM_{2.5} at an air quality monitor located in the City of Fairbanks (NCore) and 5.9 µg/m³ or nine percent of the PM_{2.5} at the North Pole air quality monitor (Hurst Road). When accounting for all emissions sources, SO₂ remained a significant precursor to PM_{2.5} formation in the Fairbanks PM_{2.5} Nonattainment Area.

After completing the first step, the major stationary source sector SO₂ precursor model runs were then performed based on the emissions for the 2020 base year and a model run that excluded SO₂ emissions. The difference in sulfate for a model simulation using base year emissions and a second model simulation with major stationary-source SO₂ emissions set to zero was compared with the 1.5 µg/m³ threshold. Alaska stated that this concentration-based modeling demonstrated the insignificance of SO₂ from major stationary sources when compared with the 1.5 µg/m³ threshold in the EPA’s guidance, and therefore, a sensitivity-based contribution analysis was not needed, in accordance with 40 CFR 51.1006(a)(2)(ii).

4. The EPA’s Evaluation and Proposed Action Regarding the Pollutants Addressed

The EPA evaluated the State’s precursor demonstration included in the Fairbanks Revised 189(d) Plan. The EPA proposes to determine that Alaska’s submission meets the requirements of 40 CFR 51.1006(a)(2) and is consistent with the EPA guidance.⁵⁹ Regarding the State’s analytical approach, the EPA proposes to find that the State used appropriate methods and data to evaluate PM_{2.5} formation in the Fairbanks PM_{2.5} Nonattainment Area from precursor emissions. Consistent with 40 CFR 51.1006(a)(2), Alaska’s submission includes a concentration-based contribution analysis. The concentration-based analysis shows that the SO₂ emissions from major stationary sources do not significantly contribute to PM_{2.5} formation in the Fairbanks PM_{2.5} Nonattainment Area. Specifically, Alaska’s analysis shows that SO₂ emissions from major stationary sources contribute 0.21 µg/m³ of PM_{2.5} at the North Pole Hurst Road air quality monitor—far below the 1.5 µg/m³ threshold included in the EPA guidance. For the EPA’s full evaluation, see EPA’s Technical Support Document.⁶⁰ Therefore, the EPA proposes to approve Alaska’s precursor demonstration submitted as part of the Fairbanks Revised 189(d) Plan as demonstrating that the contribution of SO₂ from existing major stationary sources to PM_{2.5} levels in the Fairbanks PM_{2.5} Nonattainment Area is not significant in accordance with 40 CFR 51.1006(a)(2)(i). If the EPA finalizes approval as proposed, Alaska will not be required to control SO₂ emissions from existing major stationary sources in the Fairbanks PM_{2.5} Nonattainment Area, pursuant to CAA section 189 and 40 CFR 51.1010. For purposes of the Fairbanks Revised 189(d) Plan, the PM_{2.5} plan precursors are: NH₃ and SO₂ for all sources except for major stationary sources.

Consistent with its past actions, if finalized, the EPA’s approval of Alaska’s

⁵⁵ “PM_{2.5} Precursor Demonstration Guidance,” EPA-454/R-19-004, May 2019, including Memo dated May 30, 2019, from Scott Mathias, Acting Director, Air Quality Policy Division and Richard Wayland, Director, Air Quality Assessment Division, Office of Air Quality Planning and Standards (OAQPS), EPA to Regional Air Division Directors, Regions 1–10, EPA.

⁵⁶ 40 CFR 51.1006(a)(1)(i) and (ii).

⁵⁷ 88 FR 84626, December 5, 2023, at p. 84675.

⁵⁸ See State Air Quality Control Plan, Vol. II., section III.D.7.8.15, Table 7.8.18–1.

⁵⁹ “PM_{2.5} Precursor Demonstration Guidance,” EPA-454/R-19-004, May 2019, including Memo dated May 30, 2019, from Scott Mathias, Acting Director, Air Quality Policy Division and Richard Wayland, Director, Air Quality Assessment Division, Office of Air Quality Planning and Standards (OAQPS), EPA to Regional Air Division Directors, Regions 1–10, EPA.

⁶⁰ Briggs, Nicole. (December 2, 2024). *Review of Attainment Demonstration Modeling and SO₂ Precursor Demonstration in the 2024 State Implementation Plan Submission for the Fairbanks 24-hour PM_{2.5} Nonattainment Area*. U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division, EPA-R10-OAR-2024-0595.

precursor demonstration would not extend to nonattainment NSR requirements for the area. Alaska previously determined that it was appropriate to regulate NO_x, SO₂, VOCs, and NH₃ as precursors to PM_{2.5} with respect to nonattainment NSR and submitted rule changes to that effect on October 25, 2018. The EPA approved the submitted revised program as meeting nonattainment NSR requirements triggered upon reclassification of the Fairbanks PM_{2.5} Nonattainment Area to Serious (84 FR 45419, August 29, 2019).

C. Control Strategy

1. Statutory and Regulatory Requirements Regarding the Control Strategy

CAA section 189(b) and 40 CFR 51.1010(a) contain the control measure requirements for Serious areas. CAA section 189(d) and 40 CFR 51.1010(c) contain the control measure requirements for Serious areas that fail to attain.

Pursuant to CAA section 189(b) and 40 CFR 51.1010(a), the state must identify, adopt, and implement best available control measures, including best available control technologies, on sources of direct PM_{2.5} emissions and sources of emissions of PM_{2.5} plan precursors located in any Serious PM_{2.5} nonattainment area or portion thereof located within the state. This level of control stringency is commonly called “BACM” and “BACT.” The regulation at 40 CFR 51.1010(a) specifies the requirements states must meet to identify potential control measures and in determining the measures states must include in the control strategy as BACM or BACT for the nonattainment area:

The state must identify all sources of direct PM_{2.5} emissions and sources of emissions of PM_{2.5} precursors in the nonattainment area, in accordance with the emissions inventory requirements in 40 CFR 51.1008(b).

The state must identify all potential control measures to reduce emissions from all sources of direct PM_{2.5} emissions and sources of emissions of PM_{2.5} plan precursors in the nonattainment area. The state must survey other NAAQS nonattainment areas in the U.S. and identify any measures for direct PM_{2.5} and PM_{2.5} plan precursors not previously identified by the state during the development of the Moderate area or Serious area attainment plan for the area.

The state must identify, adopt, and implement the best available control measures for each emission source.

However, the state may demonstrate that any measure identified under 40 CFR 51.1010(a)(2) is not technologically or economically feasible to implement in whole or in part by the end of the tenth calendar year following the effective date of designation of the area and may eliminate such whole or partial measure from further consideration. Overall, economic feasibility is a less significant factor in the BACM and BACT determination process.⁶¹ There are considerations for technological feasibility of a potential control measure, where a state may consider factors including but not limited to a source’s processes and operating procedures, raw materials, physical plant layout, and potential environmental impacts such as increased water pollution, waste disposal, and energy requirements.⁶² There are also considerations for economic feasibility of a potential control measure where a state may consider capital costs, operating and maintenance costs, and cost effectiveness of the measure.⁶³ In assessing whether a control measure or technology is BACM or BACT, the state must consider emissions reduction measures with higher costs per ton compared to the economic feasibility criteria applied in their RACM or RACT analysis.⁶⁴ With respect to determining BACT pursuant to CAA section 189(b), the EPA expects that states use the top-down BACT analysis process used in the Prevention of Significant Deterioration (PSD) Program.⁶⁵

Pursuant to CAA section 189(b), a state with a Serious nonattainment area must include provisions to assure the implementation of BACM and BACT-level controls on sources of direct PM_{2.5} and PM_{2.5} plan precursors no later than 4 years after the date the area is classified (or reclassified) as a Serious area.

In the preamble to the final PM_{2.5} SIP Requirements Rule, the EPA recommended the following the 5-Step BACM/BACT selection process that states should follow to satisfy the analytical and substantive requirements of 40 CFR 51.1010(a) and CAA section 189(b):⁶⁶

⁶¹ *Id.*

⁶² 40 CFR 51.1010(a)(3)(i); 81 FR 58010, August 24, 2016, at p. 58084.

⁶³ 40 CFR 51.1010(a)(3)(ii); 81 FR 58010, August 24, 2016, at p. 58085.

⁶⁴ 81 FR 58010, August 24, 2016, at p. 58085.

⁶⁵ *Id.* at p. 58080 (“Consistent with past policy, BACT determinations for PM_{2.5} NAAQS implementation are to follow the same process and criteria that are applied to the BACT determination process for the PSD program.”).

⁶⁶ *Id.* at pp. 58084–85.

Step 1: Develop a comprehensive inventory of sources and source categories of directly emitted PM_{2.5} and PM_{2.5} precursors.

Step 2: Identify potential control measures for all such sources.

Step 3: Determine whether an available control measure or technology is technologically feasible.

Step 4: Determine whether an available control measure or technology is economically feasible.

Step 5: Determine the earliest date by which a control measure or technology can be implemented in whole or in part in the area.

The EPA interprets CAA section 189(b) to require the state to determine what is BACM or BACT for a particular source or source category.⁶⁷ The EPA’s longstanding interpretation of the CAA is that BACM and BACT determinations are to be generally independent of attainment for purposes of implementing the PM_{2.5} NAAQS.⁶⁸ The EPA interprets the CAA requirement to impose BACM/BACT level control as requiring more emphasis on what controls are the best for the relevant source and whether those controls are feasible rather than on the attainment needs of the area.⁶⁹ States also may not decline to evaluate, or to control as necessary, sources or source categories on the basis that they are de minimis.⁷⁰

Subsequently, for a state with a Serious PM_{2.5} nonattainment area that has failed to attain by the applicable attainment date, the state must submit a revised attainment plan with a control strategy that demonstrates that each year the area will achieve at least a five percent reduction in emissions of direct PM_{2.5} or a five percent reduction in emissions of a PM_{2.5} plan precursor based on the most recent emissions inventory for the area; and that the area will attain the standard as expeditiously as practicable consistent with the attainment date requirements under 40 CFR 51.1004(a)(3).⁷¹ The regulation at 40 CFR 51.1010(c) specifies the following process the state must follow in determining which measures must be included in the control strategy:

The state shall identify all sources of direct PM_{2.5} emissions and sources of

⁶⁷ *Id.* at p. 58081.

⁶⁸ State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (“Addendum to the General Preamble”), 59 FR 41998, at p. 42011 (August 16, 1994); 81 FR 58010, August 24, 2016, at p. 58081.

⁶⁹ *Id.*

⁷⁰ *Id.* at p. 58082.

⁷¹ CAA section 189(d), 42 U.S.C. 7513a(d), and 40 CFR 51.1010(c).

emissions of PM_{2.5} precursors in the nonattainment area in accordance with the emissions inventory requirements in 40 CFR 51.1008(b).

The state shall identify all potential control measures to reduce emissions from all sources of direct PM_{2.5} emissions and sources of emissions of PM_{2.5} plan precursors in the nonattainment area. For the sources and source categories represented in the emissions inventory for the nonattainment area, the state shall identify the most stringent measures (MSM) for reducing direct PM_{2.5} and PM_{2.5} plan precursors adopted into any SIP or used in practice to control emissions in any state, as applicable.

The state shall also reconsider and reassess any measures previously rejected by the state during the development of any Moderate area or Serious area attainment plan control strategy for the area. Similar to the requirements for Serious area plans, the state may make a demonstration for a 189(d) plan that a measure is not technologically or economically feasible to implement in whole or in part within 5 years or such longer period as the EPA may determine is appropriate after the EPA's determination that the area failed to attain by the Serious area attainment date and may eliminate such whole or partial measure from further consideration. There are considerations for technological feasibility of a potential control measure, as described under 40 CFR 51.1010(c)(3)(i), where a state may consider factors including but not limited to a source's processes and operating procedures, raw materials, physical plant layout, and potential environmental impacts such as increased water pollution, waste disposal, and energy requirements. There are also considerations for economic feasibility of a potential control measure, under 40 CFR 51.1010(c)(3)(ii), where a state may consider capital costs, operating and maintenance costs, and cost effectiveness of the measure. Unless the state has demonstrated that the measure is not technologically or economically feasible, the state shall adopt and implement all potential control measures identified.

Finally, control measures adopted as part of the state's control strategy must be permanent, enforceable as a practical matter, and quantifiable.⁷² In order to be

enforceable as a practical matter, the state must adopt into the SIP not only the control measure or emissions limit itself but also appropriate monitoring, recordkeeping, and reporting requirements to ensure compliance with the control measure.⁷³ Without appropriate monitoring, recordkeeping, and reporting requirements, violations of the control measure could go undetected.⁷⁴

2. Summary of the EPA's Prior Rulemaking Regarding the Control Strategy

On December 5, 2023, the EPA finalized an approval in part and disapproval in part of the BACM requirements for the Fairbanks PM_{2.5} Nonattainment Area. The EPA's action for each emissions source category is described in the following paragraphs.

a. Alaska's Identification and Adoption of BACM for Home Heating and Other Area Sources

i. Solid Fuel-Burning

The EPA approved in part and disapproved in part Alaska's analysis and adoption of control measures for this source category as meeting the BACM requirements for PM_{2.5} and SO₂ emissions.⁷⁵ The EPA approved Alaska's analysis that found no NH₃-specific emissions controls for this source category. The EPA also previously approved as SIP strengthening and federally enforceable many of the control measures submitted as part of the Fairbanks Serious Plan and prior SIP submissions in 2018 as part of a separate action (86 FR 52997, September 24, 2021).

Alaska identified a number of solid fuel-burning control measures that have been adopted by other states and local authorities to identify the full range of potential BACM/BACT measures for this source category. This analysis took into account technical and economic feasibility and other considerations included in the PM_{2.5} SIP Requirements Rule.

Alaska's two-stage Solid Fuel-Burning Appliance Curtailment Program, included in the Fairbanks Emergency Episode Plan, adopts air quality thresholds that are at least as stringent as comparable curtailment programs in

Idaho, Utah, and California. Alaska accounted for the differences in natural gas availability, seasonal climate conditions, and wood stove change-out incentives in establishing the two-stage thresholds at 20 µg/m³ (Stage 1) and 30 µg/m³ (Stage 2), respectively. Alaska also had an advisory level set at 15 µg/m³ as part of the curtailment program. Alaska placed further limitations on the "No Other Adequate Source of Heat" (NOASH) waiver (available to households as a temporary waiver from certain curtailment requirements), limiting applicability to those that have economic needs based on objective criteria and limiting the number of years NOASH waivers are available. Therefore, the EPA approved the Solid Fuel-Burning Appliance Curtailment Program and associated updates to the NOASH waivers and temporary exemption as BACM for the solid-fuel burning source category (*i.e.*, Alaska state regulations 18 AAC 50.075 (e)(3), (f)(2)) for PM_{2.5} and SO₂ emissions.⁷⁶

Alaska identified and evaluated as BACM the heating device performance standards adopted previously by Missoula County, Montana. Alaska adopted a regulation modeled after the rule in Missoula County. Under 18 AAC 50.077(c), Alaska's regulations require that wood stoves meet emissions standards that are more stringent than the EPA's New Source Performance Standards (NSPS) requirement for residential wood heaters at 40 CFR part 60 and also include one-hour testing requirements to ensure only the lowest-emitting wood stoves are allowed to be sold and installed in the nonattainment area. The EPA approved these measures as BACM for the solid-fuel burning source category (*i.e.*, 18 AAC 50.077 (a–j)) for PM_{2.5} and SO₂ emissions.⁷⁷

Alaska's regulation 18 AAC 50.075(f), applicable to the Fairbanks PM_{2.5} Nonattainment Area, prohibits the operation of a solid fuel-fired heating device emissions when visible emissions exceed 20 percent opacity for more than six minutes in any one hour, except during the first 15 minutes after initial firing of the device, when the opacity limit must be less than 50 percent. The rule also prohibits visible emissions from crossing property lines. These opacity limits provide a visual indicator for the proper operation of a solid-fuel heating device. The EPA approved this measure as BACM.⁷⁸

The EPA approved as BACM the additional removal or render inoperable

⁷² Control measures must be incorporated by reference into the regulatory portion of the SIP (52.70(c) and (d)) with appropriate monitoring and reporting requirements. See CAA section 110(a)(2)(A); 42 U.S.C. 7410(a)(2)(A); 81 FR 58010, August 24, 2016, at pp. 58046–47; 57 FR 13498, April 16, 1992, at pp.13567–68.

⁷³ 81 FR 58010, August 24, 2016, at pp. 58046–47; 57 FR 13498, April 16, 1992, at pp. 13567–68; 67 FR 22168, May 2, 2002, at p. 22170; 80 FR 33840, June 12, 2015, at pp. 33843, 33865; *Montana Sulphur & Chemical Co. v. EPA*, 666 F.3d 1174, at pp. 1189–1190 (9th Cir. 2012).

⁷⁴ 67 FR 22168, May 2, 2002, at p. 22170; *Montana Sulphur & Chemical Co. v. EPA*, 666 F.3d 1174, at pp. 1189–1190 (9th Cir. 2012).

⁷⁵ 88 FR 84626, December 5, 2023, at p. 84674.

⁷⁶ 88 FR 84626, December 5, 2023, at pp. 84699, 84673–84675.

⁷⁷ *Id.*

⁷⁸ *Id.*

restrictions placed on non-certified EPA wood stoves, non-pellet outdoor hydronic heaters, coal-fired heating devices, and EPA-certified wood stoves greater than 25 years-old meet BACM requirements for PM_{2.5} and SO₂ emissions.⁷⁹ These devices are to be removed or rendered inoperable by December 31, 2024, or if a building or residence with such a device is sold prior to that date (or if a wood-fired heating device is 25 years old prior to that date). These include Alaska state regulations 18 AAC 50.077 (l–m). The EPA approved the other solid-fuel burning regulations adopted by Alaska, including device registration under 18 AAC 50.077(h) and dry wood requirements for wood sellers 18 AAC 50.076, which are at least as stringent as similar regulations adopted by other states and local authorities, and therefore represent BACM for PM_{2.5} and SO₂ emissions for the solid-fuel burning source category.⁸⁰ These include Alaska state regulations 18 AAC 50.076 (d–e), (g), (j–l).

However, the EPA partially disapproved as BACM Alaska's measures regarding dry wood seller requirements and coal-fired heating devices.⁸¹ The EPA recommended Alaska revise 18 AAC 50.076(k)(3) to require a specific frequency wood sellers are required to measure the moisture content of the seller's wood stock. Likewise, the EPA also recommended Alaska revise the regulations at 18 AAC 50.079(d), (e) and (f) to remove (or revise to BACM and BACT-level stringency) the testing exemption in (d), remove or properly bound the waiver provision in (e), and add requirements to verify compliance with the requirement for the owner and operator to render the device inoperative.

ii. Residential and Commercial Fuel Oil Combustion

Alaska adopted the regulation at 18 AAC 50.078(b) that imposed a limit of 1,000 parts per million sulfur (diesel no. 1) for residential and commercial heating. This was a switch from diesel no. 2 (approximately 2,000 parts per million sulfur) to diesel no. 1. Alaska also evaluated the potential for adopting ULSD for fuel oil combustion, but the State determined that this measure is economically infeasible. The EPA approved 18 AAC 50.078(b) as meeting the SO₂ BACM and BACT requirements

for the space heating area source category.⁸²

iii. Small Commercial Area Sources

The EPA approved Alaska's determination that there were no incinerators in the nonattainment area. Therefore, Alaska need not identify, adopt, or implement controls for the incinerator source category. The EPA also approved Alaska's BACM infeasibility demonstrations for add-on control for charbroilers and restrictions on used oil burners. By extension, the EPA approved 18 AAC 50.055 as BACM/BACT for the charbroiler source category.⁸³

However, the EPA disapproved Alaska's BACM requirements for coffee roasters. The EPA cited a number of deficiencies with Alaska's adopted control measure for coffee roasters at 18 AAC 50.078(d).⁸⁴

iv. Weatherization and Energy Efficiency

The EPA disapproved Alaska's BACM analysis with respect to potential energy efficiency and weatherization measures. The State provided a number of reasons for declining to adopt and implement any such measures, each of which the EPA rejected as bases to not adopt weatherization and energy efficiency measures.⁸⁵

v. Emissions From Mobile Sources

The EPA approved Alaska's rejection of the CARB vehicle standards as economically infeasible. The EPA likewise finalized approval of Alaska's rejection of school bus retrofits, road paving, and controls on road sanding and salting as technologically infeasible. The EPA approved Alaska's rejection of a motor vehicle inspection and maintenance (I/M) program. The EPA approved Alaska's determination that no NH₃-specific emissions controls exist for this source category.⁸⁶

The EPA approved Alaska's rejection of other transportation measures as either technologically infeasible (HOV lanes) or economically infeasible (traffic flow improvements, diesel retrofit projects, and ridesharing programs).⁸⁷

However, the EPA approved in part and disapproved in part Alaska's rejection of vehicle idling restrictions

and other transportation measures.⁸⁸ Specifically, the EPA approved Alaska's rejection of vehicle idling restrictions for heavy-duty diesel vehicles as economically infeasible. However, the EPA disapproved Alaska's rejection of vehicle idling restrictions for light-duty vehicles at schools and commercial establishments. The EPA determined that Alaska had not demonstrated that vehicle anti-idling restrictions for light-duty passenger vehicles are infeasible.

b. Alaska's Identification and Adoption of BACT for Major Stationary Sources

In its December 5, 2023, action, the EPA partially approved and partially disapproved the Fairbanks Serious Plan as meeting the BACM and BACT requirements for major stationary sources.

i. Chena Power Plant

The EPA partially approved and partially disapproved Alaska's BACM/BACT evaluation for the Chena Power Plant. The EPA partially disapproved the BACT determination because Alaska did not identify, adopt, and implement BACT for PM_{2.5} and SO₂. The EPA approved Alaska's BACT analysis for NH₃ emissions controls for the Chena Power Plant.⁸⁹

ii. Doyon-Fort Wainwright Central Heating and Power Plant

The EPA partially approved and partially disapproved Alaska's BACM/BACT determinations for PM_{2.5} controls for each of the emission sources at Doyon-Fort Wainwright Central Heating and Power Plant. The EPA partially approved the BACT determinations because Alaska's BACT findings for PM_{2.5} (embodied in State Air Quality Control Plan, Vol. II, section III.D.7.7, Tables 7.7–11 and 7.7–13 and section III.D.7.7.8.3.4) were consistent with CAA section 189(b) and 40 CFR 51.1010(a). The EPA partially disapproved the BACT determinations because the Fairbanks Serious Plan and initial Fairbanks 189(d) Plan lacked provisions necessary to ensure the BACT determinations for PM_{2.5} are enforceable as a practical matter as required by CAA sections 110(a)(2)(A) and 172(c)(7).⁹⁰

On September 25, 2023, Alaska withdrew its SO₂ BACT determinations for Doyon-Fort Wainwright Central Heating and Power Plant. Therefore, the EPA finalized disapproval of Alaska's SO₂ BACT determinations because the

⁸² 88 FR 84626, December 5, 2023, at p. 84674–75.

⁸³ *Id.*

⁸⁴ 88 FR 84626, December 5, 2023, at p. 84676; See also 81 FR 58010, August 24, 2016, at p. 58047.

⁸⁵ 88 FR 84626, December 5, 2023, at pp. 84641, 84676; See also 81 FR 58010, August 24, 2016, at p. 58085.

⁸⁶ 88 FR 84626, December 5, 2023, at p. 84675–76.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ 88 FR 84626, December 5, 2023, at pp. 84670–71, 84675–76.

⁹⁰ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ 88 FR 84626, December 5, 2023, at pp. 84670, 84675–76.

Fairbanks Serious Plan and initial Fairbanks 189(d) Plan did not identify, adopt, and implement BACT for SO₂ at the Doyon-Fort Wainwright Central Heating and Power Plant. The EPA approved Alaska's analysis that found no NH₃-specific emissions controls for the sources at this facility.⁹¹

iii. University of Alaska Fairbanks Campus Power Plant

The EPA disapproved Alaska's BACM/BACT determination for PM_{2.5} controls for the Small Diesel-Fired Engines (EU IDs 23, 26, and 27). The EPA partially approved and partially disapproved the Alaska's BACT determinations for PM_{2.5} controls for the remaining emission units. The EPA partially approved the PM_{2.5} BACT determinations because Alaska's BACT determinations embodied in State Air Quality Control Plan, Vol. II, section III.D.7.7, Table 7.7–16 and section III.D.7.7.8.6 were consistent with CAA section 189(b) and 40 CFR 51.1010(a). The EPA partially disapproved Alaska's BACT determinations because the Fairbanks Serious Plan and initial Fairbanks 189(d) Plan lacked provisions necessary to ensure the BACT determinations are enforceable as a practical matter as required by CAA sections 110(a)(2)(A) and 172(c)(7).⁹²

On September 25, 2023, Alaska withdrew its SO₂ BACT determinations for the Fairbanks Campus Power Plant. Therefore, the EPA disapproved Alaska's SO₂ BACT determinations because the Fairbanks Serious Plan and initial Fairbanks 189(d) Plan did not identify, adopt, and implement BACT for SO₂ at the Fairbanks Campus Power Plant. The EPA approved Alaska's analysis that found no NH₃-specific emissions controls for the sources at this facility.⁹³

iv. Zehnder Power Plant

The EPA partially approved and partially disapproved Alaska's BACM/BACT provisions for PM_{2.5} controls for all emission units at the Zehnder Power Plant. The EPA partially approved the PM_{2.5} BACT determination because Alaska's BACT determinations embodied in the State Air Quality Control Plan, Vol. II, section III.D.7.7, Table 7.7–14 and Appendix III.D.7.7.8.4 are consistent with CAA section 189(b) and 40 CFR 51.1010(a). The EPA partially disapproved Alaska's PM_{2.5} BACT determinations because the Fairbanks Serious Plan and initial Fairbanks 189(d) Plan lacked provisions

necessary to ensure the PM_{2.5} BACT determinations are enforceable as a practical matter as required by CAA sections 110(a)(2)(A) and 172(c)(7).⁹⁴

On September 25, 2023, Alaska withdrew its SO₂ BACT determinations for the Zehnder Power Plant. Therefore, the EPA partially disapproved the SO₂ BACT determinations because Fairbanks Serious Plan and initial Fairbanks 189(d) Plan did not identify, adopt, and implement BACT for SO₂ at the Zehnder Power Plant. The EPA approved Alaska's analysis that found no NH₃-specific emissions controls for the sources at this facility.⁹⁵

v. North Pole Power Plant

The EPA partially approved and partially disapproved Alaska's BACM/BACT provisions for PM_{2.5} controls for all emission units at the North Pole Power Plant. The EPA partially approved Alaska's PM_{2.5} BACT determinations because these findings embodied in State Air Quality Control Plan, Vol. II, section III.D.7.7, Table 7.7–14 and Appendix III.D.7.7.8.5 are consistent with CAA section 189(b) and 40 CFR 51.1010(a). The EPA partially disapproved Alaska's PM_{2.5} BACT determinations because the Fairbanks Serious Plan and initial Fairbanks 189(d) Plan lacked provisions necessary to ensure the BACT determinations are enforceable as a practical matter as required by CAA sections 110(a)(2)(A) and 172(c)(7).⁹⁶

On September 25, 2023, Alaska withdrew its SO₂ BACT determinations for the North Pole Power Plant. Therefore, the EPA partially disapproved Alaska's SO₂ BACT determinations because the Fairbanks Serious Plan and initial Fairbanks 189(d) Plan did not identify, adopt, and implement BACT for SO₂ at the North Pole Power Plant. The EPA approved Alaska's analysis that found no NH₃-specific emissions controls for the sources at this facility.

c. NH₃ Emissions Controls

With respect to NH₃ controls, for residential and commercial area sources, the EPA approved certain measures as meeting the BACM/BACT requirement for NH₃ emissions. In other cases, the EPA approved Alaska's BACM/BACT analysis that concluded there are no NH₃-specific controls for the emission source categories contributing to PM_{2.5} formation in the Fairbanks PM_{2.5} Nonattainment Area, but that there are likely to be NH₃

emissions co-benefits of measures designed to reduce emissions of direct PM_{2.5}.⁹⁷

3. Summary of the State's Submission and the EPA's Evaluation and Proposed Action Regarding the Control Strategy

a. Updates to the Identification and Adoption of BACM

Below is a summary of the regulations and SIP revisions adopted as part of the Fairbanks Revised 189(d) Plan, organized by source category, responding to EPA's December 5, 2023, disapproval.⁹⁸

i. Solid-Fuel Burning

Alaska revised the dry wood seller measure, adopted as regulation 18 AAC 50.076(k)(3), by setting a frequency at monthly intervals to measure the moisture content. Alaska also revised regulation 18 AAC 50.076(k)(1) by improving the labeling to indicate “dry wood.”

Regarding the EPA's disapproval of coal-fired heating device requirements, Alaska revised 18 AAC 50.079 by lowering the emissions threshold to test out of the mandatory removal requirements in 18 AAC 50.079(d) from 18 grams per hour to 0.10 pounds per million British thermal units (Btu) which is equivalent to the pellet hydronic heater limit in 18 AAC 50.077. Alaska amended 18 AAC 50.079(d) to require a testing protocol be approved by the department prior to any test attempting to exempt a coal device from the mandatory removal requirement. Alaska revised 18 AAC 50.079(e) limit the duration of the waiver to one calendar year.

The EPA previously approved 18 AAC 50.079(f), which requires the owner of a coal-fired heating device to render it inoperable not later than December 31, 2024. As a consequence of Alaska's revisions to 18 AAC 50.079(f), the latest an individual with a coal-fired heating device could remove that device is December 31, 2025—provided the individual meets the eligibility requirements in 18 AAC 50.079(e). Alaska stated that 18 AAC 50.079(f) is revised for clarity by adding section (3), which requires coal-fired heating devices to be rendered inoperable after the expiration of a waiver granted under subsection (e) of 18 AAC 50.079. Alaska stated that newly adopted section 18 AAC 50.079(h) requires documentation on the removal and rendering of the device inoperable and submitting an affidavit that the coal stove will not be

⁹¹ *Id.*

⁹² *Id.* at p. 84657.

⁹³ *Id.* at pp. 84670–71, 84675–76.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ State Air Quality Control Plan, Vol. II, section III.D.7.7.13.

reinstalled in the Fairbanks PM_{2.5} Nonattainment Area.

Based on these updates, the EPA proposes to approve the submitted revisions to 18 AAC 50.076 and 18 AAC 50.079 as meeting the requirements of CAA sections 110(a)(2)(A), 172(c)(7), and 189(b) and 40 CFR 51.1010(a). Accordingly, the EPA proposes to determine that the Fairbanks Revised 189(d) Plan rectifies the disapproved portions of the Fairbanks Serious Plan and initial Fairbanks 189(d) Plan for the solid fuel-burning source category.

ii. Residential and Commercial Fuel Oil Combustion

In the EPA's December 5, 2023, rule, the EPA approved as BACM Alaska's regulation under 18 AAC 50.078(b) that imposes a limit of 1,000 parts per million sulfur content in fuel limit (diesel no. 1) for residential and commercial heating.⁹⁹ This was a switch from diesel no. 2 (approximately 2,000 parts per million sulfur content in fuel limit) to diesel no. 1. The EPA agreed with Alaska's demonstration that further strengthening this requirement to 15 parts per million sulfur (*i.e.*, Ultra-low sulfur diesel) was economically infeasible.

iii. Small Commercial Area Sources

Alaska revised its regulations for coffee roasters, under 18 AAC 50.078(d). These updated regulations clarify the specific emission limit required for this source category and ensures the limit is enforceable as a practical matter. The EPA proposes to approve the submitted revisions to 18 AAC 50.078(d) as meeting the requirements of CAA section 110(a)(2), 172(c)(7), and 189(b) and 40 CFR 51.1010(a) for this source category. Accordingly, the EPA proposes to determine that the Fairbanks Revised 189(d) Plan rectifies the disapproved portions of the Fairbanks Serious Plan and initial Fairbanks 189(d) Plan for coffee roasters.

iv. Energy Efficiency and Weatherization

To address the EPA's disapproval, Alaska reviewed weatherization and energy efficiency measures adopted by other jurisdictions. Based on this review, Alaska adopted a weatherization and energy efficiency measure at 18 AAC 50.081. The measure mandates that a building owner have an energy rating completed on the building before listing it for sale. The rule requires that the seller provide the energy rating

report to the buyer. Alaska also committed to a robust advertising and education program that includes best practices to improve efficiency in an arctic environment and available economic and practical mechanisms that can assist homeowners in improving both efficiency and regulatory compliance. Alaska asserted that these components will improve the compliance rate for other control measures, including the solid fuel-fired heating device curtailment program and the requirement to remove older, uncertified heating appliances. Alaska noted that any improvements identified by the energy rater will be voluntary.

Alaska evaluated adopting building energy efficiency codes or mandatory weatherization requirements and dismissed them as technologically infeasible. According to Alaska, there is a lack of technical expertise and resources to implement (lack of energy auditors and training resources), enforce, and ensure code compliance. Alaska further contended that the earliest date Alaska can implement building codes exceeded not only the statutory requirement for the implementation of BACM by December 31, 2024, but also beyond the 2027 attainment date identified in the Fairbanks Revised 189(d) Plan.

The EPA proposes to approve the submitted revisions to 18 AAC 50.081 as meeting the requirements of CAA sections 110(a)(2), 172(c)(7), and 189(b) and 40 CFR 51.1010(a) with respect to weatherization and energy efficiency. Accordingly, the EPA proposes to determine that the Fairbanks Revised 189(d) Plan rectifies the disapproved portions of the Fairbanks Serious Plan and initial Fairbanks 189(d) Plan for weatherization and energy efficiency.

v. Emissions From Mobile Sources

The EPA previously approved as part of Fairbanks Moderate Plan, a requirement that businesses with 275 or more parking spaces provide power to electrical outlets at temperatures of 20 degrees Fahrenheit or lower for engine block heaters.¹⁰⁰ In addition, Alaska continues to install new plug-ins throughout the Fairbanks PM_{2.5} Nonattainment Area.¹⁰¹

As part of the Fairbanks Revised 189(d) Plan, Alaska re-evaluated anti-

idling for light-duty vehicles as a potential control measure. Alaska provided additional analysis demonstrating that such a measure is technologically and economically infeasible in the Fairbanks PM_{2.5} Nonattainment Area. In particular, Alaska noted that other jurisdictions that implement this measure include a temperature threshold, below which restrictions do not apply. These temperature cut offs range from 40 degrees Fahrenheit to 10 degrees Fahrenheit. These thresholds are intended to protect human health and safety.

Accordingly, Alaska evaluated implementing idling restrictions during the winter months of October through March at temperatures above 21 degrees Fahrenheit. Given that episodic emissions contributing to PM_{2.5} concentrations occur at sub-zero temperatures, Alaska's evaluation indicates that the measure would not achieve any emissions reductions.

The EPA notes that in order to achieve emissions reductions in the extreme Fairbanks environment, Alaska would have to prohibit idling regardless of ambient temperature, which presents unacceptable risks to human health. In light of these concerns, rather than regulate the vehicle users, Alaska requires owners of parking areas to provide electricity for engine-block heaters. Alaska and the EPA have previously determined that expanding plug-in availability is economically infeasible.¹⁰² Therefore, the EPA proposes to approve Alaska's current plug-in program as meeting BACM and BACT requirements for light-duty vehicles.

Accordingly, the EPA proposes to determine that Alaska has rectified the EPA's December 5, 2023, disapproval of the Fairbanks Serious Plan and initial Fairbanks 189(d) Plan with respect to control strategy requirements for mobile sources.

b. Alaska's Identification and Adoption of BACT for Major Stationary Sources

Alaska submitted revisions to its BACM/BACT determinations for the five major stationary sources in the Fairbanks PM_{2.5} Nonattainment Area, as described in the following paragraphs.¹⁰³ Alaska also submitted permits for each of the five major

¹⁰⁰ 82 FR 42457, September 8, 2017; State Air Quality Control Plan, Vol. III, Appendix III.D.5.7, adopted December 24, 2014, at p. 43; State Air Quality Control Plan, Vol. III, Appendix III.D.5.12, adopted December 24, 2014, at p. 43.

¹⁰¹ There are nearly 10,000 plug-ins available in the nonattainment area. See State Air Quality Control Plan, Appendix III.D.7.7 (adopted November 19, 2019), at p. 17.

¹⁰² 88 FR 84626, December 5, 2023, at pp. 84649, 84652 (determining that anti-idling restrictions on heavy-duty vehicles had a cost effectiveness of over \$400,000 per ton of SO₂ reduced).

¹⁰³ State Air Quality Control Plan Vol. II, Appendix III.D.7.7 (adopted November 5, 2024).

⁹⁹ 88 FR 84626, December 5, 2023, at pp. 84669, 84674.

stationary sources that adopt and implement BACT for direct PM_{2.5}.

i. Chena Power Plant

Chena Power Plant is an existing stationary source owned and operated by Aurora Energy, LLC, which consists of four existing coal-fired boilers: three 76 million British Thermal Units (MMBtu) per hour overfeed traveling grate stoker type boilers and one 269 MMBtu per hour spreader-stoker type boiler that burn coal to produce steam for heating and power (497 MMBtu per hour combined). The source also includes a coal preparation plant, coal stockpile, ash vacuum pump exhaust, and truck bay ash loadout.

Alaska revised its State Air Quality Control Plan to include its BACT determinations for PM_{2.5} and SO₂ for each of the emission units at the Chena Power Plant.¹⁰⁴ We note that Alaska removed its BACT evaluation and determinations for NO_x because the EPA approved a comprehensive NO_x precursor demonstration. Alaska also submitted conditions from Air Quality Control Minor Permit AQ0315MSS02 Revision 1 for the Aurora Energy, LLC—Chena Power Plant (Aurora Permit). The Aurora Permit conditions include enforceable PM_{2.5} BACT emissions limitations for the emission units at the Chena Power Plant comprised of numerical emissions limits and work practice standards and associated monitoring, recordkeeping and reporting requirements. The permits are included in the docket for this action.¹⁰⁵

The EPA previously reviewed Alaska's BACM/BACT evaluation for the Chena Power Plant.¹⁰⁶ Alaska has since clarified that PM_{2.5} BACT for the coal-fired boilers is operating and maintaining fabric filters (full steam baghouse) during operation.¹⁰⁷ Thus, in this action, the EPA is proposing to approve Alaska's PM_{2.5} BACT determinations for the Chena Power Plant, the submitted revisions to State Air Quality Control Plan, Vol. III, Appendix III.D.7.7, related to direct PM_{2.5} emissions and the submitted

Aurora Permit conditions¹⁰⁸ as satisfying CAA section 189(b) and 40 CFR 51.1010.

The EPA is not proposing to take action on Alaska's SO₂ BACT determinations in State Air Quality Control Plan, Vol. III, Appendix III.D.7.7, at this time. As discussed in the preceding paragraphs, the EPA is proposing to approve Alaska's SO₂ precursor demonstration for major stationary sources. If approved, Alaska will not be required to identify, adopt, or implement SO₂ BACT for the Chena Power Plant. If the EPA does not finalize approval of the SO₂ precursor demonstration, then the EPA will propose action on Alaska's SO₂ BACT determinations in a separate, future action.

ii. Doyon-Fort Wainwright Central Heating and Power Plant

Fort Wainwright is an existing U.S. Army installation. Emission units located within the military installation include units such as boilers and generators that are owned and operated by the U.S. Army Garrison Alaska (referred to as FWA). The Central Heating and Power Plant (CHPP), also located within the installation footprint, is owned and operated by Doyon Utilities, LLC (DU), the regional Alaska Native corporation for Interior Alaska. The two entities, DU and FWA, comprise a single stationary source operating under two permits.

The CHPP is comprised of six spreader-stoker type coal-fired boilers, each rated at 230 MMBtu per hour, that burn coal to produce steam for stationary source-wide heating and power. In addition to the CHPP, the source contains emission units comprised of small and large emergency engines, fire pumps, and generators, diesel-fired boilers, and material handling equipment. Alaska's BACM/BACT analysis in the Fairbanks Serious Plan for the stationary source evaluated potential controls to reduce NO_x, PM_{2.5}, and SO₂ emissions from each of these emissions units at the stationary source.¹⁰⁹

As part of the Fairbanks Revised 189(d) Plan, Alaska revised its Air Quality Control Plan sections related to the Doyon-Fort Wainwright CHPP to reflect new engines powering lift pumps

and generators, correct typographical errors, improve clarity, and to include updated SO₂ BACT determinations.¹¹⁰ With respect to the new engines, all are EPA-certified engines ranging in size from 74 horsepower to 324 horsepower. Alaska updated its PM_{2.5} BACT determinations for these new engines. Alaska removed its BACT evaluation and determinations for NO_x because the EPA approved a comprehensive NO_x precursor demonstration.

Alaska also submitted conditions from two Air Quality Control Minor Permits: AQ0236MSS03 Revision 2 (U.S. Army Garrison—USAG Alaska Fort Wainwright) and AQ1121MSS04 Revision 1 (Doyon Utilities, LLC—Fort Wainwright) (collectively referred to as the Fort Wainwright Permits). The Fort Wainwright Permits include enforceable PM_{2.5} BACT emissions limitations for the emission units at Fort Wainwright comprised of numerical emissions limits and work practice standards and associated monitoring, recordkeeping and reporting requirements. The permits are included in the docket for this action.¹¹¹

The EPA previously reviewed Alaska's BACM/BACT evaluation for the Doyon-Fort Wainwright Central Heating and Power Plant.¹¹² In addition to the submitted conditions discussed in this section x.x.ii of this preamble, Alaska's updated BACT determination clarified the maintenance and testing requirements for the diesel-fired boilers and added enclosed conveying system requirements.¹¹³ The EPA previously approved Alaska's BACT determinations for older pump engines and generator engines. Alaska updated its BACT determinations and associated permit limits to reflect grams per hour emission limits appropriate to the size and model year of the engine. Alaska also imposed limits on the hours of operations of these engines. Thus, in this action, the EPA is proposing to approve Alaska's updated PM_{2.5} BACT determinations for the emissions units

¹⁰⁴ See State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–164. Note, Alaska's prior SIP submissions only evaluated BACT for the coal-fired boilers.

¹⁰⁵ See State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–187.

¹⁰⁶ See Hedgpeth and Sorrels. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for the Aurora Energy, LLC Chena Power Plant as part of the Fairbanks PM_{2.5} Nonattainment SIP*. U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division, EPA–R10–OAR–2022–0115.

¹⁰⁷ See State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–173.

¹⁰⁸ See section III.A of this preamble for the specific permit conditions proposed for approval.

¹⁰⁹ Alaska evaluated potential NO_x controls for each emission unit, but because Alaska determined and the EPA approved that NO_x emissions are not significant for PM_{2.5} formation in the Fairbanks PM_{2.5} Nonattainment Area, Alaska does not plan to require implementation of BACT for NO_x. See 88 FR 84626, December 5, 2023. Thus, EPA is not discussing Alaska's BACT analysis for NO_x here.

¹¹⁰ See State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–202.

¹¹¹ See State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–248.

¹¹² See Hedgpeth, Z. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for Fort Wainwright-US Army Garrison Alaska (FWA) and Doyon Utilities, LLC (DU) as part of the Fairbanks PM_{2.5} Nonattainment SIP*. U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division, EPA–R10–OAR–2022–0115.

¹¹³ See State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–217; State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–225.

at Doyon-Fort Wainwright CHPP,¹¹⁴ the submitted revisions to State Air Quality Control Plan, Vol. III, Appendix III.D.7.7 related to direct PM_{2.5} emissions from the Doyon-Fort Wainwright CHPP,¹¹⁵ and the submitted conditions from the Fort Wainwright Permits¹¹⁶ as satisfying CAA section 189(b) and 40 CFR 51.1010.

The EPA is not proposing to take action on Alaska's SO₂ BACT determinations in State Air Quality Control Plan, Vol. III, Appendix III.D.7.7 at this time for the same reasons discussed in the preceding paragraphs regarding the Chena Power Plant. If the EPA does not finalize approval of the SO₂ precursor demonstration, then the EPA will propose action on Alaska's SO₂ BACT determinations in a separate, future action.

iii. University of Alaska Fairbanks Campus Power Plant

The Fairbanks Campus Power Plant is an existing stationary source owned and operated by the University of Alaska Fairbanks, which consists of two coal-fired boilers installed in 1962 that were later replaced by a circulating fluidized bed (CFB) dual fuel-fired boiler (coal and biomass) rated at 295.6 MMBtu per hour. Other emission units at the source include a backup diesel generator, diesel-fired boilers, engines, and a coal handling system for the new dual-fuel fired boiler.

In the Fairbanks Revised 189(d) Plan, Alaska updated its Air Quality Control Plan regarding the Fairbanks Campus Power Plant to reflect permanently removed emission units, add new diesel boilers and engines, update the PM_{2.5} BACT determinations for small diesel-fired boilers and large and small engines, correct typographical errors, and improve clarity.¹¹⁷ Alaska also added updated SO₂ BACT determinations for the Fairbanks Campus Power Plant.

With respect to the small diesel-fired boilers (EUs 17 through 22), Alaska updated its BACT determination for PM_{2.5} to consist of a partial limit on hours of operation, an emission limit of 0.016 lb/MMBtu,¹¹⁸ compliance with 40

CFR part 63, subpart JJJJJ, and work practice standards. Alaska evaluated whether installation of a scrubber was feasible for these boilers and determined that it was economically infeasible.¹¹⁹ Alaska noted that taking into consideration the enforceable limit on operation, the combined potential to emit of PM_{2.5} for the six boilers is two tons per year.

With respect to large diesel fired engines (EUs 8 and 35) and small diesel fired engines (EUs 24, 26, 27, 29, and 34),¹²⁰ Alaska reevaluated the feasibility of add-on PM_{2.5} controls, namely a diesel particulate filter (DPF).¹²¹ EUs 24, 29, and 34 are limited to 100 hours per year of non-emergency operation, so additional BACT controls were not evaluated for these units. Alaska determined that a DPF is not technologically feasible for EU 8 due to an unacceptable increase in back pressure. Alaska determined that DPFs were technologically feasible for the other engines, but Alaska determined that the high cost per unit of emissions reductions rendered them economically infeasible. Updating the cost-effectiveness analysis to reflect comments from the EPA's Technical Support Document,¹²² Alaska determined that the cost-effectiveness ranged from over \$17,000 at EU 26 to over \$20,000 per ton of PM_{2.5} reduced at EU 27. Alaska stated that EU 35 has potential PM_{2.5} emissions of 0.03 tons per year, which is an order of magnitude lower than the two other diesel engines, EUs 26 and 27. Therefore, Alaska did not perform a cost analysis for installing and operating a DPF on EU 35 as it would have an even higher cost per ton estimate than EUs 26 and 27. Furthermore, Alaska noted that EU 35 is limited to 100 hours per calendar year of non-emergency operation and required to combust ULSD under the

associated with industrial boilers while the boilers at the Fairbanks Campus Power Plant are commercial boilers.

¹¹⁹ State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–369.

¹²⁰ In comments, the University of Alaska Fairbanks clarified that EU 23 has been permanently removed from service and are no longer permitted EUs at the facility. See Comments on Proposed Rule—Air Plan Partial Approval and Partial Disapproval; AK, Fairbanks North Star Borough; 2006 24-Hour PM_{2.5} Serious Area and 189(d) Plan, at p. 9, Docket ID No. EPA–R10–OAR–2022–0115.

¹²¹ State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–372.

¹²² See Hedgpeth and Sorrels. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for the University of Alaska, Fairbanks as part of the Fairbanks PM_{2.5} Nonattainment SIP*. U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division, EPA–R10–OAR–2022–0115.

existing Federal NSPS Subpart IIII requirements.¹²³

Alaska removed its BACT evaluation and determinations for NO_x because the EPA approved a comprehensive NO_x precursor demonstration.¹²⁴

Alaska also submitted conditions from Air Quality Control Minor Permit AQ0316MSS08 Revision 1 (University of Alaska Fairbanks (UAF)—University of Alaska Fairbanks Campus) (UAF Permit). The UAF Permit conditions include enforceable PM_{2.5} BACT emissions limitations comprised of numerical emissions limits and work practice standards with associated monitoring, recordkeeping, and reporting. The permits are included in the docket for this action.¹²⁵

The EPA previously reviewed Alaska's BACT evaluation for the Fairbanks Campus Power Plant.¹²⁶ In this action, the EPA is proposing to approve Alaska's updated PM_{2.5} BACT determinations for the small diesel-fired boilers (EUs 17 through 22), large diesel-fired engines (EUs 8 and 35), and small diesel-fired engines (EUs 24, 26, 27, 29, and 34) at the Fairbanks Campus Power Plant. The EPA previously approved Alaska's PM_{2.5} BACT determinations for EUs 8, 17–19, 24, and 29. Alaska's updates are consistent with these past approvals. With respect to EUs 26, 27, and 35, the EPA proposes to approve Alaska's economic infeasibility demonstrations for DPFs. The EPA is proposing to approve Alaska's PM_{2.5} BACT emissions limits for small diesel-fired boilers (EUs 17 through 22), large diesel-fired engines (EUs 8 and 35), and small diesel-fired engines (EUs 24, 26, 27, 29, and 34) at the Fairbanks Campus Power Plant, which consist of numerical emissions limits, limits on operation, fuel requirements, and work practice standards.

Therefore, the EPA proposes to approve the submitted revisions to State Air Quality Control Plan, Vol. III, Appendix III.D.7.7 related to direct PM_{2.5} emissions and NO_x emissions¹²⁷ from the Fairbanks Campus Power Plant

¹²³ State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–374.

¹²⁴ 88 FR 84626, December 5, 2023.

¹²⁵ See State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–414.

¹²⁶ See Hedgpeth and Sorrels. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for the University of Alaska, Fairbanks as part of the Fairbanks PM_{2.5} Nonattainment SIP*. U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division, EPA–R10–OAR–2022–0115.

¹²⁷ The EPA is not proposing to approve the NO_x related emissions limits as meeting BACT for NO_x. For some emission units, Alaska imposed NO_x emissions limits as surrogates for direct PM_{2.5} emissions.

¹¹⁴ Industrial coal-fired boilers; diesel-fired boilers; diesel-fired engines, fire pumps, and generators; and material handling equipment.

¹¹⁵ The EPA is not proposing to approve the NO_x related emissions limits as meeting BACT for NO_x. For some emission units, Alaska imposed NO_x emissions limits as surrogates for direct PM_{2.5} emissions.

¹¹⁶ See section III.A of this preamble for the specific permit conditions proposed to be approved.

¹¹⁷ See State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–356.

¹¹⁸ Alaska noted that it previously selected a 0.012 lb/MMBtu limit erroneously. This limit is

and the submitted conditions from the UAF Permit¹²⁸ as satisfying CAA section 189(b) and 40 CFR 51.1010.

The EPA is not proposing to take action on Alaska's SO₂ BACT determinations in State Air Quality Control Plan, Vol. III, Appendix III.D.7.7 at this time for the same reasons discussed in the preceding paragraphs regarding the Chena Power Plant. If the EPA does not finalize approval of the SO₂ precursor demonstration, then the EPA will propose action on Alaska's SO₂ BACT determinations in a separate, future action.

iv. Zehnder Facility

The Zehnder Facility (Zehnder) is an electric generating facility that combusts distillate fuel in combustion turbines to provide power to the Golden Valley Electric Association (GVEA) grid. The power plant contains two fuel oil-fired simple cycle gas combustion turbines (each unit rated at 268 MMBtu per hour) and two diesel-fired generators (electromotive diesels) used for emergency power and to serve as black start engines for the GVEA generation system. The primary fuel is stored in two 50,000 gallon above-ground storage tanks. Turbine startup fuel and electromotive diesels primary fuel is stored in a 12,000 gallon above ground storage tank.

In the Fairbanks Revised 189(d) Plan, Alaska revised its Air Quality Control Plan for the Zehnder Facility to correct errors and improve clarity.¹²⁹ Alaska also submitted conditions from Air Quality Control Minor Permit AQ0109MSS01 Revision 1 (Golden Valley Electric Association—Zehnder Facility) (Zehnder Permit). The Zehnder Permit contains enforceable PM_{2.5} BACT emissions limitations for the emission units at the Zehnder Facility comprised of numerical emissions limits and work practice standards with associated monitoring, recordkeeping, and reporting. The permits are included in the docket for this action.¹³⁰

Similar to the small diesel-fired boilers (EUs 17 through 22) at the Fairbanks Campus Power Plant discussed in the preceding paragraphs of section II.C of this preamble, Alaska imposed, in the Fairbanks Serious Plan and Fairbanks 189(d) Plan, an erroneous emissions limit on the small diesel fired boilers at the Zehnder Facility. The revised Air Quality Control Plan and

associated conditions in the Zehnder Permit reflect the corrected limit.¹³¹

The EPA previously reviewed Alaska's BACT evaluation for the Zehnder Facility.¹³² In EPA's prior analysis, the EPA agreed with Alaska's BACT determinations for PM_{2.5}. For the turbines, no technologically feasible add-on control options exist to reduce PM_{2.5} emissions. For the emergency generators, the EPA agreed that the limits on annual hours of operation of 100 hours per year or less will result in add-on control equipment such as DPF being cost prohibitive. Further, the EPA stated that similar to the turbines, no technologically feasible add-on control options exist to reduce PM_{2.5} emissions from the small diesel and propane fired boilers.¹³³

Thus, in this action, the EPA proposes to approve the submitted revisions to State Air Quality Control Plan, Vol. III, Appendix III.D.7.7 related to direct PM_{2.5} emissions and NO_x¹³⁴ emissions from Zehnder and the submitted Zehnder Permit conditions as satisfying CAA section 189(b) and 40 CFR 51.1010.

The EPA is not proposing to take action on Alaska's SO₂ BACT determinations in State Air Quality Control Plan, Vol. III, Appendix III.D.7.7 at this time for the same reasons discussed in the preceding paragraphs regarding the Chena Power Plant. If the EPA does not finalize approval of the SO₂ precursor demonstration, then the EPA will propose action on Alaska's SO₂ BACT determinations in a separate, future action.

v. North Pole Power Plant

The North Pole Power Plant is an electric generating facility that combusts distillate fuel in combustion turbines to provide power to the Golden Valley Electric Association (GVEA) grid. The power plant contains two fuel oil-fired simple cycle gas combustion turbines (each unit rated at 672 MMBtu per hour), two fuel oil-fired combined cycle gas combustion turbines (each unit rated at 455 MMBtu per hour), one fuel oil-

fired emergency generator, and two propane-fired boilers.

In the Fairbanks Revised 189(d) Plan, Alaska revised its Air Quality Control Plan for the North Pole Power Plant to correct errors and improve clarity.¹³⁵ Alaska also submitted conditions from Air Quality Control Minor Permit AQ0110MSS01 Revision 1 (Golden Valley Electric Association—North Pole Power Plant) (NPPP Permit). The NPPP Permit conditions include enforceable PM_{2.5} BACT emissions limitations for the emission units at the North Pole Power Plant comprised of numerical emissions limits and work practice standards with associated monitoring, recordkeeping, and reporting. The permits are included in the docket for this action.¹³⁶

The EPA previously reviewed Alaska's BACT evaluation for the North Pole Power Plant.¹³⁷ Similar to the Zehnder facility discussion in the preceding paragraphs in this section II.C, the EPA agreed with Alaska that no additional PM_{2.5} BACT controls are feasible for emissions units at the North Pole Power Plant.¹³⁸ Thus, in this action, the EPA proposes to approve the submitted revisions to State Air Quality Control Plan, Vol. III, Appendix III.D.7.7 related to direct PM_{2.5} emissions and NO_x¹³⁹ emissions from the North Pole Power Plant and the submitted NPPP Permit conditions¹⁴⁰ as satisfying CAA section 189(b) and 40 CFR 51.1010.

The EPA is not proposing to take action on Alaska's SO₂ BACT determinations in State Air Quality Control Plan, Vol. III, Appendix III.D.7.7 at this time for the same reasons discussed in the preceding paragraphs regarding the Chena Power Plant. If the EPA does not finalize approval of the SO₂ precursor demonstration, then the EPA will propose action on Alaska's SO₂ BACT determinations separately.

¹²⁸ State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–267.

¹²⁹ See State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–300.

¹³⁰ See Hedgpeth, Z. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for the Golden Valley Electric Association (GVEA) Zehnder and North Pole Power Plants as part of the Fairbanks PM_{2.5} Nonattainment SIP*. U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division, EPA–R10–OAR–2022–0115.

¹³¹ *Id.* at p. 11.

¹³² The EPA is not proposing to approve the NO_x related emissions limits as meeting BACT for NO_x. For some emission units, Alaska imposed NO_x emissions limits as surrogates for direct PM_{2.5} emissions.

¹³³ See section III.A of this preamble for the specific permit conditions proposed to be approved.

¹²⁸ See section III.A of this preamble for the specific permit conditions proposed to be approved.

¹²⁹ State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–316.

¹³⁰ See State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–342.

¹³¹ State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–327.

¹³² See Hedgpeth, Z. (August 24, 2022). *Review of Best Available Control Technology analyses submitted for the Golden Valley Electric Association (GVEA) Zehnder and North Pole Power Plants as part of the Fairbanks PM_{2.5} Nonattainment SIP*. U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division, EPA–R10–OAR–2022–0115.

¹³³ *Id.* at p. 11.

¹³⁴ The EPA is not proposing to approve the NO_x related emissions limits as meeting BACT for NO_x. For some emission units, Alaska imposed NO_x emissions limits as surrogates for direct PM_{2.5} emissions.

c. Alaska's Identification and Adoption of Additional Measures and Demonstration of Five Percent Reduction in Emissions Pursuant to CAA Section 189(d)

The Fairbanks Revised 189(d) Plan retained the identification of all sources of direct PM_{2.5} emissions and PM_{2.5} plan precursors, identification of all potential controls to reduce direct PM_{2.5} emissions and PM_{2.5} plan precursors, and reevaluation of previously rejected control measures included in the initial Fairbanks 189(d) Plan, as well as identification of the MSMs adopted into any SIP or used in practice to control emissions in any state.

As part of its reevaluation of control measures, Alaska provided additional information for many of the control measures considered in the BACM analysis. The Fairbanks Revised 189(d) Plan includes additional consideration of banning installation of solid-fuel devices in new construction, limiting heating oil to ultra-low sulfur diesel, dry wood requirements, emissions controls for small area sources, mobile sources, and MSMs.¹⁴¹

Alaska identified a burn-down period as part of other jurisdictions' solid fuel-fired heating device curtailment program. Accordingly, Alaska adopted a burn down period of three hours for solid-fuel heating devices that begins upon the effective date and time of a curtailment announcement. In addition, Alaska added specific requirements to document economic hardship as part of a NOASH curtailment program waiver for solid-fuel devices.

Regarding the requirement to demonstrate five percent annual reductions, Alaska included in the Fairbanks Revised 189(d) Plan a control strategy analysis that demonstrates annual reductions of PM_{2.5} are greater than five percent through 2027, Alaska's projected attainment year.¹⁴² Alaska noted that the State can demonstrate either five percent annual reductions in emissions of direct PM_{2.5} or a five percent annual reductions in emissions of a PM_{2.5} plan precursor. Alaska elected to demonstrate five percent annual reductions in direct PM_{2.5} emissions. Thus, the EPA is proposing to approve the control strategy included in the Fairbanks Revised 189(d) Plan as meeting the requirements of CAA section 189(d) and 40 CFR 51.1010(c).

D. Attainment Demonstration and Modeling

1. Statutory and Regulatory Requirements Regarding the Attainment Demonstration and Modeling

Pursuant to CAA sections 188(c) and 189(b) and 40 CFR 51.1003(b) and 51.1011(b), for nonattainment areas reclassified as Serious, the state must submit an attainment demonstration as part of the Serious Plan that meets the requirements of 40 CFR 51.1011. Similarly, pursuant to 40 CFR 51.1003(c), for Serious areas subject to CAA section 189(d) for failing to attain by the Serious area attainment date, the state must submit an attainment demonstration as part of the 189(d) plan that meets the requirements of 40 CFR 51.1011. On September 2, 2020, the EPA determined that the Fairbanks PM_{2.5} Nonattainment Area failed to attain the 2006 24-hour PM_{2.5} NAAQS by the December 31, 2019, Serious area attainment date. Therefore, the EPA is proposing to evaluate any previously unmet Serious area planning obligations based on the current, applicable attainment date appropriate under CAA section 189(d) and not the original Serious area attainment date.¹⁴³ In accordance with CAA section 172(a)(2)(A) and 40 CFR 51.1004(a)(3), the projected attainment date for Serious nonattainment areas subject to CAA section 189(d) shall be as expeditious as practicable, but no later than five years following the effective date of the EPA's finding that the area failed to attain by the original Serious area attainment date, except that the Administrator may extend the attainment date to the extent the Administrator deems appropriate, for a period no greater than 10 years from the effective date of the EPA's determination that the area failed to attain, considering the severity of nonattainment and the availability and feasibility of pollution control measures. In accordance with 40 CFR 51.1011, the attainment demonstration must meet four requirements:

- a. Identify the projected attainment date for the Serious nonattainment area that is as expeditious as practicable;
- b. Meet the requirements of 40 CFR part 51, appendix W and include

¹⁴³ The term "applicable attainment date" is defined at 40 CFR 51.1000 to mean: "the latest statutory date by which an area is required to attain a particular PM_{2.5} NAAQS, unless EPA has approved an attainment plan for the area to attain such NAAQS, in which case the applicable attainment date is the date approved under such attainment plan. If EPA grants an extension of an approved attainment date, then the applicable attainment date for the area shall be the extended date."

inventory data, modeling results, and emissions reduction analyses on which the state has based its projected attainment date;

c. The base year for the emissions inventories shall be one of the 3 years used for designations or another technically appropriate inventory year if justified by the state in the plan submission; and

d. The control strategies modeled as part of a Serious area attainment demonstration shall be consistent with the control strategies required pursuant to 40 CFR 51.1003 and 51.1010 (including the specific requirements in 40 CFR 51.1010(c)) for Serious areas that fail to attain.

Further, in accordance with 40 CFR 51.1011(b)(5), the attainment plan must provide for implementation of all control measures needed for attainment as expeditiously as practicable. Additionally, all control measures must be implemented no later than the beginning of the year containing the applicable attainment date, notwithstanding the BACM implementation deadline requirements in 40 CFR 51.1010.¹⁴⁴

2. Summary of the EPA's Prior Rulemaking Regarding Attainment Demonstration and Modeling

The EPA disapproved Alaska's attainment demonstration in the initial Fairbanks 189(d) Plan because it did not fully meet CAA requirements.¹⁴⁵ As part of the attainment demonstration, the state must identify the projected attainment date that is as expeditious as practicable. Alaska did not adopt and implement all available control measures. The correct identification of the most expeditious attainment date requires an evaluation based upon expeditious implementation of the required emissions controls. Therefore, the EPA could not assess whether Alaska identified the expeditious attainment date for modeling purposes.

3. Summary of the State's Submission Regarding Attainment Demonstration and Modeling

The State included an updated attainment demonstration in the Fairbanks Revised 189(d) Plan.¹⁴⁶ In the plan, Alaska asserted that calendar year 2027 reflects attainment "as expeditiously as practicable," based on air quality improvements from the base year to attainment year, as measured by the quantified emissions reductions

¹⁴⁴ 40 CFR 51.1011(b)(5).

¹⁴⁵ 88 FR 84626, December 5, 2023, at p. 84676.

¹⁴⁶ State Air Quality Plan, Vol. II, section III.D.7.9 (adopted November 5, 2024).

¹⁴¹ State Air Quality Control Plan, Vol. II, section III.D.7.7.12 (adopted November 5, 2024).

¹⁴² State Air Quality Control Plan, Vol. II, section III.D.7.9.2.3, Table 7.9–9.

associated with the implementation of control measures.¹⁴⁷

Alaska noted that for attainment modeling, five-year design values are generally recommended. For the earlier Fairbanks Serious Plan, the base year modeling design value was 131.6 $\mu\text{g}/\text{m}^3$. However, the latest five-year (2017–2021) design value is 64.9 $\mu\text{g}/\text{m}^3$ at the North Pole air quality monitor (Hurst Road), the area of expected highest $\text{PM}_{2.5}$ concentrations in the Fairbanks $\text{PM}_{2.5}$ Nonattainment Area. As part of updating its attainment analysis, Alaska identified this five-year design value of 64.9 $\mu\text{g}/\text{m}^3$ as the base year modeling design value for the Fairbanks Revised 189(d) Plan.

Building on the 2020 base year emissions inventory, Alaska developed a series of future year emissions inventories for each calendar year from 2020 through 2029. Alaska noted that

each of these future year inventories accounted for growth in source activity over time (e.g., increases in residential heating emissions resulting from forecasted housing growth). The emissions inventory also accounted for emissions reductions associated with both on-going state and local control programs (such as the Wood Stove Change Out and Solid Fuel-Burning Appliance Curtailment programs), along with other control measures included in the SIP that were adopted since the area was classified as a Serious area.

Alaska stated that source activity growth rates used to project the 2020 base year inventory emissions in calendar years 2021 through 2029 were generally based on the 2020–2024 and 2024–2035 annualized growth rates by source sector included in the Fairbanks Revised 189(d) Plan.¹⁴⁸ However,

Alaska noted that the source activity growth rate for space heating was capped after model year 2027, and claimed this is due to the difficulty in reliably forecasting long-term energy prices and the likely peak in energy costs in 2024. Alaska also stated that the effects of the Federal mobile source and fuel control programs in projecting mobile source emissions from 2021 through 2029 were accounted for using the EPA's MOVES3 vehicle emissions model.

Alaska included a list of the state and local control measures for which emissions benefits were quantified and included in the attainment date analysis.¹⁴⁹ Further, Alaska included a phase-in forecast for each control measure for 2020–2027 inventory years. See Table 4 of this preamble for a summary of these control measures:

TABLE 4—ALASKA CONTROL MEASURES AND PHASE-IN SCHEDULE

Control measure	Percent compliance		2027 Projected emissions (tons per episodic day)		Details
	2020 Base year	2027 Attainment year	$\text{PM}_{2.5}$	SO_2	
Fairbanks Wood Stove Change Out Program.	2,791	5,628	1.09	0.11	Based on funding from the 2016, 2017, 2018, 2019–2020, 2021, and 2022 Targeted Airshed Grants.
Solid Fuel-Burning Appliance Curtailment Program.	30%	38%	Stage 1: 0.02; Stage 2: 0.12	Stage 1:—0.000; Stage 2:—0.02.	In winter 2022–2023, Alaska conducted an observational field study from which compliance was estimated to be 38.1%.
Shift to diesel no. 1 fuel oil	n/a	50%	0.02	1.73	This measure required a one-time shift from the current mix of diesel no. 2 and diesel no. 1 heating oil refined and sold in the nonattainment area by September 2022.
Requires commercially sold wood to be dry before sale.	n/a	50%	0.06	Less than 0.01	Requires commercially sold wood after October 1, 2021, to be dry, or if sold as 8-ft length rounds, requires proof of proper/adequate storage for drying by the buyer.
Removal of all uncertified devices & cordwood outdoor hydronic heaters.	0%	30%	0.25	—0.01	2024 is first year of implementation. Compliance rate estimates based on existing and on-going public education and outreach efforts.
2.0 g/hr and 0.10 lb/MMBtu certified emission rates for new or re-conveyed wood devices.	22%	35%	0.09	Less than 0.01	The compliance rate estimated for this measure reflect the volume of home sales (projected from historical data) coupled with the requirement to register wood-fired heating devices upon sale or conveyance of a property.
Removal of coal heaters	n/a	25%	Less than 0.01	Less than 0.01.	

¹⁴⁷ State Air Quality Plan, Vol. II, section III.D.7.9.

¹⁴⁸ State Air Quality Plan, Vol. II, section III.D.7.6, Table 7.6–10.

¹⁴⁹ State Air Quality Plan, Vol. II, section III.D.7.9, Table 7.9–1.

TABLE 4—ALASKA CONTROL MEASURES AND PHASE-IN SCHEDULE—Continued

Control measure	Percent compliance		2027 Projected emissions (tons per episodic day)		Details
	2020 Base year	2027 Attainment year	PM _{2.5}	SO ₂	
Wood-fired devices may not be primary or only heating source.	0%	20% (existing homes); 40% (new homes)	0.09	Less than 0.01	Beginning in 2024, compliance rates of 20% for new home sales (discounted for large lot, 2-acre cabin exemption) and 40% for home resales. The new home sale compliance rate is discounted from 40% to 20% to account for the estimated portion of large lot (greater than 2 acre) cabins which are exempted from this requirement.
NOASH/Exemption requirements.	0%	50%	Less than 0.01	Less than 0.01	Compliance rates reflect projected penetration rate increases associated with annual renewal and device registration requirements, proper installation and maintenance determinations from third-party verifiers, and requirements for catalyst replacement when manufacturer-recommended catalyst useful life is reached (estimated at six years averaged across manufacturers). These elements are also coupled with projected impacts from the NOASH reduction program funded under currently secured TAGs.

Alaska noted that, based on these phase-in forecasts, a detailed spreadsheet was developed to calculate PM_{2.5} and SO₂ emissions reductions within the space heating sector for each measure in each inventory year.¹⁵⁰ The source activity data includes device and fuel splits, emission factors, and methods used to calculate control measure emissions benefits to support the control inventories developed for the attainment date analysis. Alaska further stated that the control measure emissions benefits calculations also account for the effects of overlap between measures that impact the same source category, properly eliminating double counting.

Alaska stated that projected emissions control inventories for each year from 2020 through 2029 were prepared to support the analysis of expeditious attainment. Full modeling runs were completed for 2029, 2027, and 2026 in that order. After the 2029 modeling results demonstrated attainment of the

PM_{2.5} NAAQS, 2027 was selected as the next year to evaluate expeditious attainment.

To begin analyzing the 2027 attainment year, Alaska noted that the 2027 episodic modeling inventory was incorporated into the CMAQ air quality model. Modeled concentration outputs for this 2027 control inventory run were post-processed for each grid cell corresponding to ambient air quality monitors for which design values could be computed and processed through Alaska's Speciated Modeled Attainment Test (SMAT) tool (see State Air Quality Control Plan, Vol. II, section III.D.7.8.9). Alaska stated that the modeled design value at the controlling North Pole (Hurst Road) air quality monitor was found to be 31.9 µg/m³, below the 35 µg/m³ NAAQS for 24-hour PM_{2.5} and thus demonstrating modeled attainment by 2027.

To evaluate whether attainment could be advanced any sooner than 2027, Alaska compiled another emissions inventory for the 2026 model year. The

2026 CMAQ gridded outputs were then post-processed for the key monitor-based grid cells through the SMAT tool to develop modeled design values that reflected penetration of the State's control strategy package in 2026. Alaska stated that the 2026 modeled design value at the North Pole (Hurst Road) monitor was found to be 38.1 µg/m³, which exceeds the 35 µg/m³ NAAQS.

As shown in Table 5 of this preamble, modeled design values in 2027 at all three regulatory air quality monitor locations in the Fairbanks PM_{2.5} Nonattainment Area are below the 35 µg/m³ 24-hour PM_{2.5} NAAQS. Alaska noted that the modeled design value at the controlling North Pole (Hurst Road) monitor is 31.9 µg/m³, more than 3 µg/m³ below the NAAQS, which provides a "buffer" to account for concentrations in unmonitored grid cells across the nonattainment area. Modeled 2027 design values at the other two monitors near downtown Fairbanks are well below the PM_{2.5} NAAQS.

¹⁵⁰ See State Air Quality Plan, Vol. III, Appendix III.D.7.9.

TABLE 5—FAIRBANKS MODELED ATTAINMENT SUMMARY

Fairbanks PM _{2.5} air quality monitor	Base year 2020 5-year PM _{2.5} modeling design value (µg/m ³), 2017–2021	Future 5-year PM _{2.5} modeling design value (µg/m ³), 2026	Future 5-year PM _{2.5} modeling design value (µg/m ³), 2027
North Pole (Hurst Road)	64.9	38.1	31.9
NCORE	27.7	19.8	18.4
A Street	34.8	24.5	22.7

Source: State Air Quality Plan, Vol. II, section III.D.7.9, Table 7.9–12.

Alaska noted that even if emission controls were applied for precursor pollutants within applicable source sectors for which precursor significance determinations have been made (*i.e.*, SO₂ emissions from major stationary sources in the Fairbanks PM_{2.5} Nonattainment Area), the reduction in secondary PM_{2.5} from such controls would not be sufficient to advance attainment sooner than 2027.¹⁵¹

Therefore, Alaska asserted that this evaluation demonstrates that 2027 is the most expeditious attainment date based on currently available data and demonstrate attainment “as expeditiously as practicable.”

4. The EPA’s Evaluation and Proposed Action Regarding the Attainment Demonstration and Modeling

The EPA proposes to approve Alaska’s attainment demonstration as meeting the requirements under 40 CFR 51.1011(b). Alaska demonstrated that the 2027 projected attainment date for the Serious nonattainment area is as expeditious as practicable. The attainment demonstration meets the requirements of Appendix W and includes inventory data, modeling results, and emissions reduction analyses on which the state has based its projected attainment date. As discussed in section II.A of this preamble, the base year for the emissions inventories for Alaska was 2020, which the EPA is proposing to determine is the technically appropriate inventory year. The EPA is proposing to determine that the control strategies in Alaska’s SIP as rectified by the Fairbanks Revised 189(d) Plan satisfy the requirements of 40 CFR 51.1010. Therefore, the control strategies modeled as part of the attainment demonstration are consistent with the control strategies required pursuant to 40 CFR 51.1003 and 51.1010. With respect to the required timeframe for obtaining emissions reductions, all control measures needed for attainment will be implemented as expeditiously as

practicable and implemented to attain the PM_{2.5} NAAQS by 2027.

Pursuant to CAA section 172(a)(2)(A) and 40 CFR 51.1004(a)(3), the EPA is proposing to extend the attainment date for the Fairbanks PM_{2.5} Nonattainment Area to December 31, 2027. As shown in Table 5 of this preamble, the 2020 base year design value at the Hurst Road monitoring station is 64.9 µg/m³. This design value is well above the PM_{2.5} 24-hour NAAQS of 35 µg/m³, indicating the air quality problem in the Fairbanks PM_{2.5} Nonattainment Area remains severe. However, Alaska has demonstrated that attainment earlier than 2027 is not feasible. Moreover, the EPA has reviewed Alaska’s evaluations (and re-evaluations) of available control measures and proposes to determine that Alaska’s control strategy meets the requirements of CAA section 189(b) and 189(d) and 40 CFR 51.1010. By extension, the EPA proposes to determine that there are no other feasible measures that Alaska could implement that would advance attainment to a date earlier than December 31, 2027.

As discussed in section II.E of this preamble regarding Reasonable Further Progress, the primary drivers of emissions reductions will be continued implementation of the wood stove change out program, the Solid Fuel-Burning Appliance Curtailment Program, and the switch from diesel no. 2 fuel oil to diesel no. 1 fuel oil. The rate of wood stove change-outs in a single season is constrained based on the availability of certified installers and residential demand. Similarly, higher sulfur fuel cannot feasibly be eliminated from the Fairbanks PM_{2.5} Nonattainment Area until 2026¹⁵² due to the time necessary to expend all residual diesel no. 2 fuel oil and for diesel no. 1 to fully flush out any remaining higher sulfur residue. Finally, Alaska conducted a recent assessment of compliance with the Solid Fuel-Burning Appliance Curtailment Program that indicated a

compliance rate of 38 percent.¹⁵³ Given the variability of compliance with this program in past, Alaska does not project a near-term improvement in the compliance rate. Therefore, the EPA has considered the severity of nonattainment and the availability and feasibility of control measures as required under CAA section 172(a)(2)(A) and 40 CFR 51.1004(a)(3).

E. Reasonable Further Progress

1. Statutory and Regulatory Requirements Regarding Reasonable Further Progress

Pursuant to CAA section 172(c) and 40 CFR 51.1012, each attainment plan for a PM_{2.5} nonattainment area shall include Reasonable Further Progress (RFP) provisions that demonstrate that control measures in the area will achieve such annual incremental reductions in emissions of direct PM_{2.5} and PM_{2.5} plan precursors as are necessary to ensure attainment of the applicable PM_{2.5} NAAQS as expeditiously as practicable. As discussed in section I of this preamble, on September 2, 2020, the EPA determined that the Fairbanks PM_{2.5} Nonattainment Area failed to attain the 2006 24-hour PM_{2.5} NAAQS by the applicable December 31, 2019, Serious area attainment date. Therefore, the EPA is proposing to evaluate any previously unmet Serious area planning obligations, including RFP and quantitative milestone requirements, based on the current, applicable attainment date appropriate under CAA section 189(d) and not the original Serious area attainment date. In accordance with 40 CFR 51.1012, the RFP plan shall include all of the following:

a. A schedule describing the implementation of control measures during each year of the applicable attainment plan. Control measures for Moderate area attainment plans are required in 40 CFR 51.1009, and control

¹⁵¹ State Air Quality Control Plan, Vol. II, section III.D.7.9.3

¹⁵² State Air Quality Control Plan, Vol. II, section III.D.7.10, Table 7.10–4.

¹⁵³ State Air Quality Control Plan, Vol. III, Appendix III.D.7.9, at p. Appendix III.D.7.14–12.

measures for Serious area attainment plans are required in 40 CFR 51.1010.

b. RFP projected emissions for direct PM_{2.5} and all PM_{2.5} plan precursors for each applicable milestone year, based on the anticipated implementation schedule for control measures required by 40 CFR 51.1009 and 51.1010. For purposes of establishing motor vehicle emissions budgets for transportation conformity purposes (as required in 40 CFR part 93, subpart A) for a PM_{2.5} nonattainment area, the state shall include in its RFP submission an inventory of on-road mobile source emissions in the nonattainment area for each milestone year.¹⁵⁴

c. An analysis that presents the schedule of control measures and estimated emissions changes to be achieved by each milestone year, and that demonstrates that the control strategy will achieve reasonable progress toward attainment between the applicable base year and the attainment year. The analysis shall rely on information from the base year inventory for the nonattainment area required in 40 CFR 51.1008(a)(1) and the attainment projected inventory for the nonattainment area required in 40 CFR 51.1008(a)(2), in addition to the RFP projected emissions required in 40 CFR 51.1012(a)(2).

d. An analysis that demonstrates that by the end of the calendar year for each milestone date for the area determined in accordance with 40 CFR 51.1013(a), pollutant emissions will be at levels that reflect either generally linear progress or stepwise progress in reducing emissions on an annual basis between the base year and the attainment year. A demonstration of stepwise progress must be accompanied by appropriate justification for the selected implementation schedule.

2. Summary of the EPA's Prior Rulemaking Regarding Reasonable Further Progress

The EPA disapproved the RFP provisions in the Fairbanks Serious Plan and Fairbanks 189(d) Plan because the control strategies in those prior plans did not include all required control measures.¹⁵⁵ This caused uncertainty as to whether the RFP provisions of those plans accurately projected progress towards the most expeditious attainment year, per CAA section 172(c)(2) and 40 CFR 51.1012.

3. Summary of the State's Submission Regarding Reasonable Further Progress

The Fairbanks Revised 189(d) Plan includes updated RFP provisions at State Air Quality Control Plan, Vol. II, section III.D.7.10.¹⁵⁶ Consistent with the attainment demonstration provisions discussed in the preceding paragraphs, these updated RFP provisions reflect the attainment year of 2027.¹⁵⁷ The updated RFP analysis includes a schedule that includes 2020 as the base year, 2027 as the attainment year, and the following years as RFP and quantitative milestone analysis years: 2023, 2026, and 2029.¹⁵⁸

Alaska included an analysis of implementation of all control measures that establishes the scheduled phase-in of each measure adopted and estimation of emissions reductions for each significant pollutant (also accounting for the overlapping of measures to eliminate double counting) for each milestone year based on the phase-in schedule. Alaska calculated the RFP and quantitative milestone (QM) milestone year emissions reduction targets based on linear progress towards attainment by 2027. Based on the control measure phase-in schedule, Alaska calculated projected emissions reductions for each pollutant in each milestone year and compared these emissions reductions to their targets to evaluate linear progress toward attainment.

Alaska has continued to assess the appropriate compliance rate estimate. As Alaska noted in the Fairbanks Revised 189(d) Plan, the State is currently utilizing funding from the 2019–2020 TAG to purchase three dynamic message highway signs and an infrared camera and to expand staffing to increase compliance.¹⁵⁹ Alaska continues to conduct field studies during the wintertime to observe compliance rates. Based on the recent 2022–2023 wintertime field study, Alaska determined that the combined compliance rate in Fairbanks and the North Pole is 38.1 percent. Based on these observations and the increased use of TAG funding to improve compliance, Alaska increased its compliance estimate with the curtailment program to 38 percent for the 2023 model year,

an increase from 30 percent in 2020. Alaska plans to conduct additional wintertime curtailment program compliance observations to inform anticipated improvements in compliance beyond 2023. For the attainment year projected emissions inventory, Alaska stated that it conservatively assumed no further compliance rate increases pending further evaluation of additional wintertime compliance observations.¹⁶⁰

Alaska stated that direct PM_{2.5} emissions reductions achieved within the first two milestone years (2023 and 2026) achieve stepwise progress.¹⁶¹ However, reductions in direct PM_{2.5} emissions in the attainment year of 2027 reflect linear progress. According to Alaska's submission, this is attributable to a spike in participation in the wood stove change out program anticipated by 2027 (based on increased incentives and deadlines for older device turnover) and gradual improvements in household compliance with control strategies impacting solid fuel-burning devices.

With respect to SO₂, Alaska stated that SO₂ emissions reductions are expected to be non-linear but includes early year (2023 and 2026) progress that significantly exceeds the linear progress trajectory.¹⁶² Alaska stated that this non-linearity in control measure reductions for SO₂ is due to two causes. First, most of the measures designed to reduce direct PM_{2.5} through removal, curtailment, or replacement of solid-fuel devices trigger a shift from space heating devices that emit high levels of direct PM_{2.5} to oil-fired devices that emit very low levels of direct PM_{2.5} (but can lead to higher levels of SO₂ emissions depending on the fuel sulfur content). Second, initial reductions in SO₂ emissions are the result of Alaska implementing an SO₂-specific control measure in 2022 mandating a shift from diesel no. 2 to diesel no. 1 heating oil. Thus, emissions reductions for SO₂ exhibit stepwise rather than linear progress.

Regarding NH₃, Alaska stated that linearly established targets for NH₃ will not be met until the forecasted 2027 attainment year.¹⁶³ Alaska noted that the increases in NH₃ emissions are not due to control measure benefits or lack thereof. Although Alaska adopted and implemented control measures to reduce NH₃, Alaska did not calculate any NH₃ emissions reductions for these measures for the purposes of RFP due to

¹⁵⁶ Adopted November 5, 2024.

¹⁵⁷ RFP provisions in prior SIP submissions for the Fairbanks PM_{2.5} Nonattainment Area reflected varying projected attainment dates. Initially Alaska submitted an RFP plan in the Fairbanks Serious Plan based on the projected attainment year of 2029. Alaska withdrew and replaced the RFP plan in the Fairbanks 189(d) plan based on the revised 2024 attainment projection.

¹⁵⁸ See State Air Quality Plan, Vol. II, section III.D.7.10.2.

¹⁵⁹ State Air Quality Plan, Vol. II, section III.D.7.9.1.1.

¹⁵⁴ For an evaluation of motor vehicle emission budgets, see section II.H of this preamble.

¹⁵⁵ 88 FR 84626, December 5, 2023, at p. 84676.

¹⁶⁰ *Id.*

¹⁶¹ State Air Quality Plan, Vol. II, section III.D.7.10.3.3.

¹⁶² *Id.*

¹⁶³ *Id.*

the large uncertainty in NH₃ emissions factors for key sources.

4. The EPA's Evaluation and Proposed Action Regarding Reasonable Further Progress

The EPA is proposing to approve the Fairbanks Revised 189(d) Plan as meeting the RFP requirements in CAA section 172(c)(2) and 40 CFR 51.1012. The RFP provisions in the Fairbanks Revised 189(d) Plan meet each of the requirements in 40 CFR 51.1012(a)(1)–(4). First, the RFP provisions include a schedule describing the implementation of control measures during each year of the applicable attainment plan.¹⁶⁴ Second, the Fairbanks Revised 189(d) Plan includes RFP projected emissions for direct PM_{2.5} and all PM_{2.5} plan precursors for each applicable milestone year based on the phase-in schedule.¹⁶⁵ Third, the Fairbanks Revised 189(d) Plan includes an analysis that presents the schedule of control measures and estimated emissions changes to be achieved by each milestone year: 2023, 2026, and 2029.¹⁶⁶ This analysis relies on information from the base year inventory and attainment projected inventories in State Air Quality Control Plan, Vol. II, section III.D.7.8, as well as the RFP projected emissions. The analysis demonstrates that the control strategy will achieve reasonable progress toward attainment between the applicable base year and the attainment year.¹⁶⁷

Finally, the Fairbanks Revised 189(d) Plan includes an analysis that demonstrates that by the end of the calendar year for each milestone date, pollutant emissions will be at levels that reflect either linear progress or stepwise progress in reducing emissions on an annual basis between the base year and attainment year. As discussed in section II.E.3 of this preamble, Alaska's projections for reductions in direct PM_{2.5} reductions closely track linear progress. The EPA proposes to determine that the slight deviations from linear progress in the initial years of implementation are justified. The EPA recognizes the episodic nature of

wood-stove change outs and the time lag between state enforcement and deterrence.

With respect to SO₂ emissions reductions, Alaska projects emissions well below linear progress in 2023 and 2026 milestone years. As discussed in section II.E.3 of this preamble, the early-year reductions are due to near-term implementation of the control strategy requirement to switch to lower sulfur fuels. These early reductions are consistent with the overall goal of achieving attainment as expeditiously as practicable.¹⁶⁸ The EPA proposes to determine that Alaska adequately justified the leveling off of SO₂ emissions reductions in 2027 as due to the near-term implementation of the fuel switch as well as the increase in SO₂ emissions from residents switching from solid fuel-fired heating devices to liquid fuel-fired heating devices to comply with other measures in the control strategy targeting sources of direct PM_{2.5}.

Finally, with respect to NH₃, the EPA proposes to determine that Alaska adequately justified the increase in emissions. The EPA has previously approved Alaska control strategy for NH₃, noting that sources in the Fairbanks PM_{2.5} Nonattainment Area emit a negligible amount of NH₃ and there are no specific controls for the types of sources in the area.¹⁶⁹ Therefore, the EPA is proposing to approve the Fairbanks Revised 189(d) Plan as meeting the RFP requirements in CAA section 172(c)(2) and 40 CFR 51.1012.

F. Quantitative Milestones

1. Statutory and Regulatory Requirements Regarding the Quantitative Milestones

In accordance with CAA section 189(c)(1) and 40 CFR 51.1013, the state must submit in each attainment plan for a PM_{2.5} nonattainment area specific quantitative milestones that provide for objective evaluation of RFP toward timely attainment of the applicable PM_{2.5} NAAQS in the area.

For an attainment plan submission for a Serious area subject to the requirements of CAA section 189(d) and 40 CFR 51.1003(c), each plan shall contain quantitative milestones that provide for objective evaluation of reasonable further progress toward timely attainment of the applicable PM_{2.5} NAAQS in the area.¹⁷⁰ At a

minimum, each plan for an area subject to CAA section 189(d) must include QMs for tracking progress achieved in implementing the SIP control measures by each milestone date.¹⁷¹

In the preamble to the PM_{2.5} SIP Requirements Rule, the EPA stated that it interprets the CAA as allowing states to identify milestones that are suitable for the specific facts and circumstances of the attainment area.¹⁷² The EPA suggested possible metrics, including tracking air quality improvement, tracking emissions reductions, percentage implementation of control strategies, or percent compliance with implemented control measures.¹⁷³ Finally, the EPA stated in the preamble that quantitative milestones will be met by showing that emissions reductions scheduled to be made between the SIP due date and the attainment date were actually achieved.¹⁷⁴

Regarding the specific timeframe for the Fairbanks PM_{2.5} Nonattainment Area, per 40 CFR 51.1013(a)(4), each attainment plan submission for an area designated nonattainment for the 1997 and/or 2006 PM_{2.5} NAAQS before January 15, 2015, shall contain quantitative milestones to be achieved no later than 3 years after December 31, 2014, and every 3 years thereafter until the milestone date that falls within 3 years after the applicable attainment date.

2. Summary of the EPA's Prior Action Regarding the Quantitative Milestones

The EPA disapproved the quantitative milestones in the Fairbanks Serious Plan and Fairbanks 189(d) Plan because the control strategies in those prior plans did not include all required control measures.¹⁷⁵ This caused uncertainty as to whether the quantitative milestones were based on progress towards the most expeditious attainment year.

3. Summary of the State's Submission Regarding the Quantitative Milestones

Alaska submitted revised quantitative milestones in the Fairbanks Revised 189(d) Plan. As noted in section II.E of this preamble, Alaska's updated RFP analysis is based on a schedule that includes 2020 as the base year, 2027 as the attainment year, and the following years as quantitative milestone years:

¹⁷¹ 40 CFR 51.1013(a)(3)(ii).

¹⁷² *Id.*

¹⁷³ 81 FR 58010, Aug. 24, 2016, at pp. 58064, 58104.

¹⁷⁴ *Id.*

¹⁷⁵ 88 FR 84626, December 5, 2023, at p. 84676.

¹⁶⁴ *Id.* at section III.D.7.10.3.2; *See also* State Air Quality Control Plan, Vol. III, Appendix III.D.7.10.

¹⁶⁵ *Id.* at section III.D.7.10.3.3, Table 7.10–5.

¹⁶⁶ *Id.* at section III.D.7.10.3.2, Table 7.10–4.

¹⁶⁷ *Id.* at section III.D.7.10.3, Tables 7.10–4–7.10–5; Figures 7.10–3–7.10–5. Note that NH₃ emissions are projected to increase from base year to the projected attainment year. As discussed in the preceding paragraphs regarding the control strategy, the EPA either has previously approved Alaska's control strategy as meet planning requirements for sources of NH₃. This is primarily because there are either no controls for sources of NH₃ emissions in the Fairbanks PM_{2.5} Nonattainment Area or the direct PM_{2.5} emissions controls are sufficient to control NH₃ emissions.

¹⁶⁸ *See* CAA section 189, 42 U.S.C. 7513a, Addendum to the General Preamble, 59 FR 41998 (August 16, 1994), at p. 42016.

¹⁶⁹ 88 FR 84626, December 5, 2023, at p. 84636

¹⁷⁰ 40 CFR 51.1013(a)(3).

2023, 2026, and 2029.¹⁷⁶ Alaska used emissions reductions achieved compared to projected emissions reductions as the metric to objectively evaluate progress toward attainment.¹⁷⁷ Alaska calculated expected emissions reductions based on the control measure phase-in schedule.¹⁷⁸ In its Quantitative Milestone Reports required by CAA section 189(c) and 40 CFR 51.1013(b), Alaska reported the emissions reductions achieved by the end of the milestone year compared to the projected emissions reductions included in the quantitative milestone provisions in the Fairbanks Revised 189(d) Plan, specifically, State Air Control Quality Plan, Vol. II, section III.D.7.10.3. Alaska made clear that the state will include in its QM reports completion statistics and phase-in percentages for each measure included in the Fairbanks Revised 189(d) Plan.¹⁷⁹

According to the Fairbanks Revised 189(d) Plan, one of Alaska's reasons for selecting emissions reductions achieved compared to projected emissions reductions as the objective metric is because doing so allows Alaska to take credit for emissions reductions from voluntary measures that are not part of its control strategy.¹⁸⁰ Alaska provided the example of emissions reductions attributable to natural gas expansion. As discussed further below in section II.F.4 of this preamble, the EPA disagrees with this specific rationale for allowing the state to take credit for emissions reductions from voluntary measures that are not part of its control strategy.

4. The EPA's Evaluation and Proposed Action Regarding the Quantitative Milestones

The EPA is proposing to approve the Fairbanks Revised 189(d) Plan as meeting the quantitative milestone requirements of CAA section 189(c)(1) and 40 CFR 51.1013. First, in accordance with 40 CFR 51.1013(a)(3)(ii) and (4), the Fairbanks Revised 189(d) Plan includes quantitative milestones for the years 2023, 2026, and 2029. Second, the Fairbanks Revised 189(d) Plan includes phase-in metrics for each measure in the control strategy, including measures necessary to meet the BACM and BACT requirements in CAA section 189(b) and 40 CFR 51.1010(a) and the requirements of CAA section 189(d) and 40 CFR 51.1010(c).

Finally, the measures allow for objective evaluation of RFP. As stated in the preceding paragraphs, the EPA interprets the CAA as allowing states to identify milestones that are suitable for the specific facts and circumstances of the attainment area. The EPA proposes to determine that Alaska's quantitative milestones provide objective evaluation of RFP and are suitable for the specific facts and circumstances for the Fairbanks PM_{2.5} Nonattainment Area. Although the EPA agrees that comparing emissions reductions achieved to projected emissions reductions allows for objective evaluation of RFP for the Fairbanks PM_{2.5} Nonattainment Area, the EPA disagrees with Alaska's stated rationale for selecting this metric. The purpose of QMs is to provide an objective evaluation of the state's implementation of the SIP control measures.¹⁸¹ Therefore, crediting emissions reductions attributable to non-SIP measures toward achieving a QM is inconsistent with CAA section 189(c) and 40 CFR 51.1013.

Nevertheless, using emissions reductions as the metric is appropriate for the Fairbanks Revised 189(d) Plan because of the overlapping nature of control measures and associated emissions reductions, particularly those focused on the space heating area source sector. Specifically, the implementation of specific measures designed to reduce emissions from solid fuel-fired burning devices impacts nearly all other area-source controls measures. For example, the wood stove change out program removes wood stoves from the emissions inventory. This reduces direct PM_{2.5} emissions, but also impacts the emissions reductions achieved by the Solid Fuel-Burning Appliance Curtailment Program and dry wood requirements.

Alaska could achieve more wood stove change-outs than it projects in a milestone year and, thus, achieve more emissions reductions attributable to that measure. However, that measure, by its nature, changes the makeup of the remaining wood stove users and their collective compliance with dry wood requirements and the curtailment program. Thus, there could be an instance where Alaska overperforms on one wood stove control measure, and that overperformance causes an underperformance on one or more other similar measures, but that collectively the measures achieve RFP.

Relatedly, the wood stove change out program has the potential to moderate the benefits of measures designed to reduce SO₂ emissions by increasing the number of residences using oil fuel-fired heating devices. Comparing emissions reductions achieved to projected emissions reductions as the milestone metric allows Alaska to take into consideration these complex interactions and ultimately provides a more meaningful assessment of whether Alaska's plan is achieving RFP.

In addition to the emissions reduction metric, the Fairbanks Revised 189(d) Plan includes several other objective metrics for RFP, including the number of wood stoves changed out, compliance percentage for tracking the progress of the solid-fuel burning device change out program, and percent implementation as metrics for the fuel sulfur content shift mandate, dry wood requirements, mandatory wood device removal, and more stringent no other adequate source of heat requirements.

Alaska has demonstrated its ability to include emissions reduction statistics in its quantitative milestone reports. On March 29, 2024, Alaska submitted its quantitative milestone report for quantitative milestone year 2023 ("2023 QM Report"). The EPA determined the 2023 QM Report was adequate on November 14, 2024. Both the 2023 QM Report and the EPA's adequacy determination are included in the docket for this action.

The 2023 QM Report included a certification from the Governor's designee that the control strategy in the Fairbanks Revised 189(d) Plan is being implemented consistent with the RFP provisions in the Fairbanks Revised 189(d) Plan. The 2023 QM Report also included calculations and associated technical support for emissions reductions attributable to the measures in the control strategy. The report compared emissions reductions achieved to date to those projected based on the control measure phase-in schedule. The report also included, for example, the number of wood stoves changed out as of 2023 as well as the basis for implementation percentages and compliance rates for each control measure. Finally, the 2023 QM Report included a discussion as to whether the area will attain the PM_{2.5} NAAQS by 2027. Therefore, the EPA proposes to approve the Fairbanks Revised 189(d) Plan as meeting the quantitative milestone requirements of CAA section 189(c)(1) and 40 CFR 51.1013.

¹⁷⁶ See State Air Quality Control Plan, Vol. II, section III.D.7.10.2.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at section III.D.7.10.3.3, Table 7.10–5.

¹⁷⁹ *Id.* at section III.D.7.10.2.

¹⁸⁰ *Id.*

¹⁸¹ See 40 CFR 51.1013(a)(3)(ii) ("At a minimum, each quantitative milestone plan must include a milestone for tracking progress achieved in implementing the SIP control measures by each milestone date.") (emphasis added).

G. Contingency Measures

1. Statutory and Regulatory Requirements Regarding the Contingency Measures

Under CAA section 172(c)(9), states required to make an attainment plan SIP submission must include contingency measures to be implemented if the area fails to meet RFP or fails to attain the NAAQS by the applicable attainment date. Under the PM_{2.5} SIP Requirements Rule, states must include contingency measures that the state will implement following a determination by the EPA that the state has failed: (1) to meet any RFP requirement in the approved SIP; (2) to meet any QM in the approved SIP; (3) to submit a required QM report; or (4) to attain the applicable PM_{2.5} NAAQS by the applicable attainment date.¹⁸²

In accordance with the statute, contingency measures must be fully adopted rules or control measures that are ready to be implemented upon the EPA determination of a failure of any of the four types specified by statute and regulation for purposes of the PM_{2.5} NAAQS at issue.¹⁸³ The contingency measures must be included in the state's SIP and explicitly provide that they will take effect in the case of any such finding of failure, without further significant action by the State or the EPA. In general, the EPA expects all actions needed to effect full implementation of the measures to occur within 60 days after the EPA notifies the state of a failure to meet RFP or of a failure to attain.¹⁸⁴ The EPA has historically recommended that the additional emissions reductions from the contingency measures should be achieved within a year of the triggering event.¹⁸⁵ The EPA has recently revised its guidance concerning the period of time during which contingency measures should provide emissions reductions, and now recommends that it may be appropriate for contingency measures to achieve emissions reductions within two years under certain circumstances.¹⁸⁶ The purpose

of contingency measures is to continue progress toward attainment, as the state develops and submits, and the EPA acts on, a SIP submission to address the underlying deficiency.

Neither the CAA nor the EPA's implementing regulations establish a specific level of emissions reductions that implementation of contingency measures must achieve, but the EPA has historically recommended that contingency measures should provide for emissions reductions equivalent to approximately one year of reductions needed for RFP in the nonattainment area.¹⁸⁷ For PM_{2.5} NAAQS SIP planning purposes, prior to issuing the recent contingency measure guidance, the EPA has recommended that RFP should be calculated as the overall level of reductions needed to demonstrate attainment divided by the number of years from the base year to the attainment year.¹⁸⁸ As part of the attainment plan SIP submission, the EPA expects states to explain the amount of anticipated emissions reductions that the contingency measures will achieve. In the event that a state is unable to identify and adopt contingency measures that will provide for approximately one year's worth of emissions reductions, then the EPA recommends that the state provide a reasoned justification why the smaller amount of emissions reductions is appropriate.¹⁸⁹ As further described below, the EPA revised and updated its guidance concerning the amount of emissions reductions that contingency measures should achieve and expanded its recommendations concerning how states may justify having contingency measures that achieve fewer reductions, in light of recent court decisions and the changed factual circumstances.

To satisfy the contingency measure requirements of 40 CFR 51.1014, the contingency measures adopted as part of a PM_{2.5} NAAQS attainment plan must consist of control measures for sources in the area that are not otherwise required to meet other attainment plan requirements (e.g., BACM or BACT requirements). By definition, contingency measures are measures that are over and above what a state must adopt and impose to meet RFP and to provide for attainment by the applicable attainment date. Contingency measures serve the purpose of providing

additional emissions reductions during the period after a failure to meet RFP or failure to attain as the state prepares a new SIP submission to rectify the problem. Accordingly, contingency measures must provide such additional emissions reductions during an appropriate period and must specify the timeframe by which their requirements would become effective following any of the EPA determinations specified in 40 CFR 51.1014(a).

To comply with CAA section 172(c)(9), contingency measures must be both conditional and prospective, so that they will go into effect and achieve emissions reductions only in the event of a future triggering event such as a failure to meet RFP or a failure to attain. In the 2016 *Bahr v. EPA* decision,¹⁹⁰ the Ninth Circuit Court of Appeals held that CAA section 172(c)(9) does not allow EPA approval of already-implemented control measures as contingency measures. Thus, already-implemented measures cannot serve as contingency measures under CAA section 172(c)(9). For purposes of the PM_{2.5} NAAQS, a state must develop, adopt, and submit one or more contingency measures to be triggered upon a failure to meet any RFP requirement, failure to meet a quantitative milestone requirement, or failure to attain the NAAQS by the applicable attainment date, regardless of the extent to which already implemented measures would achieve surplus emissions reductions beyond those necessary to meet RFP or quantitative milestone requirements and beyond those predicted to achieve attainment of the NAAQS.

In another recent decision concerning contingency measures for the ozone NAAQS, the Ninth Circuit Court of Appeals held that the surplus emissions reductions from already-implemented measures cannot be relied upon to justify the approval of a contingency measure that would achieve far less than one year's worth of RFP as sufficient by itself to meet the contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9) for the nonattainment area.¹⁹¹

a. Revised Contingency Measure Guidance

On December 3, 2024, the EPA issued new guidance addressing the contingency measures requirement of CAA section 172(c)(9), herein referred to as the "Contingency Measure

¹⁸² 40 CFR 51.1014(a).

¹⁸³ 81 FR 58010, August 24, 2016, at p. 58066; see also Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 59 FR 41998, August 16, 1994, at 42015 ("General Preamble Addendum").

¹⁸⁴ 81 FR 58010, August 24, 2016, at p. 58066; see also General Preamble at pp. 13512, 13543–13544, and General Preamble Addendum, at pp. 42014–42015.

¹⁸⁵ General Preamble, at p. 13511.

¹⁸⁶ "Guidance on the Preparation of State Implementation Plans Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter," Joseph Goffman, U.S. Environmental Protection

Agency, Assistant Administrator, Office of Air and Radiation, December 3, 2024.

¹⁸⁷ 81 FR 58010, August 24, 2016, at p. 58066; see also General Preamble, at pp. 13511, 13543–13544, and General Preamble Addendum, at pp. 42014–42015.

¹⁸⁸ 81 FR 58010, August 24, 2016, at p. 58066.

¹⁸⁹ *Id.* at p. 58067.

¹⁹⁰ *Bahr v. EPA*, 836 F.3d 1218, 1235–1237 (9th Cir. 2016). See also *Sierra Club v. EPA*, 21 F.4th 815, 827–28 (D.C. Cir. 2021).

¹⁹¹ *Assoc. of Irrigated Residents v. EPA*, 10 F.4th 937, 946–47 (9th Cir. 2021) ("AIR v. EPA" or "AIR").

Guidance.”¹⁹² The principal differences between the latest Contingency Measure Guidance and prior guidance on contingency measures relate to the EPA’s recommendations concerning the specific amount of emissions reductions that implementation of contingency measures should achieve and to the timing for when the emissions reductions from the contingency measures should occur. The Contingency Measure Guidance also provides recommended procedures for developing a demonstration, if applicable, that the area lacks sufficient feasible measures to achieve one year’s worth of reductions, building on existing guidance that the state may provide a reasoned justification why the smaller amount of emissions reductions is appropriate.¹⁹³

The EPA has historically recommended that contingency measures should achieve approximately one year’s worth of RFP, calculated based upon the initial emissions inventory of the attainment plan for the area in question. As explained in the updated guidance, however, the EPA is revising its interpretation of the requirements of CAA section 172(c)(9). Under the Contingency Measure Guidance, the EPA recommends that the amount of emissions reductions that contingency measures should achieve should be one year’s worth of “progress,” as opposed to one year’s worth of RFP.¹⁹⁴ One year’s worth of “progress” is calculated by determining the average annual reductions between the base year emissions inventory and the projected attainment year emissions inventory, determining what percentage of the base year emissions inventory this amount represents, then applying that percentage to the projected attainment year emissions inventory to determine the amount of reductions appropriate from contingency measures to ensure ongoing progress if the measures are triggered.

With respect to the time period that reductions from contingency measures should occur, the EPA previously recommended that contingency measures take effect within 60 days of being triggered, and that the resulting emissions reductions generally occur within one year of the triggering event. Under the Contingency Measure

Guidance, in instances where there are insufficient contingency measures available to achieve the recommended amount of emissions reductions within one year of the triggering event, the EPA is recommending that contingency measures that provide reductions within two years of the triggering event would be appropriate to consider towards achieving the recommended amount of emissions reductions.¹⁹⁵ The Contingency Measure Guidance does not alter the 60-day recommendation for the contingency measures to take initial effect.¹⁹⁶

If, after adequately evaluating additional control measures, the state is unable to identify contingency measures that would provide a sufficient amount of emissions reductions, the EPA recommends that the state provide an analysis to establish that there are no additional feasible contingency measures. The EPA has recommended this approach for attainment plans for the PM_{2.5} NAAQS since promulgating the PM_{2.5} SIP Requirements Rule.¹⁹⁷ In the Contingency Measure Guidance, the EPA provides additional guidance to states for establishing that there are no additional feasible contingency measures. The EPA recommends that the state should provide a reasoned justification that explains and documents how it has evaluated all existing and potential control measures relevant to the appropriate source categories and pollutants in the nonattainment area, and has reached reasonable conclusions regarding whether such measures are feasible as contingency measures.¹⁹⁸

As explained in the Contingency Measure Guidance, while the EPA notes that CAA section 172(c)(9) and section 182(c)(9) do not explicitly provide for consideration of whether specific measures are feasible, the Agency believes that the best reading of these provisions is that they do not require states to adopt contingency measures regardless of any technological or cost constraints whatsoever.¹⁹⁹ Thus, the EPA views the contingency measure requirements as not to require air agencies to adopt and impose infeasible measures. The statutory provisions applicable to other nonattainment area plan control measure requirements, including RACM/RACT (for ozone and PM), BACM/BACT (for PM), and MSM (for PM), allow air agencies to exclude certain control measures that are

deemed unreasonable or infeasible (depending on the requirement). For example, the MSM provision in CAA section 188(e) requires plans to include “the most stringent measures that are included in the implementation plan of any state or are achieved in practice in any state, and can feasibly be implemented in the area.” The EPA concludes that Congress similarly did not expect air agencies to satisfy the contingency measure requirement with infeasible measures. Thus, the EPA anticipates that a demonstrated lack of feasible measures would be a reasoned justification for adopting contingency measures that only achieve a lesser amount of emissions reductions.²⁰⁰

2. Summary of the EPA’s Prior Action Regarding the Contingency Measures

In the Fairbanks Serious Plan, Alaska submitted revisions to 18 AAC 50.077(n) that included two contingency measures purporting to meet the requirements of CAA section 172(c)(9) and 40 CFR 51.1014. The first measure requires owners of older EPA-certified wood fired heating devices with an emission rating above 2.0 grams per hour (g/hr), manufactured 25 years prior to the effective date of an EPA finding that triggers this measure, to remove the device upon the sale of a property or by December 31, 2024, whichever is earlier. The second measure requires owners of EPA-certified devices that were manufactured less than 25 years prior to the EPA finding to remove the device prior to reaching 25 years from the date of manufacture. On September 24, 2021, the EPA approved the submitted revisions to 18 AAC 50.077(n) as SIP-strengthening, but otherwise did not determine whether the revisions satisfied the contingency measure requirement of CAA section 172(c)(9) and 40 CFR 51.1014.

On September 2, 2020, the EPA issued a determination that the Fairbanks PM_{2.5} Nonattainment Area failed to attain the 2006 24-hour NAAQS by the Serious area attainment date.²⁰¹ This action triggered the contingency measures included in the Fairbanks Serious Plan at 18 AAC 50.077(n).

In the initial Fairbanks 189(d) Plan, Alaska: (1) retained the revisions to 18 AAC 50.077(n); (2) submitted a revision to state regulations at 18 AAC 50.030(c), to act as a central trigger mechanism for all contingency measures contained in Alaska’s nonattainment plans,²⁰² and (3)

¹⁹² “Guidance on the Preparation of State Implementation Plans Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter,” Joseph Goffman, U.S. Environmental Protection Agency, Assistant Administrator, Office of Air and Radiation, December 3, 2024.

¹⁹³ See 81 FR 58010, Aug. 24, 2016, at p. 58067.

¹⁹⁴ Contingency Measure Guidance, at p. 23.

¹⁹⁵ Contingency Measure Guidance, at p. 46

¹⁹⁶ *Id.*

¹⁹⁷ See 81 FR 58010, Aug. 24, 2016, at p. 58067.

¹⁹⁸ Contingency Measure Guidance, at p. 33.

¹⁹⁹ *Id.*

²⁰⁰ Contingency Measure Guidance, at p. 34.

²⁰¹ 85 FR 54509, September 2, 2020, at pp. 54509–10.

²⁰² “Contingency measures in nonattainment and maintenance areas identified in 18 AAC 50.015(b),

included an additional contingency measure, as a revision to State Air Quality Control Plan, Vol. II, section III.D.7.12 (Fairbanks Emergency Episode Plan) that, if triggered, lowers the wood stove curtailment Stage 2 alert threshold from 30 $\mu\text{g}/\text{m}^3$ to 25 $\mu\text{g}/\text{m}^3$.

On January 10, 2023, the EPA approved the submitted revisions to 18 AAC 50.030(c) as consistent with the triggering events in 40 CFR 51.1014. The EPA also approved as SIP-strengthening the submitted revisions to the Fairbanks Emergency Episode Plan regarding the wood stove curtailment thresholds. However, the EPA determined that the revisions to 18 AAC 50.077(n) did not meet contingency measures requirements because they were already triggered and implemented.

With respect to the revision in the Fairbanks Emergency Episode Plan, the EPA determined that this measure alone is insufficient to meet contingency measures requirements, and Alaska did not provide a reasoned justification for why the state could not adopt additional contingency measures. Thus, the EPA disapproved the Fairbanks Serious Plan and initial Fairbanks 189(d) Plan with respect to the contingency measures element. The State is addressing this prior disapproval for the contingency measures element by submitting new provisions intended to meet the requirement in the Fairbanks Revised 189(d) Plan.

3. Summary of the State's Submission Regarding the Contingency Measures

In the Fairbanks Revised 189(d) Plan, Alaska includes: (1) calculations of one year's worth of progress and RFP metrics; (2) an evaluation of potential contingency measures; (3) three contingency measures purporting to meet the requirements of CAA section 172(c)(9) and 40 CFR 51.1014; and (4) an evaluation of whether the contingency measures achieve sufficient emissions reductions.

a. Alaska's Calculation of One Year's Worth of Progress

Alaska used the one year's worth of progress metric to demonstrate that its contingency measures achieve sufficient emissions reductions.²⁰³ According to the Fairbanks Revised 189(d) Plan, the one year's worth of progress target is

0.102 tons per episode day for direct $\text{PM}_{2.5}$ emissions and 0.115 tons per episode day for SO_2 emissions. Alaska also calculated the one year's worth of RFP target for direct $\text{PM}_{2.5}$ and SO_2 as 0.172 tons per episode day and 0.122 tons per episode day, respectively.²⁰⁴

b. Alaska's Identification and Evaluation of Contingency Measures

Alaska evaluated 25 potential measures as contingency measures.²⁰⁵ Alaska evaluated measures to reduce SO_2 emissions and direct $\text{PM}_{2.5}$ emissions. Alaska determined that there were no NH_3 control measures that could serve as contingency measures.²⁰⁶ With respect to SO_2 emissions, Alaska evaluated requiring the use of ULSD heating oil (*i.e.*, a 15 parts per million sulfur content fuel oil requirement). According to Alaska, the ULSD mandate would significantly reduce SO_2 emissions from the residential space heating source category. However, Alaska determined that the ULSD mandate could not achieve emissions reductions until year three of implementation and also posed technological feasibility concerns.²⁰⁷

Alaska also identified major stationary source SO_2 controls, aircraft SO_2 controls, residential fuel oil boilers repair and replacement requirements as potential measures. Alaska determined that, based on the major stationary source SO_2 precursor demonstration, SO_2 controls on these sources would achieve negligible reductions in sulfate formation in the nonattainment area.²⁰⁸ Similarly, Alaska determined that requiring residents to replace or upgrade their fuel oil boilers would result in negligible SO_2 emissions reductions.²⁰⁹ With respect to aircraft, Alaska explained that the State does not have authority to regulate fuel sulfur content for commercial aircraft. Thus, Alaska determined that there were no technologically feasible contingency measures for SO_2 .

Alaska also evaluated several potential contingency measures designed to reduce emissions of direct $\text{PM}_{2.5}$. Specifically, Alaska evaluated enhancements to the existing curtailment program, enhancements to the existing wood device removal

program, used oil burning restrictions, vehicle idling restrictions, making existing control measures more stringent, and various economic incentive programs suggested by commenters.²¹⁰ Alaska ultimately determined that enhancing the existing curtailment program and existing wood device removal program were the only technologically feasible measures that would achieve more than negligible emissions reductions.

Alaska determined that prohibiting small "pot burners" and used oil burners would achieve negligible emissions reductions.²¹¹ According to the Fairbanks Revised 189(d) Plan, prohibiting small pot burners would achieve emissions reductions of 0.002 tons per episode day of direct $\text{PM}_{2.5}$.²¹² Likewise, prohibiting used oil burners would achieve less than 0.0001 tons per episode day of direct $\text{PM}_{2.5}$ emissions reductions.²¹³ Similarly, Alaska determined that imposing vehicle idling restrictions would achieve 0.002 tons per episode day of direct $\text{PM}_{2.5}$ emissions reductions.

Alaska also evaluated adopting a 1.0 grams per hour PM emissions standard for new solid fuel-fired heating devices, similar to the measure implemented by Missoula, Montana.²¹⁴ Alaska determined that this measure would achieve emissions reductions through attrition (phase-out of old stoves) and would not achieve significant emissions reductions in the aggregate given Alaska's already stringent restrictions on new wood stoves.²¹⁵ Alaska also noted that the measure effectively restricts new solid-fuel burning devices to pellet-fuel fired stoves. Alaska explained that pellet stoves require electricity to operate. According to Alaska, Fairbanks experiences frequent power outages during the winter months and residents must have a reliable source of heat during these periods. According to Alaska, this renders the measure technologically infeasible as a contingency measure.

In addition, Alaska evaluated reducing the allowable moisture content in commercial dry wood.²¹⁶ Under Alaska's current regulations, all commercial dry wood must have a moisture content of 20 percent or less.²¹⁷ Alaska determined that reducing the moisture content percentage to 15

(d), and (e) must be implemented as described in the State Air Quality Control Plan for an area upon . . . the effective date of an EPA finding that the area failed (i) to attain the applicable NAAQS by the applicable attainment date; (ii) to meet a quantitative milestone; (iii) to submit a required quantitative milestone report; or (iv) to meet a reasonable further progress requirement."

²⁰³ State Air Quality Control Plan, Vol. II, section III.D.7.11.2.1 (adopted November 5, 2024).

²⁰⁴ *Id.* at section III.D.7.10, Table 7.10–8.

²⁰⁵ *Id.* at section III.D.7.11.2.2.

²⁰⁶ *Id.* at section III.D.7.11.3.3.8.

²⁰⁷ *Id.* at section III.D.7.11.3.3.1.1.

²⁰⁸ *Id.* at section III.D.7.11.3.3.1.

²⁰⁹ *Id.* at section III.D.7.11.3.3.1.3. According to the Fairbanks Revised 189(d) Plan, requiring residents to repair their fuel oil boilers would achieve at most 0.001 tons per day of SO_2 emissions reductions. Requiring replacement of fuel oil boilers would achieve at most 0.006 tons per day of SO_2 emissions reductions.

²¹⁰ *Id.* at section III.D.7.11.3.3.3.

²¹¹ *Id.* at section III.D.7.11.3.3.3.3.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.* at section III.D.7.11.3.3.2.

²¹⁵ *Id.*

²¹⁶ *Id.* at section III.D.7.11.3.3.5.

²¹⁷ 18 AAC 50.076(g).

would reduce PM_{2.5} emissions by 0.011 tons per episode day, while reducing the moisture percentage to 10 would reduce PM_{2.5} emissions by 0.022 tons per episode day. However, Alaska determined that achieving these emissions reductions within two years of a triggering event is not technologically feasible due to infrastructure constraints.²¹⁸ According to Alaska, there is a single dry wood kiln in Fairbanks that supplies 31 percent of the commercial dry wood in the area. Requiring the kiln to achieve lower wood moisture content would require longer dry times, which would restrict the availability of dry wood in the area unless the kiln expanded capacity.

Alaska also evaluated granting citation authority to the Alaska Department of Environmental Conservation and increasing civil penalties for SIP violations as potential contingency measures.²¹⁹ Alaska determined that neither measure would improve compliance or achieve emissions reductions.²²⁰ Alaska explained that it has broad and efficient state judicial authority to enforce violations of the SIP. Alaska included a discussion of its process for enforcing SIP violations. Alaska also explained that its civil penalty authority under Alaska Statute 46.03.760(e) does not set a maximum penalty for SIP violations.²²¹

Finally, Alaska evaluated whether several economic incentive programs suggested by commenters could satisfy contingency measure requirements.²²² These included subsidizing the cost of ULSD, subsidizing natural gas, and various electricity cost subsidy programs.²²³ Alaska determined that each of these programs would not be enforceable contingency measures. Alaska also noted that implementing the programs would require more than minimal further effort on the part of the state.²²⁴ Therefore, Alaska concluded that these economic incentive programs would not meet the legal requirements for contingency measures.

c. Alaska's Contingency Measures Included in the Fairbanks Revised 189(d) Plan

Based on the analysis discussed in the preceding paragraphs, Alaska concluded

that the only technologically feasible contingency measures were enhancing the solid fuel burning device curtailment and removal programs. Therefore, in the Fairbanks Revised 189(d) Plan, the State includes three measures intended to meet the contingency measures requirements: (1) lower alert levels under the Solid Fuel-Burning Appliance Curtailment Program; (2) an enforceable commitment to increase the staff hours dedicated to implementing the Solid Fuel-Burning Appliance Curtailment Program; and (3) an enforceable commitment to increase staff hours dedicated to compliance and enforcement with the state regulations requiring replacement of older wood stoves by December 31, 2024.²²⁵

Alaska's current EPA-approved Solid Fuel-Burning Appliance Curtailment Program includes two stages. Alaska calls a Stage 1 burn ban when Alaska projects ambient PM_{2.5} concentrations to be at or above 20 µg/m³. Under a Stage 1 burn ban, individuals may only operate their solid fuel-burning device if the individual has an Alaska-approved "no other adequate source of heat" (NOASH) waiver or an Alaska-approved solid fuel-burning device that meets specific stage 1 waiver age and emission rate criteria.²²⁶ Under the current curtailment program, Alaska calls a Stage 2 burn ban when the state projects ambient PM_{2.5} concentrations to exceed 30 µg/m³. Under a Stage 2 burn ban, individuals may only operate their solid fuel burning device if they have an Alaska-approved NOASH waiver.²²⁷

As the first intended contingency measure, the State adopted revisions to the Fairbanks Emergency Episode Plan that would reduce the alert levels under the Solid Fuel-Burning Appliance Curtailment Program.²²⁸ Upon a triggering event, such as failure to attain or failure to meet a QM, the Stage 1 alert level will be lowered to 15 µg/m³ and the Stage 2 alert level will be lowered to 20 µg/m³.²²⁹ The State anticipates that lowering these alert levels would result in Alaska calling burn bans more frequently and for longer durations, thus lowering the emissions from the solid fuel burning device source category.²³⁰ Alaska projected this first contingency measure will result in emissions reductions of 0.086 tons per day PM_{2.5}

but increase SO₂ emissions by 0.047 tons per day.

As a second intended contingency measure in the Fairbanks Revised 189(d) Plan, the State submitted an enforceable commitment to increase the Alaska Department of Environmental Conservation staff hours dedicated to the compliance and enforcement of the Solid Fuel-Burning Appliance Curtailment Program to 2,800 hours per year, within 60 days of any triggering event.²³¹ This would be an increase from the current 2,200 hours per year.²³² Under the current allocation of staff hours, Alaska achieved 38 percent compliance with the curtailment program.²³³ Alaska projected that with the additional staff hours, the compliance rate would increase to 65 percent.²³⁴ Alaska committed to maintain the increased allocation of staff hours, unless or until the state could later relax the measure through a SIP revision.²³⁵ Alaska further committed to publishing an annual report that includes the staff hours dedicated to compliance and enforcement of the Solid Fuel-Burning Appliance Curtailment Program and the results of the Alaska Department of Environmental Conservation's annual assessments of the compliance rate.²³⁶

As the third intended contingency measure, the State submitted a second enforceable commitment to dedicate 300 staff hours to compliance and enforcement with the SIP-approved rules requiring replacement of older wood stoves (18 AAC 50.077(l-n)).²³⁷ Alaska projects this staffing level would increase the compliance rate from 30 percent to 45 percent.²³⁸ Alaska committed to maintaining the allocation of staffing hours unless or until the state can relax the measure through a SIP revision.²³⁹ Alaska further committed to publishing an annual report that includes the staff hours dedicated to compliance and enforcement with the regulations mandating replacement of older wood stoves.²⁴⁰

²³¹ 18 AAC 50.075(e); State Air Quality Control Plan, Vol. II, section III.D.7.12. See State Air Quality Control Plan, Vol. II, section III.D.7.11.4.3.

²³² State Air Quality Control Plan, Vol. II, section III.D.7.11.4.1.

²³³ *Id.*; See also State Air Quality Control Plan, Vol. II, section III.D.7.10.3.2.

²³⁴ *Id.* at section III.D.7.11.4.1.

²³⁵ *Id.* at section III.D.7.11.4.3.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.* at section III.D.7.11.4.2.

²³⁹ *Id.* at section III.D.7.11.4.3.

²⁴⁰ *Id.*

²¹⁸ State Air Quality Control Plan, Vol. II, section III.D.7.11.3.3.5.

²¹⁹ *Id.* at section III.D.7.11.3.3.6; *Id.* at section III.D.7.11.3.3.4.

²²⁰ *Id.*

²²¹ *Id.* at section III.D.7.11.3.3.6.

²²² *Id.* at section III.D.7.11.3.3.7.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ 18 AAC 50.075(e); State Air Quality Control Plan, Vol. II, section III.D.7.11.4.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ State Air Quality Control Plan, Vol. II, section III.D.7.12.2.

²²⁹ *Id.* See also State Air Quality Control Plan, Vol. II, section III.D.7.12, Table 7.12-1.

²³⁰ State Air Quality Control Plan, Vol. II, section III.D.7.11.3.1.

d. Emissions Reductions From Alaska's Contingency Measures

Alaska projected that these three contingency measures would achieve emissions reductions of 0.151 tons per episode day of direct PM_{2.5} emissions (0.142 tons per day when accounting for some overlap) and increase SO₂ emissions by 0.038 tons per episode day. As stated in the preceding paragraphs, Alaska proposed to use the one year's worth of progress metric for contingency measures. According to the Fairbanks Revised 189(d) Plan, the one year's worth of progress target is 0.102 tons per episode day for direct PM_{2.5} and 0.115 tons per episode day for SO₂.

Alaska purported to justify the increase in SO₂ emissions with the surplus emissions reductions of direct PM_{2.5} emissions through "inter-pollutant trading."²⁴¹ Alaska developed a 5:1 ratio to compare reductions of direct PM_{2.5} emissions to reductions of SO₂ emissions. For the purposes of developing the ratio, Alaska conservatively estimated that SO₂ emissions contribute 20 percent of ambient PM_{2.5} levels in the area.²⁴² Thus, Alaska calculated that achieving an additional 0.023 tons per episode day (0.125 tons per episode day total) of direct PM_{2.5} emissions would achieve the required one year's worth of attainment for both direct PM_{2.5} and SO₂ emissions.²⁴³ Because Alaska's contingency measures would achieve 0.151 tons per episode day of direct PM_{2.5} emissions, Alaska stated that its contingency measures would achieve sufficient emissions reductions.²⁴⁴

Alaska also compared the projected emissions reductions from its contingency measures to the one year's worth of RFP metric. Alaska calculated that the one year's worth of RFP target for direct PM_{2.5} and SO₂ emissions as 0.172 tons per episode day and 0.122 tons per episode day respectively.²⁴⁵ The State acknowledged that its contingency measures would not achieve emissions reductions equivalent to one year's worth of RFP even taking into consideration inter-pollutant trading.²⁴⁶

4. The EPA's Evaluation and Proposed Action

The EPA has reviewed the three measures that the State included in the Fairbanks Revised 189(d) Plan to meet the contingency measures requirement

for the 2006 24-hour PM_{2.5} NAAQS. For the reasons explained in the following sections and the accompanying TSD, the EPA: (i) proposes to approve one of the State's submitted measures as a contingency measure; (ii) proposes to approve the other two measures as SIP-strengthening; (iii) proposes to find that the State has provided an adequate reasoned justification that no other contingency measures are feasible; and (iv) proposes to approve the Fairbanks Revised 189(d) Plan as meeting the contingency measure requirements in CAA Section 179(c)(9) and 40 CFR 51.1014(a).

a. Alaska's Calculation of One Year's Worth of Progress

Alaska proposed to use the one year's worth of progress metric to measure the sufficiency of its contingency measures. The EPA proposes to determine this is an appropriate metric. As discussed above, CAA section 172(c)(9) does not specify the amount of emissions reductions contingency measures must achieve. The EPA's recent revised guidance explains its view that one year's worth of progress approach is consistent with the primary objective of attaining the NAAQS.

This approach takes into account the declining emissions inventories between the base year and attainment year. The EPA expects that Alaska's control strategy in the Fairbanks Revised 189(d) Plan will achieve projected emissions reductions prior to any triggering event. Specifically, public participation in the wood stove change out program should continue given the mandatory change out requirements in 18 AAC 50.077(l)–(n), along with the EPA grant funding through the Targeted Airshed Grant program. Moreover, the continued phase-in of diesel no. 1 fuel oil in place of diesel no. 2 fuel oil will reduce SO₂ emissions.

b. Alaska's Identification and Evaluation of Contingency Measures

As summarized in section II.G.3 of this preamble, Alaska evaluated several control measures that could serve as contingency measures to reduce emissions of the relevant pollutants from the relevant sources. The EPA has reviewed the State's identification and evaluation of potential contingency measures. The EPA's detailed review is included in a Technical Support Document included in the docket for this action.²⁴⁷ For the reasons stated in

the following paragraphs, as well as in the Technical Support Document, the EPA is proposing to determine that Alaska adequately identified and evaluated potential contingency measures.

In a prior action, the EPA approved comprehensive NO_x and VOC precursor demonstrations submitted by Alaska. Therefore, these are not regulatory pollutants for purposes of the 2006 24-hour PM_{2.5} NAAQS in the Fairbanks PM_{2.5} Nonattainment Area. Accordingly, the State is not required to evaluate and adopt contingency measures for these pollutants.²⁴⁸ In this action, the EPA is proposing to approve an SO₂ precursor demonstration for major stationary sources. If the EPA finalizes an approval of this precursor demonstration, then stationary sources that emit SO₂ will not be subject to BACM/BACT. Accordingly, the State would not be required to evaluate and adopt contingency measures for SO₂ emissions from such sources, but Alaska would still be required to evaluate and adopt SO₂ emissions controls from other area and mobile sources.

With respect to NH₃, the EPA has previously approved Alaska's determination that there are no NH₃ controls for major stationary sources in the nonattainment area.²⁴⁹ The EPA also previously approved as BACM for NH₃ Alaska's suite of controls for direct PM_{2.5} on area sources.²⁵⁰ The EPA agrees with Alaska's determination that there are no additional NH₃ controls that could serve as potential contingency measures.

Alaska focused its evaluation of potential contingency measures on measures that could reduce direct PM_{2.5} emissions and SO₂ emissions from areas sources and mobile sources. The EPA is proposing to approve the State's approach to identifying and adopting potential contingency measures for these specific pollutants and sources as part of its proposed approval of the contingency measures element of the Fairbanks Revised 189(d) Plan.

With respect to contingency measures to reduce SO₂ emissions, the EPA proposes to approve Alaska's determinations that (1) mandating ULSD is not technologically feasible as a contingency measure because it would not achieve emissions reductions within two years of being triggered; (2) requiring residents to repair or replace their fuel oil boilers would achieve

²⁴¹ *Id.* at section III.D.7.11.2.1.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.* at section III.D.7.10, Table 7.10–8.

²⁴⁶ *Id.* at section III.D.7.10.3.4.

²⁴⁷ Jentgen, Matthew. (December 4, 2024). *Contingency Measure assessment of available control measures in the Fairbanks Revised 189(d) Plan*. U.S. Environmental Protection Agency,

Region 10, Air and Radiation Division, EPA–R10–OAR–2024–0595.

²⁴⁸ 88 FR 84626, December 5, 2023, at p. 84635.

²⁴⁹ 88 FR 84626, December 5, 2023, at p. 84636.

²⁵⁰ *Id.* at pp. 84,638–49.

negligible emissions reductions; and (3) regulating aircraft emissions is not viable as a contingency measure because of limitations on legal authority.

Regarding mandating ULSD, the EPA agrees with the State that, if implemented, such a contingency measure could reduce SO₂ emissions from the residential home heating source category, which is the dominant contributor to sulfate formation in the nonattainment area. However, the EPA agrees with Alaska's determination that mandating ULSD would not achieve emissions reductions until at least three years following the triggering event.²⁵¹ This is due to the need to improve storage and distribution infrastructure in the area, the need to allow the distribution market to shift to new demands, and the time needed to phase out higher-sulfur fuels from existing storage vessels in the area.²⁵² A contingency measure that required the use of ULSD fuel factually could not be implemented quickly following a triggering event, or achieve emissions reductions until several years following the triggering event. Thus, mandating ULSD as a contingency measure would not satisfy the key purpose of contingency measures of continuing progress towards attainment between the triggering event and submission of a revised plan. Based upon this analysis, the EPA agrees that a measure mandating sale and use of ULSD fuel in the Fairbanks PM_{2.5} Nonattainment Area is not viable as a contingency measure because of the time it would take to achieve emissions reductions.

In addition, the EPA has reviewed Alaska's emissions reductions calculations, including for the fuel oil boiler measures, and determined Alaska's methodology is reasonable. Based on these calculations, the fuel oil boiler measures would achieve negligible emissions reductions. Regarding emissions from aircraft, states are prohibited under CAA section 233 from adopting more stringent standards than those set by the Federal Government.²⁵³ Therefore, the EPA agrees that none of these potential measures are viable as contingency measures.

Regarding potential contingency measures to control direct PM_{2.5} emissions, the EPA proposes to approve Alaska's determinations of: (1) measures that would only achieve negligible emissions reductions; (2) measures that are technologically infeasible as

contingency measures because they would not achieve emissions reductions within two years of being triggered; and (3) other measures that are technologically infeasible due to infrastructure constraints and local conditions. The EPA agrees that prohibiting operation and sale of small pot burners, used oil burners, and restricting vehicle idling would achieve negligible emissions reductions. The EPA also agrees that granting citation authority to the Alaska Department of Environmental Conservation and increasing state penalties for SIP requirement violations would have negligible emissions benefits as a contingency measure.

The EPA also reviewed Alaska's evaluation of a potential requirement that all new solid fuel-burning devices meet a 1.0 gram per hour PM_{2.5} emissions standard as a potential contingency measure. The EPA agrees that, in practice, the only wood heaters that can achieve this standard are pellet-fuel fired stoves and certain highly controlled cordwood stoves. The EPA also notes that, this measure has the potential to reduce direct PM_{2.5} emissions from the solid fuel-burning source category. However, the EPA agrees with Alaska's assessment that this requirement would necessarily be an attrition-based measure that only achieves emissions reductions as homeowners replace older stoves. In its prior action on the Fairbanks Serious Plan, the EPA disapproved a similar Alaska contingency measure mandating the removal of older certified wood stoves, in part because the measure would have achieved virtually no emissions reductions in the first year of implementation.²⁵⁴

In addition, the EPA agrees that this measure is technologically infeasible as a contingency measure. In particular, as Alaska states in the Fairbanks Revised 189(d) Plan, pellet stoves require electricity to function, whereas cordwood stoves do not, and Fairbanks experiences power outages during the winter months. The EPA agrees that given the extremely cold temperatures residents experience, having a source of heat that does not rely on electricity remains a necessity. Based upon this analysis, the EPA agrees that a measure mandating that all new solid fuel-burning devices meet a 1.0 gram per hour PM_{2.5} emissions standard in the Fairbanks area is not viable as a contingency measure because emissions reductions could not be achieved within two years and the measure is otherwise technologically infeasible.

Regarding reducing the required moisture content for dry cordwood, the EPA notes that this measure has the potential to reduce emissions of direct PM_{2.5}. Alaska estimated that a measure requiring all dry wood to meet a 10 percent moisture content would reduce PM_{2.5} emissions by 0.022 tons per episode day, which equates to 18 percent of one's years-worth of progress.²⁵⁵ However, the EPA agrees with Alaska's assessment that mandating a reduction in moisture content as a contingency measure would not be technologically feasible given the constraint on the dry wood supply in Fairbanks. In order to further reduce the moisture content of cordwood while satisfying consumer demand for commercial dry wood, additional kilns would need to be built in the Fairbanks area. This type of large capital project is unlikely to be accomplished quickly such that dry wood at less than 10 percent moisture content could be reliably supplied to residents to achieve emissions reductions within two years of a triggering event.

Therefore, the EPA proposes to determine that, to the extent the contingency measures in the Fairbanks Revised 189(d) Plan fall short of the emissions reductions necessary for one year's worth of attainment, Alaska has provided an adequate reasoned justification for not adopting additional measures as contingency measures.

c. Evaluation of Submitted Contingency Measures

i. Lowered Alert Levels

The submitted contingency measure lowering the alert levels for the Solid Fuel-Burning Appliance Curtailment Program is subject to Alaska's regulation at 18 AAC 50.030(c) that is consistent with the triggers in 40 CFR 51.1014(a). The measure is thus conditional and prospective, as required by statute. This measure will take effect with minimal further effort from the State or the EPA. Neither Alaska nor the EPA will need to engage in any additional rulemaking or other significant action to implement the measure. Alaska already issues alerts through its preexisting program approved into the SIP. Thus, implementing the contingency measure will be ministerial, in terms of adjusting the curtailment alert thresholds.

At the time of adoption and submission to the EPA, these contingency measure alert levels are not otherwise included in the control strategy to meet any other attainment plan requirements. This measure

²⁵¹ State Air Quality Control Plan, Vol. II, section III.D.7.11.3.3.1.1.

²⁵² *Id.*

²⁵³ 42 U.S.C. 7573.

²⁵⁴ 88 FR 84626, December 5, 2023, at p. 84664.

²⁵⁵ State Air Quality Control Plan, Vol. II, section III.D.7.11.3.3.5.

addresses the largest source category of direct PM_{2.5} emissions in the nonattainment area and is not otherwise included in the Fairbanks Revised 189(d) Plan control strategy. The EPA expects this contingency measure would produce emissions benefits in addition to the projected emissions reductions under the control strategy and were not required to meet RFP or to attain by the attainment date.

This contingency measure would go into effect once triggered by an EPA determination, as provided in 18 AAC 50.030(c). Alaska projected this first contingency measure will result in emissions reductions of 0.086 tons per day PM_{2.5} but increase SO₂ emissions by 0.047 tons per day.²⁵⁶ This contingency measure represents 84 percent of one year's worth of progress for direct PM_{2.5} reductions, but, the increase in SO₂ emissions would not meet the one year's worth of progress metric for SO₂.

For the reasons provided in the preceding paragraphs, the EPA is proposing to determine that this measure meets the requirements for contingency measures in 40 CFR 51.1014 and CAA Section 172(c)(9). In section II.G.4.d of this preamble, we address whether approval of this contingency measure also supports approval of the overarching attainment plan contingency measures element of the Fairbanks Revised 189(d) Plan for purposes of the 2006 24-hour PM_{2.5} NAAQS in the Fairbanks PM_{2.5} Nonattainment Area.

ii. Enforceable Commitments To Enhance Enforcement of the Solid Fuel-Burning Appliance Curtailment Program and Removal of Wood Stoves

These submitted measures take the form of enforceable commitments. According to Alaska, these measures would achieve surplus emissions reductions by increasing the compliance rate with the curtailment program from 38 percent to 65 percent and the wood stove removal measure from 30 percent to 45 percent. For the reasons stated in the following paragraphs, the EPA proposes to determine that these measures meet the CAA requirements for enforceable commitments. The EPA is further proposing to approve these commitments into the Alaska SIP as SIP-strengthening but not as contingency measures.

First, Alaska's commitments meet the CAA's requirements for enforceable commitments. Under the CAA, an enforceable commitment must be: (1) a specific enforceable requirement, not merely an aspirational goal; and (2) enforceable as a practical matter (*i.e.*, the public will have sufficient information to enforce the state's compliance with its commitment).²⁵⁷ In the submitted measures, Alaska committed to increase the allocation of annual staff hours by a specific number of hours dedicated to implementing and enforcing specific SIP measures. Thus, the commitment is sufficiently concrete and not merely an aspirational goal. Moreover, Alaska committed to publish a report of its compliance with these commitments. The report will not only include the number of hours dedicated to implementing and enforcing the specific measures, but also other compliance metrics such as number of warning letters and the number of wood stoves removed. Thus, the commitments are enforceable as a practical matter.

In addition to the two criteria above, the EPA has assessed whether to approve an enforceable commitment based on consideration of the following three factors: (1) whether the commitment addresses a limited portion of the CAA requirement; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time.²⁵⁸ Regarding the first factor, in the past, states have relied on enforceable commitments as part of their overall control strategy to achieve the NAAQS.²⁵⁹ Thus, the EPA has typically assessed whether the emissions reductions attributable to the state's enforceable commitments are a limited portion of the emissions reductions necessary to achieve attainment or RFP.

The EPA notes that Alaska structured its enforceable commitments as contingency measures. Thus, in the Fairbanks Revised 189(d) Plan, Alaska assessed the amount of emissions reductions that the commitments could achieve with respect to the one year's worth of progress and one year's worth

of RFP metrics for contingency measures. Alaska determined that the emissions reductions attributable to the commitments are a small portion of the emissions reductions towards the recommended one year's worth of progress and one year's worth of RFP metrics for contingency measures, respectively.²⁶⁰ Alaska projected that emissions reductions attributable to the commitments will yield 38 percent of the emissions reductions towards one-year's work of progress target.²⁶¹

The EPA is proposing to determine that Alaska's enforceable commitments included in State Air Quality Control Plan, Vol. II, section III.D.7.11.2.1 address a limited portion of the CAA requirement. The EPA is not proposing to approve these commitments as contingency measures under CAA section 172(c)(9). If the EPA finalizes approval, these commitments will become part of Alaska's overall control strategy. Viewed in this light, Alaska would not rely on the enforceable commitments to achieve attainment or RFP.

As to the second enforceable commitments factor, Alaska has demonstrated that it can fulfill its commitments. According to Alaska, the commitment to re-allocate staff hours is within the Alaska Department of Environmental Conservation Air Quality Division's existing budget and control. In the Fairbanks Revised 189(d) Plan, Alaska stated that it has the capacity to implement the reallocation of staffing hours it is making in the enforceable commitments and to maintain them indefinitely.²⁶²

Finally, the commitments are for a reasonable and appropriate period of time. For this factor, the EPA typically assesses the state's schedule for promulgating specific control measures to achieve the promised emissions reductions and whether the schedule comports with the RFP and attainment deadlines.²⁶³ Here, Alaska is not relying on the enforceable commitment to achieve RFP or attainment. Therefore, the EPA proposes to determine that this factor is not determinative with respect to Alaska's enforceable commitments.

²⁵⁷ See *Comm. for a Better Arvin v. EPA*, 786 F.3d 1169, 1181 (9th Cir. 2015).

²⁵⁸ See 75 FR 74518, November 30, 2010, at pp. 74535–56; see also *BCCA Appeal Grp. v. EPA*, 355 F.3d 817, 840 (5th Cir. 2003).

²⁵⁹ See, e.g., Approval of Air Quality Implementation Plans; California; South Coast; Attainment Plan for 1997 PM_{2.5} Standards, 76 FR 69928, November 9, 2011, at p. 69941; Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM–10 Nonattainment Area; Serious Area Plan for Attainment of the Annual PM–10 Standard, 65 FR 19964, April 13, 2000, at pp. 19983–19984.

²⁶⁰ The enhanced enforcement of the curtailment program is expected to yield 0.090 tons per day in PM_{2.5} emissions reductions and increase SO₂ emissions by 0.038 tons per day (the increase in SO₂ caused by the shift from wood burning to heating oil). See State Air Quality Control Plan, Vol. II, section III.D.7.11.5.1.

²⁶¹ State Air Quality Control Plan, Vol. II, section III.D.7.11.5.

²⁶² *Id.* at section III.D.7.11.6.

²⁶³ See, e.g., Approval of Air Quality Implementation Plans; California; South Coast; Attainment Plan for 1997 PM_{2.5} Standards, 76 FR 69928, November 9, 2011, at p. 69941.

²⁵⁶ Applying Alaska's interpollutant trading mechanism, the combined emissions reductions for PM_{2.5} and SO₂ are estimated to be 0.077 tons per day, representing 62 percent of the one year's of interpollutant emissions reductions for PM_{2.5} and SO₂. See State Air Quality Control Plan, Vol. II, section III.D.7.11.5.2; see also State Air Quality Control Plan, Vol. II, section III.D.7.11, Table 7.11–6.

Rather, Alaska structured the commitments as contingency measures triggered upon any of the EPA findings in 40 CFR 51.1014. Once triggered, Alaska committed to increasing staff hours within 60 days of the triggering event and maintain the staff hours unless and until the State could revise them through a SIP revision.²⁶⁴

The EPA is proposing to approve the measures as SIP-strengthening but not as contingency measures under CAA section 172(c)(9) for the following reasons. The EPA acknowledges that the enforceable commitments meet many of the regulatory requirements in 40 CFR 51.1014. Specifically, the enforceable commitments are subject to Alaska's regulation 18 AAC 50.030(c) that is consistent with the triggers in 40 CFR 51.1014(a). The Fairbanks Revised 189(d) Plan also includes a description of the specific trigger mechanisms for the commitment. The commitments also specify the timeframe within which they would become effective. Finally, Alaska is not relying on the emissions reductions that may occur as a result of increased compliance rates attributable to the enforceable commitments as part of its control strategy, to meet RFP requirements, or in its attainment demonstration.

However, outside of the SO₂ nonattainment context, the EPA has not considered increased enforcement of existing measures in the control strategy as "implementation of specific measures" that would "take effect with minimal further action by the state of the EPA" following a triggering event.²⁶⁵ The EPA has approved enhanced enforcement as satisfying the contingency measure requirement in the context of SO₂ NAAQS nonattainment areas.²⁶⁶ This is for several reasons. First, the procedures and methods for quantifying and predicting SO₂ concentrations are less uncertain than for other criteria pollutants, especially those that may result from secondary formation from multiple precursors,

such as PM_{2.5}.²⁶⁷ Second, the regulated sources in SO₂ nonattainment areas are typically one or a few major stationary sources that are the main cause of exceedances of the SO₂ NAAQS.²⁶⁸ Third, the control efficiencies for SO₂ control measures are well understood and are less prone to uncertainty than for other criteria pollutants.²⁶⁹ Thus, the EPA has reasoned in the context of SO₂ NAAQS nonattainment areas that if the nonattainment area fails to meet RFP or achieve attainment, then that failure is likely due to violations of the control strategy by the major stationary source regulated in the attainment plan—rather than an inadequacy of the control strategy.²⁷⁰ Hence, for purposes of the SO₂ NAAQS, contingency measures comprised of a comprehensive enforcement program are sufficient.

By contrast, PM_{2.5} NAAQS nonattainment areas typically include hundreds or thousands of individual sources (including multiple categories of major stationary, area, and mobile sources) of emissions of direct PM_{2.5} and multiple PM_{2.5} precursors. Thus, it is not appropriate for a state or the EPA to presume that a failure to meet RFP or to attain is presumptively the result of a single easily identified source to have violated the emissions limitations in an attainment plan for the PM_{2.5} NAAQS.

Accordingly, the EPA has assessed whether the situation in the Fairbanks PM_{2.5} Nonattainment Area is sufficiently analogous to an SO₂ nonattainment area to warrant extending the EPA's approach to SO₂ contingency measures to Alaska's enforceable commitments. The EPA acknowledges that the emissions inventories and RFP provisions of the Fairbanks Revised 189(d) Plan make clear that the dominant contributor to elevated PM_{2.5} concentrations in the nonattainment area is the solid fuel-burning device source category, *i.e.*, wood stoves. The EPA has approved Alaska's control strategy as meeting BACM for this source category and is proposing to determine that the Fairbanks Revised 189(d) Plan meets the CAA section 189(d) requirements. Thus, a failure to achieve RFP or QM requirements, or to achieve attainment could be attributable to widespread noncompliance with preexisting measures limiting emissions from the solid fuel-burning device source category. Although comprised of

numerous relatively small sources, widespread noncompliance could cumulatively be comparable to that by a single major stationary source.

Therefore, if the State were to fail to meet an RFP or QM requirement or fail to attain the NAAQS by the applicable attainment date, then improving compliance with the Solid Fuel-Burning Appliance Curtailment Program and date certain removal requirement could be critical to ensuring the area achieves progress towards attainment. As previously discussed, the EPA is proposing to approve the State's determination that there are no other feasible measures that would meet contingency measures requirements. The EPA also acknowledges that Alaska's methods of assessing current and predicting future compliance rates with its control strategy have improved over time. This is evident by the results of Alaska's Fairbanks Winter Home Heating Energy Model and Multiple Residential Heating Surveys.²⁷¹ In these ways, the situation in Fairbanks shares similarities to SO₂ nonattainment areas.

However, critical distinctions remain that suggest the Fairbanks PM_{2.5} Nonattainment Area should not be treated the same as an SO₂ nonattainment area for the purposes of contingency measures requirements. In particular, the major contributors to ambient PM_{2.5} levels in Fairbanks are wood stoves, which emit direct PM_{2.5}, and oil furnaces, which emit SO₂, a PM_{2.5} precursor for area source purposes. There are tens of thousands of these area sources throughout the nonattainment area.²⁷² They vary in make, model, age, and emissions potential.²⁷³ Importantly, actual emissions are highly dependent on operator behavior—particularly for wood stoves. This is different from the single or handful of major stationary sources that a state typically regulates in SO₂ NAAQS nonattainment areas.

By extension, measuring and predicting compliance with controls on wood stoves and oil furnaces is less precise than SO₂ emissions controls on major stationary sources. In addition, assuring compliance by thousands of individual wood stove operators is significantly more resource intensive than enforcement against an SO₂ source—particularly in detecting violations. Thus, while a comprehensive enforcement program to assure compliance by major stationary sources in SO₂ nonattainment areas satisfies the

²⁶⁴ State Air Quality Control Plan, Vol. II, section III.D.7.11.4.3.

²⁶⁵ 40 CFR 51.1014(a). See Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; San Joaquin Valley, California, 84 FR 11198, March 25, 2019, at pp. 11200, 11203.

²⁶⁶ See Approval and Promulgation of Air Quality Implementation Plans; Michigan; Federal Implementation Plan for the Detroit Sulfur Dioxide Nonattainment Area, 87 FR 61514, Oct. 12, 2022, at p. 61522; see also SO₂ Guideline Document, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, EPA-452/R-94-008, February 1994 (1994 SO₂ Guideline); Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions, Office of Air Quality Planning and Standards, Stephen D. Page, April 23, 2014.

²⁶⁷ *Id.*

²⁶⁸ Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions, Office of Air Quality Planning and Standards, Stephen D. Page, April 23, 2014, at p. 69.

²⁶⁹ 87 FR 61514, Oct. 12, 2022, at p. 61522.

²⁷⁰ *Id.*

²⁷¹ State Air Quality Control Plan, Vol. II, section III.D.7.6.9.3.

²⁷² *Id.*

²⁷³ *Id.*

CAA requirement that contingency measures be comprised of “specific measures” that would “take effect with minimal further action by the state or EPA” following a triggering event, this is not the case for PM_{2.5} nonattainment areas.²⁷⁴

Thus, the EPA proposes to approve the enforceable commitments in State Air Quality Control Plan, Vol. II, section III.D.7.2.1 as SIP-strengthening that will enhance the State’s overall approach to attaining and maintaining the NAAQS in the Fairbanks PM_{2.5} Nonattainment Area.

d. Sufficiency of Emissions Reductions From Alaska’s Contingency Measures

Alaska’s contingency measure, reducing the solid fuel-burning device curtailment thresholds, would achieve approximately 0.086 tons per day PM_{2.5} emissions reductions with an increase of 0.047 tons per day SO₂ emissions.²⁷⁵ This falls short of the one year’s worth of progress metric for both pollutants, 0.102 tons per episode day of direct PM_{2.5} emissions and 0.115 tons per day of SO₂ emissions. The estimates of emissions reductions from the other two contingency measures related to enhanced enforcement are not included in this calculation because the EPA is proposing to approve them as SIP-strengthening measures. However, as discussed in section II.G.3 of this preamble, the EPA proposes to determine that Alaska has provided a reasoned justification for why the state cannot adopt additional contingency measures to make up the shortfall.

Based on the reasons in the preceding paragraphs, the EPA is proposing to approve the Fairbanks Revised 189(d) Plan as meeting the contingency measures requirements in CAA section 172(c)(9) and 40 CFR 51.1014.

²⁷⁴ The EPA solicits comments on this assessment and conclusion. Given that Alaska’s enforceable commitments meet all other requirements in 40 CFR 51.1014, the EPA may approve these commitments as contingency measures if commenters provide a compelling basis to show that the EPA should treat the Fairbanks PM_{2.5} Nonattainment Area as analogous to an SO₂ nonattainment area for the purposes of contingency measures.

²⁷⁵ Applying Alaska’s interpollutant trading mechanism, the combined emissions reductions for PM_{2.5} and SO₂ are estimated to be 0.077 tons per day, representing 62 percent of the one year’s of interpollutant emissions reductions for PM_{2.5} and SO₂. See State Air Quality Control Plan, Vol. II, section III.D.7.11.5.2; see also State Air Quality Control Plan, Vol. II, section III.D.7.11, Table 7.11–6.

H. Motor Vehicle Emission Budgets for Transportation Conformity

1. Statutory and Regulatory Requirements Regarding the Motor Vehicle Emission Budgets

CAA section 176(c) requires Federal activities in nonattainment and maintenance areas to conform to the SIP’s purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the standards. Conformity to the SIP means that such activities will not: (1) cause or contribute to any new violation of a NAAQS; (2) increase the frequency or the severity of an existing violation; or (3) delay timely attainment of any NAAQS or interim milestones.

Transportation plans, transportation improvement programs (TIPs), and transportation projects involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the transportation conformity rule (40 CFR 51.390 and part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, the EPA, FHWA and FTA to demonstrate that an area’s transportation plan and TIP conform to the applicable SIP. This demonstration typically includes a regional emissions analysis that shows that estimated emissions from existing and planned highway and transit systems are less than or equal to the SIP’s motor vehicle emissions budgets (“budgets”) that the EPA has found adequate or approved. An attainment plan for the PM_{2.5} NAAQS should include budgets for the attainment year and each required RFP year, as appropriate. Budgets are generally established for specific years and specific pollutants or precursors and reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations (40 CFR 93.118(e)(4)(v)).

Attainment plans for PM_{2.5} NAAQS would identify motor vehicle emission budgets for the attainment year and each RFP year for direct PM_{2.5} and typically for NO_x (unless certain criteria are met in the transportation conformity rule, see 40 CFR 93.102(b)(2)(iv)), and for VOCs, SO₂, and NH₃ if certain criteria in the transportation conformity rule are met (see 40 CFR 93.102(b)(2)(v)). Direct PM_{2.5} emission budgets would include direct PM_{2.5} motor vehicle emissions from tailpipe, brake wear, and tire wear. A state should also consider whether re-entrained paved and unpaved road dust

are significant contributors and should be included in the direct PM_{2.5} budget. See 40 CFR 93.102(b) and 93.122(f) and the conformity rule preamble at 69 FR 40004, July 1, 2004, at pp. 40031–40036.²⁷⁶

2. Summary of the EPA’s Prior Action Regarding the Motor Vehicle Emission Budgets

The EPA disapproved the budgets for the Fairbanks PM_{2.5} Nonattainment Area in the December 5, 2023, final rule.²⁷⁷ The EPA evaluated the motor vehicle emissions budgets developed by Alaska against our adequacy criteria in 40 CFR 93.118(e)(4) as part of our review of the submitted SIP. The EPA found that the budgets were clearly identified and precisely quantified using MOVES2014b, with appropriate consultation among Federal, State, and local agencies. However, the EPA found that the budgets did not meet other adequacy criteria: the budgets, when considered together with all other emissions sources, must be consistent with applicable RFP or attainment requirements, and must be consistent with and clearly related to the emissions inventory and the control measures in the SIP, see 40 CFR 93.118(e)(4)(iv) and (v). Because the control strategy in the Fairbanks Serious Plan and Fairbanks 189(d) Plan did not include all required control measures, the budgets did not reflect all the required control measures.

3. Summary of the State’s Submission Regarding the Motor Vehicle Emission Budgets

The Fairbanks Revised 189(d) Plan includes budgets for direct PM_{2.5} for each of the upcoming RFP years (2023, 2026, and 2029) and the 2027 attainment year identified by Alaska. Budgets for NO_x were not included because Alaska demonstrated that NO_x does not significantly contribute to PM_{2.5} formation in the Fairbanks PM_{2.5} Nonattainment Area, and the EPA finalized approval of that precursor demonstration on December 5, 2023.²⁷⁸ For VOC, SO₂ and NH₃, in accordance with 40 CFR 93.102(b)(2)(v), transportation-related emissions of these

²⁷⁶ For further information on transportation conformity rulemakings, policy guidance and outreach materials, see the EPA’s website at <https://www.epa.gov/state-and-local-transportation>.

²⁷⁷ 88 FR 84626, December 5, 2023, at p. 84676.

²⁷⁸ See section II.B.2. Note that 40 CFR 93.102(b)(2)(iv) indicates that NO_x would apply in transportation conformity unless the appropriate finding has been made or if the SIP does not establish a budget for NO_x.

precursors have not been found to be significant.²⁷⁹

The direct PM_{2.5} budgets were calculated using the MOVES3 vehicle emissions model, which was the latest on-road mobile sources emissions model available at the time Alaska started developing the attainment plan inventory. Although a major model update was released in September 2023, MOVES4, the motor vehicle emission budgets were developed using MOVES3.0.3 (released January 2022) as significant work had already been completed on the SIP amendment prior to the release of MOVES4. The use of MOVES3 was agreed upon following consultation with applicable Federal, state, and local agencies.

Alaska used local fleet and fuel inputs and the Fairbanks Area Surface Transportation Planning (FAST Planning) travel demand model to generate local vehicle travel activity estimates over the six-month nonattainment season (October through March). The average winter day emissions were used by Alaska to set the motor vehicle emissions budgets. Exceedances of the 2006 24-hour PM_{2.5} NAAQS in the Fairbanks PM_{2.5} Nonattainment Area occur almost exclusively during the winter months. Alaska executed MOVES3 with locally developed inputs representative of wintertime 2019–2020 conditions. Table 6 of this preamble summarizes the regional average winter day on-road vehicle PM_{2.5} emission budgets and the related CAA milestone for the nonattainment area.

TABLE 6—PM_{2.5} MOTOR VEHICLE EMISSION BUDGETS BY MILESTONE YEAR

Calendar year	PM _{2.5} on-road budgets (tons per day)	CAA-related milestone
2020	0.074	Base year.
2023	0.062	RFP.
2026	0.054	RFP.
2027	0.052	Attainment.

²⁷⁹ Under 40 CFR 93.102(b)(2)(v), the requirements of the transportation conformity rule apply for VOC, SO₂, and/or NH₃ in a PM_{2.5} area if either (1) the EPA Regional Administrator or the director of the state air agency makes a finding that transportation-related emissions of any of these precursors within the nonattainment area are a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO and DOT, or (2) if the applicable implementation plan or submission establishes an approved or adequate budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy. Because neither criterion is met for the Fairbanks area, budgets were not included for VOC, SO₂, and NH₃.

TABLE 6—PM_{2.5} MOTOR VEHICLE EMISSION BUDGETS BY MILESTONE YEAR—Continued

Calendar year	PM _{2.5} on-road budgets (tons per day)	CAA-related milestone
2029	0.049	RFP.

Source: State Air Quality Control Plan, Vol II, section III.D.7.14, Table 7.14–2.

4. The EPA's Evaluation and Proposed Action Regarding the Motor Vehicle Emission Budgets

We have evaluated the motor vehicle emissions budgets developed by Alaska against our adequacy criteria in 40 CFR 93.118(e)(4) as part of our review. Because the EPA believes the budgets meet the criteria in the transportation conformity regulation at 40 CFR 93.118(e)(4), the EPA proposes to approve them as part of this SIP submission that addresses attainment and RFP.

The Fairbanks Revised 189(d) Plan was submitted by the Alaska Governor's designee—the Commissioner of Alaska Department of Environmental Conservation.²⁸⁰ Consultation among Federal, State, and local agencies occurred prior to Alaska's submission of the Fairbanks Revised 189(d) Plan.²⁸¹ This consultation is documented in the State Air Quality Control Plan, Vol. II, section III.D.7.14. The budgets are clearly identified and precisely quantified (40 CFR 93.118(e)(4)(iii)).²⁸² The EPA proposes to find that the budgets are consistent with applicable RFP and attainment requirements (40 CFR 93.118(e)(4)(iv)), as well as the emissions inventory and control measures in the Fairbanks Revised 189(d) Plan (40 CFR 93.118(e)(4)(v)). The Fairbanks Revised 189(d) Plan also includes Alaska's explanations and documentation for any revisions to the Fairbanks Serious Plan and initial Fairbanks 189(d) Plan, including revisions to control measures, previously submitted budgets, and prior attainment projections.²⁸³

In addition to proposing approval of the budgets, the EPA is also initiating the adequacy review process for the budgets in this proposed rulemaking. When reviewing submitted SIPs containing budgets, the EPA reviews budgets for adequacy. Once the EPA affirmatively finds the submitted budget is adequate for transportation

²⁸⁰ 40 CFR 93.118(e)(4)(i).

²⁸¹ 40 CFR 93.118(e)(4)(ii).

²⁸² 40 CFR 93.118(e)(4)(vi).

²⁸³ 40 CFR 93.118(e)(4)(vi).

conformity purposes, that budget must be used by state and Federal agencies in determining whether proposed transportation activities conform to the SIP as required by section 176(c) of the CAA. See 40 CFR 93.118(e)(4)(1).²⁸⁴ The EPA may find budgets adequate before the SIP is approved in a final rule.

The substantive criteria the EPA uses for determining adequacy of a budget are set out in 40 CFR 93.118(e)(4); these criteria were discussed above as the basis for the EPA's proposed approval. The process for determining adequacy is found in 40 CFR 93.118(f) and consists of three basic steps: (1) public notification of a SIP submission; (2) a public comment period; and (3) the EPA's adequacy determination. The EPA can begin an adequacy review through a proposed rulemaking in the **Federal Register** based on the transportation conformity regulation at 40 CFR 93.118(f)(2). This proposed rulemaking notifies the public that the EPA has received a SIP submission with budgets that the EPA will review for adequacy and begins the public comment period. The EPA invites the public to comment on the adequacy of budgets as well as other actions the EPA is proposing in this proposed rulemaking. Comments must be submitted by the close of the comment period. See the **DATES** section of this document for details.

Interested members of the public can access the Fairbanks Revised 189(d) Plan and other relevant information at <https://www.regulations.gov>, under Docket ID No. EPA–R10–OAR–0595. Following the EPA's public comment period, the EPA will consider any comments received.

III. Summary of Proposed Action

A. Proposed Approval

In this action, the EPA is proposing to approve the submitted revisions to the Alaska SIP as meeting the following Serious Plan and CAA section 189(d) ²⁸⁵ required elements for the 2006 24-hour PM_{2.5} NAAQS Fairbanks Nonattainment Area:

1. The 2020 base year emissions inventory (CAA section 172(c)(3)); ²⁸⁶ 40 CFR 51.1008(c)(1)) for areas subject to CAA section 189(d));

²⁸⁴ However, the budgets in submitted implementation plans do not supersede the budgets in an approved SIP submission for the same CAA requirement and the period of years addressed by the previously approved SIP submission, unless the EPA specifies otherwise in its approval of a SIP submission. 40 CFR 93.118(e)(4)(1).

²⁸⁵ 42 U.S.C. 7513a(d).

²⁸⁶ 42 U.S.C. 7502(c)(3).

2. The 2027 attainment projected emissions inventory (CAA section 172(c)(1);²⁸⁷ 40 CFR 51.1008(c)(2));

3. The State's PM_{2.5} major stationary source precursor demonstration for SO₂ emissions (CAA section 189(e);²⁸⁸ 40 CFR 51.1006(a));

4. The control strategy as meeting the BACM requirements under CAA section 189(b)(1)(B)²⁸⁹ and 40 CFR 51.1010(a) for the following emission source categories:

- a. Requirements for wood sellers;
- b. Coal-fired heating devices;
- c. Coffee roasters;
- d. Weatherization and energy efficiency measures; and
- e. Mobile source emissions;

5. Control strategy BACT requirements for direct PM_{2.5} emissions (CAA section 189(b)(1)(B)²⁹⁰ and 40 CFR 51.1010(a)) for the following emission sources:

- a. Chena Power Plant;
- b. Doyon-Fort Wainwright Central Heating and Power Plant;
- c. University of Alaska Fairbanks Power Plant;
- d. Zehnder Facility;
- e. North Pole Power Plant;

6. Additional measures (beyond those already adopted in previous nonattainment plan SIP submissions for the area as RACM/RACM, BACM/BACT, and Most Stringent Measures (MSM) (if applicable) under CAA section 189(d)²⁹¹ and 40 CFR 51.1010(c);

7. Attainment demonstration and modeling meeting the requirements of CAA sections 188(c)(2) and 189(b)(1)(A)²⁹² and 40 CFR 51.1003(c) and 51.1011;

8. Reasonable further progress provisions meeting the requirements of CAA section 172(c)(2)²⁹³ and 40 CFR 51.1012;

9. Motor vehicle emission budgets meeting the requirements under 40 CFR 93.118;

10. Quantitative milestones meeting the requirements of CAA section 189(c)²⁹⁴ and 40 CFR 51.1013;

11. Contingency measures meeting the requirements of CAA section 172(c)(9)²⁹⁵ and 40 CFR 51.1014 applicable to Serious areas subject to CAA section 189(b) and 189(d).

The EPA is proposing to approve the following submitted sections of the State Air Quality Control Plan for the

Fairbanks PM_{2.5} Nonattainment Area, State effective December 14, 2024:

- 1. Volume II, section III.D.7.06 Emissions Inventory;
- 2. Volume II, section III.D.7.07 Control Strategy;
- 3. Volume II, section III.D.7.08 Modeling;
- 4. Volume II, section III.D.7.09 Attainment Demonstration;
- 5. Volume II, section III.D.7.10 Reasonable Further Progress and Quantitative Milestones;
- 6. Volume II, section III.D.7.11 Contingency Measures;
- 7. Volume II, section III.D.7.12 Emergency Episode Plan;
- 8. Volume II, section III.D.7.14 Conformity and Motor Vehicle Emission Budgets;
- 9. Volume III, Appendix III.D.7.06 Emissions Inventory;
- 10. Volume III, Appendix III.D.7.07 Control Strategy;²⁹⁶
- 11. Volume III, Appendix III.D.7.08 Modeling;
- 12. Volume III, Appendix III.D.7.09 Attainment Demonstration;
- 13. Volume III, Appendix III.D.7.10 Reasonable Further Progress and Quantitative Milestones;
- 14. Volume III, Appendix III.D.7.14 Conformity and Motor Vehicle Emission Budgets.

The EPA is also proposing to approve and incorporate by reference submitted regulatory changes into the Alaska SIP. Upon final approval, the Alaska SIP will include the following regulations, State effective December 8, 2024:

- 1. 18 AAC 50.055 (industrial processes and fuel-burning equipment requirements), except (d)(2)(B);
- 2. 18 AAC 50.076 (solid fuel-fired heating device fuel requirements; registration of commercial wood sellers), except (g)(11);
- 3. 18 AAC 50.077 (standards for wood fired heating devices), except (g);
- 4. 18 AAC 50.078 (additional control measures for a serious PM_{2.5} nonattainment area), except (c);
- 5. 18 AAC 50.079 (provisions for coal-fired heating devices); and
- 6. 18 AAC 50.081 (Real estate transaction requirements; weatherization and energy efficiency).

The EPA is also proposing to approve and incorporate by reference submitted permits into the Alaska SIP. Upon final approval, the Alaska SIP will include:

- 1. Minor Permit AQ1121MSS04 Rev. 1, Title Page, Table of Contents, List of

Abbreviations and Acronyms, Section 1, Section 3, Section 4, and Section 6, only, State effective December 14, 2024 (Doyon Utilities, LLC—Fort Wainwright (Privatized Emission Units));

2. Minor Permit AQ0236MSS03 Rev. 2, Title Page, Table of Contents, List of Abbreviations and Acronyms, Section 1, Section 3, Section 4, and Section 6, only State effective December 14, 2024 (U.S. Army Garrison Fort Wainwright);

3. Minor Permit AQ0110MSS01 Rev. 1, Title Page, Table of Contents, List of Abbreviations and Acronyms, Section 1, Section 3, Section 4, and Section 6, only, State effective December 14, 2024 (Golden Valley Electric Association, North Pole Power Plant);

4. Minor Permit AQ0109MSS01 Rev. 2, Title Page, Table of Contents, List of Abbreviations and Acronyms, Section 1, Section 3, Section 4, and Section 6, only, State effective December 14, 2024 (Golden Valley Electric Association, Zehnder Facility);

5. Minor Permit AQ0315MSS02 Revision 1, Title Page, Table of Contents, List of Abbreviations and Acronyms, Section 1, Section 3, Section 4, and Section 6, only, State effective December 14, 2024 (Aurora Energy LLC, Chena Power Plant);

6. Minor Permit AQ0316MSS08 Revision 1, Title Page, Table of Contents, List of Abbreviations and Acronyms, Section 1, Section 3, Section 4, and Section 6, only, State effective December 14, 2024 (University of Alaska Fairbanks, University of Alaska Fairbanks Campus).

B. Adequacy Process

In this action, the EPA is also initiating the adequacy process for the PM_{2.5} budgets included in this SIP submission. For further details, see section II.H.4.

IV. Interim Final Determination and Deferral of Sanctions

Please see the EPA's Interim Final Determination published in the "Rules" section of this **Federal Register**.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the regulations described in section III. of this document. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER**

²⁸⁷ 42 U.S.C. 7502(c)(1).

²⁸⁸ 42 U.S.C. 7513a(e).

²⁸⁹ 42 U.S.C. 7513a(b)(1)(B).

²⁹⁰ *Id.*

²⁹¹ 42 U.S.C. 7513a(d).

²⁹² 42 U.S.C. 7513(c)(2); 7513a(b)(1)(A).

²⁹³ 42 U.S.C. 7502(c)(2).

²⁹⁴ 42 U.S.C. 7513a(c).

²⁹⁵ 42 U.S.C. 7502(c)(9).

²⁹⁶ The EPA is not proposing to take action on Alaska's SO₂ BACT determinations in State Air Quality Control Plan, Vol. III, Appendix III.D.7.7 at this time. If the EPA does not finalize approval of the SO₂ precursor demonstration, then the EPA will propose action on Alaska's SO₂ BACT determinations separately.

INFORMATION CONTACT section of this document for more information).

VI. 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 as Amended by Executive Order 14094: Modernizing Regulatory Review

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

B. Paperwork Reduction Act (PRA) (44 U.S.C. 3401 et. seq.)

This action does not impose an information collection burden under the PRA, because this proposed SIP approval, if finalized, will not in-and-of itself create any new information collection burdens, but will simply approve certain State requirements for inclusion in the SIP.

C. Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et. seq.)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This proposed SIP approval, if finalized, will not in-and-of itself create any new requirements but will simply approve certain State requirements for inclusion in the SIP.

D. Unfunded Mandates Reform Act (UMRA) (Pub. L. 104–4)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action proposes to approve certain pre-existing requirements under State or local law and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial

direct effects on the states, on the 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: Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175, because the SIP revision that EPA is proposing to approve would not apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction, and will not impose substantial direct costs on Tribal governments or preempt Tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this proposed SIP approval, if finalized, will not in-and-of itself create any new regulations, but will simply approve certain State requirements for inclusion in the SIP.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation’s Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements Executive Order 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.”

The air agency did not evaluate EJ considerations as part of its SIP submission; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898/14096 of achieving EJ for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: December 17, 2024.

Casey Sixkiller,

Regional Administrator, Region 10.

[FR Doc. 2024–30648 Filed 1–7–25; 8:45 am]

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Part III

Department of Justice

28 CFR Part 202

Preventing Access to U.S. Sensitive Personal Data and Government-Related Data by Countries of Concern or Covered Persons; Final Rule

DEPARTMENT OF JUSTICE

28 CFR Part 202

[Docket No. NSD 104]

RIN 1124-AA01

Preventing Access to U.S. Sensitive Personal Data and Government-Related Data by Countries of Concern or Covered Persons**AGENCY:** National Security Division, Department of Justice.**ACTION:** Final rule.

SUMMARY: The Department of Justice is issuing a final rule to implement Executive Order 14117 of February 28, 2024 (Preventing Access to Americans' Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern), by prohibiting and restricting certain data transactions with certain countries or persons.

DATES: This rule has been classified as meeting the criteria under 5 U.S.C. 804(2) and is effective April 8, 2025. However, at the conclusion of the Congressional review, if the effective date has been changed, the Department of Justice will publish a document in the **Federal Register** to establish the actual date of effectiveness or to terminate the rule. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register as of April 8, 2025.

FOR FURTHER INFORMATION CONTACT:

Email (preferred):

NSD.FIRS.datasecurity@usdoj.gov.

Otherwise, please contact: Lee Licata, Deputy Chief for National Security Data Risks, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, 175 N Street NE, Washington, DC 20002; Telephone: 202-514-8648.

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I. Executive Summary

Executive Order 14117 of February 28, 2024, “Preventing Access to Americans’ Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern” (“the Order”), directs the Attorney General to issue regulations that prohibit or otherwise restrict United States persons from engaging in any acquisition, holding, use, transfer, transportation, or exportation of, or dealing in, any property in which a foreign country or national thereof has any interest (“transaction”), where the transaction: involves United States Government-related data (“government-related data”) or bulk U.S. sensitive personal data, as defined by final rules implementing the Order; falls within a class of transactions that has been determined by the Attorney General to pose an unacceptable risk to the national security of the United States because it may enable access by countries of concern or covered persons to government-related data or Americans’ bulk U.S. sensitive personal data; and meets other criteria specified by the Order.¹

¹ E.O. 14117, 89 FR 15421 (Feb. 28, 2024).

On March 5, 2024, the National Security Division of the Department of Justice (“DOJ” or “the Department”) issued an Advance Notice of Proposed Rulemaking (“ANPRM”) seeking public comment on various topics related to implementation of the Order.² On October 29, 2024, the Department issued a Notice of Proposed Rulemaking (“NPRM”) to address the public comments received on the ANPRM, set forth a proposed rule to implement the Order, and seek further public comment.³ The Department is now issuing a final rule that addresses the public comments received on the NPRM and that implements the Order. The rule identifies classes of prohibited and restricted transactions; identifies countries of concern and classes of covered persons with whom the regulations prohibit or restrict transactions involving government-related data or bulk U.S. sensitive personal data; establishes a process to issue (including to modify or rescind) licenses authorizing otherwise prohibited or restricted transactions and to issue advisory opinions; and addresses recordkeeping and reporting of transactions to inform investigative, enforcement, and regulatory efforts of the Department.

II. Background

On February 28, 2024, the President issued Executive Order 14117 (Preventing Access to Americans’ Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern) (“the Order”), pursuant to his authority under the Constitution and the laws of the United States, including the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (“IEEPA”); the National Emergencies Act, 50 U.S.C. 1601 *et seq.* (“NEA”); and title 3, section 301 of the United States Code.⁴ In the Order, the President expanded the scope of the national emergency declared in Executive Order 13873 of May 15, 2019 (Securing the Information and Communications Technology and Services Supply Chain), and further addressed with additional measures in Executive Order 14034 of June 9, 2021 (Protecting Americans’ Sensitive Data From Foreign Adversaries). The President determined that additional measures are necessary to counter the unusual and extraordinary threat to U.S. national security posed by the continuing efforts of certain countries of concern to access and exploit

government-related data or bulk U.S. sensitive personal data.

The Order directs the Attorney General, pursuant to the President’s delegation of his authorities under IEEPA, to issue regulations that prohibit or otherwise restrict United States persons from engaging in certain transactions in which a foreign country of concern or national thereof has an interest. Restricted and prohibited transactions include transactions that involve government-related data or bulk U.S. sensitive personal data, are a member of a class of transactions that the Attorney General has determined poses an unacceptable risk to the national security of the United States because the transactions may enable countries of concern or covered persons to access government-related data or bulk U.S. sensitive personal data, and are not otherwise exempted from the Order or its implementing regulations. The Order directs the Attorney General to issue regulations that identify classes of prohibited and restricted transactions; identify countries of concern and classes of covered persons whose access to government-related data or bulk U.S. sensitive personal data poses the national security risk described in the Order; establish a process to issue (including to modify or rescind) licenses authorizing otherwise prohibited or restricted transactions; further define terms used in the Order; address recordkeeping and reporting of transactions to inform investigative, enforcement, and regulatory efforts of the Department; and to take whatever additional actions, including promulgating additional regulations, as may be necessary to carry out the purposes of the Order.

The rule implements the Order through categorical rules that regulate certain data transactions involving government-related data or bulk U.S. sensitive personal data that could give countries of concern or covered persons access to such data and present an unacceptable risk to U.S. national security. The rule (1) identifies certain classes of highly sensitive transactions with countries of concern or covered persons that the rule prohibits in their entirety (“prohibited transactions”) and (2) identifies other classes of transactions that would be prohibited except to the extent they comply with predefined security requirements (“restricted transactions”) to mitigate the risk of access to bulk U.S. sensitive personal data by countries of concern or covered persons. As the Department discussed in the NPRM, the Attorney General has determined that the prohibited and restricted transactions

set forth in the rule pose an unacceptable risk to the national security of the United States because they may enable countries of concern or covered persons to access and exploit government-related data or bulk U.S. sensitive personal data.

In addition to identifying classes of prohibited and restricted transactions that pose an unacceptable risk to national security, the rule identifies certain classes of transactions that are exempt from the rule. For example, the rule exempts transactions for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof, and transactions conducted pursuant to a grant, contract, or other agreement entered into with the United States Government, including those for outbreak and pandemic prevention, preparedness, and response. The rule also defines relevant terms; identifies countries of concern; defines covered persons; and creates processes for the Department to issue general and specific licenses, to issue advisory opinions, and to designate entities or individuals as covered persons. The rule also establishes a compliance and enforcement regime.

The Department relied upon unclassified and classified sources to support the rule. Although the unclassified record fully and independently supports the rule without the need to rely on the classified record, the classified record provides supplemental information that lends additional support to the rule. The rule would be the same even without the classified record.

The Order and this rule fill an important gap in the United States Government’s authorities to address the threat posed by countries of concern accessing government-related data or Americans’ bulk U.S. sensitive personal data. As the President determined in the Order, “[a]ccess to Americans’ bulk sensitive personal data or United States Government-related data increases the ability of countries of concern to engage in a wide range of malicious activities.”⁵ As the NPRM explained, countries of concern can use their access to government-related data or Americans’ bulk U.S. sensitive personal data to engage in malicious cyber-enabled activities and malign foreign influence activities and to track and build profiles on U.S. individuals, including members of the military and other Federal employees and contractors, for illicit purposes such as blackmail and espionage. And countries

² 89 FR 15780 (Mar. 5, 2024).

³ 89 FR 86116 (Oct. 29, 2024).

⁴ 89 FR 15421.

⁵ *Id.*

of concern can exploit their access to government-related data or Americans' bulk U.S. sensitive personal data to collect information on activists, academics, journalists, dissidents, political figures, or members of nongovernmental organizations or marginalized communities to intimidate them; curb political opposition; limit freedoms of expression, peaceful assembly, or association; or enable other forms of suppression of civil liberties.

As the 2024 National Counterintelligence Strategy explains, "as part of a broader focus on data as a strategic resource, our adversaries are interested in personally identifiable information (PII) about U.S. citizens and others, such as biometric and genomic data, health care data, geolocation information, vehicle telemetry information, mobile device information, financial transaction data, and data on individuals' political affiliations and leanings, hobbies, and interests."⁶ These and other kinds of sensitive personal data "can be especially valuable, providing adversaries not only economic and [research and development] benefits, but also useful [counterintelligence] information, as hostile intelligence services can use vulnerabilities gleaned from such data to target and blackmail individuals."⁷

Nongovernmental experts have underscored these risks. For example, a recent study by the MITRE Corporation summarized open-source reporting, highlighting the threat of blackmail, coercion, identification of high-risk government personnel and sensitive locations, and improved targeting of offensive cyber operations and network exploitation posed by hostile actors' access to Americans' data derived from advertising technology.⁸

The development of artificial intelligence ("AI"), high-performance computing, big-data analytics, and other advanced technological capabilities by countries of concern amplifies the threat posed by these countries' access to government-related data or Americans' bulk U.S. sensitive personal data. For instance, the U.S. National Intelligence Council assessed in 2020 that "access to

personal data of other countries' citizens, along with AI-driven analytics, will enable [the People's Republic of China ("China" or "PRC")] to automate the identification of individuals and groups beyond China's borders to target with propaganda or censorship."⁹

Countries of concern can also exploit their access to government-related data regardless of volume to threaten U.S. national security. One academic study explained that "[f]oreign and malign actors could use location datasets to stalk or track high-profile military or political targets," revealing "sensitive locations—such as visits to a place of worship, a gambling venue, a health clinic, or a gay bar—which again could be used for profiling, coercion, blackmail, or other purposes."¹⁰ The study further explained that location datasets could reveal "U.S. military bases and undisclosed intelligence sites" or "be used to estimate military population or troop buildup in specific areas around the world or even identify areas of off-base congregation to target."¹¹ As another example of these data risks and the relative ease with which they can be exploited, journalists were able to commercially acquire from a data broker a continuous stream of 3.6 billion geolocation data points that were lawfully collected on millions of people from advertising IDs.¹² The journalists were then able to create "movement profiles" for tens of thousands of national security and military officials, and from there, could determine where they lived and worked as well as their names, education levels, family situations, and hobbies.¹³ The Order and this rule seek to mitigate these and other national security threats that arise from countries of concern accessing government-related data or Americans' bulk U.S. sensitive personal data.

⁹ Nat'l Intel. Council, *Assessment: Cyber Operations Enabling Expansive Digital Authoritarianism* 4 (Apr. 7, 2020), <https://www.dni.gov/files/ODNI/documents/assessments/NICM-Declassified-Cyber-Operations-Enabling-Expansive-Digital-Authoritarianism-20200407--2022.pdf> [<https://perma.cc/ZKJ4-TBU6>].

¹⁰ Justin Sherman et al., *Duke Sanford Sch. of Pub. Pol'y, Data Brokers and the Sale of Data on U.S. Military Personnel* 15 (Nov. 2023), <https://techpolicy.sanford.duke.edu/wp-content/uploads/sites/4/2023/11/Sherman-et-al-2023-Data-Brokers-and-the-Sale-of-Data-on-US-Military-Personnel.pdf> [<https://perma.cc/BBJ9-44UH>].

¹¹ *Id.*

¹² Suzanne Smalley, *US Company's Geolocation Data Transaction Draws Intense Scrutiny in Germany*, *The Record* (July 18, 2024), <https://therecord.media/germany-geolocation-us-data-broker> [<https://perma.cc/ME9F-TAQ7>] (citing joint reporting by the German public broadcaster Bayerische Rundfunk and digital civil rights opinion news site *netzpolitik.org*).

¹³ *Id.*

Additional open-source reporting released since issuance of the NPRM underscores the increasingly urgent risks posed by countries of concern obtaining access to government-related data or bulk U.S. sensitive personal data. For example, on November 22, 2024, cybersecurity researchers presented their findings after monitoring a collection of black-market services that recruit and pay insiders from a wide range of Chinese information technology ("IT"), technology, telecom, and other companies, to sell their access to individuals' data to online buyers. As a result, according to the researchers, these black-market services create an ecosystem for the public to pay to query individuals' data, including call records, bank accounts, hotel bookings, flight records, passport images, and location data.¹⁴

On November 19, 2024, WIRED released the results of an investigation in which they bought the digital advertising data and location information on phones in Germany from a U.S. data broker and used it to track the movements of United States Government contractors, intelligence personnel, and soldiers.¹⁵ The investigation uncovered and tracked "38,474 location signals from up to 189 devices *inside* Büchel Air Base, a high-security German installation where as many as 15 U.S. nuclear weapons are reportedly stored in underground bunkers"; 191,415 signals from up to 1,257 devices at Grafenwöhr Training Area, "where thousands of U.S. troops are stationed and have trained Ukrainian soldiers on Abrams tanks"; and 164,223 signals from nearly 2,000 devices at Ramstein Air Base, "which supports some U.S. drone operations."¹⁶ The researchers observed patterns that went "far beyond just understanding the working hours of people on base," including "map[ping] key entry and exit points, pinpointing frequently visited areas, and even tracing personnel to their off-base routines."¹⁷ As WIRED explained, "foreign governments could use this data to identify individuals with access to sensitive areas; terrorists or criminals

¹⁴ Andy Greenberg, *China's Surveillance State Is Selling Citizen Data as a Side Hustle*, *WIRED* (Nov. 21, 2024), <https://www.wired.com/story/chinese-surveillance-state-is-selling-citizens-data-as-a-side-hustle/> [<https://perma.cc/9B9P-3ZR6>].

¹⁵ Dhruv Mehrotra & Dell Cameron, *Anyone Can Buy Data Tracking US Soldiers and Spies to Nuclear Vaults and Brothels in Germany*, *WIRED* (Nov. 19, 2024), <https://www.wired.com/story/phone-data-us-soldiers-spies-nuclear-germany/> [<https://perma.cc/P5H6-3DFB>].

¹⁶ *Id.*

¹⁷ *Id.*

⁶ Nat'l Counterintel. & Sec. Ctr., *National Counterintelligence Strategy 2024*, at 13 (Aug. 1, 2024), https://www.dni.gov/files/NCSC/documents/features/NCSC_CI_Strategy-pages-20240730.pdf [<https://perma.cc/9L2T-VXSU>].

⁷ *Id.*

⁸ Kirsten Hazelrig, Ser. No. 14, *Intelligence After Next: Surveillance Technologies Are Imbedded Into the Fabric of Modern Life—The Intelligence Community Must Respond*, *The MITRE Corporation* 2 (Jan. 5, 2023), <https://www.mitre.org/sites/default/files/2023-01/PR-22-4107-INTELLIGENCE-AFTER-NEXT-14-January-2023.pdf> [<https://perma.cc/3WA2-PGM2>].

could decipher when U.S. nuclear weapons are least guarded; or spies and other nefarious actors could leverage embarrassing information for blackmail.”¹⁸

Similarly, on October 28, 2024, journalists found that “the highly confidential movements of U.S. President Joe Biden, presidential rivals Donald Trump and Kamala Harris, and other world leaders can be easily tracked online through a fitness app that their bodyguards use,” which tracked their precise location data even when they used the app while off-duty.¹⁹ This rule will prevent such foreign adversaries from legally obtaining such data through commercial transactions with U.S. persons, thereby stemming data flows and directly addressing the national security risks identified in the Order.

No current Federal legislation or rule categorically prohibits or imposes security requirements to prevent U.S. persons from providing countries of concern or covered persons access to sensitive personal data or government-related data through data brokerage, vendor, employment, or investment agreements. For example, the scope and structure of the Protecting Americans’ Data from Foreign Adversaries Act of 2024 (“PADFAA”) do not create a comprehensive regulatory scheme that adequately and categorically addresses these national security risks,²⁰ as explained in part IV.L of this preamble. Likewise, the Committee on Foreign Investment in the United States (“CFIUS”) has authority to assess the potential national security risks of certain investments by foreign persons in certain United States businesses that “maintain[] or collect[] sensitive personal data of United States citizens that may be exploited in a manner that threatens national security.”²¹ However, CFIUS only reviews certain types of investments in U.S. businesses; it does so on a transaction-by-transaction basis, instead of prescribing prospective and categorical rules regulating all such transactions; and its authorities do not extend to other activities that countries of concern may use to gain access to government-related data or Americans’ bulk U.S. sensitive

personal data, such as through purchases of such data on the commercial market or through vendor or employment agreements.²²

Similarly, Executive Order 13873 prohibits any acquisition, importation, transfer, installation, dealing in, or use by U.S. persons of certain information and communication technologies and services (“ICTS”) designed, developed, manufactured, or supplied by foreign adversaries where, among other things, the Secretary of Commerce determines that the transaction poses an “unacceptable risk to the national security of the United States or the security and safety of United States persons.”²³ In building upon the national emergency declared in Executive Order 13873, the President, in Executive Order 14034, determined that connected software applications operating on U.S. ICTS “can access and capture vast swaths of . . . personal information and proprietary business information,” a practice that “threatens to provide foreign adversaries with access to that information.”²⁴ However, as with CFIUS legal authorities, the orders do not broadly empower the United States Government to prohibit or otherwise restrict the sale of government-related data or Americans’ bulk U.S. sensitive personal data, and the orders do not broadly restrict other commercial transactions, such as investment, employment, or vendor agreements, that may provide countries of concern access to government-related data or Americans’ bulk U.S. sensitive personal data.

The rule complements these statutory and regulatory authorities. It prescribes forward-looking, categorical rules that prevent U.S. persons from providing countries of concern or covered persons access to government-related data or Americans’ bulk U.S. sensitive personal data through commercial data-brokerage transactions. The rule also imposes security requirements on other kinds of commercial transactions, such as investment, employment, and vendor agreements, that involve government-related data or Americans’ bulk U.S. sensitive personal data to mitigate the risk that a country of concern could access such data. The rule addresses risks to government-related data or Americans’ bulk U.S. sensitive personal data that current authorities leave vulnerable to access and exploitation by countries of concern and provide

predictability and regulatory certainty by prescribing categorical rules regulating certain kinds of data transactions that could give countries of concern or covered persons access to government-related data or Americans’ bulk U.S. sensitive personal data.

III. Rulemaking Process

The Department has issued this rule via notice-and-comment rulemaking consistent with the President’s direction in the Order, and it has provided the public with multiple and meaningful opportunities to share feedback on the rule at various stages of the rulemaking process.²⁵ On March 5, 2024, the Department issued a fulsome ANPRM setting forth the contemplated contours of the rule, posed 114 specific questions for public input, and allotted 45 days for public comment.²⁶

As described in the NPRM, the Department also solicited input on the ANPRM through dozens of large-group listening sessions, industry engagements, and one-on-one engagements with hundreds of participants.²⁷ The Department of Justice, both on its own and with other agencies, met with businesses, trade groups, and other stakeholders potentially interested in or impacted by the contemplated regulations to discuss the ANPRM. For example, the Department discussed the ANPRM with the Consumer Technology Association, the Information Industry Technology Council, Pharmaceutical Research and Manufacturers of America, the Biotechnology Innovation Organization, the Bioeconomy Information Sharing Analysis Center, the U.S. Chamber of

²⁵ This rulemaking pertains to a foreign affairs function of the United States and therefore is not subject to the notice-and-comment rulemaking requirements of the Administrative Procedure Act (“APA”), which exempts a rulemaking from such requirements “to the extent there is involved . . . a military or foreign affairs function of the United States.” 5 U.S.C. 553(a)(1). The rule is being issued to assist in addressing the national emergency declared by the President with respect to the threat posed to U.S. national security and foreign policy by the continuing effort of countries of concern to access and exploit government-related data or Americans’ bulk U.S. sensitive personal data. As described in the Order, this threat to the national security and foreign policy of the United States has its source in whole or substantial part outside the United States. Accordingly, the rule has a direct impact on foreign affairs concerns, which include the protection of national security against external threats (for example, prohibiting or restricting transactions that pose an unacceptable risk of giving countries of concern or covered persons access to bulk U.S. sensitive personal data). Although the rule is not subject to the APA’s notice and comment requirements, the Department is engaging in notice-and-comment rulemaking for this rule, consistent with sections 2(a) and 2(c) of the Order.

²⁶ 89 FR 15780.

²⁷ 89 FR 86119–56.

¹⁸ *Id.*

¹⁹ Sylvie Corbet, *Fitness App Strava Gives Away Location of Biden, Trump and Other Leaders, French Newspaper Says*, Associated Press (Oct. 28, 2024), <https://apnews.com/article/biden-trump-macron-bodyguards-security-strava-0a48afca09c7aa74d703e72833dcaf72> [<https://perma.cc/W59P-Y6TY>].

²⁰ See Public Law 118–50, div. I, 118th Cong. (2024).

²¹ 50 U.S.C. 4565(a)(4)(B)(iii)(III).

²² See generally Foreign Investment Risk Review Modernization Act of 2018, Public Law 115–232, tit. XVII, secs. 1701–28, 132 Stat. 1636, 2173.

²³ E.O. 13873, 84 FR 22689, 22690 (May 15, 2019).

²⁴ E.O. 14034, 86 FR 31423, 31423 (June 9, 2021).

Commerce, Tesla, Workday, Anthropic, and the Special Competitive Studies Project. It also provided briefings to the Secretary of Commerce and Industry Trade Advisory Committees 6, 10, and 12 administered by the Office of the U.S. Trade Representative and the Department of Commerce. The Department of Justice also discussed the Order and contemplated regulations with stakeholders at events open to the public, including ones hosted by the American Conference Institute, the American Bar Association, the Center for Strategic and International Studies, and the R Street Institute, as well as through other public engagements such as the Lawfare Podcast, ChinaTalk Podcast, CyberLaw Podcast, and the Center for Cybersecurity Policy & Law's Distilling Cyber Policy podcast.

During the ANPRM comment period, the Department received 64 timely comments, including 15 comments from trade associations; 13 from non-profits; three from advocacy associations; three from technology companies; two from think tanks; and one each from an automobile manufacturer, advertising company, biotechnology company, and academic medical center. The Department also received two comments after the close of the ANPRM comment period. In turn, the NPRM included a lengthy and substantive consideration of these timely and untimely public comments received on the ANPRM.²⁸

After the comment period closed, the Department of Justice, along with the Department of Commerce, followed up with commenters who provided feedback regarding the bulk thresholds to discuss that topic in more detail. These commenters included the Council on Government Relations Industry Association; the Association of American Medical Colleges; Airlines for America; the Bank Policy Institute; the Business Roundtable; the Information Technology Industry Council; the Centre for Information Policy Leadership; the Biotechnology Innovation Organization; the Software and Information Industry Association; the Cellular Telephone Industries Association; the internet and Television Association; USTelecom; Ford Motor Company; the Bioeconomy Information Sharing and Analysis Center; the Coalition of Services Industries; the Enterprise Cloud Coalition; the Electronic Privacy Information Center; the Center for Democracy and Technology; the Business Software Alliance; the Global Data Alliance; the Interactive Advertising Bureau; the U.S.-China Business Council; IBM, Workday;

and individuals Justin Sherman, Mark Febrizio, and Charlie Lorthioir. The Department also discussed the Order and the ANPRM with foreign partners to ensure that they understood the Order and contemplated program and how they fit into broader national security, economic, and trade policies.

The Department published an NPRM on October 29, 2024, that addressed the public comments received on the ANPRM, set forth draft regulations and a lengthy explanatory discussion, and sought public comment.²⁹ During the NPRM comment period, the Department, both on its own and with other agencies, met with businesses, trade groups, and other stakeholders potentially interested in or impacted by the contemplated regulations to discuss the NPRM. Also during the NPRM comment period, the Department, in coordination with the Department of Commerce, conducted individual consultations with the Pharmaceutical Research and Manufacturers of America, the Centre for Information Policy Leadership, the Electronic Privacy Information Center, the Information Technology Industry Council, the World Privacy Forum, the U.S. Chamber of Commerce, the Council on Government Relations, BSA The Software Alliance, and the Telecommunications Industry Association to discuss their members' views. In accordance with 28 CFR 50.17, the Department has documented all ex parte engagements during the NPRM's comment period and publicly posted summaries of them on the docket for this rulemaking on *regulations.gov*. The Department encouraged those groups to submit detailed, timely comments to follow up on those discussions. The Department also discussed the NPRM with stakeholders at events open to the public, including ones hosted by the American Conference Institute, and through other public engagements such as the Lawfare Podcast, ChinaTalk Podcast, and the Center for Cybersecurity Policy & Law's Distilling Cyber Policy podcast. The Department also discussed the NPRM with foreign partners to ensure that they understood the contemplated program and how it fits into broader national security, economic, and trade policies.

Although the NPRM evolved from the ANPRM based on the Department's consideration of public comments, such as by adding new potential exemptions to the proposed rule's prohibitions and restrictions, the NPRM included most of the substantive provisions that the Department either previewed or described in detail in the ANPRM. For

example, in many instances, the NPRM adopted without change definitions the Department also set forth in the ANPRM.³⁰

The Department received and carefully reviewed 75 timely comments in response to the NPRM from trade associations, public interest advocacy groups, think tanks, private individuals, and companies, as well as comments from several foreign governments. The Department also reviewed three comments that were relevant to the NPRM and that were timely filed on the docket in response to the Cybersecurity and Infrastructure Security Agency ("CISA") **Federal Register** notice requesting comment on proposed security requirements applicable to restricted transactions.³¹ The Department considered each comment that was timely submitted.

During the 31-day comment period, the Department received a request to extend the time allotted for public comment.³² As described in the NPRM, the Department solicited input on the ANPRM through engagements with dozens of stakeholders, including many of the commenters who sought the extension to the NPRM comment period.³³ As described in detail in part III of this preamble, during the NPRM comment period, the Department also conducted numerous engagements with the public to facilitate meaningful public participation during the comment period by providing stakeholders with an opportunity to ask questions about the proposed rule and to provide relevant feedback. These engagements included the organizations that requested that the Department extend the comment period.

The Department considered this request but declined to extend the comment period for several reasons.³⁴

²⁸ See, e.g., 89 FR 86123.

²⁹ 89 FR 85976 (Oct. 29, 2024).

³⁰ Consumer Tech. Ass'n, et al., Comment Letter on Provisions Pertaining to Preventing Access to U.S. Sensitive Personal Data and Gov't-Related Data by Countries of Concern or Covered Persons (Nov. 8, 2024), <https://www.regulations.gov/comment/DOJ-NSD-2024-0004-0008> [<https://perma.cc/3URP-9H7B>]. Although the official comment period was 30 days from the NPRM's publication in the **Federal Register** on October 29, 2024, the Department shared the NPRM on its website on October 21, 2024, providing the public with a total of 41 days to review and provide comment. See Press Release, U.S. Dep't of Just., *Justice Department Issues Comprehensive Proposed Rule Addressing National Security Risks Posed to U.S. Sensitive Data* (Oct. 21, 2024), <https://www.justice.gov/opa/pr/justice-department-issues-comprehensive-proposed-rule-addressing-national-security-risks> [<https://perma.cc/ZS7G-9QZH>].

³¹ 89 FR 86119–56.

³² U.S. Dep't of Just., Comment Letter on Provisions Pertaining to Preventing Access to U.S. Sensitive Personal Data and Gov't-Related Data by

²⁸ *Id.*

²⁹ 89 FR 86116.

As the Order, ANPRM, NPRM, and part IV of this preamble describe, the Department is issuing this rule to address the national emergency posed by an unusual and extraordinary threat from the continued effort of countries of concern to access government-related data and bulk U.S. sensitive personal data. This is an increasingly urgent threat, and the Department must move expeditiously to address it. Foreign adversaries are actively trying to exploit commercial access to Americans' sensitive personal data to threaten U.S. national security. This rule thus fills what Members of Congress and Administrations of both parties have consistently recognized is a significant gap in U.S. national security.

For example, the 2017 National Security Strategy noted that China and other adversaries "weaponize information" against the United States and predicted that "[r]isks to U.S. national security will grow as competitors integrate information derived from personal and commercial sources with intelligence collection and data analytic capabilities based on Artificial Intelligence (AI) and machine learning."³⁵ That strategy criticized "U.S. efforts to counter the exploitation of information" by adversaries as "tepid and fragmented," having "lacked a sustained focus."³⁶ A partially declassified April 2020 assessment by the Office of the Director of National Intelligence ("ODNI") explained that foreign adversaries are "increasing their ability to analyze and manipulate large quantities of personal information in ways that will allow them to more effectively target and influence, or coerce, individuals and groups in the United States and allied countries."³⁷ The 2022 National Security Strategy underscored the need to develop a way to "counter the exploitation of Americans' sensitive data."³⁸ A bipartisan 2023 report by the House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party ("CCP") explained that the "CCP is

committed to using the presence of technology products and services it controls to conduct cyberattacks on the United States," "collect data on Americans to advance its AI goals," and "surveil Americans as part of its campaign of transnational repression."³⁹ The Committee's bipartisan recommendations included taking "steps to prevent foreign adversaries from collecting or acquiring U.S. genomic and other sensitive health data."⁴⁰ The 2024 National Counterintelligence Strategy made protecting Americans against foreign intelligence targeting and collection a key goal given foreign adversaries' "broader focus on data as a strategic resource" and the counterintelligence value it provides.⁴¹ The November 2024 Report to Congress of the U.S.–China Economic & Security Review Commission explained that "China understands the value of data to AI and has taken active measures to increase the availability of quality data within its AI ecosystem."⁴² The report also explains that the "major research and market presence of Chinese genomic and biotech services companies in the United States gives these companies access to key technologies and data," leading to a "heightened risk of the transfer of sensitive health data of U.S. citizens" to China.⁴³ And so on.

Extending the comment period would allow this increasingly urgent, unaddressed threat to continue unabated, giving countries of concern more time and opportunities to collect and exploit government-related data and bulk U.S. sensitive personal data.⁴⁴ Delay only increases this unusual and extraordinary threat which gives countries of concern "a cheap and

reliable way to [among other threatening activities] track the movements of American military and intelligence personnel overseas, from their homes and their children's schools to hardened aircraft shelters within an airbase where . . . nuclear weapons are believed to be stored."⁴⁵ Not only do countries of concern like China "draw on . . . commercially collected data sources . . . [and] insiders from the country's tech and telecom firms [and] banks" to perpetuate its surveillance apparatus, they also sell their access to such data for other nefarious purposes that can put Americans at risk.⁴⁶

The Department also believes that extending the comment period would not provide meaningful additional input that would improve the rule. The Department has gone to great lengths to provide the public with meaningful opportunities to provide input at every stage of development of this rule. The Department took the optional step of releasing an ANPRM to provide the public with an additional formal opportunity to comment, in addition to the public's formal opportunity to comment on the NPRM. The rule closely tracks the NPRM, which had all its core components extensively previewed in the ANPRM. The public has had at least 87 days to formally provide comments throughout this rulemaking: The comment period on the NPRM was 31 days, the public had an additional 11 days to review the NPRM while it was on public inspection in the **Federal Register** before it was formally published, and the public had 45 days to comment on the ANPRM.

In addition to these formal opportunities to comment, and as documented in the ANPRM, NPRM, part III of this preamble, and the docket on *regulations.gov*, the Department also provided extensive informal opportunities for feedback. Those opportunities began with multiple informal engagements with hundreds of stakeholders before the release of the Order and ANPRM. After the release of the ANPRM and NPRM, the Department undertook extensive large-group, small-group, and one-on-one engagements with over 800 stakeholder invitees or participants across over 50 informal engagements to explain the rule and provide feedback.

Countries of Concern or Covered Persons (Nov. 18, 2024), <https://www.regulations.gov/document/DOJ-NSD-2024-0004-0028> [<https://perma.cc/M86F-5NUG>].

³⁵ Exec. Off. of the President, *National Security Strategy of the United States of America* 34 (Dec. 2017), <https://trumpwhitehouse.archives.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf> [<https://perma.cc/R4F5-QXJH>].

³⁶ *Id.* at 35.

³⁷ Nat'l Intel. Council, *supra* note 9, at 3.

³⁸ Exec. Off. of the President, *National Security Strategy* 33 (Oct. 12, 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf> [<https://perma.cc/G54X-L7ER>].

³⁹ H. Select Comm. on the Strategic Competition Between the U.S. and the Chinese Communist Party, *Reset, Prevent, Build: A Strategy to Win America's Economic Competition with the Chinese Communist Party* 22 (2023), <https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/reset-prevent-build-scc-report.pdf> [<https://perma.cc/5A7Q-YL9U>].

⁴⁰ *Id.* at 23.

⁴¹ Nat'l Counterintel. & Sec. Ctr., *supra* note 6, at 13.

⁴² U.S.–China Econ. & Sec. Review Comm'n, 118th Cong., 2024 Rep. to Cong. 11 (Comm. Print 2024), https://www.uscc.gov/sites/default/files/2024-11/2024_Annual_Report_to_Congress.pdf [<https://perma.cc/ZWC5-G5SV>].

⁴³ *Id.* at 12, 220.

⁴⁴ See, e.g., Mehrotra & Cameron, *supra* note 15 (describing an "analysis of billions of location coordinates obtained from a US-based data broker [that] provides extraordinary insight into the daily routines of US service members" and "[provides]" "a vivid example of the significant risks the unregulated sale of mobile location data poses to the integrity of the US military and the safety of its service members and their families overseas").

⁴⁵ *Id.*

⁴⁶ See Greenberg, *supra* note 14 (describing how a surveillance data black market has developed in China due in part to there being "virtually no legal checks on the government's ability to physically and digitally monitor its citizens" and in which "phone numbers, hotel and flights records, and . . . location data [are sold]" in criminal markets).

As described in part IV of this preamble, many of the comments received on the NPRM merely state preferences or renew comments made on the ANPRM without providing specific information or new analysis, or do not engage with the analysis in the NPRM. The constructive refinements suggested by commenters have become increasingly discrete. In addition, many commenters have not specifically identified what additional changes, analysis, or data they would provide if given additional time to comment. The Department thus believes that the opportunities for public comment and input during this rulemaking process have appropriately balanced the need for feedback to ensure that the rule effectively addresses the national security risks and the need to move expeditiously given the increasingly urgent national security risks.

IV. Discussion of Comments on the Notice of Proposed Rulemaking and Changes From the Proposed Rule

The discussion in part IV of this preamble summarizes comments submitted in response to the NPRM and responds to those comments. The Department does not discuss provisions of the rule that commenters did not address substantively and has implemented those provisions in the final rule without change from the NPRM. Unless the Department otherwise addresses parts of the rule in this preamble, the Department incorporates the NPRM's discussion of the rule into the preamble,⁴⁷ including, for example, the Department's determination that the categories of covered data transactions pose an unacceptable risk to national security,⁴⁸ the Department's interpretation of "information or informational materials" under IEEPA,⁴⁹ and the Department's analysis for proposed bulk thresholds.⁵⁰

Many comments were constructive. They expressed strong support for the goals of the Order and the rule, the use of exemptions as a careful and targeted approach to addressing the national security and foreign policy risks, and the Department's changes in the NPRM in response to comments on the ANPRM. These comments suggested and justified additional specific refinements that help clarify and reinforce the targeted nature of the Order and the rule, which are addressed

with respect to the relevant subparts of the rule.

Some commenters suggested clarifications or changes that were premised on a misunderstanding or narrow view of the Order and this rule. For example, some comments were premised on the view that the national security and foreign policy risks addressed by the Order and this rule are solely or primarily about the identifiability of a set of sensitive personal data. As the NPRM explained, anonymized data is rarely, if ever, truly anonymous, especially when anonymized data in one dataset can become identifiable when cross-referenced and layered on top of another anonymized dataset.⁵¹ In addition, as the Department discussed in detail in the NPRM, identifiability is only one in a range of concerns. Anonymized data itself can present a national security risk, as can pattern-of-life data and other insights that harm national security from anonymized data itself (such as in the case of precise geolocation data).⁵² Sets of bulk U.S. sensitive personal data may also be used to identify vulnerabilities within a population or, in the case of bulk human genomic data, to enhance military capabilities that include facilitating the development of bioweapons. Additionally, even smaller sets of bulk U.S. sensitive personal data can be used to make statistical inferences or conclusions about much larger population sets. Usually, a sample size should not and need not exceed 10 percent of a population to make inferences about the entire population. However, even extremely small sample sizes may allow the extrapolation of inferences about much larger populations. For example, Meta requires only a source audience of 1,000 customers, which need only include 100 people from a single country, in order to extrapolate a "lookalike" audience of million individuals for targeted advertising. In other words, countries of concern may be able to glean valuable information about the health and financial well-being of a large number of Americans through smaller datasets of bulk U.S. sensitive personal data. As a result, the Department has not adopted these suggestions, as they do not account for the broader range of national security risks that the Order and this rule address.

Similarly, some comments were premised on a narrow view that the sole or primary focus of the rule is the sale of data. As discussed at length in the Order, ANPRM, and NPRM and as

further described in part IV.C of this preamble, the sale of data is only one means by which countries of concern are seeking access to government-related data and bulk U.S. sensitive personal data. Countries of concern also leverage vendor, employment, and investment agreements as additional vectors to try to obtain that access. As a result, the Department has not adopted suggestions to the extent that they do not account for the full range of risk vectors that the Order and this rule addresses.

Many comments failed to provide specifics the Department would need to justify changes to the rule. These comments merely stated policy preferences or made conclusory assertions without providing meaningful support or analysis, or without addressing the analysis in the ANPRM and NPRM. For example, some comments claimed that the rule would have particular impacts on certain sectors or activities, but they did not identify specific non-exempt covered data transactions with countries of concern or covered persons that currently occur that the rule would prohibit or restrict, explain the significance of these transactions to the sector or industry, show why the sensitive personal data in those transactions was integral to share with a country of concern or covered person, or explain why it would not be feasible to shift those transactions to other countries or persons over time.

Other comments reflected misunderstandings about the Order and the proposed rule. For example, several comments stated that, with respect to different provisions of the proposed rule that apply to a category of activity "including" a list of specifics, it is unclear whether those lists are exhaustive or exemplary. There is no ambiguity, however, because § 202.102(b) already defines "including" to mean "including but not limited to." The final rule addresses other mistaken assertions and misunderstandings with respect to each subpart in part IV of this preamble and clarifies what the rule does or does not do.

One commenter reiterated comments originally provided on the ANPRM to suggest that the Order's and the proposed rule's restrictions on access to sensitive personal data are inconsistent with international commitments by the United States. Specifically, the commenter calls on the Department to make a greater effort to explain how the rule is consistent with the U.S. commitment towards the promotion of trusted cross-border data flows. As the NPRM explained, the rule permits cross-border data flows except with respect to

⁴⁷ 89 FR 86117–70.

⁴⁸ 89 FR 86121.

⁴⁹ 89 FR 86165–70.

⁵⁰ 89 FR 86156–65.

⁵¹ 89 FR 86126–27.

⁵² *Id.*

commercial transactions that pose unacceptable national security risks (and thus lack the trust required for the free flow of data), which the rule prohibits or restricts.⁵³ Because the commenter merely renews its prior comment on the ANPRM without any attempt to address the explanation in the NPRM, no further explanation appears necessary.

The Department will continue to assess the risk posed by countries of concern and covered persons accessing government-related data or bulk U.S. sensitive personal data, including examining whether the Department needs to expand the final rule to tackle connected data security concerns, such as data scraping or illegitimate data access via the provision of services from entities linked to state threat actors. The Department retains the right to promulgate additional rules within the scope of the Order to address that risk.

Two commenters reiterated suggestions that the Department make various revisions to borrow or incorporate aspects of international or State privacy laws into this rule. As previously stated in the NPRM, the Department supports privacy measures and national security measures as complementary protections for Americans' sensitive personal data.⁵⁴ Despite some overlap, privacy protections and national security measures generally focus on different challenges associated with sensitive personal data. General privacy protections focus on addressing individual rights and preventing individual harm, such as protecting the rights of individuals to control the use of their own data and reducing the potential harm to individuals by minimizing the collection of data on the front end and limiting the permissible uses of that data on the back end. National security measures, by contrast, focus on collective risks and externalities that may result from how individuals and businesses choose to sell and use their data, including in lawful and legitimate ways. Commenters' suggestions raise no new justifications that the Department did not already consider at the NPRM stage, nor do these suggestions address how or why privacy protections would adequately address national security concerns such that the Department should align definition with existing privacy laws.

In response to the NPRM, some commenters suggested adding a new exemption for transactions in which a

U.S. individual consents to the sale or disclosure of their data to a country of concern or covered person. One commenter requested that the Department exempt disclosures of nonclinical research data where research subjects consented to the disclosure of their data. Another commenter expressed concern about their data being sold within the United States for commercial purposes without consent or equitable benefit.

The rule declines to adopt a consent exemption for the same reasons provided in the NPRM. As explained in the NPRM, such a consent-based exemption would leave unaddressed the threat to national security by allowing U.S. individuals and companies to choose to share government-related data or bulk U.S. sensitive personal data with countries of concern or covered persons.⁵⁵ It is precisely those choices that, in aggregate, have helped create the national security risk of access by countries of concern or covered persons, and the purpose of the Order and the rule is to address the negative externality that has been created by individuals' and companies' choices in the market in the first place. It would also be inconsistent with other national security regulations to leave it up to market choices to decide whether to give American technology, capital, or data to a country of concern or covered person. Export controls do not allow U.S. companies to determine whether their sensitive technology can be sent to a foreign adversary, and sanctions do not allow U.S. persons to determine whether their capital and material support can be given to terrorists and other malicious actors. Likewise, the rule does not allow U.S. individuals to determine whether to give countries of concern or covered persons access to their sensitive personal data or government-related data. One of the reasons that the public is not in a position to assess and make decisions about the national security interests of the United States is that the public typically does not have all of the information available to make a fully informed decision about the national security interests of the United States.

The Department also declines to adopt a residual compensation requirement for domestic sales of data. The Order and this rule do not address purely domestic transactions between U.S. persons—such as the collection, maintenance, processing, or use of data by U.S. persons within the United States—except to the extent that such

U.S. persons are affirmatively and publicly designated as covered persons.

Each subpart of the rule, including any relevant comments received on the corresponding part of the NPRM, is discussed below in the remaining sections of this preamble.

A. General Comments

1. Section 202.216—Effective Date

The NPRM did not propose a specific effective date of the applicable prohibitions and directives contained in the proposed rule. One commenter requested consultation with the Department on a timeframe for the implementation of the final rule. Some commenters requested that the Department delay the effective date of the rule—with requests ranging from 12 months to 18 months, or an indefinite deadline—to allow companies, individuals, and universities time to assess their data transactions, update internal policies, make necessary data security changes, and come into compliance without disrupting commercial activity. Two commenters suggested that the Department “pause” rulemaking, postpone publication of the final rule, or, alternatively, publish the regulations for prohibited transactions first and postpone the publication of restricted transactions to a later, indeterminate date to provide more time for consultation and revisions to those provisions.

The Department carefully considered these requests and declines, at least at this time, to categorically extend the effective date beyond April 8, 2025. The Department will, however, delay the date for when U.S. persons must comply with subpart J, related to due diligence and audit requirements for restricted transactions, and for §§ 202.1103 and 202.1104, related to certain reporting requirements for restricted transactions, until October 6, 2025.

For reasons similar to the reasons why the Department declined to extend the comment period, the Department declines these commenters' request to significantly delay the effective date across the board. As the Order, ANPRM, NPRM, and parts III and IV of this preamble explain, this rule addresses a national emergency and an unusual and extraordinary threat to national security and foreign policy. Foreign adversaries are actively trying to exploit commercial access to Americans' sensitive personal data to threaten U.S. national security. This threat is increasingly urgent, justifying the expedited process for this rulemaking to address that threat. Significantly delaying the effective date of the final rule across the board would

⁵³ 89 FR 86121.

⁵⁴ *Id.*

⁵⁵ *Id.*

give countries of concern additional time to collect government-related data and bulk U.S. sensitive personal data.⁵⁶ The pressing risks posed by these countries' ongoing attempts to collect and exploit government-related data and bulk U.S. sensitive personal data to the detriment of U.S. national security weigh against extending the effective date of the rule, notwithstanding the compliance burdens some commenters raised. Commenters' request for a significantly delayed effective date cannot be reconciled with the need to expeditiously address these increasingly urgent and serious risks. United States persons have been on notice regarding the risks of sharing sensitive personal data with countries of concern for years and the United States Government's recommended steps to address those risks. For example, since at least 2020, the Department of Homeland Security ("DHS") has publicly warned U.S. businesses using data services from the PRC or sharing data with the PRC about the same risk vectors addressed by this rule.⁵⁷ DHS Security has urged U.S. entities to "scrutinize any business relationship that provides access to data" by "identifying the sensitive personal and proprietary information in their possession," "minimiz[ing] the amount of at-risk data being stored and used in the PRC or in places accessible by PRC authorities," and conducting "[r]obust due diligence and transaction monitoring" that includes "acquir[ing] a thorough understanding of the ownership of data service providers, location of data infrastructure, and any tangential foreign business relationships and significant foreign investors."⁵⁸

United States persons have been aware of this contemplated rulemaking since the issuance of the Order and ANRPM in February 2024. During engagements with companies and industry, some participants suggested that their efforts to understand and map their covered data transactions are already underway, and some other multinational companies explained that they already operate separate systems

that "firewall" U.S.-person data from access in China and other countries of concern and impose access controls to prevent unauthorized foreign access. Similarly, in the comments on the NPRM, a different large global technology business stated that multinational companies already have robust data privacy and export control programs that may be leveraged to comply with the rule, and that companies should not be required to set up entirely new compliance programs; another commenter echoed the view that companies should be able to leverage existing privacy and data security programs. But given the serious national security concerns, if the rule becomes effective, for example, before a U.S. person engaging in restricted transactions is able to comply with the security and other requirements the U.S. person should not engage in those transactions.

The comments seeking to significantly delay or pause the effective date did not offer adequate substantive analysis or support necessary to justify the change. These comments expressed a general preference for delay, but they did not attempt to, for example, identify what and how many specific non-exempt transactions they engage in that would be prohibited or restricted; identify what specific controls, recordkeeping, or systems they currently have in place and why those are not sufficient to comply; identify what controls, recordkeeping, or systems they do not have in place now that they would be required to adopt to comply with the rule; or explain why those transactions could not be paused, terminated, or shifted to non-countries of concern or non-covered persons before the effective date or the specific impact of doing so. The Department thus does not believe that these comments provide an adequate basis on which to justify a significantly delayed effective for the sectors and industries represented by the commenters, in light of the pressing national security risks described in the Order, ANRPM, NPRM, and this preamble.

In addition, the commenters requesting a significantly delayed effective date represent specific sectors and industries. The specific industries represented by these commenters appear to have different views about the time and resources needed for implementation and do not appear to be sufficiently representative of the entire category of U.S. persons engaging in data transactions that may be prohibited or restricted under the rule. The Department thus does not believe that

these comments justify an across-the-board delay of the effective date.

As a result, in light of the need to expeditiously address the increasingly urgent national security threat and the lack of significant and specific countervailing evidence, the Department believes that it is appropriate for the final rule to establish an effective date of 90 days as a starting point, consistent with 5 U.S.C. 801(a)(3) and 5 U.S.C. 553(d).⁵⁹ At one end of the spectrum, an earlier effective date may mean more U.S. persons are not prepared to comply with the rule and who must delay (or forgo, in some cases) transactions that may implicate the rule or forgo a broader suite of business opportunities that would not be prohibited or restricted under the rule, resulting in temporary but additional costs while they prepare to comply. At the other end of the spectrum, a later effective date would mean a greater risk to national security and foreign policy while countries of concern and covered person have additional time to access, obtain, and exploit government-related data or bulk U.S. sensitive personal data. The Department believes it is appropriate to err on the side of the former given the serious and pressing risks.

The Department recognizes that U.S. persons may need time to amend internal policies and procedures to ensure compliance with the final rule's due diligence provisions and to comply with reporting requirements by, for example, evaluating and assessing ongoing transactions or transaction types. Some aspects of the rule can be delayed without unduly compromising the national security interests advanced by the principal prohibitions and restrictions in subparts C and D. The rule's due-diligence requirements for engaging in restricted transactions and the recordkeeping requirements that apply to both prohibited and restricted transactions are based on existing compliance expectations set by other

⁵⁶ See, e.g., Mehrotra & Cameron, *supra* note 15 (describing an "analysis of billions of location coordinates obtained from a US-based data broker [that] provides extraordinary insight into the daily routines of US service members" and provides "a vivid example of the significant risks the unregulated sale of mobile location data poses to the integrity of the US military and the safety of its service members and their families overseas").

⁵⁷ U.S. Dep't of Homeland Sec., *Data Security Business Advisory: Risks and Considerations for Businesses Using Data Services and Equipment from Firms Linked to China*, https://www.dhs.gov/sites/default/files/publications/20_1222_data-security-business-advisory.pdf [<https://perma.cc/2C5B-CEWC>].

⁵⁸ *Id.* at 13.

⁵⁹ These provisions—in particular 5 U.S.C. 801(a)(3)—generally require the effective date be at least 60 days after publication of the rule in the **Federal Register**. The Department has not invoked any exception to these statutory requirements, notwithstanding the national emergency and threat to national security and foreign policy addressed by this rule. Although the risks addressed by this rule are urgent and ongoing, the Department recognizes the breadth of potential disruption to current business activities and the associated economic interest in a more orderly process for coming into compliance with this rule. The Department is exercising its discretion in balancing the ongoing threats to national security with the potential disruption to current business activities and has therefore determined that while a blanket extension beyond 90 days is unwarranted, it also would not be appropriate to establish an effective date earlier than that.

regulators, such as the Department of Treasury's Office of Foreign Asset Control ("OFAC") and the Department of Commerce's Bureau of Industry and Security ("BIS"), for screening vendors and transaction counterparties. The Department recognizes, however, the specific burden in applying these provisions to this new context, and has determined it is appropriate to allow additional time—an additional six months—before those provisions become operative. Thus, the provisions in §§ 202.1001, 202.1002, 202.1103, and 202.1104 will only apply to those who engage in the relevant transactions (or, for § 202.1104, reject a proposed transaction) on or after October 6, 2025. The Department believes that this will allow sufficient time for the vast majority of entities to come into compliance with these provisions and appropriately balances the value of these provisions to combatting the national security threat they are intended to address. This delay will have the effect of phasing in these additional compliance requirements, allowing U.S. persons to focus their efforts at the start on identifying and understanding the data transactions they engage in and complying with the prohibitions and restrictions.

During the 90-day period before the rule's effective date and the additional period before the remaining provisions become operative, the Department will continue to robustly engage with stakeholders to determine whether additional time for implementation is necessary and appropriate. Through those engagements and with more specific information, the Department may determine, for example, that it is appropriate (1) for the 90-day effective date to remain in effect, but to issue a general license authorizing companies to take additional time to wind-down activities regulated by the rule if they cannot come into compliance before that date; (2) for the 90-day effective date to remain in effect, but to issue a general license establishing delayed effective dates for specific sectors or activities; (3) for the 90-day effective date to remain in effect, but to issue a general license further delaying the effective date as to certain compliance requirements or adjusting those requirements; (4) for the 90-day effective date to remain in effect, but to issue a non-enforcement policy for a certain period; (5) to delay the effective date, either through regulatory modification or a general license; or (6) to make no changes. The Department will also consider other courses of action as circumstances warrant.

Several commenters requested that the Department incorporate a mechanism for continued engagement with the public to discuss and assess the rule's effectiveness in light of, and its application to, evolving technologies and threats and to provide compliance guidance. After the Department issues the final rule, the Department plans to continue its robust stakeholder engagement, as it has done throughout the rulemaking process, and issue guidance on compliance and other topics. In addition, through the advisory opinion process, the rule provides a formal avenue for the public to request and receive clarifications about the rule's applicability to particular transactions. Finally, section 5 of the Order already establishes a formal mechanism for the Department to assess the effectiveness and economic impact of the rule by requiring a report within one year after the rule goes into effect, which will include the solicitation and consideration of public comments.⁶⁰

A few commenters requested clarification from the Department on whether the provisions of the rule will apply retroactively and to existing contracts, or if the provisions will only apply prospectively on new contracts or contracts up for renewal. One commenter requested that if the Department determines that retroactive application is required for the provision in § 202.302 requiring certain contractual provisions for data brokerage transactions with foreign persons, then the Department allow sufficient time to amend existing agreements to ensure compliance.

The rule applies to covered data transactions engaged on or after the effective date. Covered data transactions completed prior to the effective date are not regulated by the rule. However, unless exempt or otherwise authorized, U.S. persons knowingly engaging in a prohibited or restricted covered data transaction on or after the effective date are expected to comply with the rule, notwithstanding any contract entered into or any license or permit granted before the effective date. In the case of § 202.302, for instance, this means that any relevant covered data transactions engaged in on or after the effective date must comply with the contractual requirements in § 202.302(a)(1), even where the U.S. persons had an existing agreement with the foreign person prior to the effective date. Restricted and prohibited transactions will not be grandfathered in as compliant simply because any resulting covered data transactions are subject to a preexisting

contract or agreement. The significant national security concerns outlined in the Order, NPRM, and parts II–IV of this preamble require these regulations to be implemented as quickly as possible. Entities that believe they need more time to come into compliance with these regulations may request a specific license.

B. Subpart C—Prohibited Transactions and Related Activities

The proposed rule identified transactions that are categorically prohibited unless the proposed rule otherwise authorizes them pursuant to an exemption or a general or specific license or, for the categories of restricted transactions, in compliance with security requirements and other requirements set forth in the proposed rule.

1. Section 202.210—Covered Data Transactions

The Order authorizes the Attorney General to issue regulations that prohibit or otherwise restrict U.S. persons from engaging in a transaction where, among other things, the Attorney General has determined that a transaction “is a member of a class of transactions . . . [that] pose an unacceptable risk to the national security of the United States because the transactions may enable countries of concern or covered persons to access bulk sensitive personal data or United States Government-related data in a manner that contributes to the national emergency declared in this [O]rder.”⁶¹ Pursuant to the Order, the proposed rule categorically prohibited or, for the categories of restricted transactions, imposed security and other requirements on certain covered data transactions with U.S. persons and countries of concern or covered persons because the covered data transactions may otherwise enable countries of concern or covered persons to access government-related data or bulk U.S. sensitive personal data to harm U.S. national security.

The proposed rule defined a “covered data transaction” as any transaction that involves any access to any government-related data or bulk U.S. sensitive personal data and that involves: (1) data brokerage, (2) a vendor agreement, (3) an employment agreement, or (4) an investment agreement. As stated in the NPRM, the Department has determined that these categories of covered data transactions pose an unacceptable risk to U.S. national security because they may enable countries of concern or

⁶⁰ 89 FR 15427.

⁶¹ 89 FR 15423.

covered persons to access government-related data or bulk U.S. sensitive personal data to engage in malicious cyber-enabled activities, track and build profiles on United States individuals for illicit purposes, including blackmail or espionage, and to intimidate, curb political dissent or political opposition, or otherwise limit civil liberties of U.S. persons opposed to countries of concern, among other harms to U.S. national security. For instance, one study has demonstrated that foreign malign actors can purchase bulk quantities of sensitive personal data about U.S. military personnel from data brokers “for coercion, reputational damage, and blackmail.”⁶²

Some commenters suggested that the final rule be limited to situations where government-related data or bulk U.S. sensitive personal data is made accessible by the U.S. person to the covered person or country of concern, and that it not apply in instances where (for example) a covered person sends bulk U.S. sensitive personal data to a U.S. person. The Department agrees that a U.S. person accessing data from a covered person ordinarily does not present the national security concerns that the rule seeks to address, and the Department does not intend the rule to cover that generic circumstance. Although commenters identified multiple ways to clarify this in the regulatory text, the Department clarifies this limitation by changing the definition of “covered data transaction” to cover only transactions that involve “access by a country of concern or covered person.” The rule includes a new example clarifying this limitation in § 202.210. This change also necessitates conforming changes to § 202.302 related to onward transfer provisions as explained in part IV.B.15 of this preamble.

Other commenters requested clarity about whether the rule would apply to other transactions that are related to a covered data transaction but that do not themselves provide a country of concern or a covered person access to bulk U.S. sensitive personal data or government-related data. The revised definition of “covered data transaction” captures only those transactions that involve access by a country of concern or covered person to bulk U.S. sensitive personal data or government-related data, as the term “access” is defined in the rule. The rule does not impose any restrictions or prohibitions on transactions that do not involve access by a country of concern or covered person to government-related data or

bulk U.S. sensitive personal data. For instance, a U.S. research institution that entered into a vendor agreement with a covered person cloud-services provider in a country of concern to store bulk U.S. personal health data or bulk human genomic data in a country of concern would have to comply with the security requirements mandated by subpart D. But the rule would not impose any restrictions or prohibitions on the ability of U.S. or foreign persons who are not covered persons to access or analyze the bulk U.S. sensitive personal data stored by a country of concern cloud-services provider.

2. Section 202.301—Prohibited Data-Brokerage Transactions; Section 202.214—Data Brokerage

The NPRM proposed prohibiting any U.S. person from knowingly engaging in a covered data transaction involving data brokerage with a country of concern or a covered person. The proposed rule defined “data brokerage” as the sale of data, licensing of access to data, or similar commercial transactions involving the transfer of data from any person (“the provider”) to any other person (“the recipient”), where the recipient did not collect or process the data directly from the individuals linked or linkable to the collected or processed data.

Some comments expressed concern with the perceived breadth of the term “data brokerage.” These comments did not appropriately consider data brokerage in the context of the rest of the regulations (such as their exemptions, the other elements of the prohibitions and restrictions, and other related definitions that limit the scope and impact of data brokerage) and, as such, made exaggerated claims about its impacts without support or analysis. These comments were premised largely on imprecise hypotheticals or generalizations, or they misstated the regulations. In addition, none of these comments discussing data brokerage addressed the national security risk posed by countries of concern or covered persons accessing the digital footprint of sensitive personal data Americans leave behind when interacting with the modern world.

Nevertheless, the Department considered each such comment and responds to the themes presented in them in the continuing discussion. To the extent that such commenters reiterated points or suggestions that were already addressed in the NPRM, the Department directs those commenters to the relevant discussions

in the NPRM.⁶³ Ultimately, the Department declines to make any changes to the prohibition in § 202.301, makes a limited change to the definition of “data brokerage” in § 202.214, adds three new examples to the definition, and amends one existing example.

Some commenters recommended that the Department adjust the definition of data brokerage to expressly exclude activities that are already subject to one of the proposed rule’s exemptions to ensure the proposed regulations do not inadvertently capture transactions that are well-regulated by financial services regulators. No change was made in response to this comment. The exemptions in subpart E already explicitly make clear that the prohibitions and restrictions in “subparts C and D do not apply to” the categories of exempt transactions. And § 202.301 (the provision prohibiting certain data-brokerage transactions) already explicitly applies “[e]xcept as otherwise authorized pursuant to subparts E or H of this part or any other provision of this part,” which includes the exemptions in subpart E. Adding another reference to this issue would be redundant and unnecessary.

Some commenters expressed confusion about the supposed relationship or tension between data brokerage and vendor agreements, and suggested changes that would undermine the prohibitions and restrictions associated with those defined terms. For example, these commenters believed intra-company data transactions could be considered prohibited data brokerage but claimed that same transaction would only be restricted if engaged in pursuant to a vendor agreement. Some of these commenters and others also requested changes to the exemption for corporate group transactions in § 202.506 to address their confusion.

Data brokerage and vendor agreements are specifically tailored to address the risk to national security posed by a country of concern or covered person’s access to government-related data or bulk U.S. sensitive personal data. While the commenters’ hypothetical questions or concerns lack factual specificity, for additional clarity, the Department has amended the definition of “data brokerage” to explicitly exclude an employment, investment, or vendor agreement. This change helps ensure that the categories of prohibited transactions and restricted transactions remain mutually exclusive. Applying these definitions still involves a fact-specific analysis, as illustrated by

⁶² Sherman et al., *supra* note 10, at 14.

⁶³ See, e.g., 89 FR 86130–31.

the accompanying examples. The Department also added two new examples at §§ 202.214(b)(7) and (8) to further illustrate how companies primarily engaged in non-data brokerage activities might otherwise trigger the prohibition.

In addition, to the extent that intra-company or internal data transactions satisfy the exemption under § 202.506 because they are ordinarily incident to and part of administrative or ancillary business operations, those transactions would be exempt regardless of whether they are characterized as prohibited data brokerage or a restricted vendor agreement. Furthermore, after the effective date of the rule, the commenters and the broader public will have the opportunity to submit detailed requests for formal advisory opinions from the Department regarding any questions they have as to how these terms affect specific factual situations as opposed to hypothetical ones.

At least one commenter suggested that the Department amend the definition of “data brokerage” by omitting the “licensing of access to data” and “similar commercial transactions” prongs, and by limiting the scope to those transactions where sensitive data is exchanged for consideration. In the alternative, the commenter suggested that the Department narrow the scope to apply to the specific types of transactions the Department intends to cover. The commenter argued that the current definition of “data brokerage” is overbroad and extends beyond “bulk sensitive personal data” to all data, and that a broad interpretation of “similar commercial transactions” could expand the scope of compliance and impact actors in several sectors such as e-commerce and analytics firms. Other commenters suggested striking “similar commercial transactions” from the definition or amending it, including by adopting standards found in certain State privacy laws. And others asked the Department to reiterate concepts like “sensitive personal data” in the definition of data brokerage.

The Department declines to adopt these suggested approaches, parts of which were already discussed in the NPRM. The Department intends for the rule to cover a broad range of data brokerage transactions involving government-related data or bulk U.S. sensitive personal data. Persons selling or reselling data to others are engaging in data brokerage, even if such activity is not that person’s primary business activity. As noted in the NPRM, the proposed rule intentionally covered both first- and third-party data brokerage because countries of concern

do not discriminate in how they seek to access government-related data or bulk U.S. sensitive personal data. As such, the rule’s broad definition is critical to ensuring there are no significant loopholes for countries of concern to continue to leverage the data brokerage market as a means of acquiring and exploiting government-related data or bulk U.S. sensitive personal data.

The Department also notes these comments appear to misapply data brokerage and its relationship to other provisions of the regulations. For example, the prohibition on data brokerage does not apply to all data. It only applies to covered data transactions, which, is limited to government-related data or bulk U.S. sensitive personal data. Adding sensitive personal data to the definition of the term would therefore be redundant. The phrase “similar commercial transactions” is intended to cover other commercial arrangements (beyond just sales and licensing) involving the transfer of government-related data or bulk U.S. sensitive personal data to countries of concern or covered persons. Commercial arrangements, by their nature, are engaged in for consideration. No further clarification of the phrase is warranted or necessary. Additionally, the exemption in § 202.505 regarding financial services already ensures that the term “similar commercial transactions” would not inadvertently capture e-commerce activities. Moreover, these comments’ suggestions do not realistically describe how or whether their recommended approaches would mitigate the national security risk associated with the rule’s examples of data-brokerage activities other than sale or licensing.

Another commenter suggested that to comply with the regulations, companies must first identify any data-brokerage activities they undertake, which the commenter claims is a daunting task. The commenter also warned that the definition would include activities beyond those engaged in by data brokerage firms. Many of the commenter’s concerns were addressed in the preamble of the NPRM. The Department intends for data brokerage to encompass both first- and third-party data brokerage to address the national security risk the Order was intended to mitigate. That is a key national security feature of the program and is addressed earlier in part IV.B.2 of this preamble.

With respect to how to comply with the regulations, the Department does not endorse any specific practice. The Department believes it is more effective to have U.S. persons develop

compliance programs suitable to their own individualized risk profile, as explained in the NPRM.⁶⁴ Such programs can vary based on a range of factors, including the U.S. person’s size and sophistication, products and services, customers and counterparties, and geographic locations. The Department may issue guidance on this topic to assist U.S. persons to develop and implement compliance programs. Without fully knowing the commenter’s situation, alternative approaches to compliance may be appropriate, such as first evaluating the company’s exposure to countries of concern or covered persons, or their possession of or access to government-related data or bulk U.S. sensitive personal data, to direct their compliance efforts.

At least two commenters proposed exempting data-sharing platforms from the definition of “data brokerage” because such platforms do not determine what data is shared or reviewed before data is shared. These commenters generally claimed that without the requested exemption, such platforms would be required to review all data exchanges and underlying datasets, potentially creating new privacy and data security risks as well as possible contractual violations. The Department declines to adopt this proposal because it is unnecessary, redundant, and risks creating an exemption that could inadvertently undermine the purpose of the rule, thereby exacerbating the national security risk the Order is intended to mitigate. The prohibition in § 202.301 requires “knowingly” engaging in a covered data transaction involving data brokerage with a country of concern or covered person. As the examples in §§ 202.230(b) and 202.305(b) illustrate, if a U.S. person merely provides infrastructure or a platform to a U.S. customer that uses the infrastructure or platform to engage in a prohibited or restricted transaction, the third-party infrastructure or platform provider would not generally have knowingly engaged in a prohibited or restricted transaction. However, it would be inappropriate for the rule to exempt third-party infrastructure or platform providers, as they could engage in their own transactions that would be prohibited or restricted, as also illustrated by the examples in § 202.230(b) and § 202.305(b).

At least two commenters were concerned that without changes to the definition of “data brokerage” or the prohibition in § 202.301, the regulations would adversely affect e-commerce or

⁶⁴ 89 FR 86128.

the ability of U.S. persons to purchase goods and services. These concerns are unfounded because the prohibition does not reach exempted activities, including data transactions that are ordinarily incident to and part of the provision of financial services. Financial services include “the transfer of personal financial data or covered personal identifiers incidental to the purchase and sale of goods and services” and “the provision or processing of payments or funds transfers.” See § 202.505(a)(4) and (5). Example 1 in § 202.505(b)(1) also specifically addresses the issue of e-commerce.

One comment expressed concern that U.S. persons engaged in data brokerage are unfairly targeted and encouraged the creation of a safe harbor for U.S. persons that conduct due diligence on data-brokerage transactions but are later deceived about a foreign adversary’s ownership or control of a customer company. The Department declines to adopt the described safe harbor because it is unnecessary and redundant. The prohibition on data brokerage in § 202.301 requires a U.S. person to act “knowingly,” which “means that a person has actual knowledge, or reasonably should have known, of the conduct, the circumstance, or the result.” See § 202.230. Generally, U.S. persons engaged in data brokerage who are in fact deceived by countries of concern or covered persons, despite taking reasonable measures to comply with § 202.301, would not be liable because they would not have had actual knowledge of, nor would they have reasonably known of, the circumstances. In addition, the Department intends to issue compliance and enforcement guidance following the publication of the final rule.

Another commenter provided several open-ended hypotheticals about the applicability of the definition of “data brokerage” in § 202.214 to unfunded or nonprofit research. They asked whether a U.S. person’s transfer of bulk sensitive personal data to a researcher in a country of concern could be considered data brokerage; whether such data transfers would be prohibited if they occurred because of mutual interest in the research; and whether the possibility of collaboration or co-authoring on a paper constitutes sufficient consideration to trigger the definition.

The public will have the opportunity to submit detailed requests for formal advisory opinions after the effective date of the regulations. In that process, filers would provide non-hypothetical and specific facts on which the Department will render an opinion on

the applicability of the regulations. Without more specific information or details, the Department can only provide general answers to these hypotheticals.

As explained with respect to the comments on § 202.511, while the rule is not limited to covered data transactions that occur for solely commercial purposes, the rule does limit data brokerage and the other categories of covered data transactions (and thus the prohibitions and restrictions) to transactions that are commercial *in nature*, meaning that they involve some payment or other valuable consideration. Generally, without more, a mutual interest in conducting research together, or the possibility of research collaboration or co-authoring a paper, would not constitute the kind of valuable consideration needed to qualify as a covered data transaction. The Department added Examples 9 and 10 to § 202.214 to clarify the circumstances to which the Department intends the rule to apply in the context of such research activities.

Other commenters similarly sought clarification on whether and how the rule applies to nonprofit or non-commercial entities. The rule applies to data brokerage and investment, vendor, or employment transactions, as defined in the rule, without regard to the for-profit or not-for-profit nature of the U.S. person engaged in the transaction. Where a nonprofit engages in a covered data transaction—by, for example, entering a vendor agreement with a covered person to host bulk U.S. sensitive personal data—the rule applies. As the NPRM explained, the rule takes an activity-based approach because it is certain activities (transactions) that pose the unacceptable risks to national security and foreign policy, regardless of the kind of entity that engages in them.

However, other provisions of the regulations might exempt otherwise prohibited or restricted data transactions engaged in by researchers. The Department has exempted data transactions arising from the official business of the United States Government, Federal law or international agreements, drug, biological, and medical device authorizations, and other clinical trials in §§ 202.504, 202.507, 202.510, and 202.511, respectively. Section 202.504 also covers data transactions conducted pursuant to a contract, grant, or other agreement with Federal departments and agencies, even when there is concurrent funding from non-Federal sources.

At least one commenter suggested that prohibited data brokerage should be limited to circumstances in which the recipient of the data receives a right, remedy, power, privilege, or interest with respect to the data. The Department declines to make the suggested change because it fails to adequately address the national security risk posed by countries of concern or covered persons’ access to government-related data and bulk U.S. sensitive personal data. The commenter’s suggestion would undermine the data-brokerage prohibition and effectively give adversarial nations unfettered access to bulk U.S. sensitive personal data or government-related data. Subpart E of the regulations offer carefully tailored exemptions that balance the national security imperatives of the Order with legitimate economic and humanitarian activities, among others. Data transactions that qualify for such exemptions would not be prohibited under this program.

One commenter sought clarification or changes regarding Example 4 in § 202.214 as to whether, assuming all other requirements of the prohibition in § 202.301 were satisfied, internet Protocol (“IP”) addresses and advertising identifiers alone, without bulk precise geolocation information, would constitute prohibited data brokerage. The Department revised the example to clarify that a data transaction involving bulk quantities of U.S. users’ IP addresses and advertising IDs would qualify as a prohibited data-brokerage transaction involving bulk covered personal identifiers because IP addresses and advertising IDs are listed identifiers. However, a data transaction involving only one of the listed identifiers—for example, only IP addresses—would not qualify as a covered data transaction because IP addresses in isolation do not qualify as sensitive personal data. Countries of concern may use IP addresses in some instances to aid in identifying the location of a particular device or user. However, the Department recognizes that IP addresses alone may not provide enough detailed information about a specific user or device to qualify as “precise geolocation data.” The Department understands that, in most commercial instances, IP addresses are collected in datasets that often contain well into the tens or hundreds of millions of such addresses and often involve other listed identifiers, as well. Given this reality, the Department will only treat IP addresses as a listed identifier, rather than also as precise geolocation data.

Another commenter recommended narrowing the definition of “data brokerage” primarily by striking the phrase “similar commercial transactions” from the definition, which the Department discussed in part IV.B.2 of this preamble. The commenter also provided some high-level examples of activities that they believe should not be considered data brokerage: (a) Marketplace sales, in which a third-party seller that is located in a country of concern or that is a covered person provides items for sale to U.S. persons on platforms owned by U.S. persons; (b) retail advertising networks that are owned by U.S. companies and that feature advertisers who are covered persons or that are based in a country of concern; (c) personal health data and human genomic data for scientific research and regulatory purposes; and (d) provisions of services to U.S. individuals abroad.

As this preamble and the NPRM explained, the Department declines to revise the definition of “data brokerage” because it “is intentionally designed and scoped to address the activity of data brokerage that gives rise to the national risk, regardless of the entity that engages in it” [and] intentionally regulates data transactions” that give rise to the risks the Order was intended to mitigate.⁶⁵ The commenter did not address how or whether their recommended approach to data brokerage would mitigate such risk. In addition, the rule already accounts for the examples provided by the commenter. Transactions ordinarily incident to the provision of covered personal identifiers and personal financial data as part of e-commerce (such as marketplace sales) are generally exempt under the financial services exemption. With respect to scientific research and regulatory purposes, the rule does not prohibit research in a country of concern or research partnerships with a covered person that do not otherwise involve a covered data transaction. And the exemptions in §§ 202.510 and 202.511 already exempt certain data transactions arising from clinical trials and regulatory approvals in the context of drug, biological, and medical device authorizations. The commenter failed to provide sufficient specificity for the Department to address the other examples they provided. The recommended change, therefore, appears unnecessary at this time.

Because the data-brokerage prohibition, along with the other prohibitions and restrictions, center around data transactions involving

access to government-related data or bulk U.S. sensitive personal data, the Department addresses the comments received on those key terms and related terms in detail in the following discussion.

3. Section 202.201—Access

The proposed rule defined “access” as logical or physical access, including the ability to obtain, read, copy, decrypt, edit, divert, release, affect, alter the state of, or otherwise view or receive, in any form, including through information systems, information technology systems, cloud-computing platforms, networks, security systems, equipment, or software.

One commenter requested that, to ensure that compliance mechanisms do not impede legitimate research activities, the Department distinguish data access and data export. The commenter interpreted “access” to data as physically obtaining data, or as being able to analyze the data in a remote analysis environment where the data remains protected and cannot be exported. To this end, the commenter recommended addressing security concerns, while maintaining legitimate users’ access to research data, by requiring data accessor attestation or by leveraging trusted research environments that adopt modern data protection methods and multi-layer security protocols.

The Department declines to distinguish access from export. In the national security context, the Department views both access to government-related data and bulk U.S. sensitive personal data by a country of concern or covered person as synonymous with the export of such data to the same. Further, it is unclear to the Department whether something like a “data accessor attestation” would be sufficient to dissuade or prevent a country of concern’s intelligence or security service from seeking to access sensitive data that may be contained in a secure research environment. The Department does not believe that these types of measures on their own mitigate the counterintelligence and other national security risks identified by the Order and parts II–IV of this preamble. However, these types of measures could be one part of a broader risk-based compliance program implemented pursuant to the rule’s requirements. Finally, it does not appear that such a change is necessary to minimize any impact on scientific and research activities, as the rule does not preclude research in a country of concern, or research collaborations or partnerships with covered persons, that do not

involve any payment or other consideration as part of a covered data transaction.

Another commenter suggested a technical correction in the final rule to avoid inadvertently causing restricted transactions that comply with the security requirements to no longer be considered covered data transactions. The Department appreciates this clarification, which it has adopted in the definition of “access.”

The final rule otherwise adopts the definition proposed in the NPRM without change.

4. Section 202.249—Sensitive Personal Data

The NPRM defined six categories of “sensitive personal data” that could be exploited by a country of concern to harm U.S. national security if that data is linked or linkable to any identifiable U.S. individual or to a discrete and identifiable group of U.S. persons. These six categories are: (1) covered personal identifiers; (2) precise geolocation data; (3) biometric identifiers; (4) human genomic data; (5) personal health data; and (6) personal financial data. As explained in part IV.B.16 of this preamble, the Department has changed the reference to human genomic data to human ‘omic data in the final rule.

One commenter requested that the Department confirm that physical and digital dental health data records are included within the scope of sensitive personal data. The commenter pointed out that unauthorized access to dental health data poses significant security risks, as they contain not only personal health information but also can serve as a unique forensic identifier. The Department agrees and confirms that physical and digital dental health records would generally fall within the existing definition of “personal health data” within the scope of sensitive personal data. Section 202.241 of the rule provides an inclusive definition for personal health data that encompasses information related to “the past, present, or future physical or mental health or condition of an individual, the provision of healthcare to an individual, or the past, present, or future payment for the provision of healthcare to an individual.” This term includes, for example, basic physical measurements and health attributes, social, psychological, behavioral, and medical diagnostic, intervention, and treatment history; test results; logs of exercise habits; immunization data, data on reproductive and sexual health; and data on the use of prescribed medications. The data contained in

⁶⁵ 89 FR 86131.

dental records would generally relate to the past, present, or future physical health or condition of an individual and to the provision of healthcare to an individual, which the Department intentionally scoped broadly to avoid the risk of inadvertently omitting relevant health data types. This flexibility allows for new health-related fields or data types to be included in the future without needing to update the rule. Further, to the extent that any such dental health records constituted “measurable physical characteristics or behaviors used to recognize or verify the identity of an individual,” the definition of “biometric identifier” included in “sensitive personal data” would capture those records. In light of the Department’s confirmation and the existing definition, the Department does not believe it is necessary to adjust the inclusive definition of “personal health data” to refer to one specific type of personal health data.

One commenter questioned the inclusion of human genomic data as a category of sensitive personal data, arguing against the ability to identify individuals solely through genetic testing and arguing that the NPRM overstates the predictability of human genomic data. The commenter agreed that knowledge of a person’s genome may offer insights into potential risks and tendencies, but the commenter concluded, without citing any reference materials, that such data cannot accurately predict health, emotional stability, or mental capacity for most individuals. The commenter also suggested that it would be “impractical” to design genetically targeted bioweapons against a specific individual or group. As noted in the NPRM, human genomic data is not only useful for identifying traits such as health, emotional stability, mental capacity, appearance, and physical abilities that might be useful in intelligence recruitment; countries of concern may also use this data to develop military capabilities such as bioweapons.⁶⁶ Human genomic data, even when de-identified, can still be re-identified, particularly when combined with other datasets such as medical records, health information, public databases, or social media information.

This potential for re-identification highlights the necessity of the national security protections set forth in the NPRM and this preamble. The commenter’s contention that a foreign adversary’s government would not leverage human genomic data due to such efforts being “impractical” is contrary to the publicly available assessments of the United States Government, including the U.S. Intelligence Community.⁶⁷ For this and other reasons already discussed in the NPRM,⁶⁸ the Department declines to adopt any change in response to this comment.

The proposed rule categorically excluded certain categories of data from the definition of the term “sensitive personal data.” These exclusions include public or nonpublic data that does not relate to an individual, including trade secrets and proprietary information, and data that is, at the time of the transaction, lawfully publicly available from government records or widely distributed media, personal communications as defined in § 202.239, and information or informational materials as defined in § 202.226. As discussed in further detail in part IV.B.15 of this preamble, the Department has refined the definition of “sensitive personal data” to ensure that the exclusion for publicly available data applies to each subcategory of sensitive personal data, and thus also applies to the term government-related data. In addition, as discussed in part IV.D.1 of this preamble, the Department has extended the exclusions to include certain metadata related to expressive information and informational materials.

As noted in the NPRM, nothing in the final rule shall be construed to affect the obligations of United States Government departments and agencies under the Foundations for Evidence-Based Policymaking Act of 2018, Public Law 115–435 (2019), 44 U.S.C. 3501 *et seq.*

5. Section 202.212—Covered Personal Identifiers

The Order defines “covered personal identifiers” as “specifically listed classes of personally identifiable data that are reasonably linked to an individual, and that—whether in combination with each other, with other

sensitive personal data, or with other data that is disclosed by a transacting party pursuant to the transaction and that makes the personally identifiable data exploitable by a country of concern—could be used to identify an individual from a data set or link data across multiple data sets to an individual,” subject to certain exclusions.⁶⁹ The NPRM defined two subcategories of covered personal identifiers: (1) listed identifiers in combination with any other listed identifier; and (2) listed identifiers in combination with other data that is disclosed by a transacting party pursuant to the transaction, such that the listed identifier is linked or linkable to other listed identifiers or to other sensitive personal data. The definition included two exceptions: (1) demographic or contact data that is linked only to other demographic or contact data; and (2) a network-based identifier, account-authentication data, or call-detail data that is linked only to other network-based identifiers, account-authentication data, or call-detail data as necessary for the provision of telecommunications, networking, or similar services.

Multiple commenters requested that the Department clarify the applicability of the demographic data exclusion with respect to data brokerage. The Department directs the commenters to the definition of “covered personal identifier” in § 202.212(b), which excludes “[d]emographic or contact data that is linked only to other demographic or contact data.” That definition, in combination with the examples provided, demonstrates how demographic data and data brokerage interact with one another. Example 3 in § 202.212(c)(3) states that a “first and last name linked to a residential street address, an email address linked to a first and last name, or a customer loyalty membership record linking a first and last name to a phone number—would not constitute covered personal identifiers.”

The data in this example does not satisfy the definition of “covered personal identifiers.” Therefore, such data would not be considered sensitive personal data under § 202.249, and a transaction involving such data would not be a covered data transaction under § 202.210. In relevant part, § 202.301 only prohibits U.S. persons from knowingly engaging in a covered data transaction involving data brokerage with a country of concern or covered person. Because there is no covered data transaction, a U.S. person would not be

⁶⁶ Ken Dilanian, *Congress Wants to Ban China’s Largest Genomics Firm from Doing Business in the U.S. Here’s Why*, NBC News (Jan. 25, 2024), <https://www.nbcnews.com/politics/nationalsecurity/congress-wants-ban-china-genomics-firm-bgi-from-us-rcna135698> [<https://perma.cc/T2Y2-R7RZ>]; Ron Pulivarti et al., Nat’l Inst. Of Standards & Tech., NIST IR 8432, *Cybersecurity of Genomic Data 9* (2023), <https://nvlpubs.nist.gov/nistpubs/ir/2023/NIST.IR.8432.pdf> [<https://perma.cc/5D3G-BEEZ>].

⁶⁷ Nat’l Counterintel. & Sec. Ctr., China’s Collection of Genomic and Other Healthcare Data from America: Risks to Privacy and U.S. Economic and National Security (Feb. 2021), https://www.dni.gov/files/NCSC/documents/SafeguardingOurFuture/NCSC_China_Genomics_Fact_Sheet_2021revision20210203.pdf [<https://perma.cc/BL4H-WJSW>].

⁶⁸ 89 FR 86156–65.

⁶⁹ 89 FR 15428–29.

prohibited from engaging in a data-brokerage transaction with a country of concern or covered person involving the data from this example.

The same commenters also recommended that the Department amend the definition of “covered personal identifier” to exclude combinations of what the commenters claim to be low-risk identifiers, such as when advertising or device identifiers are combined with low-risk identifiers like IP addresses or contact data but not combined with any other information. The Department addressed this in the NPRM and declines to make the recommended change here. Specifically, the Department stated in the NPRM that “covered personal identifiers and unique IDs can be used to link other datasets containing more exploitable information.”⁷⁰ For example, countries of concern and covered persons can use such identifiers to “help link databases of habitual visitors to gambling sites with debt collection records or a database of government records. They could link advertising IDs, IP addresses, and [Subscriber Identity Module (“SIM”)] card numbers to personal mobile devices, home addresses, and government mobile devices.”⁷¹ Additionally, the definition of “covered personal identifier” in § 202.212 already excludes demographic or contact data that is linked only to other demographic or contact data.

Several commenters took issue with the Department using a definition of “covered personal identifier” that is different than what is considered sensitive data under other laws. Because of this, the commenters recommended a broad exemption for any data that is processed by a covered person on behalf of a U.S. person where: (1) the purpose of the processing is product research, development, or improvement; (2) the U.S. person directs and controls the manner of processing the data; and (3) the covered person is contractually bound by the U.S. person to maintain the privacy and security of the data. At least one commenter objected to the inclusion of truncated government identification or account numbers in the definition of “listed identifier.” The commenters further requested an exemption for data provided or transferred by internet ecosystem providers in the ordinary course of providing internet exchange, traffic management, routing, and related services designed to optimize and secure access to services by internet end-users (except when involving data

brokerage) in addition to an exemption for any combination of the following: (1) a device- or hardware-based identifier; (2) an advertising identifier; and (3) a network-based identifier.

At least one of the commenters also made these recommendations in response to the ANPRM, and the Department considered them in the NPRM. However, the commenter provided no new information for the Department to act on or consider in this instance. The rule’s use of the term “covered personal identifiers” is much narrower than what is covered by various privacy-oriented laws and regulations. The Department has already adopted similar suggestions received from other commenters to arrive at a narrower category as described in § 202.212(a)(2) and included several examples. *See* § 202.212(c). Section 202.212(b)(2) excludes identifiers critical to the operation of services and devices “as necessary for the provision of telecommunications, networking, or similar service.”⁷² The proposed exemption mirrors generally prevalent commercial contractual obligations between data controllers and data processors (as those terms are defined by various privacy laws). The Department declines to adopt these recommendations because these conditions are targeted at fulfilling privacy-law requirements and will not address the national security risks identified in the Order. In the absence of any new evidence or support, the Department declines to remove truncated government identification and account numbers from the definition of “listed identifiers” for the reasons detailed in the NPRM.⁷³ The Department declines to add other internet service-related exemptions, as § 202.212(b)(2) already contains the requested exclusion.

A commenter in the public research field applauded the proposed rule but suggested that Social Security numbers be classified as a covered personal identifiers. Social Security numbers are included in the definition of “listed identifier” in § 202.234, which in turn is incorporated into the definition of “covered personal identifiers” in § 202.212.

Another commenter requested that the definition of “covered personal identifiers” exclude data that has been anonymized, de-identified, pseudonymized, aggregated, or is otherwise considered publicly available in accordance with privacy laws. The Department declines to amend this

definition. As the Department has explained in response to comments to the definitions of bulk U.S. sensitive personal data and sensitive personal data, even anonymized data, when aggregated, can be used by countries of concern and covered persons to identify individuals and to conduct malicious activities that implicate the risk to national security the Order was intended to address.

One commenter recommended “remov[ing] network identifiers from [the] set of listed identifiers,” or that the Department eliminate § 202.234(g) on network identifiers altogether. As the commenter noted, the Department has already carved out exceptions for network-based identifier data that is only linked to other network-based identifier data. However, when these identifiers are linked to other types of sensitive personal data, the national security risks identified in the NPRM are more likely to be present. Therefore, the Department declines to implement the commenter’s recommendations.

6. Section 202.234—Listed Identifier

The proposed rule defined a “listed identifier” as any piece of data in any of the following data fields: (1) full or truncated government identification or account number (such as a Social Security number, driver’s license or State identification number, passport number, or Alien Registration Number); (2) full financial account numbers or personal identification numbers associated with a financial institution or financial-services company; (3) device-based or hardware-based identifier (such as International Mobile Equipment Identity (“IMEI”), Media Access Control (“MAC”) address, or Subscriber Identity Module (“SIM”) card number); (4) demographic or contact data (such as first and last name, birth date, birthplace, ZIP code, residential street or postal address, phone number, email address, or similar public account identifiers); (5) advertising identifier (such as Google Advertising ID, Apple ID for Advertisers, or other mobile advertising ID (“MAID”)); (6) account-authentication data (such as account username, account password, or an answer to a security question); (7) network-based identifier (such as internet Protocol (“IP”) address or cookie data); or (8) call-detail data (such as Customer Proprietary Network Information (“CPNI”)). *See* § 202.234.

One commenter suggested that the Department remove the fifth category (advertising identifiers) from the definition of “listed identifiers,” arguing that advertising identifiers are not

⁷⁰ 89 FR 86162.

⁷¹ *Id.*

⁷² 89 FR 86206.

⁷³ 89 FR 86124.

personal information and that prohibiting the free flow of advertising identifiers will seriously affect the development of the internet advertising industry. The Department disagrees. As articulated in the NPRM, advertising identifiers combined with other types of covered personal identifiers are indeed linked or linkable to an individual and therefore are included in the scope of bulk U.S. sensitive personal data.

One commenter recommended that the Department remove any reference to IP addresses from the rule due to the potential for businesses to refrain from or be hindered in providing communications and cybersecurity services. The commenter asserted that the NPRM referenced IP addresses in multiple ways that deviate from their normal use. Specifically, the commenter highlighted that IP addresses are sometimes associated with more than one individual, and that one individual may use multiple IP addresses depending on their location (at home, on their mobile device, at work, etc.).

Further, the commenter identified alternative identifiers such as call detail data and contact data that are frequently used with IP addresses, suggesting that including IP addresses is redundant. Finally, the commenter notes the challenges that entities have had in complying with foreign laws that regulate IP addresses as personal data and suggested that regulating IP addresses in this rule will further strain those entities.

The Department notes that the definition of “covered personal identifiers” in § 202.212(b)(2) excludes network-based identifier, account-authentication data, or call-detail data that is linked only to other network-based identifier, account-authentication data, or call-detail data as necessary for the provision of telecommunications, networking, or similar service. The Department disagrees that the inclusion of IP addresses is unnecessary and should be removed from the rule. IP addresses are capable of being linked or linkable to a U.S. person and can provide location data (including, in some circumstances, precise geolocation data). The fact that IP addresses are sometimes shared or could be attributed to more than one person in some circumstances does not preclude them from also being capable of identifying U.S. persons. To the contrary, even when they can be attributed to more than one person in some circumstances, IP addresses can be useful in narrowing down, and thus increasing the identifiability of, other data that is linked or linkable to a U.S. person. As the NPRM explained, location data that

can be derived from an IP address can provide important information related to patterns of life, such as when a person goes from home to work and other locations.

Finally, the rule already separately exempts (1) from the definition of covered personal identifiers, network-based identifiers, call-detail data, or account-authentication data that is linked only to other network-based identifiers, call-detail data, or account-authentication data; (2) from the prohibitions and restrictions, any transaction that is ordinarily incident to the provision of telecommunications services; and (3) from the prohibitions and restrictions, personal communications. The comment did not identify what specific non-exempt transactions with countries of concern or covered persons remain that would be prohibited or restricted, nor did it explain how those transactions are integral to the delivery of communications or cybersecurity services. No change to the rule appears necessary.

7. Section 202.242—Precise Geolocation Data

The proposed rule defined “precise geolocation data” as data, whether real-time or historical, that identifies the physical location of an individual or a device with a precision of within 1,000 meters. Two commenters suggested that the Department narrow the geographic radius of precise geolocation data to align with U.S. State privacy laws. No change was made in response to these comments. As a threshold matter, the rule is already consistent with privacy laws when accounting for available options on most devices. Specifically, the California Privacy Rights Act, which a few commenters cited as the standard the Department should follow, includes a geographic radius of 1,850 feet (approximately 563 meters).⁷⁴ As indicated in the NPRM, the Department considered State privacy laws with which companies are already familiar, and which provide examples of the level of precision at which a device’s location warrants protection. Furthermore, as the NPRM explained, the Department also examined Android and iOS software developers’ available settings for the precision of geolocation readings, which included accuracy to within 10 meters, 100 meters, 1,000 meters, 3,000 meters, and 10,000+

⁷⁴ See, e.g., Cal. Civ. Code sec. 1798.140(w) (which uses a radius of 1,850 feet); Utah Consumer Privacy Act, Utah Code Ann. sec. 13–61–101(33)(a) (West 2024) (which uses a radius of 1,750 feet).

meters.⁷⁵ As discussed in the NPRM, the Department concluded that location data at a distance greater than 100 meters was still considered precise and presented an unacceptable risk to national security, so the Department selected 1,000 meters as the option that most carefully balanced the risk that countries of concern or covered persons could exploit U.S. persons’ precise geolocation data and current technology practices and standards.

One commenter suggested lowering the geographical location range from 1,000 meters to 100 meters, arguing that the proposed range was too wide and may include many civil facilities, such as enterprises, factories, and houses. The Department believes geolocation data within a distance of 1,000 meters to be precise. For example, in guidance to its members, the Network Advertising Initiative,⁷⁶ a non-profit trade group that crafts policies that protect users’ privacy in the advertising technology and digital advertising space, stated, “If a member receives information locating a user or device to an area with a size of 1,000 [square] meters, that member can render the data imprecise by only storing information that the user or device was in an area with a size of 800,000 meters.”⁷⁷ Further to the point, this comment seems to confuse the government-related geolocation data list in § 202.1401, with the distance of precise geolocation data for the other regulated covered data transactions in § 202.242. The Department declines to adopt the recommendation.

The definition of “sensitive personal data” excludes public or nonpublic data that does not relate to an individual. Two commenters requested clarity on the meaning of the exclusion “does not relate to an individual” from sensitive personal data in the context of precise geolocation data. In particular, the commenters sought a definition of what “relate to an individual” means or a clarifying example to explain what relates to an individual means when precise geolocation data is defined

⁷⁵ *CLLocationAccuracy*, Apple Developer, <https://developer.apple.com/documentation/corelocation/cllocationaccuracy> [https://perma.cc/AZ48-VSCP]; *Change Location Settings*, Android Developer, <https://developer.android.com/develop/sensors-and-location/location/change-location-settings> [https://perma.cc/5BY3-P7L3].

⁷⁶ Network Advert. Initiative, *About the NAI*, <https://thenai.org/about-the-nai2/> [https://perma.cc/GFN4-DVZ3] (showing that the Network Advertising Initiative (NAI) is a non-profit, self-regulatory association dedicated to responsible data collection and its use for digital advertising).

⁷⁷ Network Advert. Initiative, *Guidance for NAI Members: Determining Whether Location is Imprecise 3* (Feb. 2020), https://thenai.org/wp-content/uploads/2021/07/nai_imprecise_location2.pdf [https://perma.cc/U7CS-YHR5]. (2020).

regarding an individual or a device. They note that precise geolocation data is defined in terms of U.S. devices, and therefore precise geolocation data that is de-identified should be excluded from the scope of the rule.

The Department does not believe it is necessary to create a new definition regarding “relate to an individual.” This phrase in the exclusionary language of § 202.249(b)(1) is intended to avoid regulation of proprietary data, trade secrets, and other data that does not have to do with individuals. Similarly, the term “U.S. device” is already limited to devices that “store or transmit data that is linked or linkable to a U.S. person.” See § 202.257. This definition does not capture all geolocation data that derives from a U.S. device. For example, a company may use U.S. devices to track the geolocation data of corporate assets or packages for delivery without tying that data to the individual using the device. That data would not constitute precise geolocation data because the location of corporate assets or packages does not “relate to an individual” and because the data is not “linked or linkable to a U.S. person.” If, however, the company ties the geolocation data of those assets or packages to the individual handling the U.S. device, the geolocation data would “relate to an individual” and would be “linked or linkable to a U.S. person.” Of course, how the U.S. company collects and handles that data in the United States would not be regulated by the rule; only non-exempt transactions that are prohibited or restricted involving that precise geolocation data would be regulated under the rule.

8. Section 202.204—Biometric Identifiers

The proposed rule defined “biometric identifiers” as measurable physical characteristics or behaviors used to recognize or verify the identity of an individual, including facial images, voice prints and patterns, retina and iris scans, palm prints and fingerprints, gait, and keyboard usage patterns that are enrolled in a biometric system and the templates created by the system.

One commenter raised concerns that the proposed definition is broader than the current understanding of the term and claimed it could include photos or pictures. The commenter suggested that the Department narrow the definition of “biometric identifiers” to only include data that relates to personal characteristics, has been processed using specific technologies, and can uniquely identify a person. The commenter asserted, without support, that this definition is closer to the

traditional understanding of the term and would therefore align with existing compliance activities.

The Department declines to adopt this recommendation. The definition of “biometric identifiers” already includes similar limitations; biometric identifiers are defined as “measurable physical characteristics or behaviors used to recognize or verify the identity of an individual.” See § 202.204. Further, adding a technological processing component to the definition prevents any kind of raw data from meeting the definition of a biometric identifier, allowing countries of concern to acquire biometric identifiers and then conduct the technological processing themselves. Limiting the definition to data processed using specific technologies would also risk allowing new technological developments to undermine the definition. The Department believes this definition is effectively scoped to the national security risk, and declines to narrow the definition, particularly based on unsubstantiated compliance benefits. Finally, the rule already separately excludes expressive information or informational materials from all of the categories of sensitive personal data (including biometric identifiers), so it appears unnecessary and redundant to adjust this specific definition to address the commenter’s concern. Therefore, the Department makes no change to the definition of “biometric identifiers” in the final rule.

9. Section 202.224—Human ‘Omic Data

The proposed rule sought comment on the effect of regulating human genomic data and whether to regulate other categories of human ‘omic data. Several commenters expressed concerns about regulating covered data transactions involving human genomic data. For example, some commenters opposed setting the same bulk threshold for human genomic data that involves the “entire set . . . of the genetic instructions found in a human cell” and data that involves a “subset” of such instructions, as the rule defines “human genomic data.” See § 202.224(a)(1). Commenters explained that there is a low risk of identifying a single individual from a subset of genetic instructions, incomplete human genomes, or data about single genes that do not reveal information that is consequential to the health of a U.S. person or particular U.S. populations. The Department declines to change the threshold for human genomic data. As described in the NPRM, countries of concern, including the PRC, “view . . . genomic data as a strategic commodity

to be collected and used for its economic and national security priorities.”⁷⁸ As the NPRM explains, this data poses risks not only for “identifying traits such as health, emotional stability, mental capacity, appearance, and physical abilities that might be useful in intelligence recruitment,” but also because “countries of concern may also use this data to develop military capabilities such as bioweapons.”⁷⁹ The Department declines to raise the bulk threshold applied to bulk human genomic data because the national security risks posed by country of concern access to such data include risks unrelated to a country of concern’s ability to identify particular individuals or U.S. populations from such data.

Other commenters questioned the necessity of the rule, arguing that current research practices already handle genetic data securely with strong privacy considerations, such as de-identification and pseudonymization. As the NPRM explains, however, “advances in technology, combined with access by countries of concern to large datasets, increasingly enable countries of concern that access this data to re-identify or de-anonymize data,” allowing them to “reveal exploitable sensitive personal information on U.S. persons.”⁸⁰ Accordingly, the Department declines to exempt from its prohibitions and restrictions human genomic data that has been de-identified or pseudonymized, outside the exemptions permitted by §§ 202.510 and 202.511, which are subject to additional oversight by the Federal Government or support data sharing necessary for regulated parties to obtain or maintain regulatory approval or authorization to market or research drugs or other products. In addition, some commenters expressed concerns that the rule could impose unwanted administrative burdens on U.S. researchers by creating roadblocks to data sharing, thereby potentially decreasing the global competitiveness of U.S. genetics research. The Department has calibrated the rule to balance the interests in maintaining U.S. competitiveness in science and research with the pressing national security risks identified by the Order and in this rulemaking. The Department has adopted, clarified, and revised exemptions in part IV.E of this preamble to help alleviate the burden on

⁷⁸ 89 FR 86142.

⁷⁹ 89 FR 86157.

⁸⁰ 89 FR 86126.

individuals conducting human genomic-related research.

One commenter noted the risk that policy makers and the media could portray human genetic data as exceptional and dangerous, which could erode public trust in scientists and negatively impact recruitment for research studies. The Department appreciates the commenter's concern but notes that the U.S. intelligence community has identified specific national security risks posed by country of concern access to bulk U.S. human genomic data that the rule seeks to mitigate and that outweigh the speculative and indirect risks to public trust in scientists asserted by the commenter.⁸¹ Finally, the commenter contended that it is difficult to identify individuals solely through genetic testing, arguing that the predictability of human genomic data is overstated in the NPRM. As described elsewhere in part IV.B.9 of this preamble, country of concern access to bulk human genomic data poses national security risks beyond identifying discrete individuals or populations that the rule's restrictions and prohibitions are intended to mitigate.

In the NPRM, the Department sought comments about whether and how it should regulate transactions involving access to bulk human 'omic data other than human genomic data. The Department received several comments on this topic, including one that supported robust regulation and others that either opposed including other human 'omic data in the rule or proposed delaying its inclusion to a separate rulemaking. After further consideration, the Department has determined in the final rule to treat three categories of other human 'omic data—epigenomic data, proteomic data, and transcriptomic data—similarly to its treatment of human genomic data. The bulk threshold for these additional categories of human 'omic data will be higher than for human genomic data. The Department is not including any other categories of human 'omic data in the rule at this time. The Department incorporates this change by defining a new term, "human 'omic data," that includes human genomic data and each of the three listed other human 'omic categories.

At a high level, the 'omics sciences examine biological processes that contribute to the form and function of cells and tissues.⁸² Many commenters

urged the Department to move cautiously in regulating other human 'omic data to avoid disrupting the development of new and promising fields of research. Although none of these comments spoke with any specificity about the risks of regulating covered data transactions as contemplated by the NPRM, the Department agrees that a cautious approach is needed.

The Department recognizes that not all categories of human 'omics data present the same degree of risk if accessed by a country of concern or covered person. Data from some human 'omic categories, for example, do not present the same identifiability concerns that exist for human genomic data. But the Department remains deeply concerned by the national security risk associated with transactions involving human epigenomic, proteomic, or transcriptomic data. The fields of epigenomics, proteomics, and transcriptomics are—after genomics—the most advanced 'omic fields.⁸³ Generally speaking, epigenomics is the study of changes in gene expression that do not involve alterations to the DNA sequence itself. The field of proteomics generally aims to identify and characterize proteins and study their structures, functions, interactions, and post-translational modifications. The field of transcriptomics generally aims to understand gene expression patterns, alternative splicing, and regulation of RNA molecules. These three human 'omic categories have the greatest clinical and predictive capacity, especially when used in combination with genomics and other 'omic categories, because they are most closely related to genomics.

Data in these categories may be used by countries of concern in numerous ways. This includes risk related to identifiability, particularly for human transcriptomic data, but also, as one commenter indicated, for human epigenomic data, human proteomic data, and human meta-multiomic data.⁸⁴ But the risks are not limited to

identifiability, and countries of concern might leverage access to bulk U.S. human 'omic data in other ways that are adverse to U.S. national interests. The same attributes that make this data useful for general research make it potentially useful for nefarious purposes—for example, to train AI systems enabling the military capabilities of adversaries and undermining the U.S. bioeconomy. Additionally, classified reporting reviewed by the Department further underscores the risks of allowing countries of concern to access U.S. person data in these categories.

In addition to the comments, the Department has also reviewed a November 2024 limited study performed by the Science and Technology Policy Institute ("STPI") that sought to preliminarily evaluate the effect on ongoing or planned research if the Department regulated human genomic and other human 'omic data in this rulemaking.⁸⁵ That study, which used various methods to estimate the effect of the contemplated regulations on research efforts (including surveying and interviewing potentially impacted stakeholders), concluded that there was unlikely to be substantial disruption to research. The report, though limited by its scope and methodology, concluded that only "a small proportion of the U.S. research community is participating in research that involves collaboration with a country of concern" and that even "among groups that do have existing research collaborations with a country of concern, none of those collaborations involved data sharing that would constitute a transaction of bulk human 'omic data."⁸⁶ STPI's review of clinical trials identified only a single clinical trial that is currently active in the United States, involves more than 100 participants, gathers 'omic (in this case, transcriptomic and genomic) data, and has a site in China.⁸⁷

Most of the concerns identified in the STPI report arose from general compliance concerns, such as that Federal funding entities would impose different requirements or that researchers would have to adjust computer security protocols. For example, one interviewee noted that it took substantially longer to build infrastructure to facilitate data sharing when cybersecurity requirements had to be met.⁸⁷ Another thought that research would be slowed because of confusion

www.ncbi.nlm.nih.gov/books/NBK202168/pdf/Bookshelf_NBK202168.pdf [<https://perma.cc/Q5YE-7XLM>].

⁸³ Carly S. Cox et al., *Information Gathered on the Potential Impact of Including Omic Data in a Rule on Access to Sensitive U.S. Data*, Appendix A (Science and Technology Policy Institute, Nov. 2024) [hereinafter *STPI Report*] (citing Dai and Shen 2022). The full STPI Report is available on [regulations.gov](https://www.regulations.gov) (Docket No. NSD-104).

⁸⁴ See, e.g., Patrycja Dąca-Roszak & Ewa Zietkiewicz, *Transcriptome Variation in Human Populations and Its Potential Application in Forensics*, 60 J. Appl. Genet. 319 (Nov. 2019), <https://doi.org/10.1007/s13353-019-00510-1>.

⁸⁵ See STPI Report, *supra* note 83.

⁸⁶ *Id.* at 38.

⁸⁷ *Id.* at 40. The report found generally low levels of clinical trials of any sort that also involved a site in a country of concern.

⁸¹ See, e.g., 89 FR 86142, 86178.

⁸² See, e.g., *Evolution of Translational Omics: Lessons Learned and the Path Forward* 23, 33 (Christine M. Micheel et al., eds., 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5444441/>.

about the scope of the rule during implementation.⁸⁸ One interviewee observed that the institutional burden of complying with new rules would limit collaboration with researchers in countries of concern.⁸⁹ It is hard to disentangle these concerns from the other provisions of the rule, and it is likely that also regulating these three categories of other human ‘omic data will pose only limited marginal costs to research and industry compared to the costs attributable to other aspects of the rule, including the provisions pertaining to human genomic data. Indeed, one interviewee expressly predicted that including other human ‘omic data in the scope of the regulation would have no change on the regulatory burden because ‘omic research almost always also involves genomic data.⁹⁰

Given the significant national security risks posed by country of concern or covered person access to these data, the limited available evidence to characterize the marginal disruptive effect of regulating these human ‘omics categories, and the immaturity of research and commercialization of these human ‘omics and related applications at present, the Department has determined to regulate these three categories of human ‘omic data.

One commenter expressed support for the inclusion of provisions regulating other human ‘omic data, noting that these restrictions will significantly bolster U.S. biodefense and biosecurity. The commenter noted that bulk human ‘omics data should be viewed as providing insight into how the body is affected by changes in the environment and diet, by infectious and non-communicable diseases, or by other circumstances. The commenter encouraged the Department to implement regulations restricting the transfer of human ‘omic data, noting that if the United States is concerned about an outside entity using human genomic data to maliciously attack the American public via biological threats, then the information gathered via other human ‘omic data—especially proteomics and metabolomics—should be considered equally and perhaps more sensitive. The Department appreciates this comment. For the current rulemaking, however, the Department has chosen to focus on the most acute threats related to human ‘omic data. The Department may revisit regulating transactions involving additional human ‘omic data in future rulemaking.

One comment offered specific and helpful suggestions for revising the Department’s proposed definitions. The Department greatly appreciates this comment and has incorporated the

commenter’s suggestions as applicable to the three additional categories of human ‘omic data in the final rule. For example, the definition of “human proteomic data” now expressly excludes routine clinical measurements. The Department made similar changes to the definitions of “human epigenomic data” and “human transcriptomic data.” The final rule also clarifies that human proteomic, human epigenomic, and human transcriptomic data include only data derived from a systems-level analysis.

In the NPRM, the Department indicated it was considering carving out pathogen data in ‘omic datasets. One commenter strongly supported this exclusion, explaining that pathogen-related data serves important and unique public health functions. In the preamble to the NPRM, the Department explained that it would take a similar approach to that which the commenter suggested with respect to human genomic data; in the final rule the Department expressly excludes from the definition of “human ‘omic data” pathogen-specific data embedded in ‘omic data sets.

Another commenter stressed that, if the Department includes other human ‘omic data, it must also include them in the exemptions in subpart E, including for regulatory approval data and clinical investigations in §§ 202.510 and 202.511. The Department agrees. Those provisions already exempt transactions within their scope from the provisions in subparts B and C, which are the operative provisions prohibiting or restricting transactions. Application of those exemptions does not turn on the type of data involved, and the exemptions apply equally to transactions involving human ‘omic data as to other categories of sensitive personal data.

Numerous commenters stressed that bulk thresholds for the other human ‘omic categories identified in the NPRM should vary with risk and should be higher than the threshold for human genomic data. Commenters did not provide specific input on what those thresholds should be or which ‘omics categories should have relatively higher or lower thresholds (except that phenomics probably presented a lower risk). The three additional ‘omic categories the Department is regulating are those with the greatest national security risks at this time, but the Department agrees that, given the nascency of these fields and the relatively greater difficulty of using these ‘omic data for identification, the bulk thresholds for these categories should be higher than for human

genomic data. Some stakeholders requested simpler rules to minimize compliance costs, and the Department recognizes that, independent of individual risk analysis, there is a benefit to setting the thresholds for all human ‘omics categories at the same level. But, in many use cases, this type of data is used together with genomic data, and so there may be limited practical effects to setting different thresholds for these human ‘omics categories.⁸⁸ For these reasons, the Department uses a threshold of 1,000 U.S. persons for all these three additional categories of human ‘omic data (epigenomic, proteomic, and transcriptomic data), while maintaining the 100 U.S. person threshold for human genomic data set out in the NPRM.

10. Section 202.240—Personal Financial Data

The proposed rule defined “personal financial data” as data about an individual’s credit, charge, or debit card, or bank account, including purchases and payment history; data, including assets, liabilities, debts, and transactions in a bank, credit, or other financial statement; or data in a credit report or in a “consumer report” (as defined in 15 U.S.C. 1681a(d)).

One commenter sought clarification on whether “personal financial history” pertains solely to transactions with financial institutions or includes all purchase and payment history. The Department interprets this question as asking about the scope of the term personal financial data. The Department confirms that personal financial data in § 202.240, including payment history, applies across the board. It is not limited to purchases and payment history collected only by financial institutions.

Another commenter suggested that the Department clarify that personal financial data only includes information from sources like banks or credit statements, and not from vendors, merchants, search engines, or e-commerce records. The Department declines to adopt the recommendation. While such records are not automatically considered personal financial data, any record that contains “data about an individual’s credit, charge, or debit card, bank account, including purchases and payment history, and data in a bank, credit, or other financial statement, or in a credit report or consumer report” meets the definition. See § 202.240. The same commenter suggested that personal

⁸⁸ See, e.g., STPI Report, *supra* note 83, at 17.

financial data should only be restricted when it comes directly from an individual's bank accounts. However, the focus of the definition in the final rule is on the content of the records, documents, or information containing personal financial data, not necessarily the source. As the proposed rule explained, countries of concern and covered persons seek such personal financial data from any source and can combine it with other data to create vulnerabilities that malicious actors might exploit, posing national security risks.⁸⁹ Therefore, the Department declines to limit the definition based on the data source.

11. Section 202.241—Personal Health Data

The proposed rule defined “personal health data” as health information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual. The term includes basic physical measurements and health attributes (such as bodily functions, height and weight, vital signs, symptoms, and allergies); social, psychological, behavioral, and medical diagnostic, intervention, and treatment history; test results; logs of exercise habits; immunization data; data on reproductive and sexual health; and data on the use or purchase of prescribed medications.

One commenter suggested that the Department remove “or the past, present, or future payment for the provision of healthcare to an individual,” “social, psychological, behavioral,” and “logs of exercise habits” from the definition of “personal health information.” This commenter argued that medical expenditures are helpful to the construction and communication of medical treatment systems but cannot directly reflect someone's disease diagnosis and treatment, and thus should not be restricted. The same commenter also asserted, without explanation, that social, psychological, behavioral and sports habits are too broad to pose any threat to national security. The Department declines to adopt the recommendation. Medical expenditures can be revealing about the nature of a diagnosis or medical issue. For example, medical billing statements often come with diagnostic codes to show the services provided by a medical practitioner or facility. An expenditure

in a specific location (e.g., an oncology office, obstetrics office, or dialysis center) can similarly reveal information about health conditions. Likewise, data such as social, psychological, or behavioral habits on a specific individual can be exploited by a country of concern as a means of recruitment by an intelligence service (particularly via blackmail or coercion). This data in the hands of a country of concern could certainly pose a risk to U.S. national security, as shown by numerous open-source examples in this preamble and the NPRM's preamble in which reporters and researchers used precisely this kind of data (such as exercise logs) to track, surveil, and glean insights on U.S. military activities and personnel overseas. The rule thus adopts the approach described in the NPRM without change.

As the NPRM described, this proposed definition operates on a categorical basis and determines that the category of personal health data generally meets the requirements of being “exploitable by a country of concern to harm United States national security” and “linked or linkable to any identifiable United States individual or to a discrete and identifiable group of United States individuals” under section 7(l) of the Order. The Department welcomed comment on the extent to which there is discrete data related to an individual's physical or mental health condition that is not inherently linked or linkable to U.S. individuals (such as a dataset of only heights or weights with no identifying information).

Commenters did not address the Department's question. Instead, several commenters raised issues with the Department's use of the term “relates” in the proposed rule's definition of “personal health data.” The commenters urged the Department to define the term, or to narrow the definition of “personal health data” to replace the term “relates” with other terms, such as “identifies” or “reveals.” They contended that data that “relates” to an individual, but does not identify an individual, has a low potential to cause harm but is essential to commerce, access to goods and services, and to ensuring that innovation is not stifled. One commenter mentioned that the term “relates” is so broad that it could apply to the sale not only of a prescription, but also to innocuous retail purchases that relate to a condition but do not identify it, such as the purchase of tissues at a supermarket.

The Department has revised the definition of “personal health data” to provide greater clarity, particularly for

regulated parties not typically governed by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) or familiar with its terminology. Personal health data within the rule's scope must *indicate, reveal, or describe* the past, present, or future physical or mental health condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual.

However, the Department declines to replace the term “relates” with the term “identifies.” The commenters do not support their assertion that data that does not identify individuals on its face has a low potential to cause harm. The rule intentionally does not define personal health information in terms of whether the information identifies individuals, because the rule applies across the board, regardless of whether data is de-identified. This approach responds to the national security risks posed by countries of concern that may have the ability to re-identify the data. The Department discussed these risks in detail in the NPRM, and in part IV.B.4 of this preamble. The Department also notes that the definition of “personal health data” includes an illustrative list of the types of data that the term includes, including the use or purchase of prescribed medications. Although this list is not exhaustive, it demonstrates the kinds of personal health information that the Department intends the definition to cover.

One commenter contended that the HIPAA de-identification standards are out of date, and do not protect individuals in today's data-rich and computational-rich environment. The commenter commended the NPRM for addressing the ever-increasing ability to re-identify supposedly de-identified data, requested that traditional de-identified HIPAA data be subject to the final rule, and further proposed that de-identified personal health data such as medical records, pharmacy records, and reproductive health records or purchases be covered by the final rule. The Department agrees with this recommendation.

One commenter agreed with the need to regulate personal health data and suggested that the Department discuss the regulations with electronic medical record organizations and hospital associations. The Department, both on its own and with other agencies, discussed the NPRM with 44 medical organizations, associations, and other stakeholders that will be impacted by the regulations, comprised of healthcare trade associations, biotechnology

⁸⁹ See, e.g., 89 FR 86161.

organizations, research laboratories, and universities.

12. Section 202.206—Bulk U.S. Sensitive Personal Data

The prohibitions and restrictions apply to “bulk U.S. sensitive personal data,” which the proposed rule described as a collection or set of sensitive personal data relating to U.S. persons, in any format, regardless of whether the data is anonymized, pseudonymized, de-identified, or encrypted.

Three commenters mistakenly noted that the definition of “bulk U.S. sensitive personal data” did not include a definition for “sensitive personal data” or “sensitivity” and could, as a result, be interpreted too broadly to cover all data, not just sensitive data. As shown in the ANPRM and NPRM, the proposed rule already incorporated a separate definition of the term “sensitive personal data” in § 202.249, which is limited to the six categories of bulk U.S. sensitive personal data. Furthermore, the definition of “bulk,” as provided in § 202.205, incorporates this definition of “sensitive personal data.” Therefore, the term “bulk U.S. sensitive personal data” is appropriately scoped. However, another commenter recommended that the Department amend the definition of “bulk U.S. sensitive personal data,” which says, “a collection or set of bulk data,” to align with the characterization of the term in the part IV.A.13 of the NPRM, which says “a collection or set of sensitive personal data.” The Department agrees and has updated the definition of “bulk U.S. sensitive personal data” accordingly to ensure consistency, which should help further clarify the scope of bulk U.S. sensitive personal data. The Department has amended the definition of “bulk U.S. sensitive personal data” to read as follows: “The term *bulk U.S. sensitive personal data* means a collection or set of sensitive personal data relating to U.S. persons, in any format, regardless of whether the data is anonymized, pseudonymized, de-identified, or encrypted, where such data meets or exceeds the applicable threshold set forth in § 202.205.”

One commenter asked for clarification on whether precise geolocation data and personal health data include de-identified data. The Department encourages this commenter to review § 202.206. Three commenters suggested that the Department include definitions for the terms “anonymized,” “pseudonymized,” and/or “de-identified.” One such commenter recommended, in the context of the exemptions listed in §§ 202.510 and

202.511, that the Department adopt a definition of “de-identified” that is consistent with the privacy protection standards required by the U.S. Food and Drug Administration (“FDA”) as part of post-marketing adverse event reporting; namely, that the data be coded and not include individual names or addresses. The Department declines to adopt this suggestion. Such techniques evolve over time, and the final rule is intended to capture these developments and remain technology neutral. As one of the above commenters admitted, these are terms that are not universally understood to mean the same things. More broadly, these terms in the definition are meant to capture any claimed method for or attempt at anonymizing, pseudonymizing, or de-identifying sensitive personal data. As explained below in this part of the preamble, by including any attempt at anonymizing, pseudonymizing, or de-identifying sensitive personal data within the scope of “sensitive personal data” but then authorizing restricted transactions that comply with the methods of anonymization, pseudonymization, and de-identification laid out in CISA’s security requirements to the extent such methods are sufficient to fully and effectively prevent access to covered data that is linked or identifiable (or unencrypted or decryptable), the rule promotes effective methods while prohibiting ineffective methods. No change to this rule thus appears necessary.

Several commenters suggested that the Department modify the definition of “bulk U.S. sensitive personal data” to exclude data that is anonymized, pseudonymized, or de-identified “in compliance with internationally recognized industry standards.” These commenters suggested that such an approach would be appropriate where the link between the identifying dataset and the individual has been removed, where the data has been de-identified pursuant to HIPAA “expert determination” de-identification methods, or where the data has been “reasonably deidentified where a data controller has taken a clearly defined risk-based approach.” Many of these commenters argued that it is difficult to tie anonymous or de-identified personal information to an individual or an individual’s device and that such information is therefore not sensitive personal data. One commenter noted that effective de-identification, consistent with clear standards, has proven protective of individual privacy interests and is critical for research that leads to medical advancements. Another

commenter argued that the Department’s cited studies did not offer definitive evidence that re-identification of truly anonymized data is a real risk, but the commenter provided no evidence to contradict the cited studies or to support their conclusion. Another commenter said that control measures for anonymized, pseudonymized, and de-identified data should be different than control measures for unprocessed original data. Finally, one commenter noted that the Department should instead direct DHS to identify standards for de-identifying and anonymizing data that meet certain requirements.

Other commenters suggested that the definitions of government-related data also exclude data that is subject to robust encryption measures, including, but not limited to, data protected via post-quantum cryptography algorithms approved by the National Institute of Standards and Technology (“NIST”) to withstand quantum computer attacks. A few commenters opposed the inclusion of encrypted data based on the proposed CISA security requirements relating to data minimization and data masking strategies for restricted transactions. One commenter noted that the inclusion of encrypted data does not represent a carefully calibrated action and would curtail the usefulness of privacy-enhancing technologies (even though some of these were explicitly included in the proposed CISA security requirements). This same commenter stated, without providing any support, that quantum-computing capabilities that could be used to decipher encrypted data are too far from being operational to decrypt bulk data. Another commenter noted that adopting an exemption for these algorithms would incentivize better encryption and promote post-quantum cryptography adoption.

The Department declines to alter the approach in the NPRM. These comments inaccurately suggest that this rule would treat anonymized, pseudonymized, de-identified, and encrypted data the same as unprocessed data. The rule does not prohibit all covered data transactions with countries of concern or covered persons whenever the sensitive personal data is anonymized, pseudonymized, de-identified, or encrypted. Instead, the rule includes such data within the scope of sensitive personal data and then authorizes the three categories of restricted transactions as long as they meet CISA’s security requirements, which include data-level requirements that allow transactions to proceed with sufficiently effective techniques to accomplish data minimization and

masking, encryption, and/or privacy-enhancing technologies, and otherwise comply with the rule's other applicable requirements. For example, depending on the other circumstances of the restricted transaction, including the findings of the relevant internal risk assessment conducted in accordance with CISA's security requirements, the use of NIST-approved post-quantum cryptography algorithms would appear to satisfy the data-level requirement of applying comprehensive encryption techniques during transit and storage, as described in the CISA security requirements.

The rule's effect is therefore to strike a balance by allowing employment, vendor, and investment agreements with countries of concern or covered persons that use the robust anonymization, encryption, and/or other data-level requirements specified by CISA's security requirements along with organizational and system-level requirements, which are derived from the existing and commonly used security standards for securing data. At the same time, the rule does not allow transactions if they involve access by a covered person or country of concern to unprocessed sensitive personal data or insufficient anonymization, encryption, or other data-level requirements that do not meet CISA's security requirements.

This approach allows for restricted transactions to move forward, while setting a floor for the security applied to the underlying government-related data and bulk U.S. sensitive personal data in these transactions. As CISA explains, the final security requirements permit organizations to conduct restricted transactions by applying a sufficient combination of data-level techniques (such as pseudonymization, de-identification, aggregation, and/or encryption, as outlined in the security requirements) that either allow access to an appropriately mitigated version of the data or directly deny countries of concern and covered persons access to the data itself, in conjunction with implementing the organizational and system level requirements.

This approach is consistent with the NPRM's explanation that access to weakly anonymized, pseudonymized, encrypted, or de-identified data presents similar national security risks as access to the unprocessed or identifiable sensitive personal data. As the NPRM explained, countries of concern are attempting to access and exploit anonymized, pseudonymized, de-identified, and encrypted data (including to identify individuals). The NPRM also explained at length, using representative studies and open-source

examples, how not all forms of anonymization, pseudonymization, de-identification, and encryption provide sufficient protection from re-identification. These comments do not address the NPRM's explanation, do not provide any contrary evidence, and merely state a desired conclusion. The NPRM's approach allows the Department to strike an appropriate balance between ensuring that restricted transactions can continue given their greater economic value and ensuring that there are robust safeguards in place to protect this data.

As a result, the rule's approach, coupled with CISA's security requirements, is designed to encourage the adoption of sufficiently effective methods of encryption, aggregation, and/or other privacy-preserving technologies. One of the data-level requirements available in the security requirements is to encrypt the data "during transit and storage" using comprehensive encryption, with secure management of the cryptographic key. As the security requirements explain, United States Government-approved encryption algorithms, ciphers, and protocols—including any United States Government-approved standards for quantum-resistant public-key cryptographic algorithms—are considered comprehensive encryption.

While post-quantum cryptography could be part of a sufficient combination of data-level requirements under the security requirements to allow a restricted transaction to go forward (so long as such encryption qualifies as comprehensive encryption), the Department declines to entirely exempt restricted transactions that implement a particular level of encryption. As the NPRM explained, the use of a strong cryptographic method is one tool to mitigate the risk of access to data. But as the security requirements make clear, encryption by itself is not a panacea. Encryption is not sufficient on its own to adequately mitigate the risk of access by a country of concern or covered person. Instead, even robust encryption must be accompanied by other measures to be effective in mitigating the risk of access. For example, comprehensive encryption must be accompanied by secure cryptographic key management (such as ensuring that the key is not co-located with the data and that covered persons and countries of concern do not have access to the key). Similarly, encryption must be implemented with the organizational- and system-level requirements to ensure that encryption is implemented effectively, for example, by treating the systems responsible for the storage of and access to encryption

keys as being subject to organizational- and system-level controls that mitigate the risk that a covered person is able to access the keys to decrypt the data. And the use of even post-quantum cryptography does not eliminate the need to perform due diligence, audit compliance with the security requirements, and keep records. As a result, the Department declines to exempt restricted transactions merely because they use industry-standard encryption.

Finally, the rule offers a host of exemptions related to health research, including exemptions for federally funded research, certain clinical trials, and sharing of this data pursuant to international agreements such as certain pandemic surveillance agreements. The rule also authorizes the Department to issue general and specific licenses as necessary and appropriate.

13. Section 202.205—Bulk

The NPRM proposed applying the proposed rule's prohibitions and restrictions to bulk amounts of U.S. sensitive personal data (in addition to the separate category of government-related data). The proposed rule defined "bulk" as any amount of such data that meets or exceeds thresholds during a given 12-month period, whether through one covered data transaction or multiple covered data transactions involving the same U.S. person and the same foreign person or covered person.

The Department proposed volume-based thresholds for each category of sensitive personal data and for combined datasets. See § 202.205. The bulk thresholds are based on a risk-based assessment that accounts for the characteristics of datasets that affect the data's vulnerability to exploitation by countries of concern and that affect the consequences of exploitation.

In the ANPRM, the Department previewed ranges within which each of the bulk thresholds would be selected, relying on orders-of-magnitude differences to develop preliminary judgments.⁹⁰ The Department sought input on the thresholds from the public in response to the ANPRM. While commenters expressed varying views (including that the potential thresholds were too high or too low, should be zero, or should be eliminated entirely), these comments merely stated their preferred numbers.⁹¹ None of the comments provided actionable data points, use cases, or evidence that would support an alternative analytical framework or support adopting one

⁹⁰ 89 FR 15786.

⁹¹ 89 FR 86164.

particular threshold over another. Given this lack of specificity, the Department (along with the Department of Commerce) followed up individually with each commenter on this topic to seek any additional information available, but those engagements did not yield any materially new qualitative or quantitative information to reliably inform the selection of the bulk thresholds.⁹²

In the NPRM, the Department proposed thresholds within the ranges previewed in the ANPRM and set forth the relevant analysis, including the methodology and risk-based assessment for each category of sensitive personal data.⁹³ As part of that analysis, the NPRM examined whether potential unintended economic impacts from the choice of specific thresholds should justify deviating from the risk-based analysis and determined that it should not be based on available information. As the NPRM explained, neither the Department nor commenters identified actionable data or analysis suggesting that the specific choice of thresholds above zero is reasonably likely to result in unintended and unanticipated downstream impacts, and thus it did not appear to make a difference whether a threshold is, for example, 100 versus 1,000. The NPRM also explained that it seems unlikely that any such data or analysis exists that would be detailed and representative enough to reasonably affect the choice of any specific thresholds above zero, and there is no known, reliable, sufficiently representative qualitative or quantitative data sufficient to conclude that a choice between potential thresholds would meaningfully affect the number of transactions subject to the regulations or the cost of compliance. As at the ANPRM stage, while commenters once again expressed varying views and stated their preferred thresholds in response to the NPRM, none of the comments provided actionable data points, use cases, or evidence that would support an alternative analytical framework or support adopting one particular threshold over another. The Department of Justice (along with the Department of Commerce) once again followed up individually with commenters on this topic to seek any additional information, but those engagements did not yield any materially new qualitative or quantitative information to reliably inform the selection of the bulk thresholds.

No commenter opposed the risk-based framework and analysis that the NPRM laid out to determine the bulk thresholds, such as by suggesting an alternative methodology. Other than bare assertions of policy preferences about the thresholds, the comments addressed only discrete issues with respect to the thresholds.

The rule therefore adopts the bulk thresholds as proposed in the NPRM. The bulk thresholds analysis in the NPRM necessarily focused on orders of magnitude and set ratios based on the relative sensitivity of the six types of sensitive personal data. On the risk side, order of magnitude is the most granular level of reliable analysis given current experience and available information. Research makes clear, for example, that a relatively small amount of sensitive personal data can be used to extrapolate insights about a population that is orders of magnitude larger. By using basic statistical inference techniques, a sample size need not exceed 10 percent in order to draw conclusions about an entire population. As discussed above in this part of the preamble, fairly small sample sizes of Americans may allow for inferences on much larger segments of the U.S. population.⁹⁴ And although the Department considered whether this risk-based setting of ratios should be altered to account for potential unintended economic impacts, there is no sufficiently granular information or analysis about the types and volumes of data involved in the categories of regulated transactions to reliably inform a choice between any particular thresholds even at the level of generality of orders of magnitude. Based on the limits of currently available information, analyzing and setting the bulk thresholds at a level more granular than orders of magnitude is too speculative to form the basis for a policy decision.

Some commenters asserted that the thresholds for human genomic data are too low and will hinder normal academic, scientific, and technological exchanges. The Department declines to change these thresholds. As articulated in the NPRM, the thresholds for human genomic data are correlated to the sensitivity of that data and the national security risk when such data is exploited by a country of concern, such as the commenter. The 2024 National Counterintelligence Strategy explains that, “as part of a broader focus on data as a strategic resource, our adversaries

are interested in personally identifiable information (PII) about U.S. citizens and others, such as biometric and genomic data” and “health care data.”⁹⁵ ODNI has explained, for example, that China has gone to great lengths to obtain Americans’ human genomic data, such as trying “to leverage access through its relationships with Chinese companies, strategic investments in foreign companies, and by purchasing large data sets.”⁹⁶ China and Chinese companies “have sought to acquire sensitive health and genomic data on U.S. persons through, for example, investment in U.S. firms that handle such data or by partnering with healthcare or research organizations in the United States to provide genomic sequencing services.”⁹⁷

Additionally, no evidence has been provided that the rule would hinder beneficial academic, scientific, and technological research in light of the examples and exemptions in the rule. As explained in parts IV.B.2 and IV.D.9 of this preamble, the rule does not prohibit or restrict U.S. research in countries of concern, or research partnerships or collaborations with countries of concern or covered persons, that do not involve a prohibited or restricted commercial transaction. The rule contains exemptions meant to preserve critical health research, including the exemptions for federally funded research, for sharing data pursuant to international agreements (including certain pandemic-related and global-health-surveillance agreements), for submissions of regulatory approval data for medical drugs, devices, and biological products, and for certain clinical-investigation data and post-marketing surveillance data. Finally, as articulated in the NPRM, the rule contemplates a process through which the Department can issue general or specific licenses as necessary and appropriate to authorize regulated activities in certain circumstances.

One commenter requested that the Department delete § 202.205(c), which sets the bulk threshold for precise geolocation data at more than 1,000 U.S. devices. As justification, the commenter argued that § 202.222’s Government-Related Location Data List identifies precise geographic areas, but that § 202.205(c)’s bulk threshold on precise

⁹⁵ Nat’l Counterintel. & Sec. Ctr., *supra* note 6, at 13.

⁹⁶ *In Camera, Ex Parte* Classified Decl. of Casey Blackburn, Assistant Dir. of Nat’l Intel., Doc. No. 2066897 at Gov’t App. 11 ¶ 31, *TikTok Inc. v. Garland*, Case Nos. 24–1113, 24–1130, 24–1183 (D.C. Cir. July 26, 2024) (publicly filed redacted version) (hereinafter “Blackburn Decl.”).

⁹⁷ *Id.* at Gov’t App. 11 ¶ 33(a).

⁹² *Id.*

⁹³ 89 FR 86164–65.

⁹⁴ Sandip Sinharay, *An Overview of Statistics in Education*, in *International Encyclopedia of Education* (Penelope Peterson et al. eds., 3d ed. 2010).

geolocation data is somehow a double limit. This comment, which is unclear, seems to confuse several different elements of the rule: the Government-Related Location Data List in § 202.1401, the 1,000-meter precision required in the definition of “precise geolocation data” in § 202.242, and the bulk threshold of 1,000 U.S. devices in § 202.205(c). Geographic or location data must first be precise enough (within 1,000 meters) to meet the definition of “precise geolocation data” in § 202.242. If it is, then the question is whether that precise geolocation data provides a location within one of the areas on the Government-Related Location Data List in § 202.1401. If so, then the data is government-related data, and the bulk threshold of 1,000 U.S. devices in § 202.205(c) does not apply. If not, then the data qualifies as bulk U.S. sensitive personal data only if it exceeds the bulk threshold of 1,000 U.S. devices in § 202.205(c). As such, the Department declines to make any change in response to this comment.

Several commenters encouraged the Department to review and adjust the bulk thresholds over time to reflect changes to technology and asked how the Department might change the thresholds in the future. One commenter sought clarification regarding the benefits of setting static thresholds for technological uses that may vary widely and change rapidly. The commenter was concerned that new discoveries, particularly from AI models, could change the United States Government’s risk tolerance and justify changing the thresholds. The Department intends to monitor evolving technological developments and national security threats to ensure that the thresholds remain responsive to the risks. Changes to the bulk thresholds could be accomplished through additional rulemakings.

One commenter asserted that the proposed rule did not detail how it arrived at the different bulk thresholds, aside from assessing human and machine-centric characteristics, and that an assessment should consider the effectiveness of the thresholds. The commenter did not specify what “effectiveness” would mean in this context. The same commenter noted that sophisticated actors would likely find ways to circumvent any thresholds, while at the same time asserting that higher thresholds for each category would help focus regulators, reduce the impact on trade and innovation, and make the program more manageable for the Department to enforce. The commenter did not provide evidence or analysis justifying these assertions.

One commenter criticized the bulk thresholds as copying the PRC Government’s approach to data restrictions and suggested eliminating them. There is no basis to analogize this rule to the PRC Government’s regime. Consistent with the longstanding commitment of the United States to the trusted flow of data across borders, this rule’s default is to allow data transactions except for targeted prohibitions and restrictions on engaging in certain types of commercial transactions involving sensitive personal data above the bulk thresholds where that trust is lacking. The bulk thresholds thus have the effect of exempting transactions with less data. By contrast, PRC law’s default is to restrict data exports and require PRC Government review unless they fall below certain thresholds or meet certain exemptions. The superficial fact that both use a numerical threshold for entirely different purposes does not make one like the other.

One commenter sought clarification on whether the bulk thresholds apply to individual legal entities or apply in total to data accumulated across subsidiaries or affiliated companies. They further sought guidance on the timeframe for calculating and implementing the bulk thresholds. The bulk thresholds apply to each entity that engages in a covered data transaction, regardless of whether the entity has a relationship to another entity, such as a parent and one of its subsidiaries. As stated in the definition, the bulk thresholds apply to any amount of sensitive personal data that meets the thresholds and that involves the same U.S. person and same foreign person or covered person. The rule defines the term “U.S. person” to include certain entities and, in turn, defines the term “entity” as “a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.” See §§ 202.256 and 202.218.

One commenter requested, without support or analysis, that the rule set the bulk threshold for personal financial data and covered personal identifiers at 1 million, and another requested that the Department set the threshold for personal financial data at 500,000. Both commenters requested that the Department remove the 12-month “look-back” period because, as one commenter explained, the proposed bulk threshold of 10,000 is too low and the 12-month “look-back” period is too long. The commenter contended that many large financial institutions that conduct transactions with personal financial data will easily exceed the proposed threshold of 10,000, and thus will incur heavy compliance burdens to

review every transaction to determine whether they are restricted. Combined with the 12-month “look back” requirement, this commenter noted that if an entity conducts just two transactions per month related to 450 U.S.-persons’ financial data over a 12-month period, it would be engaging in a restricted transaction. The Department declines to revise the bulk thresholds for covered personal identifiers and personal financial data in response to these comments. As discussed in part IV.B of this preamble, the bulk thresholds are set based on a risk-based assessment that accounts for the characteristics of the different categories of sensitive personal data that affect the data’s vulnerability to exploitation by countries of concern, as well as the consequences of that exploitation. These commenters did not offer any analysis or evidence about the compliance burdens on financial institutions, nor did they explain the kinds and volume of non-exempt covered data transactions that these institutions would be engaged in (especially in light of the financial services exemption that likely covers most of those institutions’ global data activities).

In addition, while these two commenters considered the impact of the thresholds only in terms of compliance burdens for a single financial institution, the Department must also consider the impact of the thresholds collectively. The Department believes that, with respect to addressing the national security risk, the thresholds should be primarily examined from the perspective of the access provided to countries of concern and covered persons across all covered data transactions, rather than from the perspective of a single U.S. person’s transactions with a single foreign person. If the thresholds are higher, countries of concern will be able to obtain unrestricted access to significantly larger amounts of bulk U.S. sensitive data across thousands, and potentially tens of thousands, of transactions. For example, if 50 U.S. persons each give the same covered person access to genomic data on 99 U.S. persons—a seemingly small number—then a country of concern would be able to potentially obtain unrestricted access to genomic data on nearly 5,000 U.S. persons. And as explained above in this part, the data on those 5,000 U.S. persons could be reasonably used to identify individuals or extrapolate insights about a population that are orders of magnitude

larger by using basic statistical inference techniques.⁹⁸

To put this into perspective, raising the bulk threshold for covered personal identifiers by one order of magnitude to 1 million U.S. persons would allow a country of concern government to buy the passport numbers and Social Security numbers of every U.S. person who lives in the city of San Francisco from a U.S. company—and buy from other U.S. companies the same data for every U.S. person in Detroit, Washington, DC, Las Vegas, Jacksonville, and so on. Similarly, raising the bulk threshold for personal health data and personal financial data by one order of magnitude to 100,000 U.S. persons would allow U.S. companies to store the treatments and test results, financial transactions, and debts and assets of every U.S. person who works for T-Mobile, Ford, Citigroup, McDonald's, and General Motors in a data center operated by a country of concern state-owned enterprise with zero security precautions to mitigate the risk of access to that data. Those examples illustrate the unacceptable national security risks that would result from significantly raising the thresholds and allowing a country of concern to readily assemble and exploit a structured set of pattern-of-life data that is representative of the American population.

For these reasons, the Department must prioritize the cumulative national security impacts of transactions across the various data categories over the compliance burdens of individual entities, especially when no meaningful evidence or analysis has been presented on the latter topic. The Department therefore adopts the proposed bulk thresholds without change.

14. Section 202.222—Government-Related Data

The proposed rule defined subcategories of government-related data for locations and personnel, and it did not propose imposing any bulk threshold requirements on transactions involving government-related data.

For the location subcategory, the NPRM proposed defining “government-related data” as any precise geolocation data, regardless of volume, for any location within any area enumerated on the Government-Related Location Data List in § 202.1401 which the Attorney General has determined poses a heightened risk of being exploited by a country of concern to reveal insights to the detriment of national security about locations controlled by the Federal

Government, including insights about facilities, activities, or populations in those locations, because of the nature of those locations or the personnel who work there. The proposed rule listed specific locations on the Government-Related Location Data List, and anticipated including additional locations in the final rule. The final rule includes an expanded list of locations that meet the criteria in § 202.222(a)(1). See § 202.1401. These additional locations consist of commonly known Department of Defense sites, installations, such as bases, camps, posts, stations, yards, centers, or homeport facilities for any ship, ranges, and training areas in the United States and its territories. These locations are controlled by the Federal Government, as they encompass land which is federally owned or otherwise federally managed. This initial list does not necessarily represent a comprehensive collection of all locations that meet the criteria for inclusion on the Government-Related Location Data List. The Department, in consultation with other agencies, will continue to consider adding additional locations to the list, which may include, for example, U.S. embassies and consulates, certain Federal department and agency headquarters locations, and other facilities or locations that otherwise support the Federal Government's national security, defense, intelligence, law enforcement, or foreign policy missions.

For the personnel subcategory, the NPRM proposed defining “government-related data” as any sensitive personal data, regardless of volume, that a transacting party markets as linked or linkable to current or recent former employees or contractors, or former senior officials, of the United States Government, including the military and intelligence community.⁹⁹ The Department also sought public input on a suggestion raised by a commenter that the proposed definition remove the qualifier that data had to be “marketed” as data about members of the military or intelligence community because certain data can still be “linked or linkable” to members of the military through geolocation without being explicitly marketed as such. The Department did not receive any public input on this question.

One commenter sought to ensure that, similar to sensitive personal data, the definition of “government-related data” excludes publicly available data. The Department appreciates the need to ensure that the definitions of sensitive

personal data and government-related data both exclude publicly available data, and it has revised the definition of “sensitive personal data” in § 202.249 to clarify that each category of sensitive personal data—including precise geolocation data, which is a key part of the government-related data definition—excludes publicly available data.

One commenter stated that the defined term “precise geolocation data” is unclear but did not say why. Another commenter, who was supportive of the inclusion of a publicly available list of government-related locations, recommended that the list be made available in formats that allow companies to automate and streamline compliance. Although no change is needed to the rule, the Department supports automating and streamlining compliance and intends to pursue this suggestion as part of publicly maintaining this list of latitude and longitude coordinates of the geofenced areas.

One commenter asserted that the personnel category is extremely broad, open-ended, and could apply to large sections of the U.S. population. The commenter requested that the Department set a clear and high threshold for seniority in order to only capture the most important government officials, noting that a key issue for many organizations is that they have mixed data sets containing sensitive data on government officials along with data on civilians.

The Department declines to set thresholds or revise the seniority levels for government-related data. To start, as the Department explained in the NPRM, the Department has defined the personnel subcategory based on how the U.S. person markets the data, not based on whether a particular dataset contains data on former government employees or contractors. In other words, the personnel subcategory applies only to transactions in which the U.S. person has already identified and described sensitive personal data as being about certain government personnel. This subcategory does not apply based merely on the presence or absence of data linked to certain government personnel in the underlying sensitive personal data. The comment therefore appears premised on a mistaken assertion about how the personnel subcategory is defined. Furthermore, because the Order sets forth the personnel categories as “current or recent former employees or contractors, or former senior officials, of the Federal

⁹⁸ Sinharay, *supra* note 94.

⁹⁹ 89 FR 86129.

Government,”¹⁰⁰ the Department does not have discretion to change them. Even if it did, the risks associated with countries of concern or covered persons obtaining government-related data are not confined to the most senior government personnel, as the NPRM discussed.¹⁰¹ The risk of countries of concern and covered persons identifying and recruiting United States Government personnel, for example, are not limited to the most senior government personnel,¹⁰² and access to sensitive personal data can facilitate the identification of individuals for this type of recruitment.

One commenter suggested several changes to the definition of “government-related data” in § 202.222. First, the commenter argued that the language of § 202.222(a)(1)(iii) (“Facilities or locations that otherwise support the Federal Government’s national security, defense, intelligence, law enforcement, or foreign policy missions”) was too vague and impractical. Second, the commenter recommended removing “recent former employees or contractors” from the definition in § 202.222(a)(2), arguing that former employees and suppliers are not confidential and that the prohibition would affect the normal production and “personal life” of the relevant organizations. Third, the commenter suggested deleting “military personnel who like to read” from Example 1, as written in § 202.222(b), arguing that this description is a subjective judgment.

The Department declines to adopt these recommendations. Federal agencies have identified within the list at the end of the rule the locations that these agencies want subject to the prohibition on sale of precise geolocation data. The Government-Related Location Data List is thus designed to preserve the confidentiality of the activities, personnel, and facilities in those locations, which geolocation data in those locations could be used to reveal. “Facilities or locations that otherwise support the Federal Government’s national security, defense, intelligence, law enforcement,

or foreign policy missions” is meant to demonstrate the types of facilities included on the precise geolocation list. Regarding the inclusion of former employees and contractors, Section 7(m)(i) of the Order defines the personnel subcategory of government-related data marketed as linked or linkable “to categories of current or recent former employees or contractors, or former senior officials, of the Federal Government.” As such, the Department has no discretion to remove this subcategory from the scope of the rule. Further, the rule is intended to protect both current and recent former employees and contractors because former United States Government employees are still a desirable target for coercion and blackmail, based on their potential insider knowledge of United States Government facilities, operations, and other details, as well as on their potential to pick up new contract work to gain access to new data in which a foreign adversary may have interest. Finally, the language from the example is meant to demonstrate how the rule works in reality. Focusing on whether the transacting party’s characterization of a dataset is subjective is irrelevant to whether the transacting party has marketed the data as linked or linkable to current or recent former employees or contractors, or former senior officials, of the United States Government, including the military and Intelligence Community.

15. Section 202.302—Other Prohibited Data-Brokerage Transactions Involving Potential Onward Transfer to Countries of Concern or Covered Persons

The proposed rule included a prohibition specific to data brokerage to address transactions involving the onward transfer or resale of government-related data or bulk U.S. sensitive personal data to countries of concern and covered persons.¹⁰³ The NPRM proposed prohibiting any U.S. person from knowingly engaging in a covered data transaction involving data brokerage with any foreign person that is not a covered person unless the U.S. person contractually requires that the foreign person refrain from engaging in a subsequent covered data transaction involving that data with a country of concern or covered person. The proposed rule also included a requirement for U.S. persons engaging in such transactions to report any known or suspected violations of the required contractual provision. This requirement would create a mechanism to provide the necessary information for

the Department to investigate and take appropriate action to address any violations of the proposed rule.

A few commenters asserted that this provision imposes ambiguous requirements on U.S. persons engaging in covered data transactions. They stated that it is unclear how entities should evaluate whether foreign persons are complying with the contracts, and asked that the Department explicitly describe the due diligence requirements for U.S. entities to comply with § 202.302. Regarding the reporting requirement, one commenter asked that the Department exclude inadvertent, good faith, or de minimis violations of the contracts. Another commenter argued that the use of contractual language to prevent the onward transfer of data to countries of concern or covered persons was a significant step, but emphasized that some countries or entities might find alternative means to transfer data and recommended that the Department extensively track and monitor compliance. Another commenter asked that the Department provide standard contractual clauses that meet the Department’s expectations about contractual requirements.

The Department declines to prescribe specific due diligence requirements for compliance with § 202.302, because overly prescriptive requirements will not fit the risk profile or operations of all U.S. persons. As the Department discussed in detail in the NPRM, the Department expects that U.S. persons will develop compliance programs that fit their own individualized risk profiles depending on a variety of factors. At a minimum, however, U.S. persons must conduct sufficient due diligence to be able to comply with the reporting requirements, which could include periodic reviews with foreign counterparties to ensure that they have complied with the contract. The Department anticipates issuing general compliance guidance, which may include sample contractual clauses and suggest potential ways to track and monitor compliance.

Regarding excepting de minimis, good faith, or inadvertent contract violations, without a specific example, the Department cannot envision what such violations of the requirement would be. Specifically, § 202.302 requires that a U.S. person report when a foreign person has engaged in a covered data transaction—that is, a transaction that involves access by a country of concern or covered person to any government-related data or bulk U.S. sensitive personal data. Any violation of this contractual term gives a country of concern or covered person access to

¹⁰⁰ 89 FR 15429.

¹⁰¹ See, e.g., 89 FR 86118.

¹⁰² Press Release, U.S. Dep’t of Just., *Former CIA Officer Sentenced to 10 Years in Prison for Conspiracy to Commit Espionage* (Sept. 11, 2024), <https://www.justice.gov/opa/pr/former-cia-officer-sentenced-10-years-prison-conspiracy-commit-espionage> [<https://perma.cc/F9UG-AANZ>]; Press Release, U.S. Dep’t of Just., *U.S. Army Intel. Analyst Pleads Guilty to Charges of Conspiracy to Obtain and Disclose National Defense Information, Export Control Violations and Bribery* (Aug. 13, 2024), <https://www.justice.gov/opa/pr/us-army-intelligence-analyst-pleads-guilty-charges-conspiracy-obtain-and-disclose-national> [<https://perma.cc/8MGA-7FWS>].

¹⁰³ 89 FR 86130.

sensitive personal data and is inherently not de minimis. Moreover, the reporting requirement does not require that U.S. persons report contractual violations unrelated to this provision, such as a foreign person missing a reporting requirement by a few days or other minor contractual provisions. Because of the nature of national security risks, even good-faith or inadvertent violations of the contractual provision may still result in harm to U.S. national security by enabling access by a country of concern or covered person to government-related data or bulk U.S. sensitive personal data through data brokerage. For those reasons, the Department declines to modify the reporting requirement to account for de minimis, good faith, or inadvertent contract violations.

One commenter suggested that the provision apply only when a U.S. person has actual knowledge that a foreign counterparty is repeatedly violating contractual provisions. Another commenter asked that the Department include the word “knowingly” before the term “engaging” (although the term already exists there), and another asked that the Department define the terms “known or suspected [violations]” and clarify the extent to which a U.S. person must know about a violation for the reporting requirement to be triggered.

The rule’s knowledge standard is addressed in detail in part IV.B.19 of this preamble. Section 202.230 defines “knowingly” to mean, with respect to conduct, circumstances, or a result, that the U.S. person had actual knowledge of, or reasonably should have known about, the conduct, circumstances, or result. To determine what an individual or entity reasonably should have known in the context of prohibited transactions, the Department will consider relevant facts and circumstances, including the sophistication of the individual or entity, the scale and sensitivity of the data involved, and the extent to which the parties to the transaction appeared to be aware. The Department declines to adopt an actual knowledge standard because the knowingly standard acknowledges the doctrine of willful blindness, a legal concept where a person intentionally avoids knowing about something illegal or wrong, even though they suspect it might be happening. For example, imagine that a U.S. entity is engaging in a covered data transaction involving data brokerage with a foreign person that is not a covered person and has contractually required that the foreign person refrain from engaging in a subsequent covered

data transaction involving data brokerage of the same data with a country of concern or covered person. The U.S. entity suspects that the foreign person may not be complying with its contractual obligations, but instead of investigating, the U.S. entity deliberately ignores signs or evidence to maintain plausible deniability. Under the rule’s “knowingly” standard, this U.S. entity can, and should, still be responsible because it purposefully avoided the truth. In other words, the U.S. entity should have known about the violation of the contractual requirements, and taken steps to report it.

Several commenters asked whether § 202.302 would apply to contractual agreements signed before the rule’s effective date. If so, they asked for sufficient time for companies to amend those agreements. As discussed in detail in part IV.A.1 of this preamble, the rule will apply to covered data transactions covered by the rule’s prohibitions and restrictions that occur after the effective date of the rule, regardless of when U.S. persons signed those agreements. The Department is considering whether to issue a wind-down license that would allow the amendment of any existing agreements that were signed before the rule’s effective date but that still allow for a country of concern or covered person to access bulk U.S. sensitive personal data or government related data after the rule becomes effective.

In the final rule, the Department changed the text of this provision to account for the change to the definition of “covered data transaction” as described in part IV.B.1 of this preamble. That change limits the term “covered data transaction” to transactions involving access by a country of concern or covered person. Because transactions restricted by this section are definitionally not with a covered person, the Department made conforming edits to this provision as well. As with the edits to § 202.301, the revision to § 202.302 clarifies that the provision applies only when the access is by a foreign person, and not in cases where a U.S. person is accessing data from a foreign person. Other than that clarification, these conforming edits do not change the scope of this provision from the proposed rule.

16. Section 202.303—Prohibited Human ‘Omic Data and Human Biospecimen Transactions

The NPRM proposed prohibiting any U.S. person from knowingly engaging in any covered data transaction involving human genomic data that provides a country of concern or covered person

with access to bulk U.S. sensitive personal data that consists of human genomic data or to human biospecimens from which such human genomic data could be derived, where the number of U.S. persons in the dataset is greater than the applicable bulk threshold at any point in the preceding 12 months, whether in a single covered data transaction or aggregated across covered data transactions. This prohibition applied to any of the categories of covered data transactions that involve access to bulk human genomic data or to human biospecimens from which bulk human genomic data can be derived, even when the transactions involve an employment, investment, or vendor agreement. In other words, transactions falling within the scope of § 202.303 are never treated as restricted transactions under the rule. As explained in part IV.B.9 of this preamble, the Department has determined to treat transactions involving three additional categories of human ‘omic data similarly to human genomic data and has made conforming edits to this section—specifically, changing the reference to “human genomic data” to “human ‘omic data.”

The proposed rule solicited comment on whether the Department should exclude transactions involving human biospecimens intended for direct medical use from the rule’s prohibition on covered data transactions involving human genomic data and human biospecimens from which such human genomic data could be derived.¹⁰⁴ Multiple commenters expressed their view that the rule should exclude from its definition of “human biospecimens” certain human biospecimens intended for direct medical use. Commenters explained that blood-, cell-, and plasma-derived therapeutic products; human organs for transplant; and blood and plasma for transfusions, in particular, provided lifesaving interventions for patients globally, and they highlighted the humanitarian interest of the United States in enabling the transfer of such products to care for patients in countries of concern. Commenters also explained the difficulty of deriving individual human genomic data from human biospecimens used in or processed by finished medical products. The Department agrees with the commenters. As such, the Department revised the definition of “human biospecimens” in § 202.223 to clarify that the term does not include human biospecimens intended by the recipient of the human biospecimens solely for use in diagnosing, treating, or

¹⁰⁴ 89 FR 86140.

preventing any disease or medical condition. The prohibition in § 202.303 on covered data transactions with countries of concern or covered persons involving access to bulk human genomic data or human biospecimens from which bulk human genomic data could be derived thus does not prohibit covered data transactions with countries of concern or covered persons involving human biospecimens intended for use by the recipient to diagnose, treat, or prevent any disease or medical condition. In light of this change, a separate exemption for direct medical use is not necessary.

One commenter suggested that the rule permit sharing bulk amounts of human genomic data or human biospecimens from which such data could be derived with countries of concern or covered persons for genetic research where an individual's health or well-being is not at risk—*i.e.*, beyond the diagnosis, treatment, or prevention of a disease or medical condition. The Department declines to adopt an express exemption for data transactions involving human genomic data or human biospecimens from which such data could be derived for general research purposes. Significantly, the rule does not generally prohibit transactions involving access to such data when the recipient is not a covered person or country of concern. For example, citizens of a country of concern who primarily reside in a third country are generally not considered covered persons under the rule. Nor, contrary to some commenters' understanding, does the rule restrict access to publicly available datasets; such data is excluded from the definition of "sensitive personal data." See § 202.249(b)(2). The rule also includes important exemptions and is calibrated to permit U.S. persons to share bulk U.S. sensitive personal data, including human genomic data and human biospecimens from which such data could be derived, with countries of concern and covered persons to enable genetics-related research under some circumstances.

For example, data transactions involving human genomic data or human biospecimens from which such data could be derived conducted pursuant to a Federal contract, grant, or agreement, or conducted by a Federal agency, are exempt from subparts C and D of the rule. See § 202.504. The rule also exempts from subparts C and D any data transactions to the extent that they are required or authorized by Federal law or pursuant to an international agreement to which the United States is a party, including specified agreements

authorizing parties to share global health and pandemic preparedness-related data. See § 202.507. The definition of "covered data transactions" subject to the prohibitions and restrictions of subparts C and D of the rule identifies specific categories of data transactions to which the restrictions and prohibitions apply, each of which requires a commercial nexus. See, *e.g.*, § 202.214 ("data brokerage" defined as "the sale of data, licensing of access to data, or similar commercial transactions involving the transfer of data"); § 202.217 ("employment agreement" defined as "any agreement or arrangement in which an individual . . . performs work or job functions directly for a person in exchange for payment or other consideration"); § 202.228 ("investment agreement" defined as "an agreement or arrangement in which any person, in exchange for payment or other consideration, obtains direct or indirect ownership interests or rights in relation to" property or entities); and § 202.258 ("vendor agreement" defined as "any agreement or arrangement . . . in which any person provides goods or services to another person . . . in exchange for payment or other consideration"). In addition, §§ 202.510 and 202.511 exempt certain data transactions with countries of concern and covered persons that are necessary to obtain or maintain regulatory approval or authorization to market a drug, biological product, device, or combination product; clinical investigations regulated by the FDA or clinical investigations to support applications to the FDA for marketing or research permits for certain products; and data transactions ordinarily incident to and part of collecting or processing clinical care data or post-marketing surveillance data to support or maintain authorization by the FDA.

In light of the risk identified in the Order, the NPRM, and this preamble of countries of concern seeking to acquire, among other things, U.S. persons' genomic data,¹⁰⁵ the Department declines to adopt a more express exemption for human genomics-related research. However, U.S. persons may seek to obtain a general or specific license pursuant to subpart H if they assess that the prohibitions or restrictions of subparts C and D would apply to specific covered data transactions related to human genomics research involving bulk human genomic data or human biospecimens from

which such data could be derived with countries of concern or covered persons.

17. Section 202.304—Prohibited Evasions, Attempts, Causing Violations, and Conspiracies

The NPRM proposed prohibiting transactions that have the purpose of evading or avoiding the rule's prohibitions, or that cause a violation of or attempt to violate the rule's prohibitions. The NPRM also proposed prohibiting conspiracies formed to violate the rule's prohibitions. In response to ANPRM comments, the NPRM added new examples in § 202.304(b) highlighting how these regulations would apply in certain scenarios where bulk U.S. sensitive personal data would be licensed or sold to support algorithmic development, including cases of evasion, or where sensitive personal data could be extracted from AI models. The example in § 202.304(b)(5) involves a U.S. subsidiary of a company headquartered in a country of concern that licenses a derivative algorithm from a U.S. online gaming company for the purpose of allowing the country of concern parent entity to access bulk U.S. sensitive personal data from the training data contained in the algorithm. A commenter raised concerns as to whether the transaction described in the example has the purpose of evading the regulations if the U.S. person subsidiary was licensing an AI classifier that determines whether to advertise to an individual but that does not appear to disclose the sensitive personal data on which it was trained. The commenter recommended that the Department clarify that the prohibited behavior in the example was not licensing a model that was merely trained on bulk U.S. sensitive personal data for the purposes of conducting targeted advertising, but rather licensing a model that reveals the underlying bulk U.S. sensitive personal data upon which it was trained.

As a general matter, the Department agrees that the core question is whether the AI classifier could reveal the underlying bulk U.S. sensitive personal data on which it was trained. For example, if the AI classifier enabled the U.S. person to access the bulk U.S. sensitive personal data on which the model was trained, such as bulk covered personal identifiers, then a licensing transaction intended to evade the rule's prohibitions by enabling the country of concern parent company to access such data could violate the rule. The Department has made revised the example in § 202.304(b)(5) to clarify that point. The Department also agrees that licensing access to an AI classifier that

¹⁰⁵ 89 FR 86118.

could not reveal bulk U.S. sensitive personal data on which it was trained does not violate the rule. Nor does mere access to an algorithm that was trained on bulk U.S. sensitive personal data, by itself, constitute access to the underlying data.

One commenter noted that the example in § 202.304(b)(5) inaccurately states that the licensed algorithm contains training data. The Department agrees and has struck the language “contained in the algorithm” from the example.

18. Section 202.215—Directing

The proposed rule defined “directing” to mean that the U.S. person has any authority (individually or as part of a group) to make decisions on behalf of a foreign entity and exercises that authority. For example, a U.S. person would direct a transaction by exercising their authority to order, decide to engage, or approve a transaction that would be prohibited under these regulations if engaged in by a U.S. person.

One commenter renewed their observation from the ANPRM that § 202.215 is too broad because it could capture situations where a U.S. service provider does not know or expect their services to be used as part of a covered data transaction. The Department declines to make any further changes to this section because the definition in § 202.215 and the related discussion in the NPRM sufficiently address the commenter’s observations, and the commenter does not engage with the NPRM’s explanation.¹⁰⁶

19. Section 202.230—Knowingly

The proposed rule defined “knowingly” to mean, with respect to conduct, a circumstance, or a result, that the U.S. person had actual knowledge of, or reasonably should have known about, the conduct, circumstance, or result. To determine what an individual or entity reasonably should have known in the context of prohibited or restricted transactions, the Department stated that it would take into account the relevant facts and circumstances, including the relative sophistication of the individual or entity at issue, the scale and sensitivity of the data involved, and the extent to which the parties to the transaction at issue appear to have been aware of and sought to evade the application of the proposed rule. As a result of this knowledge standard, the regulations incorporating the word “knowingly” do not adopt a strict liability standard.

The Department’s decision to adopt a knowingly standard—as opposed to adopting a strict liability standard, which is much more common for IEEPA-based regimes (*e.g.*, OFAC-administered economic sanctions)—reflects the Department’s reasoned and balanced approach to mitigating the national security risks described in the Order while taking into consideration the views and concerns of the regulated community. This single, significant decision by the Department sufficiently addresses the source of many of the concerns and observations raised in the comments of this section. With respect to the regulations incorporating this standard, U.S. persons are not responsible for conduct, circumstances, or results that they could not reasonably have known about.

The Department received comments that involved themes or issues that were previously raised and addressed. The Department directs those commenters to relevant discussions in the NPRM. Some comments lacked sufficient factual specificity and were premised on imprecise hypotheticals or generalizations such that it would be unreasonable for the Department to rely on them to make changes to the regulations. Most of these commenters advocated for such sweeping exceptions or amendments to the knowingly standard that, if adopted, would swallow most of the prohibitions and restrictions set forth in the regulations. Such an outcome would not only be at odds with the national security imperatives of the Order but would challenge even a common understanding of what the word “knowledge” means. As such, the Department declines to change or amend the standard. The Department continues addressing the relevant comments it received in the continuing discussion.

Nearly all commenters on this provision expressed concern with the “reasonably should have known” portion of the standard. The comments seemingly encourage the Department to consent to potentially unreasonable behavior by the regulated community that would be at odds with the national security risks identified in the Order. Commenters argued that “reasonably should have known” is susceptible to subjective judgment and hindsight and that the appropriate response to this supposed concern would be to further elevate the standard to “actual knowledge,” thereby insulating from liability willfully blind, grossly reckless, or unreasonable actors. These commenters suggested that a U.S. person should not be liable for violating

the regulations absent proof of actual knowledge, even if the Department has strong evidence demonstrating that the U.S. person reasonably should have known about, prevented, mitigated, or addressed the violative conduct. Some commenters requested “safe harbors” as an alternative to striking or removing the “reasonably should have known” language, effectively accomplishing the same outcome if adopted.

The Department declines to make the requested changes. The existing standard provides the necessary flexibility to address national security risks while differentiating responsibilities based on the activities, roles, and characteristics of particular entities and individuals in data transactions. The knowingly standard is already a sufficiently elevated standard (compared to the strict liability standard in other IEEPA-based programs) designed to account for the nature, scope, breadth, volume, and ubiquity of data transactions and the variations in the parties or industries that engage in them. The existing standard also ensures that the Department can discourage, prevent, investigate, and punish conduct that is willfully blind, reckless, or unreasonable in light of the facts and circumstances that give rise to the matter.

The Department also declines to create a safe harbor for due diligence practices at this time. It is possible that as best practices develop over time after the program’s effective date, some kind of safe harbor could be included in the regulations. However, at this time, a safe harbor would be premature because there are a wide range of practices in use across multiple industries that may have valuable applications to meeting the requirements of these rules. The Department also notes that after the effective date of the regulations, the Department will be able to entertain and consider detailed license applications and requests for advisory opinions on these and other issues from the commenters and the broader public.

One commenter noted that mitigating risks around the reproduction or disclosure of sensitive data for training AI models is an area of active study and that any current regulation would impede the ability of U.S. companies to deploy AI models. This commenter also suggested that the regulations include an actual knowledge standard for transactions involving AI, that U.S. persons not be required to actively conduct due diligence on data transactions with foreign persons to determine whether they are covered persons; that an actual, rather than constructive, knowledge standard be

¹⁰⁶ 89 FR 86132.

used in the regulations because of compliance costs, and that clarification be provided as to how liability would apply between a cloud-computing service provider and its customers (the data owners).

This comment lacked sufficient specificity for the Department to address the observation related to the ability of U.S. companies to deploy AI models in the context of this regulation. The commenter also failed to demonstrate how their observations or suggestions regarding not actively conducting due diligence or adopting an actual knowledge standard would mitigate the risk to national security that the Order was intended to mitigate. Additionally, with respect to the commenter's latter concern, the Department directs the commenter to definition of the term "knowingly" in § 202.230 along with its various examples. Specifically, Example 5 in § 202.230(b)(5) addresses the situation contemplated by this comment. Thus, the Department declines to make any further changes in response to this comment.

Another commenter observed that the knowingly standard ignores or fails to appreciate the billions of transactions occurring across every country and network of the globe. The comment then described, in the context of cloud computing, the perceived difficulties with determining bulk data thresholds, data content, covered persons, and the three categories of restricted transactions in light of the knowingly standard.

This comment seems to entirely misconstrue how the knowledge standard works vis-à-vis cloud providers and their customers. The Department has not suggested that a cloud provider necessarily be held responsible for whether its U.S. person customers are making their data available via the provider's cloud platform to a country of concern or covered person as part of a restricted transaction. Rather, the Department is seeking to ensure that if a cloud provider itself enters into a restricted transaction by relying on employees or vendors that are covered persons or by taking certain investments from covered persons that would afford those covered persons with access to their customer's bulk U.S. sensitive personal data, then they do so consistent with the requirements of these regulations. As such, the Department makes no changes as a result of this comment.

Another commenter argued that the rule makes problematic assumptions about emerging technologies that the broad "knowingly" standard exacerbates. As an example, they

pointed to Example 1 in § 202.301(b)(1), arguing that the example assumes that the AI chatbot will reproduce bulk sensitive data. The commenter argued that this assumption leads to the potential that any technology that is vulnerable to attack or misuse would be a covered transaction, and that the overly broad definitions are not conducive to innovation and broad adoption of new technologies. The commenter therefore recommended that the regulations clarify that only data owners, not data resellers such as cloud service providers, are responsible for compliance with the rule, or, in the alternative, that the knowingly standard be limited to actual knowledge.

The commenter's arguments and perspective lack sufficient factual specificity needed for the Department to respond. However, generally, the commenter's concerns are addressed in the NPRM and in parts IV.B.2 and IV.B.19 of this preamble. Additionally, the national security risks that the rule is seeking to address are present regardless of whether the data owner or the data transmitter, such as a cloud-services provider, is the one who provides countries of concern or covered persons access to government-related data or bulk U.S. sensitive personal data. Both such entities can help identify and manage these risks. Given the nature of the risk, the Department declines to further limit the liability of data resellers beyond the current knowingly standard.

C. Subpart D—Restricted Transactions

1. Section 202.401—Authorization To Conduct Restricted Transactions

The NPRM set forth three classes of transactions (vendor agreements, employment agreements, and investment agreements) that are prohibited unless the U.S. person entering into the transactions complies with the "security requirements" defined in § 202.248. The goal of the security requirements is to address national security and foreign policy threats that arise when countries of concern and covered persons access government-related data or bulk U.S. sensitive personal data that may be implicated by the categories of restricted transactions. CISA, in coordination with the Department, developed the requirements—the CISA Security Requirements for Restricted Transactions—which are on the CISA website, as announced via a separate **Federal Register** notice. That document is incorporated by reference into the definition of "security requirements" in § 202.248. The security requirements

require U.S. persons engaging in restricted transactions to comply with organizational and system-level requirements, such as ensuring that basic organizational cybersecurity policies, practices, and requirements are in place, as well as data-level requirements, such as data minimization and masking, encryption, or privacy-enhancing techniques. The Department of Justice is incorporating by reference the published final security requirements in this final rule. Interested parties can view or obtain CISA's security requirements on CISA's website <https://www.cisa.gov/resources-tools/resources/E.O.-14117-security-requirements>.

One commenter recommended that the Department withhold incorporating by reference CISA's security requirements until after CISA implements an ex parte process to secure input from critical infrastructure sectors. The Department declines to adopt this recommendation. The organizational-, system-, and data-level requirements specified by CISA's security requirements are derived from the existing and commonly used security standards and frameworks that are applied across several critical infrastructure sectors. The CISA security requirements represent an essential component of addressing the risk posed by country of concern and covered person access to government-related data and bulk U.S. sensitive personal data. The application of these security requirements allows the Department to strike the appropriate balance between safeguarding U.S. national security and authorizing employment, vendor, and investment agreements with countries of concern or covered persons. Without the robust safeguards the CISA security requirements provide, the Department would not authorize U.S. persons to engage in restricted transactions, and those transactions would instead be prohibited due to the risk they pose, as discussed below in this part of the preamble. The public has already had several opportunities to comment on and engage with the Department and CISA in meetings before, during, and after the NPRM's comment period to provide input on the security requirements, as discussed in part III of this preamble.

As discussed throughout this preamble, one commenter repeatedly assumed that the restricted transactions are "low risk," criticized the Department's approach to these transactions, claimed that the NPRM's recordkeeping, reporting, and auditing requirements to, for example, retain access logs as a means of compliance,

was tantamount to a “sweeping surveillance mandate” for “billions” of these “low risk” transactions, and argued that the Department should refrain from regulating restricted transactions at this time.

The final rule makes no change in response to this comment. The categories of restricted transactions are not low risk. There is ample open-source and other support for the Department’s determination that employee, vendor, and investment agreements involving U.S. persons and countries of concern or covered persons present an unacceptable risk to national security because they may enable countries of concern or covered persons to access government-related data or bulk U.S. sensitive personal data. As discussed in detail in the ANPRM and NPRM, open-source information and examples confirm the Department’s determination that each of these three commercial activities, to the extent that they are not otherwise exempt under the rule, are vectors that present unacceptable risk. The comment’s assertions that the restricted transactions are “low risk” or that there are “millions” or “billions” of them is not accompanied by any support or analysis, and the comment does not engage with the ANPRM’s and NPRM’s analysis of this issue. In addition, the comment’s assertion about the national security risks posed by particular kinds of transactions necessarily reflects limits on the information available to the public.

The Intelligence Community and other parts of the United States Government have repeatedly warned that foreign adversaries are “increasing targeting all kinds of data—from personally identifying information, such as your Social Security number, to health and genomic data,” and that they view such data “as a strategic resource and collection priority, not only for their own economic advancement, but also for their intelligence and military operations.”¹⁰⁷ These adversaries “use every tool in the toolkit—they may recruit an insider, use a cyber intrusion, make an investment, recruit top talent, or do some combination of all of those things,” and thus they use not only illegal but also “quasi-legal and even legal tactics[]whereby they acquire data through seemingly legitimate investments, partnerships, joint

ventures, or regulatory actions.”¹⁰⁸ In particular, China “recruit[s] human sources to target our businesses, using insiders to steal the same kinds of innovation and data that their hackers are targeting while also engaging in corporate deception—hiding Beijing’s hand in transactions, joint ventures, and investments—to do the same.”¹⁰⁹ As summarized in more detail in part IV.B.5 of this preamble, the Federal Bureau of Investigation (“FBI”) has explained that companies operating under legal and political systems like the PRC’s present a hybrid commercial threat precisely because they can be compelled, influenced, or leveraged to provide access to technology, systems, and data through their commercial activities.

With respect to employees and other individuals with authorized access to sensitive personal data, the United States Government has publicly recognized that foreign intelligence entities “actively target, solicit, and coerce individuals to obtain information,” among other things, and that insiders may use their authorized access to harm U.S. national security.¹¹⁰ For instance, Chinese law authorizes “national intelligence work agencies” to use “any necessary methods, means, and channels” to carry out “intelligence work both domestically and abroad,” including by establishing “cooperative relationships with relevant individuals and organizations” and “entrust[ing] them with related tasks.”¹¹¹ PRC intelligence services often use “cooperative contacts” in countries

outside of the PRC to further their intelligence goals, including obtaining information concerning foreign companies, politicians, intelligence officers, and political dissidents.¹¹² In August 2024, for example, a U.S. person pled guilty after obtaining a wide variety of information at the request of Chinese intelligence, including location and other sensitive data about Chinese dissidents, pro-democracy advocates, and members of the Falun Gong religious movement, as well as information about his employer, a major U.S. telecommunications company.¹¹³ Similarly, the United States Government has issued an advisory about the threats posed by IT workers from North Korea, who can “surreptitiously obtain IT development contracts,” misrepresent themselves as U.S.-based teleworkers, and “[u]se privileged access gained as contractors for illicit purposes, including enabling malicious cyber intrusions by other [North Korean] actors.”¹¹⁴ With respect to investments, the United States Government has publicly warned that the tactics of countries of concern include using “mergers, acquisitions, investments, and joint ventures” to obtain sensitive personal data.¹¹⁵ This “include[s] leveraging venture capital (VC) investments, investments through entities based in third countries, investments as limited partners, and iterative minority investments.”¹¹⁶ For example, the National Counterintelligence and Security Center (“NCSC”) has publicly assessed that the PRC “has for years been able to gain access to U.S. healthcare data, including genomic data,” through channels that include “investing in U.S. firms that handle sensitive healthcare and other types of personal data, providing them

¹⁰⁸ *Id.* at 4, 6; see also Nat’l Counterintel. & Sec. Ctr., *Protect Your Organization from the Foreign Intelligence Threat* 1 (Dec. 2021), <https://www.dni.gov/files/NCSC/documents/SafeguardingOurFuture/12.13.2021%20Protect%20Your%20Org%20from%20the%20Foreign%20Intel%20Threat.pdf> [https://perma.cc/X9YU-VVHH].

¹⁰⁹ *The Strategic Competition Between the U.S. and the Chinese Communist Party: Hearing Before the H. Select Comm.*, 108th Cong. (2024) (statement of Christopher Wray, Director, Fed. Bureau of Investig.), <https://www.fbi.gov/news/speeches/director-wrays-opening-statement-to-the-house-select-committee-on-the-chinese-communist-party> [https://perma.cc/89CA-DPHQ]; see also Nat’l Counterintel. & Sec. Ctr., *Protecting Critical Supply Chains: Building a Resilient Ecosystem* 2 (Sept. 2024), <https://www.dni.gov/files/NCSC/documents/supplychain/Building-a-Resilient-Ecosystem.pdf> [https://perma.cc/L7SN-UX8C].

¹¹⁰ Nat’l Counterintel. & Sec. Ctr., *supra* note 6, at 7.

¹¹¹ *In Camera, Ex Parte Classified Decl.* of David Newman, Principal Deputy Assistant Att’y Gen., Nat’l Sec. Div., U.S. Dep’t of Just., Doc. No. 2066897 at Gov’t App. 51 ¶ 22, *TikTok Inc. v. Garland*, Case Nos. 24–1113, 24–1130, 24–1183 (D.C. Cir. July 26, 2024) (publicly filed redacted version) (hereinafter “Newman Decl.”) (quoting a translation of the National Intelligence Law of the People’s Republic of China, promulgated by the Standing Committee of the National People’s Congress, June 27, 2017, effective June 28, 2017, amended Apr. 27, 2018).

¹¹² Press Release, U.S. Dep’t of Just., *Florida Telecommunications and Information Technology Worker Sentenced for Conspiring to Act as Agent of Chinese Government* (Nov. 25, 2024), <https://www.justice.gov/opa/pr/florida-telecommunications-and-information-technology-worker-sentenced-conspiring-act-agent> [https://perma.cc/3L7E-RQRP].

¹¹³ See, e.g., Plea Agreement, *United States v. Ping Li*, No. 8:24–cr–334–SDM–NHA (M.D. Fla. Aug. 19, 2024).

¹¹⁴ Off. of Foreign Asset Control, U.S. Dep’t of Treas., *Fact Sheet: Guidance on the Democratic People’s Republic of Korea Information Technology Workers* (May 16, 2022), <https://ofac.treasury.gov/media/923131/download?inline> [https://perma.cc/8DTV-Q34S].

¹¹⁵ Casey, *supra* note 107, at 3; see also Nat’l Counterintel. & Sec. Ctr., *Protect Your Organization from the Foreign Intelligence Threat*, 1 (Dec. 2021), <https://www.dni.gov/files/NCSC/documents/SafeguardingOurFuture/12.13.2021%20Protect%20Your%20Org%20from%20the%20Foreign%20Intel%20Threat.pdf> [https://perma.cc/X9YU-VVHH].

¹¹⁶ Casey, *supra* note 107, at 7.

¹⁰⁷ Michael C. Casey, Dir., Nat’l Counterintel. & Sec. Ctr., *Remarks for the Economic Development Association of Alabama*, 3 (Jan. 30, 2024), https://www.dni.gov/files/NCSC/documents/SafeguardingOurFuture/FINAL-FINAL-Prepared-Remarks_01302024_Casy_Alabama.pdf [https://perma.cc/GZ9F-Z7KE].

entry to the U.S. market and access to this data.”¹¹⁷ For example, “China’s BGI purchased U.S. genomic sequencing firm Complete Genomics in 2013,” and in 2015, “China’s WuXi Pharma Tech acquired U.S. firm NextCODE Health to later form WuXi NextCODE Genomics.”¹¹⁸ Then, in 2020, the “U.S. Department of Commerce sanctioned two subsidiaries of China’s BGI for their role in conducting genetic analysis used to further the PRC government’s repression of Uyghurs and other Muslim minority groups in Xinjiang.”¹¹⁹

With respect to vendors, the United States Government has publicly assessed that “contractors, sub-contractors, and vendors that have been granted access to facilities, systems, and networks may wittingly—or unwittingly—do harm to” an organizations’ supply chain.¹²⁰ By providing software and other services to U.S. companies, vendors can gain access to sensitive U.S. persons’ data for nefarious purposes.¹²¹ DHS has similarly warned that the “PRC legal and regulatory framework around data offers little to no protection to U.S. firms that share data with PRC firms or entities,” particularly “data service providers and data infrastructure” such as “data centers owned or operated by PRC firms,” “joint ventures” with PRC firms, and “software and mobile applications owned or operated by PRC firms.”¹²²

For example:

- In July 2022, news outlets reported that “Google was sharing potentially sensitive user data with a sanctioned Russian ad tech company owned by Russia’s largest state bank” for four months after the company was sanctioned.¹²³ According to the reporting, the data Google shared included data about “users browsing websites based in Ukraine,” which “means Google may have turned over such critical information as unique mobile phone IDs, IP addresses, location

information[,] and details about users’ interests and online activity, data that U.S. senators and experts say could be used by Russian military and intelligence services to track people or zero in on locations of interest.”¹²⁴

- In July 2021, a Reuters special investigation reported that a Chinese genomics company (BGI Group) “selling prenatal tests around the world developed them in collaboration with the country’s military and is using them to collect genetic data from millions of women.”¹²⁵ According to the report, United States Government advisors warned that the company is amassing “a vast bank of genomic data” and “analy[zing] [it] with artificial intelligence,” which could “potentially lead to genetically enhanced soldiers, or engineered pathogens to target the U.S. population or food supply.”¹²⁶

- According to a 2021 NCSC assessment, “Chinese companies have also gained access to U.S. healthcare data by partnering with hospitals, universities, and other research organizations in America. These U.S. entities routinely seek low-cost genomic sequencing services for their facilities, which Chinese biotech firms can often provide due to Chinese government subsidies These partnerships allow U.S. entities to expand their research capabilities, while Chinese firms gain access to more genetic data on more diverse sets of people, which they can use for new medical products and services.”¹²⁷ For example, “[o]ver the past decade, China’s BGI has partnered with many research and healthcare entities in America to provide them with genomic sequencing services, while also gaining access to health records and genetic data on people in the U[nited] S[tates].”¹²⁸ And “[i]n July 2020, the U.S. Department of Commerce sanctioned two subsidiaries of China’s BGI for their role in conducting genetic analysis used to further the PRC government’s repression of Uyghurs and other Muslim minority groups in Xinjiang.”¹²⁹

More broadly, employee, vendor, and investment relationships have been vectors exploitable and exploited by countries of concern to access critical

infrastructure, technology, trade secrets and intellectual property, research, and other assets. For example, on August 8, 2024, a Federal grand jury returned an indictment against a U.S. person for facilitating a scheme to deceive American and British companies into hiring foreign remote IT workers who were actually North Korean actors. The companies paid the North Korean actors hundreds of thousands of dollars that were funneled to North Korea for its weapons program.¹³⁰ And in March 2024, a Federal grand jury indicted a Chinese national for theft of trade secrets. As a Google software engineer, the individual was granted access to Google’s confidential information related to the hardware infrastructure, the software platform, and the AI models and applications they supported. Between 2022 and 2023, he uploaded and transferred over 500 sensitive files, including proprietary hardware and software data used by Google’s AI supercomputing systems for machine learning. The individual sent this data to his personal account while secretly traveling to China, working for two PRC-based companies in the AI industry, and eventually founding his own AI company in China while still serving as a Google employee. The individual had another Google employee swipe his work-issued access badge to make it appear that he was working from his U.S. Google office when, in fact, he was in the PRC.¹³¹

Other examples include the following:

- In September 2018, journalists reported that China’s antitrust authorities raided a U.S. chemical company’s Shanghai office, demanding access to the company’s research network, passwords, and printed document; seizing computers; and intimidating employees. The raids came one year into an arbitration battle between the U.S. company and its former Chinese joint venture partner, who the U.S. company suspected had obtained and was using the U.S. company’s proprietary technology without permission. The Chinese antitrust investigators pressured the

¹¹⁷ Nat’l Counterintel. & Sec. Ctr., *supra* note 67, at 2.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 3.

¹²⁰ Nat’l Counterintel. & Sec. Ctr., *supra* note 109, at 5.

¹²¹ See, e.g., U.S. Dep’t of Commerce, Final Determination: Case No. ICTS–20121–002, Kaspersky Lab, Inc., 89 FR 52434, 52436 (June 24, 2024) (describing how Kaspersky employees gained access to sensitive U.S. person data through their provision of anti-virus and cybersecurity software).

¹²² U.S. Dep’t of Homeland Sec. *supra* note 57, at 2, 10–12.

¹²³ Craig Silverman, *Google Allowed a Sanctioned Russian Ad Company to Harvest User Data for Months*, ProPublica, (July 1, 2022), <https://www.propublica.org/article/google-russia-rutarget-sperbank-sanctions-ukraine> [https://perma.cc/6R4V-L868].

¹²⁴ *Id.*

¹²⁵ Kirsty Needham & Clare Baldwin, *Special Report: China’s Gene Giant Harvests Data From Millions of Women*, Reuters (July 7, 2021), <https://www.reuters.com/article/world/special-report-chinas-gene-giant-harvests-data-from-millions-of-women-idUSKCN2ED1A5/> [https://perma.cc/3VPW-AP5D].

¹²⁶ *Id.*

¹²⁷ Nat’l Counterintel. & Sec. Ctr., *supra* note 67, at 2.

¹²⁸ *Id.* at 3.

¹²⁹ *Id.*

¹³⁰ Press Release, U.S. Dep’t of Just., *Justice Department Disrupts North Korean Remote IT Worker Fraud Schemes Through Charges and Arrest of Nashville Facilitator* (Aug. 8, 2024), <https://www.justice.gov/opa/pr/justice-department-disrupts-north-korean-remote-it-worker-fraud-schemes-through-charges-and> [https://perma.cc/Z4P2-G7TN].

¹³¹ Press Release, U.S. Dep’t of Just., *Chinese National Residing in California Arrested for Theft of Artificial Intelligence-Related Trade Secrets from Google* (Mar. 6, 2024), <https://www.justice.gov/opa/pr/chinese-national-residing-california-arrested-theft-artificial-intelligence-related-trade> [https://perma.cc/R88W-RBAU].

U.S. company to drop the arbitration case to resolve the antitrust investigation, seemingly as part of a broader strategy to exert control over foreign companies and their intellectual property.¹³²

- In 2018, the *New York Times* published an article detailing how a U.S. semiconductor company, Micron, was the target of intellectual property theft in Taiwan. After Micron rejected acquisition and partnership offers by Chinese chipmakers in 2015, Fujian Jinhua Integrated Circuit Company (a Chinese company) and UMC (a Taiwanese company) partnered to build a chip making factory in China. Jinhua tapped UMC to develop the necessary technology and UMC allegedly recruited Micron employees, who stole propriety information from Micron before leaving the company. Micron filed a lawsuit against UMC and Jinhua in the United States, accusing them of trade secret theft. UMC denied the allegations, but Taiwanese police raided UMC offices and recovered the stolen documents and devices. Meanwhile, Jinhua and UMC filed a patent infringement lawsuit against Micron in China, which could block Micron's sales in the country.¹³³ The Micron case is emblematic of how the Chinese government uses every legal and regulatory lever—poaching talent, subsidies, patent infringement, antitrust, outright theft, and the courts—to pressure individual companies to transfer technology or not pursue cases of theft.

- In March 2019, Tesla accused a former engineer of stealing intellectual property from the company's self-driving car project and providing that information to a Chinese electric vehicle startup company. The individual allegedly copied more than 300,000 files and directories, repeatedly logged into Tesla's networks, and cleared his browser history before leaving Tesla for the rival employer.¹³⁴

With adversaries' increasing strategic focus on Americans' sensitive data as one of the assets to fuel their intelligence and military activities, it

should come as no surprise that they would use the same vectors to access companies, systems, and other repositories of sensitive personal data. In light of the risks to government-related data and bulk U.S. sensitive personal data posed by employment, vendor, and investment agreements, the Department considered outright prohibiting transactions conducted through those vehicles. The Department believes that, given the gravity of the threats and the plethora of examples where countries of concern have exploited these vehicles to obtain access to U.S. person data, the risks would justify such prohibitions. However, because the Department has determined that the security requirements can adequately mitigate these risks, the rule characterizes these transactions as restricted transactions.

The same commenter claimed that while the NPRM had well defined objectives for what they characterized as "high-risk" prohibited transactions, objectives were not well-defined for what they characterized as "low-risk" restricted transactions. This commenter concluded that this could result in: (1) forcing companies to decrypt encrypted data, thereby undermining U.S. data security and cybersecurity; (2) requiring the aggregation of vast quantities of sensitive personal and non-personal data, creating further cybersecurity risks; (3) criminalizing and deterring ordinary business transactions with U.S. allies; and (4) impeding low-risk information sharing with U.S. allies needed for scientific, health, or other purposes. The Department has already addressed the mischaracterization of risk by this commenter, so this point will not be readdressed.

In response to the commenter's other points, first, the Department reiterates that nothing in the rule imposes a legal requirement to decrypt or aggregate data to comply. The NPRM extensively explained this point, and the commenter did not engage with that explanation at all or offer any substantive analysis to support the commenter's claim. The Department expects companies to "know their data" but has been clear throughout this rulemaking process that decryption is not a required step in that effort. Indeed, other commenters that will be subject to this rule have acknowledged that there is no need to decrypt encrypted data. For example, during at least one of the Department's engagements with stakeholders, a public-interest research center acknowledged that the proposed rule would not require companies to decrypt their data to know whether they are regulated or to comply.

Second, the Department expects companies to know their data when they are dealing in government-related data and bulk U.S. sensitive personal data. Companies choosing to engage in these categories of data transactions can and should have some awareness of the volume of data they possess and in which they are transacting. For example, data-using entities typically maintain metrics, such as user statistics, that can help estimate the number of impacted individuals for the purposes of identifying whether a particular transaction meets the bulk threshold.¹³⁵ Given that the bulk thresholds are built around order-of-magnitude evaluations of the quantity of user data, it is reasonable for entities to conduct similar order-of-magnitude-based assessments of their data stores and transactions for the purposes of regulatory compliance. Companies already must understand, categorize, and map the volumes of data they have for other regulatory requirements, such as State laws requiring notification of data breaches of specific kinds of data above certain thresholds.¹³⁶

Third, the rule does not criminalize or deter ordinary business transactions with U.S. allies. As discussed in part IV.F.1 of this preamble, the fact that the rule has cross-border ramifications for companies located in countries that are not countries of concern due to the ownership networks of covered persons and countries of concern and covered persons speaks to the pervasive reach of covered persons and countries of concern. Their ability to influence and compel access, or obtain it through these ownership structures, which span across countries and continents provides further support for the need to address this risk to our national security.

Another commentator recommended that the Department clarify that the provisions regulating restricted transactions are intended to address the risks attendant in allowing covered persons access to covered data, but are

¹³² Lingling Wei & Bob Davis, *How Chinese Systematically Pries Technology from U.S. Companies*, Wall Street Journal (Sept. 26, 2018), <https://www.wsj.com/articles/how-china-systematically-pries-technology-from-u-s-companies-1537972066>.

¹³³ Paul Mozur, *Inside a Heist of American Chip Designs, as China Bids for Tech Power*, New York Times (June 22, 2018), <https://www.nytimes.com/2018/06/22/technology/china-micron-chips-theft.html> [<https://perma.cc/B3L4-NNNM>].

¹³⁴ Sherisse Pham *Tesla Is Accusing a Former Employee of Stealing Self-Driving and Giving It to a Chinese Rival* CNN (Mar. 22, 2019), <https://www.cnn.com/2019/03/22/tech/tesla-xiaopeng-motors-lawsuit/index.html> [<https://perma.cc/W76V-QT88>].

¹³⁵ Justin Ellingwood, *User Data Collection: Balancing Business Needs and User Privacy*, DigitalOcean (Sept. 26, 2017), <https://www.digitalocean.com/community/tutorials/user-data-collection-balancing-business-needs-and-user-privacy> [<https://perma.cc/GCX5-RGSK>]; Jodie Siganto, *Data Tagging: Best Practices, Security & Implementation Tips*, Privacy 108 (Nov. 14, 2023), <https://privacy108.com.au/insights/data-tagging-for-security/> [<https://perma.cc/8PQA-89DA>]; Nat'l Inst. of Health, *Metrics for Data Repositories and Knowledgebases: Working Group Report 7*, (Sept. 15, 2021), <https://datascience.nih.gov/sites/default/files/Metrics-Report-2021-Sep15-508.pdf> [<https://perma.cc/8KBQ-HWRK>].

¹³⁶ See, e.g., Del. Code. Ann. tit. 6, secs. 12B–100 to –104 (West 2024); N.M. Stat. Ann. sec. 57–12C–10 (LexisNexis 2024).

not intended to prevent access by the covered person. Although this comment does not require any change to the rule, the restricted transactions are classes of transactions that would be prohibited except to the extent they comply with CISA's security requirements, which are designed to mitigate the risk of access to government-related data or bulk U.S. sensitive personal data. As CISA's final security requirements explain, the security requirements are meant to prevent access to covered data by countries of concern or covered persons unless specific efforts outlined in the security requirements are taken to minimize the national security risks associated with such access. As further explained by CISA, the security requirements accomplish this goal by requiring U.S. persons to implement a combination of mitigations that, taken together, are sufficient to fully and effectively prevent access by covered persons or countries of concern to sensitive personal data that is linkable, identifiable, unencrypted, or decryptable using commonly available technology, consistent with the required data risk assessment. That could be accomplished, as the security requirements explain, by denying access outright or by only allowing covered persons access to sensitive personal data for which regulated persons have instituted other data-level requirements that mitigate the risks of countries of concern or covered persons obtaining direct access to the underlying government-related data or bulk U.S. sensitive personal data (in addition to applying the organizational and system-level requirements).

The Department expects that complying with the security requirements will not ordinarily result in a de facto prohibition on restricted transactions and instead would typically permit restricted transactions to go forward. As CISA's final security requirements point out, a U.S. business could choose to fully deny a covered person access to government-related data or bulk U.S. sensitive personal data while still executing a restricted transaction that would otherwise allow access to the business's networks and systems. For example, a U.S. business that holds bulk U.S. sensitive personal data could accept an investment from a covered person or hire a covered person as a board director (a restricted transaction) by complying with the security requirements to deny or otherwise mitigate the covered person's access to that data. The covered person in those restricted transactions could perform their responsibilities without

access to that data (or with access to that data if the regulated entities have instituted adequate data-level requirements, in addition to the organizational and system-level requirements).

To be sure, it is possible that, in what the Department expects to be relatively rare circumstances, the only service that a covered person would be providing as part of a restricted transaction would require access to data that is linkable, identifiable, unencrypted, or decryptable using commonly available technology, such that complying with the security requirements would preclude that transaction. Because compliance with the security requirements would preclude the provision of the service, the restricted transaction in that circumstance may be effectively prohibited, absent the grant of a specific license authorizing it. That result would be consistent with the unacceptable national security risks of allowing covered persons to access the underlying data.

Some commenters provided feedback on the security requirements that would govern restricted transactions. The Order makes CISA, not the Department, responsible for developing the security requirements. The Department has shared with CISA any comments that are relevant to the security requirements but were erroneously filed in the docket for this rulemaking.

2. Section 202.258—Vendor Agreement

The proposed rule defined a "vendor agreement" as any agreement or arrangement, other than an employment agreement, in which any person provides goods or services to another person, including cloud-computing services, in exchange for payment or other consideration.

A commenter sought clarification on whether the rule would apply to U.S.-based third-party cloud-computing service platforms that provide storage and IT services. The term "vendor agreement" refers to a kind of activity, not a kind of entity. The provision of cloud-computing services falls squarely within the definition of "vendor agreement." As explained in part IV.B.19 of this preamble, a U.S. person providing cloud-computing services, would, like any other U.S. person, be prohibited from engaging in its own covered data transactions that are prohibited or restricted by the rule.

The same commenter also suggested adding an exemption for cloud service providers or clarifying whether the knowledge standard would be met if a customer manages their data independently. The Department

declines to add such an exemption, noting that the rule aims to protect access regardless of the services offered, and any exemption would not sufficiently mitigate the associated threats. The application of the "knowing" standard to cloud services is discussed separately in part IV.B.19 of this preamble.

The same commenter sought clarity on whether the restrictions on vendor agreements extend to subsidiaries or affiliates of U.S. companies located in countries of concern. As explained in part IV.F.1 of this preamble, a U.S. company's foreign subsidiary, organized under the laws of or with its principal place of business in a country of concern, is a separate entity from its U.S. parent. As Example 6 in § 202.256(b)(6) shows, the U.S. parent would be a U.S. person, and the subsidiary would be a covered person. As a result, the U.S. parent would generally be restricted from engaging in a vendor agreement with its covered person subsidiary if that agreement provides the subsidiary with access to government-related data or bulk U.S. sensitive personal data. No change to the rule is required in response to this request for clarification.

3. Section 202.217—Employment Agreement

The proposed rule defined an "employment agreement" as any agreement or arrangement in which an individual, other than as an independent contractor, performs work or performs job functions directly for a person in exchange for payment or other consideration, including employment on a board or committee, executive-level arrangements or services, and employment services at an operational level.

One commenter suggested that the Department delete § 202.217 and instead exempt employment agreements from the scope of the rule. The commenter noted that employment agreements are contracts signed between enterprises and individuals and made the unsupported assertion that a restriction on employment agreements with citizens of countries of concern or non-American citizens living in countries of concern is a discriminatory policy that infringes on individuals' equal employment rights and violates their human rights. The Department declines to implement this change.

The inclusion of employment agreements within the scope of restricted transactions is related to the national security risk articulated in the NPRM. As noted, the legal and political regimes of countries of concern enable

them to compel employees who work for their companies or within their territory to share information with these governments, including their intelligence services, creating a significant risk to U.S. national security. Further, the rule itself does not prohibit employment agreements with individuals in a country of concern or employed by a covered person, but rather simply requires that the CISA security measures be in place to ensure that those covered person employees cannot access government-related data or bulk U.S. sensitive personal data that is linkable, identifiable, unencrypted, or decryptable using commonly available technology by covered persons and/or countries of concern, consistent with the required data risk assessment.

This rule is not discriminatory. It does not turn on racial, ethnic, or national identity; instead, the rule identifies categories of covered persons based on the risk that a country of concern could leverage such a person or entity to access government-related data or bulk U.S. sensitive personal data. The criteria in § 202.211(a) does not indiscriminately apply, for example, to everyone of Chinese nationality. To the contrary, covered person categories distinguish between non-U.S. citizens who primarily reside in a country of concern (who are covered persons because they are subject to the jurisdiction and legal regimes of the country of concern's government); non-U.S. citizens who are not primarily resident in a country of concern (who are only covered persons if they work for a country of concern or covered person, or are individually designated); and anyone located in the United States (who are not covered persons, unless designated, because of the weaker categorical ability of countries of concern to subject them to the country of concern's jurisdiction or to otherwise direct or control their actions). As such, the rule adopts the proposed approach from the NPRM without change.

One commenter asked for "additional clarification regarding exemptions related to a Chinese national that receives employment, particularly for instances where Chinese nationals are employed in the United States and go through the immigration process." Although this question is not entirely clear, the commenter appears to be asking whether the provisions regarding restricted transactions would apply to an employment agreement between a country of concern's national and a U.S. company while the national's application for a change of immigration status is pending. The answer depends on several additional facts. If the

Chinese national is employed in the United States and is living in the United States, then the individual meet the definition of a U.S. person, which includes "any person in the United States." As such, the individual is not a foreign person and would therefore not meet the criteria of any of the categories of covered persons (unless individually designated). In this scenario, therefore, the employment agreement between the Chinese national and the U.S. company would not be a restricted transaction because it is between two U.S. persons.

By contrast, if the Chinese national is primarily resident in a country of concern, works outside the United States for the government of a country of concern or for another covered person, or has been designated as a covered person, then the individual would be a covered person. In that scenario, as a result, the employment agreement between the Chinese national and the U.S. company would be a restricted transaction. The fact that the Chinese national has applied for a pending change of U.S. immigration status would not alter that individual's status as a covered person. With respect to a change in immigration status, the national would become a U.S. person under § 202.256 (and thus lose their status as a covered person, unless designated) only upon an actual change in—not mere application for a change in—their status such that they are "admitted to the United States as a refugee under 8 U.S.C. 1157 or granted asylum under 8 U.S.C. 1158" or become a U.S. citizen, national, or lawful permanent resident. No change to the rule is necessary to clarify this point.

The same commenter remarked that the provisions on restricted transactions "impose substantial constraints on employment agreements in countries of concern, potentially creating compliance challenges that extend beyond U.S. jurisdiction." The commenter noted that these restrictions could hinder the legal structuring of employment agreements, which must also adhere to foreign regulatory requirements, and urged the Department to consider adjustments to the regulations to avoid conflicts with foreign data protection laws. First, the Department clarifies that the rule regulates U.S. persons engaging in covered data transactions that involve employee agreements with covered persons or countries of concern and does not target employment agreements "in countries of concern." Next, the commenter did not provide support or analysis for their assertions that the rule imposes substantial constraints that

would potentially hinder entering into such agreements or create conflicts with foreign data protection laws. The Department reiterates that the rule does not prevent employment agreements with covered persons or countries of concern, but instead requires U.S. companies to meet certain security requirements and other applicable requirements. Lastly, the Department finds unpersuasive the commenter's argument that making companies adhere to foreign regulatory requirements would hinder the legal structuring of employment agreements, as navigating domestic and foreign regulations and provisions is inherent in the nature of engaging in cross-border business, even separate from this rule.

Another commenter asked the Department whether unpaid service on a volunteer board would be considered "other consideration." The value and benefit derived from one's experience can constitute "other consideration" as part of an exchange for services rendered, even if on a volunteer basis or for charitable or humanitarian purposes. No change has been made to this provision as a result of this comment.

One commenter noted that while the NPRM discussed the regulations on the employment of covered persons by U.S. companies, clarification is needed regarding the employment of covered individuals by non-U.S. affiliated companies. Generally, the provisions of § 202.401 regulate U.S. persons engaging in restricted transactions involving an employment agreement with a country of concern or covered person. Absent evasion or avoidance scenarios, or fact patterns wherein a foreign person causes a U.S. person to violate the provisions of this rule, foreign persons are not restricted from engaging in employment agreements with covered persons. No change to the rule is necessary in response to this comment.

This same commenter also asked for clarification on the extent to which the rule would apply to a foreign entity that includes U.S. affiliates. The commenter did not provide enough specificity or facts for the Department to meaningfully address this question (such as the relationship between the foreign entity and the U.S. affiliates, whether the foreign entity is a covered person, and the nature of the transactions at issue). In general, however, any affiliate is a separate entity that, like a subsidiary, would have to be independently analyzed to determine whether it meets the definitions of U.S. person, foreign person, or covered person. To the extent that the commenter has a more specific question, the commenter can seek an advisory opinion.

Another commenter recommended that the Department clarify that the term “employment agreement” does not extend to roles that do not have or that are unlikely to have access to covered data by virtue of covered data transactions, such as office, human resources, or other functions that the commenter says are an essential part of regular business processes and that would not otherwise be covered by the exemption for corporate group transactions. Under § 202.401, a restricted transaction prohibits U.S. persons from knowingly engaging in a covered data transaction involving an employment agreement with a country of concern or covered person, unless the U.S. person complies with the security requirements and all other applicable requirements. Where there is no covered data transaction, the employment agreement is not a restricted transaction, even if the employee is a covered person. This same commenter also sought confirmation of whether it would be a restricted transaction involving an employment agreement for a U.S. person company to provide access to basic company information, such as a company staff directory, to business offices in a country of concern. The commenter did not provide enough information to assess the potential outcome. As such, the Department advises this commenter to seek an advisory opinion, following the provisions of § 202.901.

Finally, another commenter asked whether the outcome in Example 4 in § 202.217 would change if the data scientist hired by the financial services company were developing a new AI-based personal assistant as part of the provision of financial services, not as a standalone product that could be sold to the company’s customers. The Department presumes that this commenter’s question was whether the financial services exemption in § 202.505 would apply and the answer is no. A covered person data scientist, who is provided administrator rights allowing that covered person to access, download, and transmit bulk quantities of personal financial data, is not an exempt transaction because it is not ordinarily incident to the provision of financial services. Similarly, sharing such data with a covered person for the purpose of developing a new AI-based personal assistant is not ordinarily incident to the provision of financial services. Furthermore, as noted in the NPRM, the Department does not believe that an employment agreement or a vendor agreement that gives a covered person access to bulk U.S. sensitive

personal data is a reasonable and typical practice in providing the underlying financial services that do not otherwise involve covered persons or a country of concern. The Department makes no change to the rule in response to this comment.

4. Section 202.228—Investment Agreement

The proposed rule defined an “investment agreement” as any agreement or arrangement in which any person, in exchange for payment or other consideration, obtains direct or indirect ownership interests in or rights in relation to (1) real estate located in the United States or (2) a U.S. legal entity. The proposed rule categorically excluded certain passive investments that do not pose an unacceptable risk to national security because they do not give countries of concern or covered persons a controlling ownership interest, rights in substantive decision-making, or influence through a non-controlling interest that could be exploited to access government-related data or bulk U.S. sensitive personal data. Specifically, the proposed rule excluded from “investment agreement” investments (1) in any publicly traded security, in any security offered by any investment company that is registered with the U.S. Securities and Exchange Commission (“SEC”), such as index funds, mutual funds, or exchange-traded funds, or made as limited partners (or equivalent) into a venture capital fund, private equity fund, fund of funds, or other pooled investment fund, if the limited partner’s contributions and influence are circumscribed as set forth in the proposed rule; (2) that give the covered person less than 10 percent of total voting and equity interest in a U.S. person; and (3) that do not give a covered person rights beyond those reasonably considered to be standard minority shareholder protections.

With respect to the requirement of a de minimis percentage of total voting and equity interest, in the NPRM, the Department shared that it was considering a range of different proposals, including de minimis percentages that are significantly lower or higher than this percentage, such as the five percent threshold above which investors must publicly report their direct or indirect beneficial ownership of certain covered securities under the Securities Exchange Act of 1934, 15 U.S.C. 78m(d). The Department invited public comment on the specific de minimis threshold that should be used in this exception for passive investments.

Two commenters advocated for a higher de minimis threshold. These comments urged the Department to adopt a 25-percent threshold, contending that it aligns with the Financial Crimes Enforcement Network’s rules for reporting beneficial owners, as well as with the proposed rule’s annual reporting requirement for U.S. entities engaging in restricted transactions involving cloud-computing services where the U.S. entities are 25 percent or more owned by a country of concern or covered person.¹³⁷ The commenter also asserted, without support, that this threshold is unlikely to give an investor a degree of control that threatens national security. The other commenter urged the Department to adopt a 35-percent threshold, noting that numerous minority investments have more than 10 percent of total voting and equity interest but are still entirely passive.

The Department has considered the commenters’ input but does not believe that increasing the threshold to 25 or 35 percent would sufficiently address the national security risks that the rule seeks to address. Twenty-five or 35-percent ownership could potentially provide an investor meaningful economic leverage or informal influence over access to a company’s assets (like sensitive personal data) even when the investor does not obtain formal rights, control, or access beyond standard minority shareholder protections. For example, an investor may have sufficient voting power to influence a company’s decision-making, whether formally through shareholder voting, or informally based on the size of the investment, the investor’s interest in the company’s success, and the company’s interest in maintaining or expanding the investment. This informal influence is exactly the type of leverage that the investment agreement category of restricted transactions seeks to address.

Furthermore, the Financial Crimes Enforcement Network rules for reporting beneficial ownership are primarily designed to address risks posed by shell and shelf entities to the U.S. financial system to prevent, for example, money laundering and illicit finance, which are different than the kind of risk this rule seeks to address.¹³⁸ Similarly, the rule’s annual reporting requirement for certain restricted transactions is not comparable. The annual reporting

¹³⁷ See 3 CFR 1010.380; 89 FR 86153.

¹³⁸ Beneficial Ownership Information Reporting Requirements, 87 FR 59498, 59498 (Sept. 30, 2022) (to be codified at 31 CFR pt. 1010) (stating that the rule’s requirements are intended to prevent and combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activity).

requirement provides the Department with information about companies with notable country of concern ownership that access large amounts of sensitive personal data; it does not speak to the applicability of the rule to a broad category of transactions, as the investment agreement definition does. In contrast, CFIUS regulations, which also focus on the national security risks accompanying foreign investments into U.S. companies, do not, in certain circumstances, extend to passive investments where the investments are less than 10 percent of outstanding voting interests and do not include certain rights, such as involvement in substantive decision-making.¹³⁹ One commenter noted that the passive investment exclusion extends to publicly-traded companies and pooled investment funds and does not cover one-percent, passive, minority investments into private U.S. entities. The commenter suggested carving out these investments on the basis that they are truly passive, noting that the exclusion's third prong, which requires that the investment does not give a covered person rights beyond those reasonably considered to be standard minority shareholder protections, ensures that the investments are passive. The Department agrees and has modified the requirements of the investment agreement exclusion for passive investments in § 202.228(b)(iii) to include limited partner investments into private entities. For these reasons, the Department slightly expands the scope of the passive investment exclusion and adopts a de minimis threshold of 10 percent in the final rule.

D. Subpart E—Exempt Transactions

The NPRM proposed exempting several classes of data transactions from the scope of the proposed rule's prohibitions. The final rule adopts those exemptions with some modifications as discussed in part IV.D of this preamble. The final rule also makes clear that the due-diligence, auditing, reporting, and recordkeeping requirements in subpart J and the auditing requirements in subpart K generally do not apply to

exempt transactions. One exemption, in § 202.510 for regulatory approval data, is available only to the extent that the U.S. person complies with specified recordkeeping and reporting requirements. The generally applicable requirement in § 202.1104 for U.S. persons to report rejected transactions applies to all prohibited transactions; an otherwise exempt transaction would not be prohibited. The Department also retains its generally applicable authority in § 202.1102 to request and subpoena information. The other requirements in subparts J and K are intended to apply only as conditions of engaging in restricted transactions and has clarified this through additional language in each exemption listed in subpart E.

1. Section 202.502—Information or Informational Materials

Under IEEPA, “[t]he President may issue such regulations, including regulations prescribing definitions, as may be necessary for the exercise of the authorities granted by this chapter.”¹⁴⁰ As courts have held, this provision explicitly “authorize[s] the Executive Branch to define the statutory terms of IEEPA,” and definitions promulgated by an agency that has been delegated this authority thus “carry the force of law” subject to judicial deference.¹⁴¹ Section 2(b) of the Order delegated this statutory authority to the Attorney General, and the Department exercises this authority to define “information or informational materials.” The Department received few comments on its proposed interpretation. For the reasons explained below and in the NPRM, the final rule adopts the definition proposed in the NPRM without change, including with respect to information not fully created and in existence at the time of the transaction. The Department has, however, changed the definition of “sensitive personal data” in response to comments received on this topic to exclude certain metadata.

One commenter asserted that the Department's interpretation would not be entitled to deference after the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*.¹⁴² The Court's decision in *Loper Bright* explicitly preserved the Executive's authority to reasonably define statutory

terms when Congress has delegated to the Executive the authority to do so.¹⁴³ The Court explained that it was the judiciary's responsibility to determine whether Congress had done so. Here, Congress was explicit in its delegation of authority to the Executive Branch to issue “regulations prescribing definitions” as “may be necessary for the exercise” of IEEPA authorities.¹⁴⁴ This express delegation is similar to those examples identified by the Court as delegating authority to define terms.¹⁴⁵ In any event, for the reasons explained by the Department in the NPRM and reiterated here, the Department believes its interpretation is the best interpretation of the statutory term in light of text, structure, and context, including the enactment history and legislative history.

As set out in the NPRM, the Department defines “information or informational materials” as limited to expressive material, consistent with the purpose of 50 U.S.C. 1702(b)(3) to protect materials involving the free exchange of ideas from regulation under IEEPA and with IEEPA's broader purpose to limit material support to adversaries. See § 202.226. A broader definition of the term would enable adversaries and countries of concern to use non-expressive data to undermine our national security.

Some commenters believed that this interpretation is inconsistent with the Berman Amendment. As set out in detail in the NPRM, the Department disagrees. Briefly, the Berman Amendment's list of examples of information and informational materials reflects Congress' intent to protect the import or export of expressive speech and communicative works and mediums that may be carrying such expressive content.¹⁴⁶ This is reinforced

¹⁴³ *Id.* at 2263 (“[S]ome statutes ‘expressly delegate[]’ to an agency the authority to give meaning to a particular statutory term.”).

¹⁴⁴ 50 U.S.C. 1704.

¹⁴⁵ *Loper Bright*, 144 S. Ct. at 2263 n.5 (quoting 29 U.S.C. 213(a)(15) (“as such terms are defined and delimited by regulations of the Secretary”) and 42 U.S.C. 5846(a)(2) (regulating according to term “as defined by regulations which the Commission shall promulgate”).

¹⁴⁶ One commenter insisted that the “ordinary meaning” of the term, including as reflected in an Office of Management and Budget (“OMB”) circular, includes non-expressive data. The cited OMB circular post-dates the enactment of the Berman Amendment and defines the term for use in guidance to agencies for managing Federal IT resources. It is therefore of exceedingly negligible relevance here. As explained at length in the NPRM, the term “information and informational materials” as used in the Berman Amendment cannot be understood outside the specific history and context surrounding its enactment. Some commenters pointed out that some mediums

¹³⁹ 31 CFR 800.302(b) (providing that “covered control transactions” do not include “a transaction that results in a foreign person holding 10 percent or less of the outstanding voting interest in a U.S. business . . . but only if the transaction is solely for the purpose of passive investment.”); 31 CFR 800.243 (defining “solely for the purpose of passive investment” as indicating ownership interests that do not, *inter alia*, afford any rights that if exercised could constitute control or any access, rights, and involvement specified in 31 CFR 800.211(b)); 31 CFR 800.211(b) (specifying access, rights or involvement to include board membership observer rights, or involvement in substantive decision-making).

¹⁴⁰ 50 U.S.C. 1704.

¹⁴¹ *Zarmach Oil Servs., Inc. v. U.S. Dep't of Treas.*, 750 F. Supp. 2d 150, 156 (D.D.C. 2010); see also, e.g., *Holy Land Found. v. Ashcroft*, 333 F.3d 156, 162–63 (D.C. Cir. 2003); *United States v. Lindh*, 212 F. Supp. 2d 541, 562–63 & n.52 (E.D. Va. 2002); *Consarc Corp. v. U.S. Dep't of Treas., Off. of Foreign Assets Control*, 71 F.3d 909, 914–15 (D.C. Cir. 1995); *Consarc Corp. v. Iraqi Ministry*, 27 F.3d 695, 701 (D.C. Cir. 1994).

¹⁴² 144 S. Ct. 2244 (2024).

by the Berman Amendment's legislative and drafting history and context, which reveal Congress's focus on expressive materials (such as artwork, literature, or news media) and on the free exchange of ideas. In particular, in enacting the 1994 changes to the Berman Amendment, Congress explicitly acknowledged and ratified a meaning of the term "information or informational materials" that was narrower than anything that, in a colloquial or dictionary sense, could potentially be characterized as "information or informational materials."¹⁴⁷

One commenter contended that information—including the non-expressive data subject to this rule—would be protected by the First Amendment as speech and is therefore categorically within the Berman Amendment's prohibition. But whether the non-expressive data subject to this rule would be subject to First Amendment analysis does not dictate whether it falls within the scope of the Berman Amendment. As the legislative history and context make clear, Congress intended with the Berman Amendment to advance core First Amendment principles, not to wholesale import First Amendment doctrine as such. This commenter's suggestion is flatly inconsistent, for example, with Congress's conscious preservation of the exception that allows the Executive Branch to regulate information—even expressive information—that is not fully created at the time of the transaction. That legislative choice demonstrates a degree of flexibility reflected in, though not necessarily coterminous with, First Amendment doctrine.

Nor does the Department's interpretation contradict the First Amendment orientation of the Berman Amendment or impermissibly burden the First Amendment rights of U.S. persons. The rule is analogous to the wide range of content-neutral and viewpoint-neutral laws regulating commercial transactions involving the sale, disclosure, and use of sensitive

personal data that courts have consistently upheld against First Amendment challenge. As the Supreme Court observed long ago, "numerous examples" of commercial information "are regulated without offending the First Amendment."¹⁴⁸ Courts have consistently held that the First Amendment permits viewpoint-neutral restrictions on commercial transactions that use, disclose, and sell confidential financial information; targeted marketing lists of consumers, customers' purchase, rental, and borrowing histories for books, videos, and other materials; telecommunication customers' proprietary network information; personal dossiers aggregated from public and nonpublic information; and consumer-reporting information.¹⁴⁹ Similarly, these types of transactions are not protected from export restrictions under IEEPA by the Berman Amendment.

In sum, the Department's definition appropriately "balances IEEPA's competing purposes" in "restricting material support for hostile regimes while encouraging the robust interchange of information."¹⁵⁰ The export of non-expressive data (including the sensitive personal data that the rule regulates) does not implicate the exchange of ideas and expression that the Berman Amendment protects. At the

same time, allowing sensitive personal data to fall into the hands of countries of concern would directly support and enable their attempts to undermine national security, including through traditional and economic espionage, surveillance, sabotage, blackmail, and other nefarious activities. Moreover, these categories of sensitive personal data are already subject to some existing government regulation in the context of domestic commercial transactions. It would be unreasonable to interpret IEEPA—a statute that is specifically designed to address foreign threats to national security, foreign policy, and the economy—as disallowing regulation of the same commercial transactions when they involve transferring such data to a country of concern.

In the NPRM, the Department explained that, under its interpretation, expressive content and associated metadata that is not sensitive personal data would be categorically outside the scope of the definition of "sensitive personal data" and thus outside the scope of the regulations, regardless of the type of activity (or transaction) involved. The Department asked for further comments on this issue, and several commenters suggested that further protections for metadata ordinarily included in expressive materials, such as geolocation data embedded in digital photographs, were warranted. The Department agrees that it is appropriate to provide further protections for the export of metadata that is ordinarily associated with expressive materials, or that is reasonably necessary to enable the transmission or dissemination of expressive materials, to avoid unintended effects on the export of information or informational materials. Such metadata is therefore categorically excluded from the rule's scope, as reflected in revisions to the definition of "sensitive personal data" in § 202.249. The rule would still properly reach metadata that is not ordinarily associated with expressive materials or not reasonably necessary to its transmission or dissemination because regulating that data does not impermissibly prohibit the export of the expressive material itself. This prevents the abuse of expressive materials as a conduit for transmitting unrelated government-related data or bulk U.S. sensitive personal data. The Department reiterates that other aspects of the rule (such as bulk thresholds or the definition of "covered data transaction") also protect the dissemination of expressive content and its associated metadata.

listed—such as CD ROMs or microfiche—can store non-expressive data just as well as expressive content. This is undoubtedly true but misses the point: Congress listed these media types because they are used to store the expressive content such as music, artwork, or literature that the provision seeks to protect. One commenter contended that the Department's proposed definition does not account for the distinct terms "information" and "informational materials." The Department disagrees: the phrase refers to expressive content ("information") as well as the mediums containing that content ("informational materials").

¹⁴⁷ See H.R. Rep. No. 103-482, 103d Cong., 2d Sess., at 239 (conf. rep.), reprinted in 1994 U.S.C.C.A.N. 398, 483; *United States v. Amirnazmi*, 645 F.3d 564, 586 (3d Cir. 2011).

¹⁴⁸ *Ohrlik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456 (1978).

¹⁴⁹ E.g., *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749 (1985); *id.* at 762 (three-justice plurality opinion agreeing that "[t]here is simply no credible argument that this type of credit reporting requires special protection to ensure that debate on public issues will be uninhibited, robust, and wide open") (cleaned up); *id.* at 764 (Burger, C.J., concurring in the judgment) (agreeing); *id.* at 774 (White, J., concurring in the judgment) (agreeing that "the defamatory publication in this case does not deal with a matter of public importance" warranting First Amendment protection). See also *Trans Union LLC v. FTC*, 295 F.3d 42, 46, 52–53 (D.C. Cir. 2002) (upholding the constitutionality of the FTC's regulations implementing the privacy protections of the Gramm-Leach-Bliley Act by restricting financial institutions' use of any personally identifying information obtained by financial institutions in connection with providing financial products or services to a consumer); *Trans Union Corp. v. FTC* (*Trans Union I*), 245 F.3d 809, 818 (D.C. Cir. 2001), *reh'g denied*; *Trans Union Corp. v. FTC* (*Trans Union II*), 267 F.3d 1138, 1142 (D.C. Cir. 2001), *cert. denied*, 536 U.S. 915 (2002); *Boelter v. Hearst Commc'ns, Inc.* (*Hearst II*), 269 F. Supp. 3d 172, 177–78 (S.D.N.Y. 2017); *Boelter v. Hearst Commc'ns, Inc.* (*Hearst I*), 192 F. Supp. 3d 427, 445 (S.D.N.Y. 2016); *Boelter v. Advance Magazine Publishers, Inc.*, 210 F. Supp. 3d 579, 599 (S.D.N.Y. 2016); *Nat'l Cable & Telecommc'ns Ass'n v. FCC*, 555 F.3d 996, 1001 (D.C. Cir. 2009) (restrictions on disclosure of customer proprietary network information); *Brooks v. Thomson Reuters Co.*, No. 21-cv-01418-EMC, 2021 WL 3621837, at *1, *15 (N.D. Cal. Aug. 16, 2021); *King v. Gen. Info. Servs., Inc.*, 903 F. Supp. 2d 303, 309–11 (E.D. Pa. 2012).

¹⁵⁰ *United States v. Amirnazmi*, 645 F.3d 564, 587 (3d Cir. 2011).

To the extent that any parties believe that the sensitive personal data involved in their covered data transactions may nevertheless qualify as “information or informational materials” that is exempt under 50 U.S.C. 1702(b)(3), they can seek clarification using the administrative processes for seeking an advisory opinion or applying for a specific license before engaging in the transaction.

2. Section 202.504—Official Business of the United States Government

The NPRM proposed exempting data transactions to the extent that they are for (1) the conduct of the official business of the United States Government by its employees, grantees, or contractors; (2) any authorized activity of any United States Government department or agency (including an activity that is performed by a Federal depository institution or credit union supervisory agency in the capacity of receiver or conservator); or (3) transactions conducted pursuant to a grant, contract, or other agreement entered into with the United States Government. Most notably, this exemption exempts grantees and contractors of Federal departments and agencies, including the Department of Health and Human Services (“HHS”), the Department of Veterans Affairs, the National Science Foundation, and the Department of Defense, so that those agencies can pursue grant-based and contract-based conditions to address risks that countries of concern can access sensitive personal data in transactions related to their agencies’ own grants and contracts—as laid out in section 3(b) of the Order—without subjecting those grantees and contractors to dual regulation.

Two commenters noted that the rule would hinder scientific progress by preventing international collaboration with scientists who are primarily resident in countries of concern because those scientists would no longer be able to leverage large population neuroscience datasets funded by the National Institutes of Health (“NIH”). One of these commenters noted that the proposed rule could impose unwanted administrative burdens on U.S. researchers by creating roadblocks to data sharing and thereby potentially decrease the global competitiveness of U.S. genetics research and related applications. These concerns are unsupported. As explained in parts IV.D.2, IV.D.4, and IV.D.8–10 of this preamble, the rule regulates certain categories of commercial transactions and does not prohibit or restrict United States research in a country of concern,

or research partnerships or collaboration with covered persons, that does not involve the exchange of payment or other consideration as part of a covered data transaction. In addition, the rule includes exemptions and provisions meant to streamline compliance and reduce the impact on researchers. The rule exempts expressive information and personal communications, such as the posting or publication of health-related research data online by individual researchers. To the extent that such covered data transactions are conducted pursuant to a grant, contract, or other agreement entered into with the United States Government, that activity would be exempt from the prohibitions and restrictions of the rule. And the rule exempts the activities of the United States Government, such as providing access to its own databases. The rule exempts data that is lawfully publicly available or available in unrestricted, open-access repositories and other widely distributed media, such as databases freely available to the scientific community. Other exemptions include clinical care data and post-marketing surveillance data needed for FDA authorization, submissions of regulatory approval data to research or market drugs, biological products, devices, and combination products, and the sharing of data as part of international agreements (including those addressing pandemic preparedness and global health surveillance). The Department therefore does not believe that the rule will undermine the global competitiveness of the U.S. genetics sector significantly, if at all.

To the contrary, the rule is intended to limit the ability of countries of concern and covered persons to use commercial means to obtain and exploit access to government-related or bulk U.S. sensitive personal data. Safeguarding government-related data and bulk U.S. sensitive personal data is crucial for maintaining trust and competitiveness within the research community. These regulations will foster international collaboration and strengthen the global standing of U.S. researchers. Furthermore, the rule does not prevent the sharing of data with countries that are not countries of concern. It only requires that U.S. persons require foreign persons that are not countries of concern or covered persons, and with which the U.S. persons engage in covered data transactions involving data brokerage to contractually require that the foreign person refrain from subsequent data transactions involving data brokerage of

the same data with a country of concern or covered person, as described in § 202.302(a)(1). Foreign persons that obtain covered data from U.S. persons should be contractually prohibited from onward transfer of this data to countries of concern or covered persons.

The rule’s prohibitions and restrictions, as limited by this and other exemptions, are considerably less onerous and wholly different in kind than those imposed by certain other countries. For example, a PRC set of laws and regulations supposedly aimed at protecting national security, data security, and privacy impose strict controls on transfers of certain broad categories of data collected or produced in China—including vaguely defined categories like “important data”—to places outside of China, effectively localizing such data. To the extent that these authorities do not prohibit cross-border transfers of such data outright, they generally subject such transfers to review, approval, and security assessments conducted by PRC government regulators and require that the recipient be contractually obligated to follow security measures prescribed by the government.¹⁵¹ Transfers of scientific data outside of China are also subject to government review and approval. In addition, the European Union’s (“EU”) General Data Protection Regulation (“GDPR”), which the EU calls “the toughest privacy and security law in the world,”¹⁵² imposes restrictions on the transfer of personal data outside the European Economic Area that are designed to ensure that the level of protection of individuals

¹⁵¹ These laws include the National Security Law of the People’s Republic of China (promulgated by the Standing Committee of the National People’s Congress, July 1, 2015, effective July 1, 2015), *see* Exh. A to Newman Decl., *supra* note 111; the Cybersecurity Law of the People’s Republic of China (promulgated by the Standing Committee of the National People’s Congress, Nov. 7, 2016, effective June 1, 2017), *see* Exh. B to Newman Decl., *supra* note 111; the Anti-Terrorism Law of the People’s Republic of China (promulgated by the Standing Committee of the National People’s Congress, Dec. 27, 2015, effective Jan. 1, 2016, amended Apr. 27, 2018), *see* Exh. C to Newman Decl., *supra* note 111; the National Intelligence Law of the People’s Republic of China (promulgated by the Standing Committee of the National People’s Congress, June 27, 2017, effective June 28, 2017, amended Apr. 27, 2018), *see* Exh. D to Newman Decl., *supra* note 111; and the Counter-Espionage Law of the People’s Republic of China (promulgated by the Standing Committee of the National People’s Congress, Nov. 1, 2014, amended Apr. 26, 2023, effective July 1, 2023), *see* Exh. E to Newman Decl., *supra* note 111.

¹⁵² Ben Wolford, *What Is GDPR, the EU’s New Data Protection Law?*, GDPR.eu, <https://gdpr.eu/what-is-gdpr/> [<https://perma.cc/3LAB-CTPQ>].

granted by the GDPR remains the same, among other restrictions.¹⁵³

Some commenters requested clarity about projects receiving both federal and non-Federal funding, as well as the extent to which the exemption would include transactions conducted pursuant to a grant, contract, or other agreement with Federal departments and agencies to conduct and share the results of federally funded research that also involved grants, donations, or other funding from non-Federal entities, like private institutions or donors. The Department has added new examples in § 202.504 to clarify that transactions conducted pursuant to a grant, contract, or other agreement with Federal departments and agencies are exempt, even if those transactions also involve funding from non-Federal entities.

3. Section 202.505—Financial Services

The NPRM proposed exempting the transfer of personal financial data or covered personal identifiers incidental to the purchase and sale of goods and services (such as the purchase, sale, or transfer of consumer products and services through online shopping or e-commerce marketplaces, while still prohibiting these marketplaces from conducting data transactions that involve data brokerage), as well as exempting the transfer of personal financial data or covered personal identifiers for the provision or processing of payments or funds transfers.

Commenters were generally supportive of the Department's inclusion of a financial services exemption. Comments requested clarifications about the exemption's scope and outer peripheries, requested changes to its examples or requested new examples, and suggested changes that would expand its applicability beyond data transactions that are ordinarily incident to and part of the provision of financial services. The Department has made many of these changes and clarifications to the exemption and its examples in response to these comments. Some commenters raised issues that failed to appreciate

the applicability of the regulations' other exemptions or provisions and made suggestions that would be redundant or unnecessary if accepted. Other commenters mistakenly treated the list of financial services as exhaustive and failed to appreciate that it is an exemplary list. Some commenters failed to appropriately consider how the suggestions or observations they put forth would address the national security risks the Order was intended to mitigate. Other commenters failed to explain why it was essential in the context of their suggestions that covered persons or countries of concern access government-related data or bulk U.S. sensitive personal data.

In the NPRM, the Department also shared that it was considering whether and how the financial services exemption should apply to employment and vendor agreements between U.S. financial-services firms and covered persons where the underlying financial services provided do not involve a country of concern. As the Department explained, under this proposed exemption, U.S. persons would be required to evaluate whether a particular data transaction (such as a transaction involving data brokerage or a vendor, employment, or investment agreement) is "ordinarily incident to and part of" the provision of financial services such that it is treated as an exempt transaction.¹⁵⁴ The Department shared two new proposed examples and sought public input as to whether to treat those examples as exempt transactions or restricted transactions.¹⁵⁵ Specifically, the Department sought public comment on the extent to which it is reasonable, necessary, and typical practice for U.S. financial-services firms to hire covered persons as employees or vendors with access to bulk U.S. sensitive personal data as part of providing financial services that do not involve a country of concern; why U.S. financial-services

firms hire covered persons instead of non-covered persons in those circumstances; and any additional compliance costs that would be incurred if the transactions in these examples were treated as restricted transactions. One of the new examples proposed in § 202.505(b)(12) of the NPRM featured a U.S. wealth-management services company that collects bulk personal financial data on U.S. clients, appoints a citizen of a country of concern located in a country of concern to its board, and allows this board member access to the bulk personal financial data in connection with the board's data security and cybersecurity responsibilities.

One commenter stated that, for banking organizations, it would treat that example as "ordinarily incident to and part of" the provision of financial services because board oversight of a bank's programs is integral to its required governance procedures. However, the commenter also emphasized that a director carries out an oversight function with respect to a firm's security program as a core component of risk management, is not involved in day-to-day management activities, and does not have a need to access bulk U.S. sensitive personal data to faithfully carry out his or her roles and responsibilities. In explaining the commenter's rationale that a director would not need access to this data to perform his or her duties, the commenter overlooked one of the key facts in the example—that the board director could access bulk personal financial data of the company's U.S. person clients. Treating this board director's employment as a restricted transaction would only mean implementing the security requirements, including data-level requirements that mitigate the risk that the director may access data that is linkable, identifiable, unencrypted or decryptable using commonly available technologies, and which the commenter confirms the director does not need access to. It does not prohibit the board director's employment. Accordingly, the Department has decided to treat the transactions in the proposed examples as restricted transactions because, as stated in the NPRM, it does not believe that an employment agreement (including the hiring of board members) or a vendor agreement that gives a covered person access to bulk U.S. sensitive personal data is a reasonable and typical practice in providing the underlying financial services that do not otherwise involve covered persons or a country of concern. See §§ 202.505(b)(3)

¹⁵³ See Regulation (EU) 2016/679 of the European Parliament and of the Council of Apr. 27, 2016, On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC, art. 44; see also *International data transfers*, European Data Protection, https://www.edpb.europa.eu/sme-data-protection-guide/international-data-transfers_en [<https://perma.cc/G5A3-4HEB>] ("In a nutshell, the GDPR imposes restrictions on the transfer of personal data outside the EEA, to non-EEA countries or international organisations, to ensure that the level of protection of individuals granted by the GDPR remains the same.").

¹⁵⁴ Cf., e.g., 31 CFR 560.405(c) (discussing the OFAC exemption for transactions "ordinarily incident to a licensed transaction" as applied to scenarios involving the provision of transportation services to or from Iran); 31 CFR 515.533 n.1 (discussing the OFAC exemption for transactions "ordinarily incident to" a licensed transaction as applied to scenarios involving the licensed export of items to any person in Cuba); Letter from R. Richard Newcomb, Dir., U.S. Dep't of Treas., Off. of Foreign Assets Control, *Re: Iran: Travel Exemption* (Nov. 25, 2003), <https://ofac.treasury.gov/media/7926/download?inline> [<https://perma.cc/3VRL-X886>] (discussing the OFAC exemption for transactions "ordinarily incident to" travel as applied to scenarios involving the use of airline-service providers from a sanctioned jurisdiction).

¹⁵⁵ 89 FR 86135.

and 202.505(b)(12). These transactions therefore appear to pose the same unacceptable national security risk regardless of the kinds of underlying services provided by the U.S. person.

Commenters suggested that financial institutions engage in operational and compliance activities that are uncommon to other sectors. Because of this, the commenters believe there may be confusion on the applicability of the exemptions for financial services and corporate groups transaction. To address this supposed confusion, the commenters recommended the expansion of the financial services exemption to include data transactions that are ordinarily incident to and part of the operations of financial services entities regulated by Federal or State banking or insurance regulators, without limitation. The Department declines to adopt this suggestion. First, the suggestion is too broad and appears to fully exempt financial-services entities (*i.e.*, their operations) from the regulations, even if they engage in the same covered data transactions that pose the unacceptable risks addressed by the Order (such as selling bulk U.S. sensitive personal data to a covered person). As the NPRM explained, the rule takes an activity-based approach, not an entity-based approach, because it is these commercial activities (*i.e.*, transactions) that pose an unacceptable national security risk, regardless of the kind of entity that engages in them. A new Example 6 was added in § 202.506(b)(6) to address the issue of the overlap between these exemptions. There is no tension or confusion between these independent exemptions because any combination of the exemptions can apply, depending on the circumstances of any given matter. In addition, to the extent that a financial-services entity (or any other U.S. person) engages in data transactions that are required or authorized by Federal law (*e.g.*, the Bank Secrecy Act), those transactions could also be exempt under § 202.507.

Similarly, commenters requested that the financial services exemption be expanded to expressly include data transfers arising from a financial institution's regulatory obligations. This change appears unnecessary. The exemption in § 202.507 already authorizes "data transactions to the extent they are required or authorized by Federal law." Example 1 in § 202.507(d)(1) addresses the commenters' concerns by making clear that a U.S. bank or other financial institution can engage "in a covered data transaction with a covered person that is ordinarily incident to and part of

ensuring compliance with U.S. laws and regulations (such as OFAC sanctions and anti-money laundering programs required by the Bank Secrecy Act)." Some commenters also mentioned that the Department may be inadvertently limiting the relevant scope of exempted data transactions in § 202.505 to those arising from securities-based financial services subject to Securities Exchange Commission ("SEC") jurisdiction. The list of financial services in the exemption is exemplary, not exhaustive, given that the defined term "including" precedes the list. However, to avoid the possibility of any substantial misunderstanding as to whether activities related to commodity markets can be financial services, the Department has added "securities and commodity markets" to the parenthetical in § 202.505(a). The Department also confirms that financial services include futures, options, and derivatives subject to the jurisdiction of the Commodity Futures Trading Commission ("CFTC"), security-based swaps, and the activities of Futures Commission Merchants, commodity trading advisors, introducing brokers, and other CFTC-regulated entities. Parties that face continued challenges determining whether their activities are financial services will be able to file requests for advisory opinions with the Department after the effective date of the regulations.

These same commenters were also concerned that the exemption may not reach transactions involving mortgage-backed securities and other asset-backed securities, which could curtail the ability of parties in countries of concern from buying securities backed by U.S. mortgages and other assets. This comment appears to be based on a misunderstanding. As the Example 2 at § 202.505(b)(2) makes clear, it is ordinarily incident to and part of securitizing and selling asset-backed obligations (such as mortgage and nonmortgage loans) to a covered person for a U.S. bank to provide bulk U.S. sensitive personal data to the covered person. As such, this activity would be exempt, and no changes seem necessary.

Some commenters suggested that cybersecurity services may be considered ancillary to processing payments and funds transfers, based on the view that such services are a form of risk mitigation and prevention. Commenters also proposed the addition of a new example to clarify the limitations in Example 4 at § 202.505(b)(4) regarding product development in what appears to be fraud detection and prevention models. The Department agrees that

cybersecurity services performed in conjunction with the processing of payments and funds transfers can be ordinarily incident to the provision of financial services and thus exempt to the extent that they are performed as part of the processing of payments and funds transfers. The Department, however, declines to extend the exemption to product development or adopt an additional example specific to product development. The comment does not explain why bulk U.S. sensitive personal data needs to be accessed in a country of concern or by a covered person to develop such products as part of providing financial services in a country of concern or to a covered person. The Department makes no further changes regarding this issue.

Several commenters requested clarifications to Example 10 in § 202.505(b)(10). The commenters suggested a clarification that the financial services exemption covers lawful regulatory requests from countries of concern directed at any financial services provider, not just banks. The financial services exemption is not limited to any specific entity and applies to any transaction by any entity that is ordinarily incident to and part of providing financial services, and thus no change is necessary. Nevertheless, as clarification, the Department adopts the suggestion to broaden Example 10 from "bank" to "financial services provider" and adds language showing that sharing financial data as part of routine regulatory reporting requirements is ordinarily incident to the provision of financial services and is therefore exempt.

Commenters also noted that the current version of the financial services exemption is ambiguous as to whether it covers the transfer of personal financial data or covered personal identifiers incidental to the purchase and sale of goods and services, since such exempted transactions must be "ordinarily incident to and part of the provision of financial services" and, as such, the text of the rule appears to narrowly focus on financial-services institutions or payment processors rather than sellers in those marketplaces. This comment misapplies the exemption. The exemption applies to any transaction that is ordinarily incident to and part of financial services, which includes any transaction that is ordinarily incident to and part of the transfer of personal financial data or covered personal identifiers for the purchase and sale of goods and services. As Example 5 in § 202.505(b)(5) makes clear, the financial services exemption is not only applicable to the activities of

financial institutions; that example shows that the exemption can apply to a U.S. company operating an online marketplace.

Commenters also suggested renaming § 202.505 as “financial services and consumer transactions for goods or services” and making the following modifications: in § 202.505(a), before “, including,” insert “or purchase and sale of goods or services.” The Department declines to implement these changes, which appear unnecessary in light of the rule’s text and examples, and which may inadvertently broaden the exemption to cover vendor agreements that the rule intends to regulate.

4. Section 202.506—Corporate Group Transactions

The NPRM proposed exempting covered data transactions to the extent that they are (1) between a U.S. person and its subsidiary or affiliate located in (or otherwise subject to the ownership, direction, jurisdiction, or control of) a country of concern; and (2) ordinarily incident to and part of administrative or ancillary business operations (such as sharing employees’ covered personal identifiers for human-resources purposes; payroll transactions, such as the payment of salaries and pensions to overseas employees or contractors; paying business taxes or fees; purchasing business permits or licenses; sharing data with auditors and law firms for regulatory compliance; and risk management).

One commenter requested that the Department clarify its definitions of “subsidiary,” “affiliate,” and “branch.” Although these terms are not defined in the rule, the Department provided clarification on their meaning in section IV.C.4 of the NPRM.¹⁵⁶ The commenter does not identify any meaningful ambiguity or specific uncertainty about the application of these terms, which are commonly used and applied terms throughout other national security programs. As a result, the Department does not believe it is necessary or appropriate at this time to define these terms. To the extent that ambiguities or uncertainty about the application of these terms arises in the future, the Department can issue general guidance, and the public can seek advisory opinions on their application to specific transactions.

Numerous commenters requested that the Department broaden the scope of data transactions covered by this exemption to cover, as one commenter put it, “more corporate substantive operations-related activity,” rather than

only data transactions that are ordinarily incident to and part of administrative or ancillary business operations. For example, one commenter suggested that the scope of this exemption be broadened “to encompass a broader range of necessary business activities beyond routine administrative support.” Similarly, multiple commenters requested that this exemption be expanded to cover data sharing required for global business operations or services. Other commenters similarly requested that this exemption be expanded to cover any data transfers “necessary to a company’s business,” even if such activity is not ordinarily incident to and part of administrative or ancillary business operations, or to “all instances where a subsidiary in a country of concern receives data from a U.S.-based parent.” The Department declines to incorporate these suggestions because they would not adequately mitigate the threats posed by access to government-related data or bulk U.S. sensitive personal data by a country of concern or covered person.

In addition, numerous commenters requested that the Department make clear that certain specific data transactions or activities identified by the commenters, including what some commenters referred to as “routine” and “low-risk” transactions, are included within the scope of this exemption. These included internal collaboration and review platforms; pricing and billing systems; customer and vendor relationship management tools, including technical assistance centers; expense monitoring and reporting; recruiting and other activities related to identifying and selecting job applicants; contingent workforce management; and financial planning, analysis, and management activities.

The list of ancillary business activities in the exemption is not exhaustive and therefore, some of these activities, such as expense monitoring and reporting, are likely already covered by the scope of this exemption. As such, the Department declines to incorporate these suggestions, as doing so is unnecessary. Additionally, while some of the suggested transactions may be routine, it is unclear why these functions would need to be utilized or performed by a covered person or are necessary for a company to operate in a country of concern. The Department anticipates addressing which activities fit within the exemption through public guidance issued after publication of the final rule.

One commenter requested that the Department include in the exemption

transfers of government-related data or bulk U.S. sensitive personal data to corporate affiliates in countries of concern for routine research and development purposes and not related to other exemptions, including §§ 202.510 and 202.511. The Department declines to adopt this recommendation. This commenter did not provide enough information for the Department to assess the scope or economic, scientific, or humanitarian value of any such transactions, nor the likelihood that such transactions would otherwise satisfy the definition of a “covered data transaction” to fall within the scope of the rule. In light of the substantial risks posed by country of concern access to government-related data and bulk U.S. sensitive personal data described in part II of this preamble and in the NPRM,¹⁵⁷ the Department declines to expand the corporate group transactions exemption to include data transactions involving government-related data and bulk U.S. sensitive personal data with corporate affiliates of U.S. companies in countries of concern for routine research and development purposes.

One commenter reiterated their comment on the ANPRM seeking clarification that the corporate group transactions exemption would cover all employees of a U.S. entity and its affiliates in countries of concern, as well as employees of trusted vendors. The corporate group transactions exemption applies to transactions, not to individuals. As discussed in the NPRM, this exemption may apply to situations in which employees of a U.S. company’s affiliate located in a country of concern are provided with access to covered data.¹⁵⁸ Additionally, for the reasons discussed in section IV.C.4 of the NPRM,¹⁵⁹ the Department declines to broaden the corporate group transactions exemption to include suppliers and other third-party vendors. This commenter also reiterated their comment on the ANPRM seeking confirmation that business offices in a particular country of concern that have access to basic company information, such as a company staff directory, would be covered by this exemption. This scenario is discussed in section IV.C.4 of the NPRM.¹⁶⁰

Multiple commenters requested that the Department include an example in § 202.506 involving a U.S. financial-services provider that has a subsidiary located in a country of concern. In this

¹⁵⁶ 89 FR 86136.

¹⁵⁷ 89 FR 86118–19.

¹⁵⁸ 89 FR 86218.

¹⁵⁹ 89 FR 86136.

¹⁶⁰ *Id.*

example, customers of the U.S. company conduct financial transactions in the country of concern, and customers of the foreign subsidiary conduct financial transactions in the United States. To perform customer service functions related to these financial transactions, the foreign subsidiary accesses bulk U.S. sensitive personal data—specifically, personal financial data.

The Department agrees that the corporate group transactions exemption would apply to the foreign subsidiary's access to the personal financial data under these circumstances because it is ordinarily incident to and part of the provision of customer support. The Department has added this example to § 202.506(b). The Department also notes that the transaction described by these commenters would be covered by the financial services exemption.

One commenter asked the Department to clarify whether the corporate group transactions exemption would apply to a situation in which a U.S. financial-services provider has a foreign affiliate that is also a financial-services provider. In this scenario, the two entities have a centralized risk-monitoring application used by global fraud risk-control employees to effectively monitor fraud risk across the enterprise. The U.S. company allows the foreign affiliate's employees conducting fraud risk monitoring to access bulk U.S. sensitive personal data to the extent reasonably necessary to ensure effective enterprise-wide risk monitoring. The Department agrees that the corporate group transactions exemption would apply to this scenario. While the transaction is between a U.S. company and its affiliate, effective enterprise-wide risk monitoring is ordinarily incident to and is an ancillary part of providing financial services.

This commenter also asked the Department to clarify whether this exemption would apply to a situation in which a U.S. company has a foreign affiliate that is a covered person and that provides customer support services to U.S. customers as part of global customer support operations. In this scenario, the U.S. company provides the foreign affiliate with access to bulk U.S. sensitive personal data to the extent necessary for the affiliate to provide customer support. The commenter considered the foreign affiliate's access to bulk U.S. sensitive personal data to be covered by the corporate group transactions exemption because, the commenter believed, such access was ordinarily incident to and part of the provision of customer support.

The Department does not agree that the foreign subsidiary's access to bulk U.S. sensitive personal data under the circumstances described by this commenter would be covered by the corporate group transactions exemption. Specifically, the Department does not consider the foreign subsidiary's access to the bulk U.S. sensitive personal data to be ordinarily incident to and part of the provision of customer support because, in the scenario described by the commenter, the foreign subsidiary appears to be providing customer support to the U.S. company's customers in all instances—including instances in which customer support is being provided to U.S. persons located in the United States—and not just in instances that involve a country of concern or a covered person. This view aligns with the Department's view on the inapplicability of the financial-services exemption to vendor agreements where the underlying financial services being provided by the vendor do not involve a country of concern or a covered person, as discussed in section IV.C.3 of the NPRM¹⁶¹ and Example 4 in § 202.505(b).

One commenter requested that the Department clarify that “potential incidental access to physical facilities” containing covered data would not be considered “access” to such data. This commenter provided an example in which a counterparty employs a repair technician who is not authorized to access facilities that transmit U.S. sensitive personal data “but theoretically could obtain unauthorized access.”

This comment lacks the specificity needed to justify a change or evaluate a suggestion and does not provide support or analysis. As discussed in the NPRM, the definition of “access” is intentionally broad.¹⁶² Section 202.201 of the rule defines “access” as “logical or physical access, including the ability to obtain, read, copy, decrypt, edit, divert, release, affect, alter the state of, or otherwise view or receive, in any form, including through information systems, information technology systems, cloud computing platforms, networks, security systems, equipment, or software” (emphasis added). The commenter has not offered any suggestion for a way to distinguish between incidental or inadvertent access in a manner that would minimize the national security risk that this rule seeks to address. Finally, the CISA security requirements contemplate

organizational, system, and data-level security requirements that are meant to prevent access by covered persons or countries of concern to data that is linkable, identifiable, unencrypted, or decryptable using commonly available technology. For these reasons, the Department declines this commenter's request.

One commenter urged the Department to remove or lessen the requirement in this exemption that additional access protocols be established to ensure that employees in countries of concern only have access to pseudonymized, anonymized, or de-identified data. This commenter noted that many companies have already instituted robust security and data governance measures, as well as mechanisms for intra-affiliate data transfers, and may have contractual or other legal obligations to comply with when storing or safeguarding data. The application of this exemption does not require that data be pseudonymized, anonymized, or de-identified. As noted in section IV.C.4 of the NPRM, however, a non-exempt employment agreement that qualifies as a restricted transaction would be subject to the CISA security requirements incorporated in § 202.248.¹⁶³

This commenter also remarked that Examples 4 and 12 in §§ 202.505(b)(4) and 202.505(b)(12) (the financial services exemption) should be covered by the corporate group transactions exemption. This commenter provided no support or analysis for this assertion, and the comment lacks the specificity needed to justify a change or evaluate a suggestion. There is no indication in these examples that they involve data transactions between a U.S. person and its subsidiary or affiliate located in (or otherwise subject to the ownership, direction, jurisdiction, or control of) a country of concern.

One commenter asked the Department to clarify whether this exemption would apply to data transfers that are necessary for business-data analysis purposes, noting that it would be burdensome for a company to have to implement a different data analysis system since a shared system is both vital to operations and most cost-effective. This comment lacks the specificity needed to justify a change or evaluate a suggestion. In addition, the business-data analysis mentioned by this commenter appears not to be ancillary or administrative activity but rather part of a company's core business activities, such as product development and research. The Department declines to exempt such

¹⁶¹ 89 FR 86135.

¹⁶² 89 FR 86122.

¹⁶³ 89 FR 86136.

activities as explained in the NPRM and part IV.D of this preamble.

5. Section 202.507—Transactions Required or Authorized by Federal Law or International Agreements, or Necessary for Compliance With Federal Law

The NPRM proposed exempting covered data transactions to the extent that they are required or authorized by Federal law, international agreements or specified global health and pandemic preparedness measures, or are necessary for compliance with Federal law.

One commenter expressed concern that companies could exploit this exemption by relying on data transfer rules contained in expansive digital trade agreements. This commenter expressed alarm about the possibility that certain provisions of such agreements, which reflect commitments to cross-border data transfers, could be used as a basis to circumvent the prohibitions and restrictions in this rule, especially since the list of international agreements in § 202.507(a) is not exhaustive. Accordingly, this commenter requested that the Department clarify that this exemption does not cover transactions required or authorized by international trade agreements.

The Department appreciates this commenter's recognition of the nexus between the provisions in digital free trade agreements, on the one hand, and the national security risk that the Order and this rule seek to address, on the other hand. The Department agrees and reiterates that the exemption contained in § 202.507(a) for sharing data pursuant to international agreements would not allow for the sharing of government-related data or bulk U.S. sensitive personal data with a country of concern pursuant to the World Trade Organization's General Agreement on Trade in Services or other trade agreements. As explained in the NPRM, digital-trade agreements and arrangements that merely facilitate international commercial data flows—such as the Global Cross-Border Privacy Rules and Global Privacy Recognition for Processors Systems of the Global Cross-Border Privacy Rules Forum and the Asia-Pacific Economic Cooperation (“APEC”) Cross-Border Privacy Rules and APEC Privacy Recognition for Processors Systems—are outside the scope of the exemption for international agreements. As the NPRM explained, these arrangements consist of frameworks for coordinating national regulatory measures, prohibit data localization, and do not facilitate the

sharing of data between the United States and a country of concern.¹⁶⁴

Another commenter suggested that this exemption be expanded to cover data transactions not only to the extent that they are required or authorized by Federal law, but also to the extent that they “facilitate or otherwise relate to compliance” with Federal law or other regulatory obligation. This commenter noted that some financial institutions may institute compliance programs that go beyond what is specifically required by Federal law in order to help ensure compliance with such laws or other regulatory obligations.

The Department appreciates that some financial institutions may impose internal rules and requirements that are stricter than those established by Federal law in order to help ensure compliance. The commenter's suggestion to extend this exemption to data transactions to the extent that they “facilitate or otherwise relate to” compliance with Federal law or other regulatory obligations, however, lacks the specificity needed to justify a change. It does not, for example, identify any specific non-exempt covered data transactions with countries of concern or covered persons that go beyond what is required or authorized by Federal law but that would be prohibited or restricted. Accordingly, the Department declines to modify this exemption.

Some commenters requested that the Department include a separate mechanism in § 202.507(b) for researchers to share data rapidly during a public health crisis, if such sharing is not otherwise authorized by the specific mechanisms identified in that section. The Department declines to adopt this recommendation. As explained in parts IV.B.2 and IV.D.9 of this preamble, the rule does not prohibit or restrict the sharing of data by researchers or others that does not involve the exchange of payment or other consideration as part of a covered data transaction. In addition, the rule already has exemptions—including for sharing data as authorized or required by the International Health Regulations (which address data sharing for public health events and emergencies), the Pandemic Influenza Preparedness and Response Framework, the Global Influenza Surveillance and Response System, and other health-related international agreements—that allow data sharing in these circumstances. Finally, general and specific licenses are available to the extent that the sharing of government-related data or bulk U.S. sensitive

personal data in these circumstances would involve non-exempt prohibited or restricted transactions.

6. Section 202.509—Telecommunications Services

The NPRM proposed regulating exempt transactions that are ordinarily incident to and part of telecommunications services.

Several commenters suggested that the Department expand the definition of “telecommunications services” in § 202.252 to include voice and data communications over the internet. The Department agrees. Instead of limiting the scope of “telecommunications services” to the definition in 47 U.S.C. 153(53), the Department has adopted its own definition of the term to more appropriately cover present day communications for the purposes of the exemption in § 202.509. This new definition includes the provision of voice and data communications services regardless of format or mode of delivery such as communications services over IP, voice, cable, wireless, fiber, or other types of broadband. This definition is limited to communications services and does not reach services like cloud computing.

One commenter recommended expanding the definition of “telecommunications services” to include data transactions that are ordinarily incident to the function of communications networks, effectively creating an exemption for IP addresses. The Department appreciates that IP addresses are ubiquitously used to track users on the internet. However, the Department currently views IP addresses as an important listed identifier that can be used to track users and devices as a personal identifier as well as to provide precise geolocation data. Therefore, the Department declines to expand this exemption to include communications networks.

Another commenter recommended expanding this exemption to include the provision of cybersecurity services, noting that network-based identifiers used in cybersecurity services function similarly and do not involve the personal data of users. While the Department appreciates the importance of cybersecurity services, the Department declines to make this suggested change. First, whether network-based identifiers themselves involve personal data is not the relevant inquiry. Network-based identifiers can be exploited, in combination with other listed identifiers, to harm national security in the ways identified in this preamble. Second, some network-based identifiers, such as “IMEI” numbers and

¹⁶⁴ See 89 FR 86136–37.

Integrated Circuit Card Identifiers (“ICCID”) are used in other contexts and often do contain other sensitive personal data. Third, the exemption already exempts transactions to the extent that they are ordinarily incident to and part of providing telecommunications services. The comment does not identify the specific non-exempt transactions with countries of concern or covered persons involving the provision of cybersecurity services that would be prohibited or restricted, nor does the comment explain why the sharing of government-related data or bulk U.S. sensitive personal data with countries of concern or covered persons is an integral part of those transactions. Therefore, no changes were therefore made in response to this comment.

7. Section 202.510—Drug, Biological Product, and Medical Device Authorizations

The NPRM exempted certain data transactions necessary to obtain and maintain regulatory approval from country of concern regulatory entities to market a drug, biological product, medical device, or combination product. The Department sought public comment on the scope of the exemption, including whether to authorize covered data transactions involving covered person vendors in countries of concern that are involved in submitting regulatory approval data on behalf of U.S. persons to country of concern regulators; the extent to which regulatory approval data includes personally identifiable information; and the definition of “regulatory approval data.”

This exemption in the final rule is limited to data that is de-identified or pseudonymized consistent with FDA regulations; required by a regulatory entity to obtain or maintain authorization or approval to research or market a drug, biological product, device, or combination product (*i.e.*, covered product); and reasonably necessary to evaluate the safety and effectiveness of the covered product. For example, de-identified or pseudonymized data that is gathered in the course of a clinical investigation and would typically be required for FDA approval of a covered product would generally fall within the exemption. Conversely, clinical participants’ precise geolocation data, even if required by a country of concern’s regulations, typically would fall outside the scope of the exemption because such data is not reasonably necessary to evaluate covered product safety or effectiveness. One commenter identified some circumstances where such data

might be relevant, such as when the data is collected by a wearable device, or when tracing contaminated or defective products. The Department appreciates this comment and agrees that the data necessary to evaluate safety or effectiveness may vary with circumstances. No change to the regulatory text is necessary, however, as the text already incorporates a “reasonableness” standard.

One commenter pointed out that the preamble to the NPRM indicated that the exemption extended to data required to obtain or maintain “authorization or approval” to “research or market” the specified products, whereas the proposed regulatory text did not include the term “authorization” or “research.” The Department has revised the text of § 202.510 to include both terms, consistent with its stated intent in the NPRM to exempt submissions to regulatory bodies to conduct certain medical research and consistent with the definition provided for the term “regulatory approval data.”

This commenter also sought clarification that the exemption applies to inspections by country of concern regulatory bodies and that, in these circumstances, the de-identification requirement should not apply. This commenter explained that regulatory bodies, including both the FDA and those in countries of concern, possess investigatory authority to more closely examine data related to clinical investigations or post-marketing activities, and that when they exercise this inspection authority, they ordinarily are granted access to all data—including data that has not been de-identified or pseudonymized—consistent with current FDA and foreign regulatory bodies’ practices. The Department first confirms that regulatory inspections, when necessary to maintain authorization or approval to research or market a covered product, generally would fall within the scope of the exemption. The Department appreciates the comment regarding the release of unredacted, identifiable bulk U.S. sensitive personal data in the context of these inspections; such data would generally fall outside the scope of the exemption, even when accessed as part of a regulatory inspection. The comment does not provide information on the frequency of these inspections by country of concern regulators, the extent of U.S. sensitive personal information that would be exposed, the manner in which inspectors or regulatory agencies obtain or retain that data, or who, as a practical matter, the relevant parties ordinarily would be. For example, the rule does not generally apply to

transactions that do not involve a U.S. person; it is unclear from the information provided whether or how the rule would apply where the regulatory body conducts an investigation of an in-country clinic or vendor. Although the comment refers generally to the possibility and authority to conduct overseas inspections, the comment does not suggest that such inspections occur with any frequency. The Department is therefore not convinced that a broad regulatory exemption allowing country of concern regulators unrestricted access to bulk U.S. sensitive personal data adequately accounts for the corresponding national security risks. The Department will continue to evaluate this concern, including the appropriateness of a general license.

Several commenters sought clarification of whether “key-coded” or pseudonymized data would qualify as de-identified data under this provision (and under § 202.511) and suggested that the Department align the requirement with the FDA’s requirements for data submission. Commenters explained that pseudonymized data is used by researchers to enable, for example, longitudinal studies and data traceability. As these commenters recognize, the data submitted to the FDA typically does not include “names and other information which would identify patients or research subjects,” 21 CFR 20.63(b), while other provisions explain (for example) that certain submissions should “assign a unique code for identification of the patient,” 21 CFR 314.80(i), instead of using patient names. The Department appreciates these comments. The risks of re-identification when using pseudonymized or key-coded data are generally higher than when using fully de-identified data. But given the importance of being able to associate patient data longitudinally, the FDA’s practice in this regard, and the established industry protocols for preserving patient or subject anonymity, the Department has changed this provision—as well as the corresponding limitation to de-identified data in § 202.511—to apply to both de-identified data and pseudonymized data as described in 21 CFR 314.80(i). The Department recognizes that data collection and submission continue beyond the initial regulatory approval process, and it intends the term “regulatory approval data” to include data from post-market clinical investigations (conducted under applicable FDA regulations, including

21 CFR parts 50 and 56), clinical care data, and post-marketing surveillance, including data on adverse events. For example, where continued approval to market a drug in a country of concern is contingent on submission of data from ongoing product vigilance or other post-market requirements, the exemption applies.

The exemption also applies even where FDA authorization for a product has not been sought or obtained. The Department does not, in these regulations, intend to require U.S. companies to first seek authorization to market a product in the United States before seeking regulatory approval or authorization from a country of concern. One commenter requested that this be codified in the regulatory text; the Department sees no need to do so because nothing in the regulatory text requires otherwise.

The exemption is limited to transactions that are necessary to obtain or maintain regulatory approval or authorization to market or research a drug or other medical product. Commenters requested additional clarity about whether the exemption would apply to the use of a registered agent, country of concern third-party vendors, employees of a U.S. company in a country of concern, or U.S. subsidiaries incorporated in a country of concern to submit regulatory approval data to country of concern regulators. The Department agrees that there is a strong humanitarian interest in ensuring that U.S. persons may share regulatory approval data with country of concern regulators or covered persons as necessary to obtain or maintain authorization to market drugs, biological products, devices, or combination products. The exemption in § 202.510 does so. The Department has revised Example 3 in § 202.510 to clarify that sharing regulatory approval data with a registered agent, country of concern subsidiary of a U.S. company, or an employee of a U.S. company who primarily resides in a country of concern that a U.S. company intends for the registered agent, subsidiary, or employee to submit to a country of concern regulator, as required by country of concern law, is exempt because it is “necessary” to obtain approval or authorization. In contrast, Example 4 of § 202.510 illustrates that entering into a vendor agreement with a covered person to store and organize regulatory approval data for eventual submission to a country of concern regulator is not “necessary” to obtain regulatory approval if it is not required by country of concern law. The Department has added Example 5 to

clarify that the exemption would also apply to de-identified sensitive personal data collected during post-marketing product surveillance to assess the safety and efficacy of a drug and submitted to a country of concern regulator by a local country of concern registered agent, pursuant to country of concern law, for a U.S. company to maintain authorization to market the drug in the country of concern.

The Department recognizes that some U.S. persons seeking to market drugs, biological products, devices, or combination products in a country of concern may engage third-party vendors to assist with the submission of such data to regulatory entities. The exemption in § 202.510 is calibrated to enable such arrangements where it is “necessary” to obtain or maintain regulatory approval from a country of concern regulator and where such data is de-identified or pseudonymized, consistent with FDA regulations, and reasonably necessary for the country of concern regulator to assess the safety and effectiveness of such products. One commenter suggested changing the exemption to include transactions that are “reasonably necessary” to obtain or maintain approval, but the full comment suggests that there would be substantial difficulty in divining the line between transactions that are “reasonably necessary” and those that are simply “convenient.” Given the substantial national security risks that the prohibitions and restrictions are intended to mitigate, the Department believes that a facially narrower exemption is appropriate. Moreover, in many cases, transactions such as these may likely proceed as restricted transactions under subpart D. Recognizing the complexity of country of concern laws and business practices associated with submitting regulatory approval data to country of concern regulators, the Department declines to provide further specificity about what data transactions it deems “necessary” to obtain or maintain regulatory authorization to market drugs, biological products, devices, or combination products. The final rule provides U.S. persons the opportunity to seek advisory opinions about specific, concrete data transactions, including the use of covered person third-party vendors, and general or specific licenses to authorize any such data transactions otherwise subject to subparts C and D. See §§ 202.801, 202.802, and 202.901.

Some commenters requested that the Department exempt, under either § 202.510 or § 202.511, data transactions where a U.S. company has licensed the intellectual property of a country of

concern pharmaceutical company to market—including potentially conducting a clinical investigation for—a country of concern-developed drug in the United States. The commenters explained that such licensing agreements may require the U.S. company to submit adverse effects reports or other clinical care or post-marketing surveillance data to the country of concern pharmaceutical company. One commenter also asked that, if the Department did not categorically include these types of transactions within the scope of the rule, it clarify that the arrangement would be characterized as a vendor agreement that could proceed under § 202.401.

The Department does not assess that changes to the text of the exemptions are necessary. The exemption at § 202.510 permits U.S. persons to share certain bulk U.S. sensitive personal data with a country of concern or covered person, if doing so is “necessary to obtain or maintain regulatory authorization or approval to research or market a drug, biological product, device, or combination product.” The exemption is not limited to circumstances in which the data is necessary for the *U.S. person* to obtain or maintain regulatory authorization or approval to market a drug, biological product, device, or combination product. Accordingly, the Department intends for the exemption to cover arrangements in which a U.S. person shares “regulatory approval data” with a covered person, like a country of concern pharmaceutical company, if it would be necessary for the covered person to maintain regulatory authorization or approval to market the drug, biological product, device, or combination product, and the data transaction otherwise complies with the requirements of § 202.510.

The Department has also revised the text of § 202.510 to ensure that any such exempted data transactions apply to circumstances in which a person seeks approval or authorization to market or research a drug, biological product, device, or combination product in a third country that is not a country of concern. The NPRM limited the exemption to circumstances in which the exempted data transaction was necessary to “obtain or maintain regulatory approval to research or market” the covered products “in a country of concern.” However, the Department assesses that the humanitarian interest in enabling covered persons to market drugs, biological products, devices, and combination products in third countries

outweighs the risk of permitting U.S. persons to provide “regulatory approval data” to covered persons for the covered person to subsequently market a drug, biological product, device, or combination product either in the country of concern or in a third country.

The Department declines, however, to categorically exempt or characterize all such licensing transactions described by commenters without more information about the volume of such arrangements, the quantity and types of government-related data or bulk U.S. sensitive personal data U.S. companies provide to country of concern licensors, the extent to which such transactions would involve confidentiality protections to mask the identity of U.S. persons, and the value to U.S. patients and end-users of such products. Where the transaction does not fall into one of the existing exemptions, U.S. persons engaged in these types of licensing agreements may seek authorization for such transactions via a general or specific license, pursuant to subpart H, or an advisory opinion under subpart I.

Several commenters asked the Department to provide more specificity about what “sensitive personal data” the Department would consider “reasonably necessary” for a country of concern regulator to assess the safety and effectiveness of a drug, biological product, device, or combination product to satisfy the definition of “regulatory approval data.” The Department agrees with other commenters who encouraged the Department not to provide a brightline rule about what sensitive personal data would be “reasonably necessary” for a country of concern regulator to assess a product’s safety and effectiveness because it would be difficult to anticipate all of the circumstances in which different types of sensitive personal data may be “reasonably necessary” to assess product safety and effectiveness in advance. Section 202.510 includes some examples of sensitive personal data the Department assesses would be “reasonably necessary” for a country of concern regulator to assess a product’s safety or effectiveness. The Department welcomes U.S. persons to seek an advisory opinion about concrete data transactions they are anticipating pursuant to subpart I, or seek general or specific licenses to authorize data transactions they assess may be subject to subparts C and D, pursuant to subpart H, if more specificity is required.

One commenter expressed concern that the exemption would not apply to “device[s],” like certain medical technology products that provide treatment or diagnostic services, unless

they relate to the treatment of diseases or directly affect the structure of a human body. The Department has incorporated the term “device” for the purposes of §§ 202.510 and 202.511, as that term is defined in 21 U.S.C. 321(h). That provision defines a “device” as, among other things, “an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is— . . . (B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or (C) intended to affect the structure or any function of the body of man or other animals.” The Department believes that the commenter may have misread the definition of “device” in 21 U.S.C. 321(h) as requiring that a “device” satisfy both subparts (B) and (C) of the definition, including each of the elements of subpart (B). The Department believes that the definition of “device” incorporated in §§ 202.510 and 202.511 likely would apply to many “medical technology product[s]” that are “intended for use in the diagnosis of disease or other conditions.”

The same commenter encouraged the Department to add “electronic products” to the list of clinical investigations regulated by the FDA or supporting applications to the FDA for research or marketing permits for drugs, biological products, devices, combination products, or infant formula exempted from subparts C and D by § 202.511(a)(1). The commenter explained that its association members produce electronic products, like ultrasound imaging devices and blood warmers used for patient care, and that permitting these members to efficiently comply with international regulatory processes is essential to the members’ competitiveness. As explained in part IV.D.7 of this preamble, § 202.511 incorporates the definition of “device” from 21 U.S.C. 321(h), which includes any “instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article . . . intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals.” Accordingly, the Department believes that the exemption in § 202.511(a)(2) may already apply to the “electronic products,” like ultrasound imaging devices and blood warmers, that the commenter explained were used in patient care for the “diagnosis of disease or other conditions, or in the

cure, mitigation, treatment, or prevention of disease.” The Department welcomes U.S. persons that produce “electronic products” outside the scope of the device definition incorporated by § 202.511 to provide more specific details about the data transactions related to their electronic products that the Department should consider exempting through a license to authorize such data transactions with a country of concern or covered person, pursuant to subpart H.

Some commenters requested that the Department add food products, including dietary supplements and “health foods,” and cosmetics to the lists of products in the exemptions in §§ 202.510 and 202.511. The commenters explained that, under some circumstances, countries of concern may require foreign producers of these products to submit data to country of concern regulators to obtain or maintain regulatory approval to market or research such products. The Department declines to adopt the commenters’ recommendations. The exemptions in §§ 202.510 and 202.511 are tailored to balance the humanitarian interest in providing access to drugs, biological products, devices, and combination products to individuals in countries of concern and globally, and ensuring that manufacturers engaged in clinical trials and investigations of drugs, biological products, devices, combination products, or infant formula can collaborate internationally with the pressing national security risks described in the Order, NPRM, and this preamble about country of concern access to government-related data and bulk U.S. sensitive personal data.¹⁶⁵ The Department does not assess that the same humanitarian interests support exempting data transactions involving government-related data or bulk U.S. sensitive personal data relating to the production and marketing of dietary supplements or cosmetics in countries of concern from the prohibitions and restrictions in the rule, which are designed to mitigate the national security risk of country of concern access to such data. Further, commenters did not provide the Department with detailed enough information to assess whether the rule would impose meaningful restrictions on U.S. persons’ ability to obtain or maintain regulatory approval to market or research dietary supplements or cosmetics in countries of concern. Regulated entities and persons may provide the Department more information about the specific data

¹⁶⁵ 89 FR 86118–19.

transactions that they assess the rule may affect and seek a license pursuant to subpart H.

One commenter recommended that the Department revise the definition of “regulatory approval data” to include submissions required by country of concern regulatory entities of bulk U.S. sensitive personal data—such as human genomic data or human biospecimens from which such human genomic data could be derived—to other covered persons—like a laboratory, institutional review board, or ethics committee in a country of concern—to obtain or maintain authorization to market a drug, biological product, device, or combination product. The Department agrees that data transactions that otherwise satisfy the definition of “regulatory approval data” and that are necessary to obtain or maintain authorization to market a drug, biological product, device, or combination product and that a country of concern regulatory entity requires a U.S. person to submit to another covered person for such purposes are exempt from subparts C and D. The Department has revised the exemption in § 202.510 accordingly.

Several commenters requested clarification about whether the term “regulatory entity” in § 202.510 includes local, municipal, provincial, and national regulators.

The exemption requires that parties engaged in transactions involving regulatory approval data with countries of concern nonetheless comply with the recordkeeping and reporting requirements otherwise applicable to U.S. persons engaged in restricted transactions, because of the heightened national security risk that arises from transmitting government-related data or bulk U.S. sensitive personal data directly to a government entity in a country of concern. Some commenters asserted that this would be unduly burdensome, but they did not provide any further information on the scope of that burden or the costs of compliance. One commenter asserted that the requirement was duplicative of some existing requirements or practices, suggesting that compliance will not be excessively costly even if it does require some changes to current practices. This commenter also sought further specificity on what records would be required to be kept under this section. Because of the variety of transactions that might occur, the Department does not believe it is feasible or appropriate to specify the precise records that must be maintained; the regulatory text requires a full and accurate record, which in many cases will likely include,

at a minimum, the information set out in subparagraphs 4, 5, 6, 7, and 10 of § 202.1101(b).

Another commenter requested that recordkeeping and retention requirements not apply to U.S. companies engaging with third parties or vendors that assist in clinical and other research, unless those vendors “have access to sensitive personal data that is not required for regulatory submission and is not de-identified,” given that many countries of concern require by law that nationals of those countries provide certain data to regulatory authorities. This commenter added that because the Department is using the definition of “personal health data” from HIPAA, the de-identified “regulatory approval data” and “clinical investigations and post-marketing surveillance data” exempted at §§ 202.510 and 202.511 may be “key-coded,” as provided for at 45 CFR 164.514(c), as long as the key is not held by or accessible to a covered person, which will preserve essential product safety and post-marketing surveillance activities.

The Department declines to adopt the commenter’s suggestions to eliminate the reporting requirements generally or for third-party vendors submitting regulatory approval data to a country of concern regulator specifically. The reporting and recordkeeping requirements required to comply with the exemptions at §§ 202.510 and 202.511 are essential for the Department to better understand the risk, if any, posed by sharing government-related data or bulk U.S. sensitive personal data with countries of concern or covered persons to obtain or maintain regulatory authorization to research or market products, or in the course of clinical investigations, product safety, or post-marketing product surveillance activities. Where country of concern law requires a U.S. company to engage a country of concern registered agent or vendor to submit such data, it is essential for the Department to have access to records and reporting involving the transactions between the registered agent or vendor and the country of concern regulators to weigh the risks, if any, posed by such transactions. Further, while entities invoking the exemptions under §§ 202.510 and 202.511 may maintain some records related to data collected about participants in their clinical trials, investigations, and post-marketing product surveillance activities to address potential patient privacy and informed consent concerns, the Department’s recordkeeping and reporting obligations are driven by the

Department’s interest in better understanding the risk posed by sharing government-related data or bulk U.S. sensitive personal data with specific countries of concern or covered persons. The extant recordkeeping and reporting obligations imposed by other regulatory regimes do not address this national security risk-focused recordkeeping and reporting obligation.

8. Section 202.511—Other Clinical Investigations and Post-Marketing Surveillance Data

In response to comments received at the ANPRM stage, the Department proposed an exemption related to clinical investigations and post-marketing surveillance data. Commenters were generally supportive of this exemption, although several commenters suggested that the exemption should be broadened in various ways. At a high level, these commenters expressed concern that, as proposed, the exemption might unduly harm biopharmaceutical innovation. One commenter, for example, emphasized that the rule, even with the exemption in § 202.511, might limit the pharmaceutical and medical device industry’s access to organizations and individuals with valuable expertise and capabilities. The Department recognizes that a consequence of the rule—indeed, its purpose—will be to limit certain transactions with covered persons and countries of concern. But neither this commenter nor other commenters presented evidence that covered persons, as a class, possess unique capabilities that cannot be obtained from other sources. In such cases, a regulated person or entity could seek a specific license under § 202.802.

The Department has considered these comments and, as explained, has made some changes to or otherwise clarified the exemption. The Department believes that with these changes and clarifications, the exemption appropriately balances the need to mitigate the national security risk attendant to access to government-related data and bulk U.S. sensitive personal data against other interests, including humanitarian, economic, and scientific interests.

The Department believes that, as discussed in the NPRM,¹⁶⁶ existing FDA regulations governing clinical investigations and subject data offer sufficiently robust protection to at least mitigate national security concerns, and in light of the countervailing interests in allowing these types of transactions to proceed, the Department retains this

¹⁶⁶ See 89 FR 86138–40.

exemption, with some changes, in the final rule. Some commenters contended that the exemption should not be limited to FDA-regulated activities. For example, one commenter thought that the exemption should include “local-for-local” studies—that is, clinical trials conducted in a country of concern to support an application for approval by that country’s regulators—even when the study is not regulated by the FDA. The Department believes that FDA regulations, though focused on a different problem, are essential to mitigate the national security risk identified in the Order, and declines to extend the exemption to non-FDA-regulated activities. The Department reiterates, however, that the rule does not restrict the transfer of non-U.S. person data to the United States and that many transactions can proceed as restricted transactions or subject to a license.

The Department proposed exempting transactions “ordinarily incident to and part of” either certain clinical investigations or certain post-market activities. The Department adheres in the final rule to that scope. One commenter suggested substantially broadening the exemption to reach transactions that are “incidental to and in furtherance of” such activities, to allow greater industry use of covered persons’ expertise and capabilities. As explained, the Department recognizes that some transactions that might otherwise occur in the absence of the rule might not proceed, or might proceed only subject to the requirements for restricted transactions, without a broader exemption. But the Department has not seen evidence that covered persons possess irreplaceable expertise or capabilities, and it does not believe that the proposed change properly accounts for the national security concerns that arise from these types of transactions.

Other commenters sought clarification about whether the exemption would apply to entities involved in clinical research other than those actually performing the research, such as medical record companies or research ethics committees. The exemption is not limited to any particular type of entity, but rather is limited to those transactions that are ordinarily incident to and part of the specified activities. Entities seeking clarity about whether a particular transaction would fall within that exemption can avail themselves of the advisory opinion process set out in subpart I.

Some commenters recommended that the clinical investigations exemption apply to all transactions involved in

clinical studies or investigations. The commenters did not provide adequate information about the types of transactions, the extent to which they would qualify as covered data transactions that involve access by a country of concern or covered person to government-related data or bulk U.S. sensitive personal data, or the necessity of such transactions for the Department to assess the risks and benefits of expanding the exemption. Notably, the Department revised the definition of “covered data transaction” in § 202.210 to clarify that the prohibitions and restrictions of the rule only apply to covered data transactions with a country of concern or covered person that involve access by a country of concern or covered person to government-related data or bulk U.S. sensitive personal data. The rule does not regulate transactions that do not implicate country of concern or covered person access to government-related data or bulk U.S. sensitive personal data. And the exemption for clinical investigations and certain clinical care and post-marketing surveillance data transactions already exempts any data transactions within the scope of the restrictions or prohibitions of subparts C and D, if they are “ordinarily incident to and part of” the relevant clinical investigations or collection and processing of clinical care or post-marketing surveillance data. The Department declines to specify in advance the types of data transactions that fall within the scope of the exemption and welcomes regulated persons or entities to seek an advisory opinion or apply for a license authorizing any such transactions that they assess fall within the scope of the rule’s prohibitions and restrictions.

The Department does not intend to categorically preclude clinical investigations from being conducted in a country of concern and does not believe that the rule, even without the clinical investigation-focused exemption, does so. The rule generally does not prohibit or restrict data transactions from a country of concern to the United States and does not apply to data unrelated to U.S. persons. The Department sought comments on whether, why, and to what extent it would be necessary for U.S. persons to transmit bulk U.S. sensitive personal data to a covered person in order to support a clinical investigation taking place in a country of concern. One commenter asserted that anonymized clinical data should be categorically exempted to avoid preventing companies from launching clinical trials in a country of concern, but they did not

elaborate on how the rule, especially in light of the exemption for clinical investigations, would do so. The Department therefore rejects this suggestion.

Some commenters requested clarity about what standard for de-identification the Department intended to require for U.S. persons to avail themselves of the exemption. Consistent with many commenters’ recommendations, the Department has adopted standards for de-identification or pseudonymization that are consistent with the FDA’s practices for adverse event reporting in 21 CFR 314.80(i) for sensitive personal data implicated by §§ 202.510 and 202.511 and discussed in more detail in part IV.D.8 of this preamble.

The Department is also aware that, as appropriate and required, certain data related to post-marketing surveillance is made available to global public health authorities, such as the World Health Organization’s Vigibase. Submissions by the United States Government itself, such as FDA submissions to Vigibase, would be exempt under § 202.504. Several commenters sought an explicit exemption for data repositories used to support medical and other public health research. These commenters expressed concern that, because covered persons or countries of concern might have access to bulk U.S. personal health or human genomic data submitted by a U.S. person, U.S. persons would not be permitted to submit data to these repositories. The Department declines to make any change. The rule’s prohibitions and restrictions principally apply to covered data transactions between U.S. persons and covered persons or countries of concern. The rule’s prohibitions and restrictions in subparts C and D typically would not apply, unless the data repositories to which U.S. researchers are submitting data are themselves covered persons. Further, such submissions of data may be exempt under § 202.507 or because the submission does not involve an exchange of money or other consideration to satisfy the definition of a covered data transaction. In cases where a regulated person or entity believes the operative provisions of this part otherwise apply, such as the provision requiring contractual limits on onward data transfers to countries of concern or covered persons in § 202.302, the Department encourages those parties to seek a license under subpart H. The available comments do not provide sufficient information for the Department to identify or describe the entities with whom transactions of this type should be exempted. But,

based on the public comments and subject to receipt of additional and more specific information, the Department believes it may be appropriate to issue general licenses that broadly authorize the submission of health- and medical research-related data to specific entities.

The Department sought comment on whether the FDA recordkeeping provisions in 21 CFR 312.62 would be adequate such that it would be unnecessary to also require compliance with the recordkeeping and reporting requirements set forth in §§ 202.1101(a) and 202.1102. After reviewing the comments on this subject, the Department makes no change in the final rule and does not seek to impose those requirements on entities availing themselves of this exemption.

The Department sought comment on whether any exemption, or parts of it, could feasibly be time-limited to allow industry to shift existing processes and operations out of countries of concern over a transition period. Some commenters expressed concern that the lack of clarity about the duration of the exemptions in §§ 202.510 and 202.511 would hinder U.S. companies' ability to research and market drugs, biological products, devices, and combination products. The Department agrees and has not imposed any expiration for the exemptions in the rule. As with any other provision of the rule, the Department may amend the rule in the future to address the national security risks posed by country of concern access to government-related data and bulk U.S. sensitive personal data.

The Department recognizes that some of the rule's prohibitions and restrictions may nonetheless affect some covered data transactions relating to clinical investigations and involving access by covered persons or countries of concern to government-related data or bulk U.S. sensitive personal data. The Department has established licensing provisions in subpart H to permit regulated persons or entities to seek the Department's authorization to continue otherwise regulated transactions. While some commenters valued the flexibility that licensing provides, they generally preferred the regulatory certainty of a regulatory exemption that could be supplemented by licenses for transactions outside the exemption. The Department agrees that this approach provides better clarity for regulated entities and will minimize, though not eliminate, disruption to medical research. The Department believes that both general and specific licenses will nonetheless play an important role in further mitigating disruption of medical research. One commenter, for example,

suggested establishing a "pathway" for approving collaboration for specific research projects. The Department believes the existing licensing framework establishes just that pathway.

9. Exemptions for Non-Federally Funded Research

Several commenters expressed concerns that the rule would impede U.S. persons from participating in or sharing government-related data or bulk U.S. sensitive personal data pursuant to international research projects that involve countries of concern or covered persons, but that are not conducted pursuant to a contract, grant, or other agreement with the Federal Government or are not otherwise exempted by §§ 202.510 and 202.511. Commenters requested an exemption for such non-federally funded research. The Department declines to include an express exemption for non-federally funded research programs in the rule.

First, the definition of "covered data transactions" subject to the prohibitions and restrictions of subparts C and D identifies specific categories of data transactions to which the restrictions and prohibitions apply, each of which requires a commercial nexus. *See, e.g.*, § 202.214 (defining "data brokerage" as "the sale of data, licensing of access to data, or similar commercial transactions involving the transfer of data"), § 202.217 (defining "employment agreement" as "any agreement or arrangement in which an individual . . . performs work or job functions directly for a person in exchange for payment or other consideration"), § 202.228 (defining "investment agreement" as "an agreement or arrangement in which any person, in exchange for payment or other consideration, obtains direct or indirect ownership interests or rights in relation to" property or entities), § 202.258 (defining "vendor agreement" as "any agreement or arrangement . . . in which any person provides goods or services to another person . . . in exchange for payment or other consideration"). Commenters did not provide adequate information for the Department to assess whether the non-federally funded research about which they raised concerns would satisfy the nexus to a commercial transaction required by the specified categories of covered data transactions. To the extent that U.S. persons' non-federally funded research would involve access to government-related data or bulk U.S. sensitive personal data by a country of concern or covered person and one of the specified categories of covered data transactions

involving a payment or other consideration, the Department would welcome such regulated persons or entities to provide additional information necessary for the Department to assess the risks and benefits of the proposed transactions and apply for a specific license to authorize any such data transactions.

Second, the rule does not impose any restrictions on U.S. persons accessing government-related data or bulk U.S. sensitive personal data. To the extent that commenters are concerned that the rule would directly impede their participation in non-federally funded research involving their access to government-related data or bulk U.S. sensitive personal data, the rule is limited to restricting or prohibiting certain covered data transactions involving access by countries of concern or covered persons to government-related data or bulk U.S. sensitive personal data.

Third, the rule does not regulate any publicly accessible material, including data that would otherwise constitute government-related data or bulk U.S. sensitive personal data in open-access data repositories. Commenters expressed concern that the rule would impede their ability to engage in research involving open-access data repositories. The definition of "sensitive personal data" excludes any data that is, at the time of the transaction, lawfully available to the public from a Federal, State, or local government record or in widely distributed media, including unrestricted and open-access data repositories. Similarly, the exemption for data transactions conducted pursuant to a contract, grant, or other agreement with a Federal agency or department would exempt from the prohibitions and restrictions of subparts C and D the sharing of data with an open-access data repository authorized by contract, grant, or other agreement with the Federal agency or department.

Fourth, the Department exempted certain clinical investigations regulated by the FDA in § 202.511(a)(1) because the Department agrees that the protections involving clinical investigation participants' data and the humanitarian interests in promoting the development of new drugs, biological products, devices, and combination products to diagnose, treat, and prevent disease and other medical conditions, and infant formula outweigh the national security risks of countries of concern obtaining access to government-related data or bulk U.S. sensitive personal data. Similarly, the Department exempted research conducted pursuant to a grant, contract, or other agreement

with the Federal government in § 202.504 because Federal agencies may impose contract, grant, or agreement-based restrictions and reporting requirements on U.S. persons to protect government-related data and bulk U.S. sensitive personal data from exploitation by countries of concern.¹⁶⁷

Non-federally funded research activities and research activities outside the scope of clinical investigations regulated by the FDA do not provide the same federally imposed protections and reporting requirements on government-related data or bulk U.S. sensitive personal data necessary to mitigate and better assess the risks of country of concern access to government-related data or bulk U.S. sensitive personal data involved in such research activities.

Fifth, at least one commenter explained that there may be circumstances in which clinical trials or emergency care situations supported by private foundations or non-governmental organizations involve the transfer of biological products that the commenter assessed could violate the prohibition on transfers of bulk human 'omic data and biospecimens from which such data could be derived. The exemption in § 202.511 exempts certain data transactions involving clinical investigations regulated by the FDA or required for applications to the FDA for research or marketing permits for drugs, biological products, devices, combination products, and infant formula, and data transactions ordinarily incident to and part of the collection and processing of clinical care data or post-marketing surveillance data necessary to support or maintain authorization by the FDA, regardless of whether the entity engaged in the clinical investigation receives Federal funding. And the Department has revised the definition of "human biospecimens" in § 202.223 to exclude human biospecimens intended by a recipient solely for use in diagnosing, treating, or preventing any disease or medical condition.

In light of these considerations, the Department declines to provide a general exemption for non-federally funded research at this time. To the extent that U.S. persons are concerned that they are involved in covered data transactions involving access by countries of concern or covered persons to government-related data or bulk U.S. sensitive personal data in the course of their non-federally funded research activities, they may seek a general or specific license authorizing those data transactions, pursuant to subpart H.

E. Subpart F—Determination of Countries of Concern

1. Section 202.601—Determination of Countries of Concern

In the proposed rule, the Attorney General determined, with the concurrence of the Secretaries of State and Commerce, that the governments of six countries—the People's Republic of China ("China" or "PRC"), along with the Special Administrative Region of Hong Kong and the Special Administrative Region of Macau; the Russian Federation ("Russia"); the Islamic Republic of Iran ("Iran"); the Democratic People's Republic of Korea ("North Korea"); the Republic of Cuba ("Cuba"); and the Bolivarian Republic of Venezuela ("Venezuela")—have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or the security and safety of U.S. persons, and pose a significant risk of exploiting government-related data or bulk U.S. sensitive personal data to the detriment of the national security of the United States or the security and safety of U.S. persons.

One commenter expressed support for the designated countries of concern and for the fact that the Department made country of concern determinations based on the countries' specific actions. According to the commenter, this approach would allow the Department to remove or add countries to and from the list of countries of concern depending on their conduct. The Department agrees and notes that, with the concurrences of the Secretaries of State and Commerce, it has the authority to amend the list of countries of concern. In doing so, the Department would undertake a rulemaking that is subject to the ordinary process of robust interagency review and notice and public comment.

One commenter asserted that the proposed rule's restrictions on data transactions to China and other countries are discriminatory and violate international law, the United Nations Charter, and World Trade Organization economic and trade rules. The commenter expressed firm opposition to the rule, demanded that the Federal Government stop what it characterized as discriminatory treatment of China, and reserved its right to pursue countermeasures.

The rule's restrictions are not discriminatory; they are based on countries engaging in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or the

security and safety of U.S. persons, and posing a significant risk of exploiting government-related data or bulk U.S. sensitive personal data to the detriment of the national security of the United States or the security and safety of U.S. persons. The countries of concern have engaged in years of adverse and continuing conduct that the Department set forth in detail in the NPRM¹⁶⁸ and in parts III, IV.B, IV.C and IV.E of this preamble.¹⁶⁹

Even just between issuance of the NPRM and the final rule, new incidents have come to light that demonstrate how China continues to aggressively threaten U.S. national security. For example, according to a recent press release issued jointly by the Federal Bureau of Investigation and CISA, "PRC-affiliated actors have compromised networks at multiple telecommunications companies to enable the theft of customer call records data," and "the compromise of private communications of a limited number of individuals who are primarily involved in government or political activity."¹⁷⁰

There have also been numerous recent examples of U.S. persons acting as unregistered agents of China. For example, in August 2024, a U.S. person pled guilty after obtaining a wide variety of information at the request of Chinese intelligence, including information about Chinese dissidents and pro-democracy advocates, members of the Falun Gong religious movement, and his employer, a major U.S. telecommunications company.¹⁷¹ In September 2024, a Federal grand jury returned an indictment charging a former New York State government employee for acting as an undisclosed agent of the Chinese Government and the CCP. In exchange for substantial economic and other benefits, this individual wielded influence among State executives and engaged in political activities that served the interests of the PRC and Chinese Communist Party, such as changing high-level New York State officers' messaging regarding issues of importance to the PRC and Chinese Communist Party and blocking representatives of the Taiwanese

¹⁶⁸ 89 FR 86141–44.

¹⁶⁹ 89 FR 86140–48.

¹⁷⁰ Press Release, CISA, *Joint Statement From FBI and CISA on the People's Republic of China (PRC) Targeting of Commercial Telecommunications Infrastructure* (Nov. 13, 2024) <https://www.cisa.gov/news-events/news/joint-statement-fbi-and-cisa-peoples-republic-china-prc-targeting-commercial-telecommunications> [https://perma.cc/DX86-WM6Y].

¹⁷¹ See, e.g., Plea Agreement, *United States v. Ping Li*, supra note 113.

¹⁶⁷ See, e.g., 89 FR 15426.

government from having access to high-level New York State officers.¹⁷²

Moreover, the commenter does not cite any specific provisions of international agreements that it alleges the rule would violate, making it difficult for the Department to fulsomely respond to the comment. Nevertheless, as the Department discussed in further detail in the NPRM and part IV.D.5 of this preamble, the rule's prohibitions and restrictions on access to government-related data and bulk U.S. sensitive personal data by countries of concern are consistent with or otherwise permissible under trade and other international agreements, including for example, pursuant to the security exception to the World Trade Organization's General Agreement on Trade in Services.¹⁷³

Finally, because it is outside the scope of the rule, the Department does not respond to the commenter's threat to take retaliatory measures in response to the rule.

F. Subpart G—Covered Persons

1. Section 202.211—Covered Person

The proposed rule identified a “covered person” as an individual or entity that falls into one of four classes of covered persons, or that the Attorney General has designated as a covered person. The NPRM noted that an entity is automatically a covered person if it is a foreign person that: (1) is 50 percent or more owned, directly or indirectly, by a country of concern; (2) is organized or chartered under the laws of a country of concern; or (3) has its principal place of business in a country of concern. As the NPRM also explained, an entity is also a covered person if it is a foreign person that is 50 percent or more owned, directly or indirectly, by a covered person.¹⁷⁴ The NPRM noted that any foreign person that is an individual is also a covered person if that individual is an employee or a contractor of a country of concern or of a covered person that is an entity;¹⁷⁵ or if that individual is primarily a resident in the territorial jurisdiction of a country of concern is also a covered person.¹⁷⁶ Lastly, the NRPM listed

criteria governing the Department's designation of covered persons.¹⁷⁷

The Department has slightly amended the language of §§ 202.211(a)(1) and (2) to now apply to (1) a foreign person that is an entity that is 50 percent or more owned, directly or indirectly, individually or in the aggregate, by one or more countries of concern or persons described in § 202.211(a)(2); or that is organized or chartered under the laws of, or has its principal place of business in, a country of concern; and (2) a foreign person that is an entity that is 50 percent or more owned, directly or indirectly, individually or in the aggregate, by one or more persons described in §§ 202.211(a)(1), (3), (4), or (5).

These technical corrections, which do not alter the intended scope of the criteria for covered persons, were necessary for three reasons. First, the Department streamlined the language in § 202.211(a)(2) that references subsections of the covered person criteria for the sake of clarity and concision. Second, the Department changed the 50-percent rule language in §§ 202.211(a)(1) and (2) to more closely match OFAC's 50-percent rule language, because the Department intends for the rules to generally be applied in a similar manner. This corrected language will capture, as was originally intended, indirect ownership as it relates to certain complex ownership structures—such as where two covered persons each own minority stakes in a subsidiary, but their aggregate ownership meets or exceeds the 50-percent threshold—consistent with OFAC's implementation of the 50-percent rule.

Third, the Department added “or persons described in § 202.211(a)(2) of this section” to ensure that foreign persons that are entities and 50 percent or more owned by a covered person are in scope. Again, this technical correction is not an expansion of the intended scope of this category of covered persons. Instead, this correction aligns the category with the description in the NPRM, which says, “An entity is also a covered person if it is a foreign person that is 50 percent or more owned, directly or indirectly, by a covered person.”¹⁷⁸ This therefore does not present a substantive change in the scope as proposed in the NPRM.¹⁷⁹

One commenter suggested that the Department refine the covered person definition to avoid under inclusion and overinclusion. The commenter noted that an entity that is 50 percent owned

by a country of concern presents the same risk as an entity with 49 percent ownership, even though the latter would not automatically be considered a covered person. The commenter is correct that an entity that is controlled, but not 50 percent or more owned, by one or more covered persons or countries of concern is not categorically considered a covered person under § 202.211(a). At this time, however, the Department does not believe that a significant minority interest necessarily presents the same level of risk as a majority interest such that the 50-percent rule should be lowered, and other considerations—including the need for an objective, brightline rule and industry's experience in complying with the 50-percent rule in other national security contexts—justify adherence to the 50-percent rule.

The Department agrees, however, that a controlling interest may present risks of access, which is why control is one of the criteria for the Department to designate an entity as a covered person under § 202.211(a)(5) if such an entity is determined to meet the relevant criteria. U.S. persons should exercise caution when considering engaging in covered data transactions with an entity that is not a covered person but in which one or more covered persons have significant ownership that is less than 50 percent, or which one or more covered persons may control by means other than a majority ownership interest. Ownership percentages can fluctuate such that an entity could become a covered person, and such entities may be designated by the Department based on the significant controlling interest. Additionally, persons should be cautious in dealing with such an entity to ensure that they are not engaging in evasion or avoidance of the regulations.

One commenter recommended that the Department consider applying the knowledge-based standard currently employed by BIS export control rules, which prohibits U.S. persons from proceeding with a transaction if they have actual knowledge that a violation of the Export Administration Regulations has occurred or is about to occur. As justification, the commenter explained that companies that meet the covered person criteria based on their 50 percent ownership may not be publicly traded, or they may be small businesses and startups invested in by larger entities whose own ownerships may shift with market conditions. The comment provides no analysis for whether the BIS knowledge standard would adequately address the national security concern as compared to the

¹⁷² Press Release, U.S. Dep't of Just., *Former High-Ranking New York State Government Employee Charged with Acting as an Undisclosed Agent of the People's Republic of China and the Chinese Communist Party* (Sept. 3, 2024), <https://www.justice.gov/usao-edny/pr/former-high-ranking-new-york-state-government-employee-charged-acting-undisclosed> [<https://perma.cc/M2A8-FDGC>].

¹⁷³ 89 FR 86120.

¹⁷⁴ 89 FR 86148.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ 89 FR 86150–51.

¹⁷⁸ 89 FR 86148.

¹⁷⁹ 89 FR 86148–50.

“knowingly” standard that the rule already adopts.

Relatedly, another commenter suggested modifying the rule to allow U.S. persons to rely on certifications and supporting documentation provided by persons to establish their status as non-covered persons. This commenter asserted that research institutions are not sophisticated or capable enough to run compliance programs.

The Department declines to make any changes to the rule in response to the above comments. The regulations do not prescribe or endorse any specific method to screen counterparties to determine their status as covered persons. Consistent with the NPRM, U.S. persons should employ compliance programs that are based on their “individualized risk profile . . . [which may] vary depending on a variety of factors, including the U.S. person’s size and sophistication, products and services, customers and counterparties, and geographic locations.”¹⁸⁰ Additionally, the rule’s prohibitions and restrictions are subject to a knowingly standard, which generally mitigates the commenters’ concerns. In many circumstances, depending on a U.S. person’s individualized risk profile, a party’s own statements or the records maintained by third parties may be an appropriate part of a compliance program to confirm the covered person status of counterparties.

One commenter suggested that the Department aid business compliance efforts and automated due diligence by making the Covered Persons List “as comprehensive as possible” by regularly updating and including aliases and technical identifiers. Another commenter similarly requested that the Department provide legal certainty and ease compliance by taking an approach under which transactions with listed entities are prohibited. The commenter noted that the Cyberspace Administration of China has ordered that access to databases listing corporate entities and corporate ownership structures be discontinued for non-Chinese database users. As a result, the commenter noted that it may prove difficult for U.S. companies—particularly small- and medium-sized U.S. businesses, which the commenter noted make up more than 90 percent of the manufacturing industry—to ascertain whether an entity is within the scope of § 202.211(a).

As discussed in part IV.E of the NPRM’s preamble, the Covered Persons List will include each covered person

that is designated by the Department.¹⁸¹ While these comments do not necessitate any change to the rule, the Department will endeavor to provide sufficient details about designated persons to aid the private sector in its compliance efforts associated with identifying and screening designated covered persons. The Department also supports automating and streamlining compliance and intends to pursue this suggestion as part of publicly maintaining the Covered Persons List, such as by offering text and PDF versions of the Covered Persons List for manual review, and data file versions of the list that could be designed to facilitate automated screening. Depending on a U.S. person’s scale, sophistication, and risk profile of their business, it may be appropriate for a U.S. person to consider using one of the numerous commercially available screening software packages as part of a compliance program.

The Covered Persons List, however, will not exhaustively identify all covered persons. Monitoring compliance against a non-exhaustive list is not novel to the regulated public that engages in cross-border transactions. Indeed, maintaining a non-exhaustive list is consistent with the practice at OFAC, which maintains several non-exhaustive sanctions lists, including the Specially Designated National and Blocked Persons List (“SDN list”) and the Sectoral Sanctions Identifications List. U.S. persons engaging in covered data transactions may likely already screen cross-border transactions and other dealings against the OFAC SDN list. As OFAC notes in its Frequently Asked Question #91, “some OFAC sanctions block categories of persons even if those persons do not appear in the SDN list, including . . . persons blocked pursuant to OFAC’s ‘50 Percent Rule’ The property and interests in property of such an entity are blocked regardless of whether the entity itself is listed on the SDN list.”¹⁸² As indicated in the ANPRM and NPRM, the private sector will need to screen their transaction counterparties, vendors, employers, and investors to determine whether they meet the categories of covered persons in § 202.211(a), in addition to those on the Covered Persons List.¹⁸³ U.S. persons who comply with OFAC sanctions should be familiar with taking a risk-based

approach to sanctions screening such that this concept will not be novel.

A commenter argued that it is often nearly impossible, from a compliance perspective, for companies to determine ownership of companies located in a country of concern. This comment was entirely conclusory, and the Department disagrees. U.S. persons (and persons otherwise subject to U.S. jurisdiction) already must ensure that they are not engaging in trade or other transactions with persons designated by OFAC.¹⁸⁴ The commenter is silent on the specific ways in which the Department’s rule requiring due diligence into company ownership would be harder to comply with than OFAC’s regulations, which also expect the regulated community to screen for ownership. OFAC’s regulations treat any entity owned in the aggregate, directly or indirectly, 50 percent or more by one or more blocked persons as itself a blocked person, regardless of whether the entity itself is designated pursuant to an Executive Order or otherwise identified on OFAC’s SDN list.¹⁸⁵ As such, the Department expects that much of the regulated public will have already have experience developing and implementing a tailored, risk-based compliance program for sanctions screening that includes methods for determining whether a foreign vendor, contractor, or counterparty is an SDN or owned by an SDN. The Department declines to make any change to the rule in response to this comment.

Several commenters asserted that the categories of covered persons are too broad. These comments, however, are generally premised on various misapplications of the categories. For

¹⁸⁴ See, e.g., Off. of Foreign Asset Control, U.S. Dep’t of Treas., *Frequently Asked Questions: 65. How Frequently Is an Insurer Expected to Screen Its Databases for OFAC Compliance?* (Nov. 13, 2024), <https://ofac.treasury.gov/faqs/65> [<https://perma.cc/VJM5-DTXD>]; Off. of Foreign Asset Control, U.S. Dep’t of Treas., *Frequently Asked Questions: 95. Does a Financial Institution Have the Obligation to Screen Account Beneficiaries for Compliance With OFAC Regulations?* (Dec. 4, 2006), <https://ofac.treasury.gov/faqs/95> [<https://perma.cc/RXN9-YXZU>]; Off. of Foreign Asset Control, U.S. Dep’t of Treas., *Frequently Asked Questions: 445. What Are My Compliance Obligations With Respect to E.O. 13694, as Amended?* (Dec. 29, 2016), <https://ofac.treasury.gov/faqs/445> [<https://perma.cc/C5RP-GGN4>]; Off. of Foreign Asset Control U.S. Dep’t of Treas., *Frequently Asked Questions: 813. As a Member of the Art Community, What Are My Compliance Obligations With Respect to Executive Order 13224, as Amended?* (Dec. 13, 2019), <https://ofac.treasury.gov/faqs/813> [<https://perma.cc/RUW8-VMK4>].

¹⁸⁵ See generally Off. of Foreign Asset Control, U.S. Dep’t of Treas., *Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property Are Blocked* (Aug. 13, 2014), <https://ofac.treasury.gov/media/6186/download?inline> [<https://perma.cc/Q87V-VZJQ>].

¹⁸¹ 89 FR 86150–51.

¹⁸² Off. of Foreign Asset Control, U.S. Dep’t of Treas., *Frequently Asked Questions: 91. What Lists Does OFAC Maintain? Where Can I Find These Lists?* (Aug. 21, 2024), <https://ofac.treasury.gov/faqs/91> [<https://perma.cc/Q8XA-RJ2Z>].

¹⁸³ 89 FR 86149–51.

¹⁸⁰ 89 FR 86152–53.

example, one commenter noted a concern that a company's "association with a country of concern" would restrict that company from receiving data from U.S. companies. The commenter further noted that this concern is especially salient for entities on the Covered Persons List that are owned by a country of concern or an entity located in those countries. But a company does not become a covered person merely for having "an association" with a country of concern or a covered person. As listed in § 202.211(a), the criteria for falling into a covered person category or for being designated as a covered person are more rigorous than merely having associated with a country of concern or covered person. The scope of the categories of covered persons is correlated to the risk that a person or entity could be leveraged by a country of concern for access to government-related data or bulk U.S. sensitive personal data. A company merely being "associated" with a country of concern or covered person, absent a reason to believe they meet § 202.211(a) criteria, does not rise to the level of risk that the rule intends to address and is an exaggeration of the rule's prohibitions.

As another example, another commenter claimed that there are 40 million "registered" firms in one of the countries of concern and asserted that all of them would be considered covered persons under the rule. Section 202.211(a) does not categorically treat an entity as a covered person just because it is "registered" in a country of concern. Instead, it covers foreign person entities that are "organized or chartered under the laws of" or have their "principal place of business in" a country of concern. Registration to do business in a country is legally different than being organized under the laws of a country or having a principal place of business there. The latter is far narrower in scope than those merely "registered in" a country of concern, which could include, for example, companies that do no business in a country, or those that are not subject to the direction or control of its government, but register in order to protect their intellectual property.

Additionally, the rule does not require U.S. persons to identify and catalogue every individual and entity

that meets the covered person criteria. Instead, the rule requires U.S. persons to examine their much smaller demographic of current or prospective clients, vendors, employees, and investors to determine whether those individuals or entities meet the criteria of § 202.211(a). This commenter has chosen to mis-frame the rule as if it requires a U.S. person to boil the ocean (identify every covered person in the world), when it merely requires a U.S. person to boil their own pot (know their own customers, vendors, employees, and investors).

The same commenter stated that every single vendor, employment, and investment agreement with these "registered" entities would be subject to the Department's rule. Again, this comment misapplies the rule, artificially inflating its scope. The commenter neglects to consider any of the other elements or scoping of the rule. Other than the limited onward-transfer provision, the rule regulates only enumerated types of commercial transactions by U.S. persons with countries of concern or covered persons that give those countries or covered persons access to government-related data or to the six types of bulk U.S. sensitive personal data that meet or exceed the bulk thresholds, where none of the exemptions, general licenses, or specific licenses apply. This comment also neglects to consider that the rule does not prohibit the restricted transactions but rather allows U.S. persons to engage in such transactions under the condition that they comply with certain security and other requirements.

Another commenter expressed concerns that some may misinterpret the rule as prohibiting U.S. persons from allowing foreign researchers of a country of concern nationality access to Americans' data. As such, the commenter requested clarification of whether foreign researchers working for companies outside of countries of concern are excluded from the rule's provisions even if such foreign researchers are of a country of concern nationality.

Under the rule's definition of a covered person, a foreign individual (such as a researcher) who is a national of a country of concern would not be a covered person unless they (1) primarily

reside in a country of concern; (2) are employed by or a contractor of a country of concern or a covered person; or (3) are designated by the Department as a covered person.

As the Order and rule make clear, the definition of "covered person" follows risk, not race, nationality, or ethnicity. The Order and rule are directed at persons of any race, nationality, or ethnicity who are subject to the ownership, direction, jurisdiction, or control of a country of concern. The definition of "covered person" categorically includes any foreign person that is primarily resident in a country of concern, regardless of their nationality or race. The rule does not categorically treat country of concern nationals that are located in third countries (*i.e.*, not located in the United States and not primarily resident in a country of concern) as covered persons. Instead, the rule treats only a subset of country of concern nationals in third countries categorically as covered persons: those working for the government of a country of concern, or for an entity that is a covered person. Similarly, the Department's authority to designate a specific individual as a covered person turns on a determination that the individual is subject to the control, jurisdiction, or direction of a country of concern, or is acting on behalf of or purporting to act on behalf of a country of concern or covered person, or has knowingly caused or directed a violation of the rule.

The definition of "U.S. person" is also not dependent on a person's nationality or race; it includes, for example, any person in the United States, any U.S. citizen or lawful permanent resident, and any person who has been granted asylum or refugee status in the United States. For example, under the rule, a country of concern citizen located in the United States is a U.S. person (unless individually designated). As a result, a U.S. person of any race, nationality, or ethnicity would not be categorically treated as a covered person, and the only circumstance in which a U.S. person would be treated as a covered person is by individual designation. Consequently, the rule adopts the approach described in the NPRM without change.¹⁸⁶

¹⁸⁶ 89 FR 86150.

One commenter asked for clarification on when a foreign company is “in the United States” with respect to the definition of “U.S. person” in § 202.256. More specifically, the commenter asked whether a company that conducts business with U.S. individuals but does not have a U.S. branch or subsidiary could meet the definition. Selling to U.S. customers does not place a foreign person “in the United States.” A foreign company with no headquarters, subsidiary, or other physical presence in the United States is not “in the United States” for the purposes of § 202.256.

One commenter asserted that the proposed rule’s definitions of covered person, person, foreign person, and U.S. person are internally inconsistent because the proposed rule treats Chinese or Russian citizens located in the United States as U.S. persons, but it treats U.S. branches of companies organized under the laws of a country of concern as foreign persons. The commenter asked that the Department ensure that the definitions align and treat entities and individuals alike, or that the Department modify the definitions to demonstrate how entities and individuals are treated differently.

The proposed rule does not treat entities and individuals differently; rather, it treats branches of companies, which are not independent entities and do not have their own separate corporate personhood, as part of their parent companies. As a result, as demonstrated in the examples at §§ 202.256(b)(7) and (8), the U.S. branch of a company organized under the laws of a country of concern is treated as a foreign person, but a U.S. subsidiary of a foreign company, which is a separate entity from the parent, is treated as a U.S. person. This treatment of foreign branches aligns with OFAC’s treatment of foreign branches in its IEEPA-based sanctions programs. The Department has added related examples in §§ 202.211(b)(7) and (8) to further illustrate this point.

One commenter listed several fact patterns involving U.S. person entities that were owned 50 percent or more by covered persons or countries of concern and noted that these U.S. person entities “would be covered persons” under the rule. As described in the ANPRM, including its Example 33, anyone in the United States (including those temporarily in the United States) would be considered a U.S. person, and no U.S. persons (including those temporarily in the United States) would be categorically treated as covered persons.¹⁸⁷ See also Example 6 in

§ 202.211(b)(6). Furthermore, the categories of covered persons in §§ 202.211(a)(1) through (4) explicitly apply only to foreign persons, not U.S. persons, and the category in § 202.211(a)(5) (which applies to any person) requires individual designation by the Department. The rule does not treat any U.S. person, including a U.S. subsidiary of a covered person, as a covered person unless the Department has individually designated the U.S. person as a covered person. The rule adopts the NPRM’s examples illustrating the differences in treatment between a U.S. subsidiary and its foreign owner, as well as between U.S. companies and their foreign branches. The rule adopts this proposal unchanged from the NPRM.

The same commenter also provided several scenarios involving entities that the commenter concluded would meet covered person criteria in §§ 202.211(a)(2) or (3). In these examples, the commenter repeated essentially the same fact pattern: A country of concern owns 50 percent of third-country Company A that, in turn owns 50 percent of a second third-country Company B. In some instances, the commenter stated that Company B would be a covered person under the rule because of the country of concern’s mere 25 percent indirect ownership.

This reasoning misapplies the 50-percent rule. Company B is a covered person, but not because the country of concern indirectly owns 25 percent of the company. Twenty-five percent ownership by a country of concern or covered person is less than the 50-percent rule requires. Instead, Company B is a covered person because it is 50 percent or more owned by a covered person (Company A), and Company A is a covered person because it is 50 percent or more owned by a country of concern. If, however, Company A were not a covered person (because its country of concern ownership was less than 50 percent and it did not meet any other criteria for covered persons), then Company B would not be a covered person, even with its less-than-50-percent indirect ownership by a country of concern. The Department has added an example at § 202.211(b)(8) to further clarify this point.

The commenter recited several additional scenarios that can be reduced to the same fact pattern described above, each referring to subsidiaries located in different countries that are not countries of concern. The commenter’s examples mention various non-country of concern locations where countries of concern and covered persons may have set up subsidiaries, and asserts that the

existence of these subsidiaries somehow makes the rule overbroad. The commenter appears to be claiming that a rule that targets a country of concern or covered person should regulate only persons and property within that country’s territory, and that any other result is evidence of the rule’s overbreadth.

The Department disagrees and is not aware of any precedent for such a claim. The fact pattern discussed above and the examples in the rule are classic demonstrations of the 50-percent rule being applied as intended. The commenter does not explain how the application of the 50-percent rule, which is drafted to match the longstanding language and application used by OFAC for years, somehow produces an unexpected or overbroad result.

In the sanctions’ context, for example, if OFAC designates and blocks a Russian bank that operates in Russia and is owned by Russian government, all property and interests in property of that Russian bank are also blocked by operation of law. If that Russian bank operates subsidiaries in countries outside of Russia, even in countries that are partners and allies of the United States, those subsidiaries would be blocked persons by operation of law and U.S. persons would be prohibited from engaging in transactions and dealings with those subsidiaries, wherever located, unless exempt or otherwise authorized. The commenter provides no justification or argument explaining why consistent application of the 50-percent rule across regulatory programs would be inappropriate in the context of this rule.

In addition, the cross-border nature of countries of concern and covered persons’ corporate hierarchy further supports the need for the rule to regulate covered persons that are outside a country of concern. Specifically, the national security and foreign policy risks identified in the Order exist with respect to any entity that is subject to the ownership, direction, jurisdiction, or control of a country of concern due to the fact that each of the countries of concern listed in the rule have legal or political systems that allow those countries to obtain sensitive personal data (and access to such data) from persons subject to a country of concern’s ownership, direction, jurisdiction, or control without due process or judicial redress.¹⁸⁸ Those risks exist with

¹⁸⁸ Nat’l Counterintel. & Sec. Ctr., *supra* note 67, at 1; Justin Sherman, *Russia Is Weaponizing Its*

respect to any person that is meaningfully subject to their ownership, direction, jurisdiction, or control—not only to specific entities designated on a case-by-case basis. Entities that are meaningfully subject to the ownership, direction, jurisdiction, or control of a country of concern are, as the FBI has described, hybrid commercial threats. According to the FBI, “[h]ybrid [c]ommercial [t]hreats are businesses whose legitimate commercial activity can facilitate foreign government access to U.S. data, critical infrastructure, and emerging technologies that enable adversaries to conduct espionage, technology transfer, data collection, and other disruptive activities under the guise of an otherwise legitimate commercial activity.”¹⁸⁹ For example, DHS explained in 2020 that “PRC laws are most effective at creating compulsory data access when the data travels through a PRC firm abroad or a

firm located within the PRC.”¹⁹⁰ The categories of covered persons defined in the Order and defined further in the rule identify categories of persons that present such hybrid commercial threats because they are meaningfully subject to the ownership, direction, jurisdiction of a country of concern, or to the control of a country of concern or covered person.

One commenter requested, in the context of restricted transactions, that the Department limit the definition of “covered person” to the criteria listed in §§ 202.211(a)(1), (4), and (5). According to the commenter, for foreign persons meeting the criteria in §§ 202.211(a)(2) through (3), the nexus to a country of concern is weak and it would be too difficult for businesses to assert controls across all restricted transactions. The commenter provided the following example: A Japanese national (or a national of a country that is not a country of concern) owns Company A, which is incorporated under the laws of China. Company A owns 50 percent or more of Company B, an Australian company, and Company B hires a contractor who is a Canadian national. The commenter asserts that scenarios where a U.S. person engages in a restricted covered data transaction involving a vendor agreement with the contractor pose only a highly attenuated national security risk.

The Department disagrees. Company B’s majority ownership by Company A—which carries with it formal control over all business decisions, a controlling level of informal influence, and a formal legal jurisdiction over Company B—is a classic example of a hybrid commercial threat. Any work completed by the contractor, who meets the covered person category in § 202.211(a)(3), carries this same risk. The commenter’s scenario highlights the pervasiveness of the threat, as well as the reach that countries of concern have to try to obtain access to Americans’ data. The scenario indeed reinforces that, without engaging in robust due diligence, U.S. companies could unknowingly provide foreign adversaries with the means to access data that harms America’s national security. As such, the rule adopts the approach described in the NPRM without change.

Finally, one commenter suggested that the Department exempt from the prohibitions of the rule any covered persons who are ethical and compliant to prevent undue restrictions on legitimate research. The Department declines to adopt this suggestion. As

explained in the NPRM, countries of concern have the legal authority or political systems to force, coerce, or influence persons under their jurisdiction to share their data and access with the country of concern’s government, regardless of how ethical or trustworthy the person is.¹⁹¹

2. Section 202.701—Designation of Covered Persons

The proposed rule provided for the Attorney General to publicly designate a person, whether an individual or entity, as a covered person with whom U.S. persons may not knowingly engage in a prohibited transaction, or a restricted transaction that fails to comply with the requirements of subpart D, except as otherwise authorized under the rule. As set out in the NPRM, this process is modeled generally on the processes for designation under the various sanctions’ lists maintained by OFAC. The Department received only limited comments on this subject, and it adopts the proposed regulation without change.

One commenter suggested that the criteria for designation as a covered person were insufficiently determinate and that U.S. persons would avoid legitimate transactions for fear that their counterparties might be designated at some point in the future. The Department believes this concern is too speculative to support a change in the designation criteria, which themselves reflect the criteria established by the President in the Order. Although resource and information constraints or other factors will require the Department to exercise a degree of discretion in choosing which potentially designatable persons should be pursued for designation, whether a person is subject to designation is reasonably determinate once relevant facts are known. As in the context of analogous sanctions regimes, U.S. companies routinely perform due diligence on prospective counterparties. That U.S. persons may lack access to the same information that the Department has in assessing their potential counterparties’ risk for designation is unavoidable and does not warrant changing the criteria. Moreover, § 202.901 establishes a process for seeking an advisory opinion from the Department on contemplated transactions.

The same commenter suggested that the rule exempt from designation U.S.-based subsidiaries that adopt the CISA security requirements and U.S.-based subsidiaries that have a substantial presence in the United States. This commenter, as well as another

Data Laws Against Foreign Organizations, Brookings Inst. (Sept. 27, 2022), <https://www.brookings.edu/articles/russia-is-weaponizing-its-data-laws-against-foreign-organizations/> [https://perma.cc/ATU2-SU3G]; U.S. Dep’t of State, 2022 Country Reports on Human Rights Practices: Venezuela 19 (2022), https://www.state.gov/wp-content/uploads/2023/02/415610_VENEZUELA-2022-HUMAN-RIGHTS-REPORT.pdf [https://perma.cc/7TM9-P87S]. See generally Freedom in the World 2024: North Korea, Freedom House, <https://freedomhouse.org/country/north-korea/freedom-world/2024> [https://perma.cc/5PAA-YMQ4]; Freedom on the Net 2022: Cuba, Freedom House, <https://freedomhouse.org/country/cuba/freedom-net/2022> [https://perma.cc/FFF6-ALCB]; U.S. Dep’t of Homeland Sec., *supra* note 57; Anna Borshevskaia, ‘Brave New World’: Russia’s New Anti-Terrorism Legislation, Wash. Inst. (July 8, 2016), <https://www.washingtoninstitute.org/policy-analysis/brave-new-world-russias-new-anti-terrorism-legislation> [https://perma.cc/2XXZ-UTC7]; Combating the Iranian Cyber Threat: Republic at the Center of Cyber Crime Charges in Three Cases, Fed. Bureau of Investig. (Sept. 18, 2020), <https://www.fbi.gov/news/stories/iran-at-center-of-cyber-crime-charges-in-three-cases-091820> [https://perma.cc/DYL5-WXUC]; Amelia Williams, Cuba: New Data Protection Law—What you need to know, Data Guidance (Sept. 2022), <https://www.dataguidance.com/opinion/cuba-new-data-protection-law-what-you-need-know> [https://perma.cc/JH83-6P7S]; Joanna Robin, Maduro Regime Doubles Down on Censorship and Repression in Lead-Up to Venezuelan Election, ICJ (July 24, 2024), <https://www.icj.org/inside-icij/2024/07/maduro-regime-doubles-down-on-censorship-and-repression-in-lead-up-to-venezuelan-election/> [https://perma.cc/6TBD-4J28]; U.S. Dep’t of State, Bureau of Democracy, H.R. & Lab., 2021 Country Reports on Human Rights Practices: North Korea (2021), https://www.state.gov/wp-content/uploads/2022/03/313615_KOREA-DEM-REP-2021-HUMAN-RIGHTS-REPORT.pdf [https://perma.cc/GF5Z-25UG]; Freedom on the Net 2024: Iran, Freedom House at C4, C6, <https://freedomhouse.org/country/iran/freedom-net/2024> [https://perma.cc/2QKR-9E7C].

¹⁸⁹ *In Camera*, Ex Parte Classified Decl. of Kevin Vorndran, Assistant Dir., Counterintel. Div., Fed. Bureau of Invest., Doc. No. 2066897 at Gov’t App. 33 ¶ 6, *TikTok Inc. v. Garland*, Case Nos. 24–1113, 24–1130, 24–1183 (D.C. Cir. July 26, 2024) (publicly filed redacted version).

¹⁹⁰ U.S. Dep’t of Homeland Sec., *supra* note 57, at 10.

¹⁹¹ 89 FR 86148–50.

commenter, also observed that entities—such as U.S. subsidiaries of covered person-owned companies—may be unable to take actions to avoid designation. The Department rejects these suggestions. As explained in the NPRM, the designation process allows the Department to address risks to national security that may arise from the designated person's relationship—whether voluntary or involuntary—with a country of concern.¹⁹² As a general matter, the national security risk from concluding a covered data transaction with such a person may arise from the potential actions of the government of the country of concern in relation to that person, and not necessarily from the intent or personal characteristics of the individual or entity. The scope of a subsidiary's business in the United States or its adoption of security measures may be relevant to the exercise of the Department's discretion to designate that subsidiary but will not categorically exempt the subsidiary from designation. Under the final rule, an entity whose relationship with a covered person or country of concern changes—for example, through divestment by the covered person owner—such that the entity would no longer be subject to ownership or control by a covered person or otherwise satisfy the designation criteria, would be able to seek removal from the Covered Persons List.

Two commenters raised identical concerns that designations would not be subject to independent judicial review. A designated person or entity can petition the Department directly for reconsideration of its designation, and the Department also anticipates that designated entities will be able to avail themselves of existing judicial remedies, including, as applicable, under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.* These commenters also objected that consultation by the Department with other agencies when making designation decisions was not mandatory. The commenters do not explain how mandatory consultation in every instance would meaningfully improve the rule, and the Department believes that mandatory consultation would unduly hinder administration of the rule by slowing decision-making and by needlessly diverting other agencies' resources from their primary missions. For example, it may be unnecessary to consult with the Department of Health and Human Services when contemplating a designation of an entity that works in the financial sector. The Department

does expect to consult the Department of State on foreign policy concerns and other agencies as appropriate based on their applicable equities and expertise. The final rule better reflects this intention by explicitly including the Department of State in the list of agencies to be consulted. These commenters also objected to the use of classified information in designation decisions. However, use of classified information is expressly contemplated by IEEPA, *see* 50 U.S.C. 1702(c), and courts have routinely upheld the use of classified information in the IEEPA context. *See, e.g., Global Relief Found., Inc., v. O'Neill*, 315 F.3d 748, 754 (7th Cir. 2002); *cf. People's Mojahedin Org. of Iran v. Dep't of State*, 327 F.3d 1238, 1242 (D.C. Cir. 2003).

Another commenter raised concerns that the designation process would violate due process in some circumstances. Although the Department believes that due process concerns are best addressed in the context of a specific case, it is confident that the process outlined—which largely mirrors the process used by OFAC for designating sanctions targets—is consistent with the Constitution and due process principles. Due process is a flexible concept, and the Constitution's preference for pre-deprivation notice and opportunity to be heard is subject to many exceptions, including when, as here, a pre-deprivation notice and hearing would risk the very harm to public interest that the government seeks to limit. *See, e.g., Gilbert v. Homar*, 520 U.S. 924, 930 (1997) (suspension without pay of State employee); *FDIC v. Mallen*, 486 U.S. 230, 240 (1988) (suspension of banking license). As explained in the NPRM, designations must be immediately effective to prevent designated covered persons from engaging in transactions that create the national security risk that the designation is designed to avoid; the data, once transferred to the jurisdiction of a country of concern, likely cannot be clawed back.¹⁹³ Pre-deprivation notice would create the same risk, and in these circumstances the flexibility of due process principles permits the government to rely on post-deprivation process. *See Glob. Relief Found.*, 315 F.3d at 754; *Al Haramain*, 686 F.3d at 987; *Zevallos v. Obama*, 10 F. Supp. 3d 111, 127 (D.D.C. 2014), *aff'd*, 793 F.3d 106 (D.C. Cir. 2015). The Department is committed to implementing the regulations consistent with constitutional requirements, and declines this commenter's suggestion to

categorically limit designations to foreign persons.

One commenter requested that the Department affirmatively authorize academic researchers engaged in international research involving government-related data or bulk U.S. sensitive personal data to rely on documentation from international researchers outside a country of concern certifying that the international researchers are not covered persons. The Department declines to adopt this brightline rule. The Department expects U.S. persons engaged in data transactions involving access by countries of concern or covered persons to government-related data or bulk U.S. sensitive personal data to develop reasonable due diligence processes to ensure that they are not knowingly engaging in a covered data transaction with a covered person or country of concern. Notably, the prohibitions and restrictions in subparts C and D only apply to covered data transactions in which U.S. persons knowingly engage with countries of concern or covered persons. The reasonableness of those due diligence requirements will vary depending on the nature of the U.S. person engaging in such transactions; the counterparties with whom the U.S. person is engaging; and the volume, purpose, and nature of the bulk U.S. sensitive personal data or government-related data involved in the data transaction. For example, under some circumstances, it may be reasonable for a U.S. person to rely on certifications with supporting documentation from a foreign person that the foreign person is not a covered person. However, in light of the varying circumstances identified above, the Department declines to adopt a brightline rule about what specific due diligence mechanisms would apply.

G. Subpart H—Licensing

The proposed rule provided processes for regulated parties to seek, and for the Department to issue, general and specific licenses. As described in the NPRM, general licenses would be published in the **Federal Register** and could be relied upon by all relevant parties affected by a particular element of the regulations.¹⁹⁴ The Department anticipates that licenses will be issued only in rare circumstances as the Department deems appropriate. Specific licenses, on the other hand, would cover only parties who apply to the Department for such a license and disclose the facts and circumstances of the covered data transaction they seek to engage in. Specific licenses would

¹⁹² 89 FR 86151.

¹⁹³ *Id.*

¹⁹⁴ 89 FR 86151–52.

authorize only the transactions described in the license; a specific license might authorize one or more transactions that would otherwise be prohibited.

One commenter noted that the proposed rule did not provide clarity regarding how companies can seek requests for general licenses, nor a timeline for the Department to respond to a request for a general license. The commenter recommended that general licenses mimic OFAC's general licenses for medicines, which list a broad range of permitted activities. They also suggested that the Department include a mechanism for emergency authorization or expedited licenses to cover multiple data transfers, so that companies do not have to seek a license for each data transfer.

Companies seeking licenses should submit requests for specific licenses, not general licenses. The Department will determine and issue, at its discretion, general licenses in particular circumstances, such as where multiple companies in the same industry submit requests for specific licenses on the same topic, or in circumstances where the Department otherwise learns of a need to issue a general license, such as via industry engagement. The Department intends for general licenses to reflect some of OFAC's practices, and the Department has and will continue to examine those licenses to identify ways to structure the Department's general licenses. The Department anticipates that licenses—whether specific or general—will, in some cases, cover multiple data transactions in the same area, and that companies will not have to seek licenses for each data transfer. The Department also intends to consider emergency requests for specific licenses and, potentially, to issue general licenses that respond to emergencies, depending on the circumstances.

One commenter asked for clarification regarding how companies should submit requests for specific licenses. Section 202.802 describes that process, and the Paperwork Reduction Act submission that accompanied the proposed rule identified the information that an applicant would need to provide to the Department as part of a specific license application.¹⁹⁵ The Department intends to issue additional guidance to further describe the process for submitting specific license requests to help guide the regulated community.

One commenter expressed concern that, given that the Department has stated that licensing decisions will rarely be granted and will

presumptively be denied, relying on licensing could raise the risk and cost of doing business in the biopharmaceutical sector, and will have scientific and business consequences for U.S. biotechnology companies. The Department recognizes the importance of promoting scientific research and biopharmaceutical developments to the U.S. economy, as well as to global health and well-being. As described in part IV.D of this preamble, the rule includes important exemptions to mitigate the consequences and costs of the rule's prohibitions and restrictions on scientific and medical research, and to preserve the development of innovative treatments for diseases and other medical conditions. *See also* §§ 202.504, 202.507, 202.510, and 202.511. The Department has also sought to clarify, in part IV.D of this preamble and in examples associated with the exemptions in subpart E, how the rule will apply to certain data transactions related to scientific research and the development of new medical treatments to provide regulated entities greater certainty about the rule's effect on their activities and to reduce the costs of complying with the rule. Notwithstanding these exemptions and clarifications, the licensing regime set forth in subpart H provides an important mechanism for the Department to grant additional categorical and case-by-case exemptions to the rule to ensure that the Department effectively balances the pressing national security risks of country of concern access to government-related data and bulk U.S. sensitive personal data with the Department's interest in promoting U.S. leadership in scientific research and pharmaceutical and biotechnological development. The Department intends to issue additional public guidance about how regulated entities may apply licenses before the rule's effective date to aid such entities in applying for licenses.

One commenter expressed concern about the Department's ability to oversee the large and consequential task of issuing licenses, and they encouraged the Department to seek additional input from industry groups that have expansive experience with other similar licensing processes. The commenter also suggested testing any licensing scheme before it goes live. The Department appreciates this comment and will take it into consideration and follow-up as useful with relevant stakeholders after issuance of the final rule.

One commenter urged the Department to firmly commit to responding to licensing requests on a timely basis, and

asked that the Department automatically approve any licenses it does not respond to in 45 days. The commenter also asked that the Department clarify whether the 45-day period set forth in § 202.802 for the Department to endeavor to respond to a request for a specific license means that the Department may issue or deny a license 45 days from submission of a request, or that the Department may, for example, only issue an initial response seeking more information about a license by the end of the 45-day period.

The Department is committed to timely responding to requests for licenses. The Department will endeavor to respond to license requests swiftly to ensure that it has received all information relevant to a license, and to issue licensing decisions 45 days from when the Department has received all information from the parties necessary to make a licensing decision. However, the Department declines to automatically approve licenses that it has not responded to within 45 days, because, as discussed in part IV.G of this preamble, the issuance of licenses is an exception to the rule to allow for transactions that warrant licenses, not a default. Moreover, depending on the subject matter in the license request, the Department may need to seek input from other agencies with relevant expertise and must ensure that it has sufficient time to do so.

One commenter asserted that the NPRM's proposal to include additional obligations on companies as conditions of specific licenses could lead to uncertainty and confusion by adding case-by-case requirements. Although the Department appreciates this concern, the Department maintains that it is important to retain the flexibility to impose requirements on specific licenses so that it can adequately respond to the fact-specific transactions presented in each specific license request, while also determining how to protect, to the greatest extent possible, the sensitive personal data involved in the underlying transactions.

One commenter suggested requiring license applicants to demonstrate compliance with existing data security frameworks. The Department agrees that demonstrating adequate attention to data security is likely to be an important factor in licensing decisions, but it declines to require any particular substantive requirement with respect to specific licenses in order to preserve the flexibility that the license is meant to provide.

¹⁹⁵ 89 FR 86203.

H. Subpart I—Advisory Opinions

1. Section 202.901—Inquiries Concerning Application of This Part

The NPRM proposed a system whereby the Attorney General could provide guidance on the rule in the form of official guidance or written advisory opinions. The final rule adopts the NPRM's proposal. The Department may issue official guidance at any time, including to address recurring or novel issues. The Department may also issue guidance in response to specific inquiries received through advisory opinion procedures.

One commenter expressed appreciation that trade associations may seek guidance on behalf of their members. Another commenter asked whether the Department would issue standardized guidelines beyond advisory opinions once the rule has been published. In addition to publishing advisory opinions, the Department intends to publish general forms of interpretive guidance, such as Frequently Asked Questions posted online. The Department plans to make any official guidance publicly available to help potentially regulated parties better understand the regulations.

One commenter also asked whether the responsibility for seeking advisory opinions lies with U.S. companies handling a transaction, or with foreign companies conducting business with U.S. companies. The decision to seek an advisory opinion from the Department about a specific, non-hypothetical transaction is entirely voluntary, and only U.S. persons who are parties to a transaction that the rule potential regulates, or an agent of that U.S. person-party, may seek an advisory opinion from the Department. Also, in implementing this rule, the Department is committed to continuing its robust engagement and outreach with stakeholders and foreign partners, which may identify broader issues appropriate for clarification in public guidance.

I. Subpart J—Due Diligence and Audit Requirements

The Order delegates to the Attorney General, in consultation with relevant agencies, the full extent of the authority granted to the President by IEEPA as may be necessary or appropriate to carry out the purposes of the Order,¹⁹⁶ and it expressly directs the Department's rule to "address the need for, as appropriate, recordkeeping and reporting of transactions to inform investigative,

enforcement, and regulatory efforts."¹⁹⁷ As the Department stated in the NPRM, it is critical to maximize widespread compliance with the rule and to gather the information necessary to administer and enforce the program, without unduly burdening U.S. persons or discouraging data transactions that the program is not intended to address.

1. Section 202.1001—Due Diligence for Restricted Transactions

The NPRM proposed imposing affirmative due diligence requirements as a condition of engaging in a restricted transaction. The NPRM also proposed know-your-data requirements, which specifically require that U.S. persons engaging in restricted transactions develop and implement data compliance programs with risk-based procedures for verifying data transactions, including the types and volumes of data involved in the transactions, the identity of the transaction parties, and the end-use of the data. The NPRM proposed affirmative recordkeeping requirements as a condition of engaging in a restricted transaction, and it required U.S. persons subject to these affirmative requirements to maintain documentation of their due diligence, in order to assist in inspections and enforcement, and to maintain the results of annual audits that verify their compliance with the security requirements and, where relevant, the license conditions to which the U.S. persons may be subject.

One commenter raised an unsubstantiated concern about the recordkeeping and due diligence requirements associated with restricted transactions, making a blanket assertion that the application of such requirements would be inconceivable for restricted transactions. As a solution to this unsubstantiated concern, the commenter requested that the Department replace the proposed requirements with an information-sharing framework like the ones utilized by customs authorities with respect to supply-chain risk. Specifically, this commenter suggested that the Department replicate the approach taken by the Customs-Trade Partnership Against Terrorism, which the commenter described as a public-private partnership pioneered by DHS to protect the U.S. supply chain in the aftermath of the terrorist attacks of September 11, 2001. Under this partnership, the commenter noted, U.S. companies voluntarily invested in improving their digital and other supply chain security processes, and agreed to share

information with the United States Government, in exchange for a series of regulatory incentives. The Department declines to make this change for several reasons.

First, the Department lacks discretion under the Order to convert the rule to a voluntary public-private partnership or information-sharing program. The Order directs the Department to issue a rule prohibiting and restricting classes of transactions that pose an unacceptable risk of enabling countries of concern or covered persons to access government-related data or bulk U.S. sensitive personal data, and that meet certain other criteria.

Second, a voluntary information-sharing partnership would not address the unacceptable risks to national security and foreign policy at the heart of the Order. As explained in the NPRM and part IV of this preamble, these risks are externalities that derive in large part from U.S. persons' choices to share government-related data and bulk U.S. sensitive personal data with countries of concern and covered persons that they can leverage to exploit that data. Like other national security risks and threats, the data security risks addressed by the Order and this rule result from the failure of the private market to adequately internalize and account for these collective national security and foreign policy costs. Unlike this rule, a voluntary information-sharing program would not correct that externality because such a program would allow U.S. persons to continue to choose to engage in covered data transactions that pose these unacceptable risks.

The same is true of the specific recordkeeping and other due diligence requirements for restricted transactions. Recordkeeping, security, and due diligence requirements were contemplated as key mitigative components of restricted transactions in both the ANPRM and NPRM, providing the public with ample opportunity to raise substantiated concerns. The recordkeeping, security, and due diligence requirements are designed to address national security and foreign policy threats that arise when countries of concern and covered persons access government-related data or bulk U.S. sensitive personal data that may be implicated by the categories of restricted transactions. The requirements are specifically tailored to those risks. The commenter does not describe how—even if their concern were substantiated—replacing the recordkeeping and other due diligence requirements with a voluntary information-sharing program would mitigate such national security and

¹⁹⁶ 89 FR 15423.

¹⁹⁷ 89 FR 15424.

foreign policy threats. The commenter also does not explain how a voluntary information-sharing program would adequately enable the Department to monitor compliance with the rule, investigate potential violations, and enforce the rule, or ensure that U.S. persons are taking adequate steps to closely monitor their compliance with the rule given the risks posed by ongoing restricted transactions. The Department believes that these requirements are a critical part of mitigating the unacceptable risks posed by these transactions.

Third, the rule creates mechanisms for the Department to provide official guidance or written advisory opinions in response to specific inquiries received through advisory opinion procedures. As part of this system, the Department also plans to make any official guidance publicly available to help potentially regulated parties better understand the regulations and the Department's interpretation of the regulations and the Order. The system will assist regulated parties in their application of the regulation's recordkeeping and due diligence requirements to specific, non-hypothetical factual scenarios.

Another commenter generally claimed that the final rule will impose significant compliance burdens on U.S. companies. The due diligence requirements for engaging in restricted transactions and the recordkeeping requirements that apply to both prohibited and restricted transactions are based on existing compliance expectations set by other regulators, such as OFAC and BIS, for screening vendors and transaction counterparties.

Another commenter claimed that costs to businesses for Know Your Customer ("KYC") due diligence are generally already high, and that unclear requirements will add to business costs and frustration. The commenter stated that some information, such as an entity's residence or country of incorporation, may be easy to obtain, but the extent to which an entity is subject to the influence or control of a country of concern or covered person may not be readily apparent. Again, the Department cannot address this commenter's concerns because the commenter did not provide any specific information or justification for why the proposed rule's KYC requirements are unclear. However, as explained in the NPRM, the proposed rule does not require U.S. persons to determine whether an entity is controlled or subject to the influence of a country of concern. Regulated parties have the duty to determine whether entities or

individuals meet the definitions of covered persons set forth in § 202.211(a)(1) through (4), none of which include control or influence. Rather, the Department will determine whether an entity is subject to the direction or control of a country of concern or covered person and, if so, will publicly designate them as a covered person. For this fifth category of covered persons, U.S. businesses need only rely on the published Covered Persons List when conducting due diligence.

Another commenter asserted that the proposed rule's due diligence, reporting and auditing requirements would impose a substantial administrative burden, and they recommended that the Department view due diligence requirements in proportion to the degree of risk associated with a covered data transaction. For example, the commenter suggested that due diligence for "lower-risk" transactions could include streamlined measures such as contractual safeguards and automated review of counterparties' technical indicators, such as IP address locations. As the Department discussed in the NPRM, the Department will encourage U.S. persons subject to the proposed rule to develop, implement, and update compliance programs as appropriate.¹⁹⁸ Although the Department may issue guidance to assist U.S. persons to develop and implement compliance programs, the compliance program suitable for a particular U.S. person would be based on that person's individualized risk profile and would vary depending on a variety of factors, including the U.S. person's size and sophistication, products and services, customers and counterparties, and geographic locations. Depending on a U.S. person's individualized risk profile, a reasonable compliance program could include streamlined measures such as contractual safeguards and automated review of counterparties' technical indicators, such as IP address locations.

Another commenter stated that multinational companies already have robust data privacy and export control programs that may be leveraged to comply with the rule, arguing that companies should not be required to set up entirely new compliance programs and should leverage existing compliance infrastructure to the extent feasible. Another commenter echoed the view that companies should be able to leverage existing privacy and data security programs. The Department strongly agrees. Nothing in the rule

requires companies to set up new compliance programs where they already have such programs that otherwise meet the requirements of the rule. The Department expects that many companies will adapt their existing compliance programs to respond to the rule's requirements.

One commenter asserted, without support, that the proposed rule's due diligence requirements are akin to requiring that Post Offices read the mail of U.S. citizens and produce reports to law enforcement on what they have read. The commenter questioned whether the proposed rule conforms with the U.S. Constitution, described the due diligence and reporting requirements as a "surveillance mandate," asserted that the rule contains serious civil rights concerns, and flagged that the NPRM docket did not reflect input from entities like the Department of State's Bureau of Democracy and Human Rights, the American Civil Liberties Union, or Freedom House.

This comment distorted and mischaracterized the rule in conclusory ways without any specificity or analysis of the rule itself. First, as explained in part L of this preamble, the ANPRM, NPRM, and this rule each resulted from extensive, robust formal and informal interagency review and input from dozens of agencies (including the State Department), White House offices, and other Executive Branch entities.

Second, the rule exempts from its coverage expressive information or informational materials and personal communications, among other things, and is consistent with the First Amendment, as discussed in part IV.D.1 of this preamble.

Third, the rule's due diligence and reporting requirements are tailored to ensure compliance and help inform the Department's administration of the program. The rule affirmatively requires due diligence and annual audits only for U.S. persons engaging in restricted transactions, and the due diligence requirements are similar to the elements of companies' compliance programs in the sanctions compliance and export controls contexts (although, in contrast to sanctions, which impose strict liability for violations, the rule's prohibitions include a knowledge standard). See § 202.1002. The rule requires reports only for a certain subset of restricted transactions that raise heightened risks, or where U.S. entities receive and reject offers to engage in a prohibited transaction involving data brokerage to help inform the Department about entities engaging in data brokerage that may be seeking to

¹⁹⁸ 89 FR 86152–53.

undermine or violate the rules. *See* § 202.1104. And much of the rule's recordkeeping requirements are in line with documents that businesses already keep, such as access logs.

Other than breezily using the buzzwords "surveillance mandate" to mischaracterize the rule's compliance requirements, the commenter did not describe what civil rights or constitutional concerns the proposed rule raises. The American Civil Liberties Union provided a comment to the proposed rule and did not raise the concerns asserted by the commenter. And although all members of the public had the opportunity to comment on the ANPRM and NPRM, Freedom House did not submit a comment. The commenter's buzzwords and unsupported accusations have no basis in the rule itself and provide no reason to alter the rule.

2. Section 202.1002—Audits for Restricted Transactions

The NPRM proposed imposing an annual audit requirement as a condition of engaging in a restricted transaction to verify and improve compliance with the security requirements. Section 202.1002(f) of the NPRM proposed requiring an auditor to submit a written report that describes the audit methodology, including "the policies and other documents reviewed, personnel interviewed, and any facilities, equipment, networks, or systems examined."¹⁹⁹

One commenter requested that the Department change this provision to insert the terms "relevant" before the terms "policies," "personnel," and "facilities" to ensure that auditors do not randomly review all the documents, personnel, or equipment of relevant parties. This comment appears to misinterpret the audit section of the proposed rule by reading § 202.1002(f) in isolation from § 202.1002's other provisions. Section 202.1002(e) of the proposed rule defined the scope of the audit and was already limited to focus only on activities covered by the proposed rule. In contrast, § 202.1002(f) addressed only what an auditor must include in the audit report.²⁰⁰ It does not require an auditor to review all of a companies' policies, interview all its personnel, or examine all its facilities, equipment, networks or systems. However, to ensure that the regulatory text is clear, the final rule adds the term "relevant" to § 202.1002(f)(2)(ii) to clarify that the audit report must describe only the relevant policies,

personnel interviewed, and facilities, equipment, networks or systems examined by the auditor.

A couple of commenters expressed concerns that the proposed rule did not include protections for confidentiality and trade secrets contained in reports and audits from either public disclosure or evidentiary use. It is unclear why the commenter thinks that the Department would not use an audit report as evidentiary support for an enforcement action if the report demonstrates a company's failure to comply with the rule. The audit report is one of the ways that the Department seeks to impose broad compliance with the rule. As for confidentiality, the Department would be bound by existing legal requirements regarding the protection of confidential or proprietary information.²⁰¹

A number of commenters requested that companies be allowed to use audits completed for other purposes to comply with the final rule to avoid imposing significant compliance burdens on companies. The Department agrees with these comments and notes that the proposed rule required that a company conduct an audit of its compliance with the proposed rule, but it did not require that a company conduct a separate audit to comply with the audit requirements. The final rule does not include that requirement, either. However, the audit must specifically, sufficiently, and expressly address the requirements set forth in the rule.

Multiple commenters requested that companies be allowed to use internal auditors to audit compliance with the rule and reduce their compliance burden for restricted transaction. In the Department's extensive experience with corporate compliance in national security, criminal, and other contexts, internal audits often lack the independence, expertise, and resources to conduct objective and thorough evaluations of their own company's compliance efforts, while external audits often provide more effective and comprehensive assessments. However, the Department recognizes that, with the appropriate independence, expertise, and resources, internal audits may also be effective and may be a sensible part of a compliance program, depending on the U.S. company's individualized risk profile. The Department has thus updated the rule to delete the requirement that audits be "external" to allow internal audits that are otherwise sufficiently "independent." The Department intends to provide additional guidance on the requirements

for a sufficiently independent audit after the final rule is published.

One commenter suggested that the Department adopt a self-certification system akin to the Data Privacy Framework, and that the Department allow for third-party reviews as a condition for engaging in restricted transactions. Although the Department appreciates the value of certifications to privacy regimes such as the Data Privacy Framework, it does not find self-certifications sufficient to ensure compliance given the national security risks to government-related data and bulk U.S. sensitive personal data that the rule seeks to address. The audit provisions set forth in § 202.1002 are tailored to ensure compliance with the rule, including the security requirements, and to ensure that auditors have the requisite independence to effectively assess compliance.

One commenter claimed that the audit requirement in the proposed rule is unnecessarily broad because it would apply to all data transactions, straying beyond the national security concerns behind the proposed rule and imposing challenging requirements on U.S. companies. The commenter suggested that the Department consider a risk-based approach to auditing that takes into account the sensitivity of the data and the nature of transactions and counterparties, rather than imposing a uniform, annual auditing cadence for all restricted transactions. A few commenters also stated that an annual auditing requirement was burdensome. One commenter suggested that companies be allowed to conduct random spot audits, or that the Department require audits for companies engaged in high volumes of restricted transactions. Another commenter suggested that companies only be required to conduct audits after determining that they are not in compliance with the rule.

The audit requirement in the proposed rule explicitly applies only to U.S. persons engaging in restricted transactions; it does not apply broadly to all U.S. persons engaging in data transactions. No change is necessary to clarify this point. However, the Department appreciates that the scope of the audit provision in the NPRM's proposed § 202.1002(e)(1) could be read to apply to all data transactions, even those outside the scope of the rule, and has revised the terminology in § 202.1002(e)(1) in the final rule to clarify that the scope of the audit must examine a U.S. person's restricted transactions, not all their data transactions, and has revised

¹⁹⁹ 89 FR 86224.

²⁰⁰ *Id.*

²⁰¹ *See, e.g.*, 28 CFR 16.7.

§ 202.1002(f)(2) to clarify that the audit report need only address the nature of a U.S. person's restricted transactions. The Department expects that an auditor would need to review a U.S. entity's procedures for determining whether transactions are restricted, prohibited, or exempt to ensure that the entity is appropriately identifying and handling restricted transactions. Once the auditing requirement is triggered, the rule would require the auditor to examine the data transactions engaged in by a U.S. person that it has identified as restricted transactions and determine whether the data transactions satisfy the CISA security requirements and other compliance obligations.

The proposed rule already took into account the sensitivity and nature of the transactions and counterparties by limiting the scope of the proposed rule's restrictions to countries of concern or covered persons, and by including bulk thresholds that trigger the rule's requirements. The Department believes that annual audits are necessary for U.S. persons to stay current with their data transactions and the security measures put in place to protect that data. Spot audits would provide only a snapshot in time and would not provide a company guidance about adequate remedial measures that they must take to come into compliance with the rule. Although one commenter noted that agencies monitoring CFIUS mitigation agreements often do not require annual audits, the commenter does not appear to consider that CFIUS mitigation agreements may contain other reporting obligations that can apprise CFIUS monitoring agencies, on a potentially regular basis, about a company's compliance with CFIUS mitigation without the need for an annual audit. The rule does not contain comparable reporting obligations. Furthermore, without auditing, it is unclear how a U.S. entity would adequately determine whether it is in compliance with the rule. For these reasons, the Department makes no changes on this issue.

J. Subpart K—Reporting and Recordkeeping Requirements

1. Section 202.1101—Records and Recordkeeping Requirements

The NPRM proposed requiring any U.S. person engaging in a restricted transaction to keep full and accurate records of each restricted transaction and to keep these records available for examination for at least 10 years after the date of each transaction (the length of the statute of limitations for violations of IEEPA). The proposed rule described the required records in detail,

which include a written policy describing the compliance program, a written policy documenting implementation of the security measures for restricted transactions, the results of any audits to evaluate compliance with the security measures, documentation of the due diligence conducted to verify the data flow involved in any restricted transaction, and other pertinent information regarding each transaction.

One commenter repeated their claim from the ANPRM that this provision amounts to real-time, U.S. law enforcement-directed monitoring of data transmissions of private citizens and companies. This comment has no basis in the rule. As the NPRM explained, nothing in the rule, on its face or in practice, requires U.S. companies to surveil their employees, customers, or other private entities. All that § 202.1101 does is require U.S. persons that engage in restricted transactions to have and implement a risk-based compliance program, a common feature in sanctions, export controls, anti-money laundering, privacy, and a host of national security and other laws.

The EU's GDPR, for example, requires every data controller to “maintain a record of the processing activities under its responsibility,” including “the purposes of the processing,” “a description of the categories of data subjects and of the categories of personal data,” “the categories of recipients to whom the personal data have been or will be disclosed including recipients in third countries or international organisations,” “where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and, in the case of transfers referred to in the second subparagraph of Article 49(1), the documentation of suitable safeguards,” “where possible, the envisaged time limits for erasure of the different categories of data,” and “where possible, a general description of the technical and organisational security measures referred to in Article 32(1).”²⁰² The GDPR also requires data processors to similarly “maintain a record of all categories of processing activities carried out on behalf of a controller.”²⁰³ And the GDPR requires data controllers and processors to make these records available to the relevant government authorities on request.²⁰⁴

²⁰² Regulation (EU) 2016/679, *supra* note 153, art. 30(1).

²⁰³ *Id.*, art. 30(2).

²⁰⁴ *Id.*, art. 30(4).

Similarly, the California Privacy Rights Act requires the issuance of regulations “requiring businesses whose processing of consumers’ personal information presents significant risk to consumers’ privacy or security” to, among other things, “perform a cybersecurity audit on an annual basis, including defining the scope of the audit and establishing a process to ensure that audits are thorough and independent,” and “submit to the California Privacy Protection Agency on a regular basis a risk assessment with respect to their processing of personal information.”²⁰⁵ Other State privacy laws require similar audits, data protection assessments, and reporting.²⁰⁶

It is unclear why the commenter believes that similarly requiring U.S. persons to monitor their own transactions and their own compliance with this rule, and to use an audit to double-check their compliance and identify areas of non-compliance, equates to a surreptitious law-enforcement surveillance dragnet. The rule has nothing to do with the United States Government's authorities to lawfully engage in law enforcement and national security activities to gather intelligence. Personal communications, expressive information, and metadata ordinarily associated with expressive materials (or that is reasonably necessary to enable the transmission or dissemination of expressive materials) are specifically excluded from the scope of the rule. And the rule does not regulate purely domestic transactions between U.S. persons, like the collection, maintenance, processing, or use of data by U.S. persons within the United States (unless one of those persons is a publicly designated covered person).

Nor do the recordkeeping, reporting, or other requirements of the rule amount to a mechanism for the Federal Government to obtain access to the underlying data of U.S. persons. Nothing in the rule requires regulated parties to submit the underlying sensitive personal data to the Federal Government. For example, the annual reporting requirement in § 202.1103 for certain restricted transactions and the requirement in § 202.1104 to report certain rejected transactions require only a top-level description of the covered data transaction, such as the “types and volumes” of data involved in the transaction and the “method of data transfer.” The Department expects that

²⁰⁵ Cal. Civ. Code sec. 1798.185(a)(15).

²⁰⁶ See, e.g., Colo. Rev. Stat. 6–1–1302(c), 6–1–1309; 4 Colo. Code Reg. 904–3, Part 8; Conn. Gen. Stat. 42–522.

U.S. persons will fulfill these requirements by including only generalized statements in the report, such as “15,000 U.S. persons’ human genomic data transferred by file transfer protocol,” without providing any of the underlying data.

To be sure, there may be limited circumstances in which the Department may need greater details about the underlying sensitive personal data, such as if a company seeks an advisory opinion about whether a certain kind of data meets one of the definitions for a category of sensitive personal data, or if a U.S. person applies for a specific license and adjudicating that license requires more details about the kinds of data that are the subject of the transaction, or if a company’s non-compliance with the rule and any enforcement action turns on a dispute over the data itself. But in the Department’s experience, even those limited circumstances should ordinarily be resolvable without needing access to the underlying data itself—such as through asking questions about the nature of the data to the parties, similar to what occurs in other national-security processes such as CFIUS and the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector.

Several commenters suggested that the Department include rules to protect companies’ confidential information, proprietary information, or trade secrets to ensure that such information will not be publicly disclosed or used for evidentiary purposes. No change was made in response to this comment. These kinds of protections are already enshrined in other, longstanding laws (such as the Freedom of Information Act and Trade Secrets Act), and the rule will comply with them to the extent that they apply. Creating additional restrictions on the disclosure or use of such information is unnecessary and could undermine the Department’s ability to investigate potential violations of the rule and enforce it.

Another commenter observed that many U.S. companies do not transact in data, but rather their data movement is part of a system or workflow. According to the commenter, the rule’s recordkeeping requirements presume that companies have identified and isolated all discrete restricted transactions, but that is far more burdensome to do when data are part of globally integrated workflows. They described an example in which an engineer at a company responsible for product development or de-bugging may have routine access to user data and

claim that those workflows make it more practical and cost-effective to more broadly adopt the requisite security requirements than to apply them in a piecemeal fashion. The Department appreciates that this rule will result in some compliance costs, but no change appears necessary to address this comment. The recordkeeping requirements do not presume that U.S. persons engage in only discretely identified restricted transactions. Indeed, the comment’s suggested approach to its own example appears to be a workable solution based on the limited facts provided and, depending on the specific circumstances of a company, may be how some companies decide to reasonably comply with these regulations.

2. Section 202.1102—Reports To Be Furnished on Demand

The proposed rule included provisions to assist the Department in investigating potential noncompliance with the rule. These provisions include requiring any U.S. person to furnish under oath, from time to time and at any time as may be required by the Attorney General, complete information relative to any covered data transaction subject to a prohibition or restriction.

One commenter stated that § 202.1102 is a means for U.S. companies to disclose and produce information upon demand to law enforcement authorities. No change was made in response to this comment. Section 202.1102 merely states the statutory recordkeeping and subpoena authority granted to the President and delegated to the Department under the Order. It is no different than other IEEPA recordkeeping and subpoena authority implemented by the Department of the Treasury across its sanctions programs or by the Department of Commerce under Executive Orders 13873 and 14034.

This same commenter also asserts that the requirements of § 202.1102 would impose significant budgetary expenses on the United States Government, which would be tasked with reviewing information on what the commenter asserted, without support, are billions of “low-risk” transmissions and millions of low-risk transactions. This comment merely repeated this commenter’s claim that the restricted transactions are “low risk,” which has been addressed separately in part IV.C.1 of this preamble. The comment provided no specific analysis as to the number of non-exempt covered data transactions that are subject to the restrictions in this rule or the expenses that the commenter

believes are required to implement the rule. And nothing in the rule establishes a program that requires the Department to review and approve data transmissions or transactions in advance. To the contrary, a hallmark of risk-based compliance is that the private sector, which is best positioned to know its own transactions, is responsible for managing its own compliance without the need for advance United States Government review and approval of every individual transaction undertaken, similar to approaches used for sanctions and export controls. While the rule does allow the Department to ask for records and institutes discrete reporting requirements for rejected transactions and for certain high-risk entities on an annual basis, it does not mandate that all such records be produced for the Department. The Department declines to make any changes to the rule based on this comment.

The same commenter expressed concern that the reporting provisions set out in subpart K could require some regulated entities, such as electronic communications services providers subject to the restrictions of 18 U.S.C. 2701 *et seq.*, to report information about transactions with their customers that Federal law may otherwise prohibit in the absence of specified legal process. The Department does not take a position regarding the commenter’s legal analysis. However, the Department does not intend for regulated entities to construe the reporting provisions set forth in subpart K to impose reporting requirements inconsistent with Federal law. The Department has revised the provisions in subpart K to clarify that the reporting requirements do not oblige parties to furnish information in reports that Federal law would otherwise prohibit.

Another commenter in the pharmaceutical research field argued that their current auditing and recordkeeping measures already adhere to much of what is required under the NPRM, and asserted that it would be unduly burdensome for them to repeat these efforts. Nothing in the rule requires U.S. persons to unnecessarily duplicate their records or create redundant systems. U.S. persons can use existing auditing, recordkeeping, and other compliance practices and systems to the extent that they fully satisfy the requirements of this rule.

3. Section 202.1104—Reports on Rejected Prohibited Transactions

The NPRM proposed requiring that any U.S. person that has received and affirmatively rejected an offer from

another person to engage in a prohibited transaction must submit a report to the Department within 14 business days of rejecting it.

One commenter noted that a 14-day period for reporting on rejected transactions should be extended to a minimum of 30 days. The commenter argued that 14 days was too narrow from a compliance standpoint and that 30 days would allow companies sufficient time to investigate, document, and confirm relevant details about a rejected transaction. The Department declines to adopt this suggested change. While the Department appreciates the desire for a longer reporting period, the proposed 14-day period is consistent with, and indeed longer than, the similar reporting period implemented by OFAC, which requires reporting on rejected transactions within 10 business days of rejecting such a transaction.²⁰⁷ These reports will help the Department identify instances in which potential countries of concern or covered persons seek to enter into prohibited transactions with U.S. persons in contravention of the rule, including through evasion. The information submitted by these reports will thus assist the Department in monitoring U.S. persons' compliance with the rule, identifying matters for potential investigation, undertaking enforcement actions, and identifying ways in which to refine the rule in the future. Additionally, timely reporting of a rejected transaction could, in real time, potentially curtail adversaries' future attempts to access government-related data or bulk U.S. sensitive personal data because the Department can promptly uncover conspiracies to evade or avoid the rule's prohibitions, identify shell companies and agents, investigate targets for designation or enforcement actions, and mitigate potentially ongoing threats to U.S. national security, which increase the longer a rejected restricted transaction goes unreported. Furthermore, lengthening the deadline is unnecessary to allow investigation and documentation because § 202.1104(c) already limits reports on rejected transactions to the required information "to the extent known and available to the person filing the report at the time the transaction is rejected." The Department thus expects that U.S. persons will generally satisfy this reporting requirement by filing an initial report with the information known at the time the transaction is rejected and supplementing it later with additional documentation or relevant details from the results of their

investigations, or as requested by the Department. The Department thus declines to change the timeframe.

K. Subpart M—Penalties and Finding of Violation

The NPRM proposed civil and criminal penalties, including a process for imposing civil monetary penalties similar to those used in other IEEPA-based regimes.

One commenter requested reduced criminal penalties, noting that the penalties of up to 20 years in prison seem "quite punitive" for a covered data transaction violation. The Department declines to take an approach that would create an inconsistency with other penalties imposed for IEEPA-based criminal violations. Under IEEPA, criminal penalties apply to any person convicted of willfully committing, willfully attempting to commit, willfully conspiring to commit, or aiding or abetting in the commission of a violation of any license, order, regulation, or prohibition issued under IEEPA. The penalties, as stated in the NPRM, are commensurate with the willful actions of the person on whom the Department imposes such penalties. The Department further notes that these penalties are intentionally designed to be severe, reflecting the gravity of the national security risks associated with violating the rule and its provisions, and are intended to deter and prevent violations of the prohibitions. Finally, the provisions of IEEPA allow the Department to exercise its discretion. Upon conviction, criminal violators may be fined not more than \$1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both. As with all Federal criminal cases, unless a criminal penalty has a mandatory minimum sentence (which the rule does not), the ultimate penalty, up to the statutory maximum, will be imposed by a Federal district judge, who will determine any sentence after considering the U.S. Sentencing Guidelines and other statutory factors.

Another commenter recommended that if an entity in compliance with the rule makes a voluntary self-disclosure ("VSD") to the Department about a possible violation of the rule, that entity should receive "safe harbor" (presumably from any civil or criminal enforcement action, although the commenter did not specify) to encourage proactive participation in compliance mechanisms. In that vein, the Department intends to publish compliance and enforcement guidance and other resources to help the regulated community comply with the rule. Similar to guidance published by

the Department regarding other VSD programs,²⁰⁸ the Department anticipates that the guidance and resources regarding the rule will cover a variety of issues and will likely include a discussion of how the Department will assess VSD.

L. Coordination With Other Regulatory Regimes

The proposed rule discussed three potential areas of overlap between the proposed rule and existing regulatory regimes. First, the Department considered the potential interaction between this rule's application to investment agreements and CFIUS's authority to review "covered transactions," *see generally* 50 U.S.C. 4565. Second, the Department considered, in consultation with the Federal Trade Commission ("FTC") and other agencies, the potential interaction between this rule's application to data-brokerage transactions and PADFAA.²⁰⁹ Third, the Department considered the potential interaction between this rule's application to vendor agreements and any actions taken by the Secretary of Commerce under Executive Orders 13873 and 14034.

One commenter recognized the Department's efforts to distinguish PADFAA from the proposed rule, but contended that the proposed rule is redundant in light of PADFAA, and urged the Department to incorporate provisions into the final rule to clarify which agency would take primary jurisdiction over activities that violate both PADFAA and this final rule. Another commenter urged the Department to coordinate with the FTC on enforcement activities because the FTC lacks experience addressing national security concerns and is not the appropriate agency to identify or determine whether an entity is controlled by a foreign adversary. Another commenter requested that the Department sign a memorandum of understanding with the FTC to ensure cooperation.

As the Department discussed in the NPRM, the Department does not believe that it would be appropriate to alter the proposed rule's scope in light of PADFAA for several reasons.²¹⁰ There

²⁰⁸ See, e.g., U.S. Dep't of Just., *Voluntary Self Disclosure and Monitor Selection Policies* (Mar. 8, 2024), <https://www.justice.gov/corporate-crime/voluntary-self-disclosure-and-monitor-selection-policies> [<https://perma.cc/SQ5N-5ECP>]; U.S. Dep't of Just., *Criminal Division Pilot Program on Voluntary Self-Disclosures for Individuals* (Sept. 19, 2024), <https://www.justice.gov/criminal/criminal-division-pilot-program-voluntary-self-disclosures-individuals> [<https://perma.cc/B845-NM3C>].

²⁰⁹ Public Law 118–50, *supra* note 20.

²¹⁰ 89 FR 86155.

²⁰⁷ 31 CFR 501.604(c).

are significant differences in scope between PADFAA and the proposed rule, which the Department set forth in some detail in the NPRM, and which the commenters do not address. Although the Department declines to set forth which agency would take primary jurisdiction over enforcement actions, as the Department explained in the NPRM, the Department and the FTC intend to coordinate closely to ensure that these authorities are exercised in a harmonized way to minimize any conflicting obligations or duplicative enforcement.²¹¹ For example, the Department and the FTC intend to coordinate, as appropriate, on licensing decisions and on any potential enforcement actions under PADFAA with respect to activities that may be authorized, exempt, or licensed under the rule.

For related reasons, the Department rejects one commenter's suggestion that the Department abandon the rulemaking because the enactment of PADFAA makes the President's declaration of an emergency unnecessary. As a legal matter, the President's declaration of an emergency is unreviewable by a court, and it is not a decision the Department is authorized to revisit. And, substantively, the rule covers a range of transactions—such as restricted transactions—that present the national security threats recognized by the President's declaration and the Order and that are entirely outside PADFAA's scope. This suggestion also ignores the significant differences in scope and structure between the Order and PADFAA, which the NPRM discussed.

Another commenter renewed a suggestion originally raised as a comment to the ANPRM that the Department address additional potential overlap between the proposed rule and the ICTS program and its rules relevant to sensitive data, the BIS NPRM regarding the requirements for Infrastructure as a Service (“IaaS”) providers to verify the identity of foreign customers,²¹² and the BIS ANPRM regarding connected vehicles.²¹³ The Department has already considered and discussed the potential interaction between this rule and actions that the Secretary of Commerce may take, as authorized by Executive Orders 13873 and 14034, and the

commenter does not engage with the analysis provided in the Department's NPRM. Furthermore, the Department of Commerce has not yet issued final rules regulating IaaS or connected vehicles, so it would be premature to provide an analysis of the ways in which the Department's rule interacts with those rules. As noted in the NPRM, the Department is committed to working with BIS to ensure a consistent approach between the rule's restrictions on vendor agreements and any ICTS actions that may overlap.

One commenter argued that, on issues that depend on public and private information exchanges with U.S. allies and trading partners—such as commerce, diplomacy, health, science, and technology—the NPRM did not adequately address the damage that would be done to the long-established regulatory processes and policy interests of other agencies, including the Department of Commerce, Department of State, and HHS. The Department disagrees. The interagency process to develop the Order, ANPRM, and NPRM included review by and consultation with dozens of Federal departments and agencies, including those listed by the commenter. The Department consulted a broad range of agencies, White House offices, and other Executive Branch entities, including the Departments of State, Treasury, Defense, Commerce, HHS (including the FDA, NIH, and Centers for Disease Control and Prevention), Veterans Affairs, and DHS; the U.S. Postal Service; the U.S. Intelligence Community; White House offices such as the Office of Pandemic Preparedness, OMB (including the Office of Information and Regulatory Affairs (“OIRA”)), Office of the National Cyber Director, Domestic Policy Council, Council of Economic Advisors, and National Economic Council; the National Security Council (including the International Economics, Technology & National Security, Global Health Security & Biodefense, China, Cyber, and Legal directorates); the Office of the U.S. Trade Representative; the FTC; the Federal Communications Commission; the Consumer Financial Protection Bureau; the National Science Foundation; the SEC; the Board of Governors of the Federal Reserve; the Federal Deposit Insurance Corporation; and the Commodity Futures Trading Commission. The final rule is a reflection of the Department's extensive efforts at whole-of-government coordination. At each interval of the rulemaking process, departments and agencies have had the opportunity to provide, and have provided, meaningful

and extensive input to the Order, ANPRM, NPRM, and final rule.

Another commenter expressed support for the Department's coordination with other regulatory regimes, noting that companies involved in international trade are already subject to national security-related requirements overseen by CFIUS, OFAC, BIS, and other entities. The commenter noted that efforts to harmonize the various applicable regimes will be greatly beneficial to the companies seeking to comply.

M. Severability

Section 202.106 of the NPRM provided that the provisions of this rule are intended to be severable from each other if any provision of the final rule is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action or judicial review. The Department did not receive any comments on § 202.106 and adopts and slightly amends it, with the additional explanation below.

The Department has determined that this rule implements and is fully consistent with governing law, but it recognizes that implementation may be subject to legal challenge. The Department intends for the provisions of this rule to be severable from each other. The Supreme Court has explained that where specific provisions of a rule are unlawful, severance is preferred when doing so “will not impair the function of the [rule] as a whole, and there is no indication that the regulation would not have been based but for its inclusion.”²¹⁴

In the event a court holds that any provision in a final 28 CFR part 202 is invalid or unenforceable, the Department intends that the remaining provisions of a final 28 CFR part 202, as relevant, would continue in effect to the greatest extent possible. In addition, if a court holds that any such provision is invalid or unenforceable as to a particular person or circumstance, the Department intends that the provision would remain in effect as to any other person or circumstance. Each provision of the final rule and application thereof serves an important, related, but distinct purpose; provides a distinct benefit separate from, and in addition to, the benefit provided by other provisions and applications; is supported by evidence and findings that stand independent of each other; and is

²¹¹ *Id.*

²¹² Taking Additional Steps To Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities, 89 FR 5698 (Jan. 29, 2024) (to be codified at 15 CFR pt. 7).

²¹³ Securing the Information and Communications Technology and Services Supply Chain: Connected Vehicles, 89 FR 15066 (Mar. 1, 2024) (to be codified at 15 CFR pt. 7).

²¹⁴ *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 294 (1988); see also *Sw. Elec. Power Co. v. EPA*, 920 F.3d 999, 1033 (5th Cir. 2019) (vacating only challenged portions of a rule).

capable of operating independently such that the invalidity of any particular provision or application would not undermine the operability or usefulness of other aspects of the final rule. Depending on the circumstances and the scope of a court's order, remaining provisions of a final rule likely could continue to function sensibly independent of any provision or application held invalid or unenforceable. Although more limited application may change the magnitude of the overall benefit of the final rule, it would not undermine the important benefit of, and justification for, the final rule's application to other persons or circumstances. The qualitative and quantitative benefits of the final rule outweigh the costs for all persons and circumstances covered by the final rule.

For example, the prohibitions and restrictions related to transactions involving access to personal health data should continue to apply even if a court holds that the restrictions or prohibitions on transactions involving access to biometric data are invalid. Similarly, the rest of the conditions required for U.S. persons to engage in restricted transactions with a country of concern or covered person should continue to apply even if a court holds that one set of conditions (such as the recordkeeping requirements) are invalid. The rule should also continue to apply with respect to other countries of concern (such as North Korea) or categories of covered persons even if a court finds its application with respect to one country of concern (such as Russia) or one category of covered persons is invalid. The Department's intent that sections and provisions of the final rule can function independently similarly applies to the other portions of the rule.

N. Other Comments

One commenter recommended that the Department consider amending the rule to require Federal agencies to implement universal opt-out mechanisms ("UOOMs") on government devices at the operating system level and that the Department "work with state enforcers to ensure website and application compliance." According to this commenter, such mechanisms would prevent applications from accessing specific data on government devices and send a signal requesting websites and apps not to sell or share user data with third parties. This commenter remarked that such an amendment would offer a proactive approach to data protection that complements the rule's restrictions on certain data transactions by preventing

sensitive government data from entering vulnerable data ecosystems in the first place.

While the Department appreciates this commenter's recommendation, the Order and this rule do not regulate the United States Government's own activities, including the operation of its own devices, as made clear by section 8 of the Order. This limitation would preclude the Department from requiring a UOOM on United States Government devices at the operating system level, as the commenter suggested. However, the Department has shared this recommendation with CISA and others within the United States Government that are focused on securing sensitive personal data on the United States Government's own systems and devices.

One commenter "agree[d] that there needs to be regulation, including to a greater extent, of U.S. data," but noted that "the rule falls short of an effective law." Another commenter noted that in light of the glaring need for national data protection against threats from abroad and recent data breaches, this rule may not go far enough, but it at least serves to set the foundation for a "much needed wall against continued foreign threats." While the Department appreciates the concept raised by these commenters, the Order only authorizes the Department to promulgate regulations that prohibit or otherwise restrict transactions that present an unacceptable risk to national security by affording countries of concern or covered persons with access to government-related data and bulk U.S. sensitive personal data. As the Department has publicly explained, this rule is one key part of a broader solution to make it more difficult for countries of concern to obtain Americans' sensitive personal data. While this rule is focused on one set of risk vectors (access through commercial activities), other risk vectors such as theft and computer intrusions must necessarily be addressed by other complementary national security, cybersecurity, and privacy measures.

V. Regulatory Requirements

The Department designated the proposed rule as "significant" under Executive Order 12866, as amended.²¹⁵ Upon review, OIRA agreed with this designation. The Department has likewise designated this final rule as "significant" under Executive Order 12866, as amended, and OIRA has similarly concurred with that designation. Accordingly, this rule includes a Final Regulatory Impact

Analysis ("FRIA") and a Final Regulatory Flexibility Analysis ("FRFA"), as required by Executive Order 12866, as amended, and the Regulatory Flexibility Act,²¹⁶ respectively. Part V.A of this preamble summarizes the FRIA. The full version of the FRIA is available on [regulations.gov](https://www.regulations.gov) (Docket No. NSD-104).

A. Executive Orders 12866 (Regulatory Planning and Review) as Amended by Executive Orders 13563 (Improving Regulation and Regulatory Review) and 14094 (Modernizing Regulatory Review)

Pursuant to the requirements of Executive Order 12866, as amended, at section 6(a)(3)(C), the Department has prepared an FRIA of the potential economic impacts of this rule and placed the FRIA on this rule's docket on [regulations.gov](https://www.regulations.gov) (Docket No. NSD-104). The FRIA evaluates the potential economic impacts of this final rule on entities in the United States that are likely to be affected by the rule.

The Department requested comments on the Initial Regulatory Impact Analysis ("IRIA"), including the economic impact of the proposed rule. The Department received several comments directed to the IRIA. A summary of and response to those comments are contained in the full FRIA that is found on [regulations.gov](https://www.regulations.gov).

The Department estimates the discounted annualized cost of the regulation to be approximately \$459 million annually. The extremely high potential net benefits (*i.e.*, expected benefits less estimated costs) justify moving forward with the rule. The approximately \$459 million in estimated annual cost would significantly protect U.S. national security, including well over 100 million American individuals who are potential targets of adversaries exploiting government-related data and bulk U.S. sensitive personal data. While the benefits to national security are difficult to quantify, the Department expects them to be substantial, including preventing the use of data by countries of concern and covered persons to micro-target U.S. persons, to aggregate insights from large datasets to target United States Government and private-sector activities, and to enhance military capabilities that include facilitating the development of bioweapons. Meanwhile, the estimated annual cost of the regulation is very low relative to the relevant economic activity. For example, the approximately \$459 million in estimated annual cost of the rule is only about one-third of 1

²¹⁵ E.O. 12866, 58 FR 51735 (Sept. 30, 1993).

²¹⁶ 5 U.S.C. 601 *et seq.*

percent (0.3 percent) of the \$176 billion in revenues generated in the U.S. Computing, Infrastructure, Data Processing Services, and Web Hosting Services industry sector. The Department therefore expects that the national security and foreign policy benefits, while qualitative, will far outweigh the estimated costs of the final rule.

Although, as the FRIA notes, the monetary value of the data sold to countries of concern appears to represent a relatively small percentage of the overall value of all such transactions from U.S. entities, the data that is sold—especially when it is government-related data or bulk U.S. sensitive personal data—presents significant risks to U.S. persons and to U.S. national security. As explained more fully in part II of this preamble, countries of concern seek to obtain government-related data and bulk U.S. sensitive personal data for malicious uses that undermine the national security and foreign policy of the United States.

Overall, the Department estimates that this rule may directly financially impact approximately 3,000 companies engaged in data brokerage and an additional 1,500 firms that currently engage in restricted transactions involving government-related data and bulk U.S. sensitive personal data with covered persons. This is a relatively small fraction of the overall number of U.S. firms engaged in transactions involving bulk data, as the rule only affects those specific types of commercial transactions identified in the rule that involve access to government-related data or bulk U.S. sensitive personal data by the six identified countries of concern, or by covered persons. These annual costs may include lost and forgone transactions, the cost of deploying the CISA security requirements for restricted transactions, and the direct costs of compliance. Many of the compliance costs that regulated entities will incur due to the rule are one-time costs, such as initial assessments and remediation efforts, that will be needed only once to come into initial compliance with the rule's requirements. Other costs, such as monitoring, compliance audits, reporting, and training, will occur annually.

As the FRIA explains, the Department cannot assess whether any secondary impacts or indirect costs of this rule are reasonably likely given the limitations of available information, the resulting uncertainty, and the qualifications surrounding the analysis. Such impacts and costs are still too speculative and

hypothetical to be quantified in this analysis. Even assuming, however, that such impacts and costs were reasonably likely and could be reasonably estimated, the Department would still conclude that the high qualitative and quantitative benefits to national security and foreign policy of this rule would outweigh the estimated impacts and costs. Additionally, the rule includes 11 exemptions that allow notable categories of commercial transactions to continue unimpeded by the rule's prohibitions and restrictions, and that reduce the overall costs of the rule. See §§ 202.501 through 202.511. Sections 202.800 through 202.803 further provide a mechanism for entities to obtain licenses for otherwise restricted or prohibited transactions.

Finally, the FRIA identifies both the baseline for the Department's cost estimates of the potential impact of the rule, as well as the assumptions used to determine that potential impact. These assumptions include estimates of the number of potentially impacted parties, the costs of compliance, and the number of potentially affected transactions. These assumptions are necessary because, as a new regulatory program, there is little data publicly available about the markets impacted by this rule. The assumptions are also over-inclusive in terms of the impact estimates because they rely on North American Industry Classification System ("NAICS") codes that include entities likely not impacted by the rule, as well as transactions that will be exempted from the rule's prohibitions and restrictions. Nonetheless, the assumptions provide a best estimate of both the estimated costs and expected benefits of the rule, given available economic information. The FRIA also includes updated dollar amounts for various estimated impacts, most notably for the estimated total annual costs of compliance for this rule as well as the 10-year annualized cost estimates. The new figures are lower, though not significantly, than those projected in the IRIA included in the NPRM. The changes do not reflect substantially new data or analyses, but rather provide greater accuracy to the tables by correcting for previous rounding errors and unifying the data.

B. Regulatory Flexibility Act

The Department promulgates this rule to address the growing threat posed by the efforts of foreign adversaries to access and exploit government-related data or bulk U.S. sensitive personal data, as articulated in the Order. In particular, the Order directs the Attorney General to, among other things, determine which classes of data

transactions ought to be prohibited due to the unacceptable risk they pose by allowing countries of concern or covered persons to access government-related data or bulk U.S. sensitive personal data. The Order also directs the Attorney General to work with relevant agencies to identify countries of concern and classes of covered persons, establish a process to issue licenses authorizing transactions that would otherwise be prohibited or restricted transactions, address the need for requirements for recordkeeping and reporting transactions, and determine which classes of transactions will be required to comply with separate security requirements. The need for this rule is articulated in part II of and throughout this preamble. Briefly, advances in computing technology, AI, and methods for processing large datasets allow countries of concern to more effectively leverage for malicious purposes government-related or bulk U.S. sensitive personal data they have purchased or collected. The capability currently exists to allow anyone, including countries of concern, who have access to government-related data or bulk U.S. sensitive personal data to combine and manipulate it in ways that could identify sensitive personal data, including personal identifiers and precise geolocation information.

1. Succinct Statement of the Objectives of, and Legal Basis for, the Rule

Through the Order, the President used his authority under IEEPA and the NEA to declare national emergencies and regulate certain types of economic transactions to protect the country against foreign threats. The Order expands upon the national emergency previously declared by Executive Order 13873, as modified by Executive Order 14034. Furthermore, the President, under title 3, section 301 of the U.S. Code, authorized the Attorney General, in consultation with the heads of relevant executive agencies, to employ the President's powers granted by IEEPA as may be necessary or appropriate to carry out the purposes of the Order.

IEEPA empowers the President to "deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States," including by investigating, blocking, prohibiting, and regulating 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.”²¹⁷ Existing IEEPA-based programs include those administered by OFAC, which enforces economic and trade sanctions, and the BIS Office of Information and Communications Technology and Services, which is responsible for information and communications technology and services supply chain security.

2. Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Rule Will Apply

The rule will affect data-brokerage firms and other firms engaged in covered data transactions that pose a risk of exposing government-related data or bulk U.S. sensitive personal data to countries of concern or covered persons. The Department has estimated that about 4,500 firms, just over 90 percent of which are small businesses (“small entities”), will be impacted by the rule. Therefore, the Department estimates that this rule will impact approximately 4,050 small entities and approximately 450 firms that would not be classified as small entities.

Small entities, as defined by the Regulatory Flexibility Act,²¹⁸ include small businesses, small nonprofit organizations, and small governmental jurisdictions. The definition of “small entities” includes the definition of “small businesses” pursuant to section 3 of the Small Business Act of 1953, as amended: “A small business concern . . . shall be deemed to be one which is independently owned and operated, and which is not dominant in its field of operation.” The definition of “small business” varies from industry to industry (as specified by NAICS code and found at 13 CFR 121.201) to reflect the typical company size in each industry.

NAICS code 518210, “Computing Infrastructure Providers, Data Processing, Web Hosting, and Related Services,” contains all the affected data brokers as well as some of the other entities engaged in one or more of the classes of restricted data transactions.²¹⁹ The Department estimated the likely number of small entities affected by the rule using the Small Business Administration (“SBA”) small business size standards, which themselves are based on the NAICS codes. According to the SBA Office of Size Standards, a

small business under NAICS code 518210 has an annual revenue under \$40 million.²²⁰

Under the appropriate NAICS code, data brokers are considered a subset of the total firms; however, for this analysis, it was assumed that the proportion of small entities was the same for both the broader NAICS industry and the specific data broker industry. Because more than 90 percent of impacted firms across all relevant industries can be considered small entities, the rule impacts a substantial number of small entities.

TABLE V–1—SMALL BUSINESS SIZE STANDARD AND AFFECTED FIRMS

Number of affected firms	Share of affected firms that are small	Number of affected small firms
4,500	Approximately 90 percent.	Approximately 4,050.

This analysis assumes that the small entities affected by the rule will incur compliance costs of around \$32,380 per firm per year, compared with an annual compliance cost of \$400,460 for the largest affected firms. The costs as a percentage of annual revenue will vary company by company.

The Department is not aware of recent reliable revenue data by firm size for the data broker industry, but a reasonable assumption is that if a firm’s revenues from data sales are not sufficient to cover the compliance costs, then that firm will have an incentive to exit that market. Furthermore, calculating the proportion of the costs associated with the rule that falls on small firms is complicated by the fact that several of the rule’s provisions—specifically the requirements related to cybersecurity, due diligence, recordkeeping, and reporting—likely involve high fixed costs. Even if small entities have less complex business operations, leading to fewer complications related to compliance, they will still face a higher cost burden, proportionally, from the rule than larger firms. Large entities will likely already have a greater portion of the fixed costs associated with the rule covered by existing capabilities. Therefore, while the costs associated with the security and due diligence requirements will be smaller in absolute terms for smaller entities, such entities will likely need to pay a higher proportion of their overall budgets to comply. Due to the unknowns and the large number of small entities, it is possible that a substantial number of

small firms will experience a significant impact.

3. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule

The rule requires firms engaged in restricted transactions to adhere to certain standards for data security, due diligence, recordkeeping, and reporting. *See* § 202.1101. To mitigate the risk of sharing government-related data or bulk U.S. sensitive personal data with countries of concern or covered persons through restricted transactions, organizations engaged in restricted transactions would be required to institute organizational and system-level data security policies, practices, and requirements and data-level requirements developed by DHS through CISA in coordination with the Department. *See* § 202.248. Those requirements, which CISA is releasing and announcing through a **Federal Register** notice issued concurrently with the final rule, overlap with several similar, widely used cybersecurity standards or frameworks. In addition, the security requirements developed by CISA require firms to protect the data associated with restricted transactions using combinations of the following capabilities necessary to prevent access to covered data by covered persons or countries of concern:

1. data minimization and data masking;
2. encryption;
3. privacy-enhancing technologies; and
4. denial of access.

Firms will also be required to undergo annual independent testing and auditing to ensure their continuing compliance with the security requirements. As stated in part IV.I.2 of this preamble, the Department intends to provide additional guidance on the requirements for a sufficiently independent audit after the final rule is published.

Additionally, to ensure that government-related data and bulk U.S. sensitive personal data are not accessible by countries of concern or covered persons, the rule requires firms to engage in due diligence before pursuing restricted transactions, such as by using KYC/Know-Your-Vendor programs to complete background checks on potential partners. Furthermore, as described in § 202.1002 the rule requires firms to keep records that contain extensive details of their restricted transactions as well as the details of the other parties involved. They are also required to undergo

²¹⁷ 50 U.S.C. 1701(a), 1702(a)(1)(B).

²¹⁸ 5 U.S.C. 601 *et seq.*

²¹⁹ 518210—Computing Infrastructure Providers, Data Processing, Web Hosting, and Related Services, North American Industry Classification System, <https://www.naics.com/naics-code-description/?v=2022&code=518210> [<https://perma.cc/5PWG-AQWL>].

²²⁰ *Id.*

annual audits of their records to ensure compliance and assess potential risks.

4. Identification of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Rule

As discussed in part IV.L of the preamble, while PADFAA seeks to address some of the same national security risks as the rule does, there are clear differences between PADFAA, the Order, and this rule, including the scope of regulated data-brokerage activities, the types of bulk sensitive personal data that are covered, and the relevant countries of concern. Further, while PADFAA allows the FTC to investigate certain data-brokerage activities involving countries of concern as unfair trade practices, consistent with the FTC's existing jurisdiction, this rule establishes a new set of consistent regulatory requirements that apply across multiple types of commercial transactions and sectors. Finally, as stated in part IV.L of this preamble, the Department will coordinate closely with the FTC to ensure consistency in how both authorities are implemented.

Some restricted transactions under the rule could also end up being subject to review and action by CFIUS. In 2018, the Foreign Investment Risk Review Modernization Act of 2018 gave CFIUS the authority to review certain non-controlling foreign investments that may pose a risk to national security by allowing the sensitive personal data of U.S. citizens to be exploited.²²¹

However, while CFIUS acts on a transaction-by-transaction basis, this final rule creates restrictions and prohibitions on covered data transactions that apply to categories of data transactions involving the six countries of concern. In a situation where a covered data transaction otherwise subject to the rule is later subject to a CFIUS review, such transaction would be exempted from the Department's review under the rule to the extent that CFIUS takes any of the actions identified in the rule. See §§ 202.207 and 202.508.

Furthermore, the categories of covered data transactions covered by the rule extend beyond the scope of CFIUS, including, for example, the categories addressing the provision of government-related data or bulk U.S. sensitive personal data through data brokerage, vendor agreements, and employment agreements. The rule also covers investment agreements that may not be covered by CFIUS, as well as cases where the relevant risks do not result

from the covered transaction or may occur before a CFIUS action takes place.

A description of the alternatives considered, the need for, and objectives of, the rule is included in section I.I. of the FRIA accompanying this rule, and is not repeated here.

C. Executive Order 13132 (Federalism)

The rule does not have federalism implications warranting the application of Executive Order 13132. 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.

D. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The rule does not have Tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

E. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

F. Paperwork Reduction Act

The collections of information contained in this rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, under control number 1124-0007.

The rule includes seven new collections of information, annual reports, applications for specific licenses, reports on rejected prohibited transactions, requests for advisory opinions, petitions for removal from the designated Covered Persons List, reports of known or suspected violations of the onward transfers prohibition, and recordkeeping requirements for restricted transactions. The Department did not receive any comments specifically on these collections of information or the estimated burden.

Based on wage rates from the Bureau of Labor Statistics and lower- and upper-bound estimates (used because this is a new program and there is uncertainty in the estimated number of potential respondents for each of the forms), the following are the estimated burdens of the collections:

- *Annual reports.* The Department estimates that 375 to 750 filers will send

an average of one annual report per year, spending an estimated average of 40 hours to prepare and submit each annual report. The Department estimates the aggregated costs for all filers at \$821,100 to \$1,642,200 annually for annual reports.

- *Applications for specific licenses.*

The Department estimates that 15 to 25 filers will send an average of one application for a specific license per year, spending an estimated average of 10 hours to prepare and submit each application for a specific license. The Department estimates the aggregated costs for all filers at \$8,211 to \$13,685 annually for applications for specific licenses.

- *Reports on rejected prohibited transactions.* The Department estimates that 15 to 25 filers will send an average of one report on a rejected prohibited transaction per year, spending an estimated average of two hours to prepare and submit each application for a specific license. The Department estimates the aggregated costs for all filers at \$1,642 to \$2,737 annually for reports on rejected prohibited transactions.

- *Requests for advisory opinions.* The Department estimates that 50 to 100 filers will send an average of one request for an advisory opinion per year, spending an estimated average of two hours to prepare and submit each request for an advisory opinion. The Department estimates the aggregated costs for all filers at \$5,474 to \$10,948 annually for requests for advisory opinions.

- *Petitions for removal from covered persons list.* The Department estimates that 15 to 25 filers will send an average of one petition for removal from the Covered Persons List per year, spending an estimated average of five hours to prepare and submit each petition for removal from the Covered Persons List. The Department estimates the aggregated costs for all filers at \$4,106 to \$6,843 annually for petitions for removal from the Covered Persons List.

- *Reports of known or suspected violations of onward transfers prohibition.* The Department estimates that 300 to 450 filers will send an average of one report of known or suspected violations of the onward transfers prohibition per year, spending an estimated average of two hours to prepare and submit each report of known or suspected violations of the onward transfers prohibition. The Department estimates the aggregated costs for all filers at \$32,844 to \$49,266 annually for reports of known or suspected violations of the onward transfers prohibition.

²²¹ See Public Law 115-232, tit. XVII, secs. 1701-28, 132 Stat. 1636, 2173.

• *Recordkeeping requirements for restricted transactions.* The Department estimates that 1,400 small to medium-sized firms will incur a total of \$1,344,000 in recordkeeping costs per year. Also, the Department estimates that 100 large firms will incur a total of \$22,500,000 in recordkeeping costs per year.

Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act requires that Federal agencies prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may directly result in the expenditure of \$100 million or more in 1995 dollars (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector (2 U.S.C. 1532(a)). However, the Unfunded Mandates Reform Act does not apply to “any provision” in a proposed or final rule that is “necessary for the national security” (2 U.S.C. 1503(5)).

In the Order, the President explained that “[t]he continuing effort of certain countries of concern to access Americans’ sensitive personal data and United States Government-related data constitutes an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security and foreign policy of the United States.” The Order expanded the scope of the national emergency declared in Executive Order 13873 of May 15, 2019 (Securing the Information and Communications Technology and Services Supply Chain), and further addressed with additional measures in Executive Order 14034 of June 9, 2021 (Protecting Americans’ Sensitive Data From Foreign Adversaries). Section 2(a) of the Order thus requires the Attorney General to issue the regulations in this part, subject to public notice and comment, “[t]o assist in addressing the national security emergency described” in the Order. Because the entirety of this rule and every provision in it addresses the national emergency described by the President in the Order, the Department has concluded that the Unfunded Mandates Reform Act does not apply to this rule.

H. Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the

Congressional Review Act), the Office of Information and Regulatory Affairs has determined that this rule meets the criteria set forth in 5 U.S.C. 804(2). As laid out in the FRIA, this rule is expected to result in an annual effect on the economy of \$100 million or more. The Department will submit the final rule to Congress and the U.S. Government Accountability Office consistent with the Congressional Review Act’s requirements no later than its effective date.

I. Administrative Pay-As-You-Go Act of 2023

The Department has determined that the Administrative Pay-As-You-Go Act of 2023 (Pub. L. 118–5, div. B, title III, 137 Stat. 31 (2023)) does not apply to this rule because it does not affect direct spending.

List of Subjects in 28 CFR Part 202

Incorporation by reference, Military personnel, National security, Personally identifiable information, Privacy, Reporting and recordkeeping requirements, Security measures.

■ Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Assistant Attorney General for National Security by A.G. Order No. 6067–2024, and for the reasons set forth in the preamble, the Department of Justice adds part 202 to 28 CFR chapter I to read as follows:

PART 202—ACCESS TO U.S. SENSITIVE PERSONAL DATA AND GOVERNMENT-RELATED DATA BY COUNTRIES OF CONCERN OR COVERED PERSONS

Sec.

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- 202.1401 Government-Related Location Data List.

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; E.O. 14117, 89 FR 15421.

Subpart A—General

§ 202.101 Scope.

(a) Executive Order 14117 of February 28, 2024 (Preventing Access to Americans' Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern) ("the Order"), directs the Attorney General to issue regulations that prohibit or otherwise restrict United States persons from engaging in any acquisition, holding, use, transfer, transportation, or exportation of, or dealing in, any property in which a foreign country or national thereof has any interest ("transaction"), where the transaction: involves United States Government-related data ("government-related data") or bulk U.S. sensitive personal data, as defined by final rules implementing the Order; falls within a class of transactions that has been determined by the Attorney General to pose an unacceptable risk to the national security of the United States because the transactions may enable access by countries of concern or covered persons to government-related data or bulk U.S. sensitive personal data; and meets other criteria specified by the Order.

(b) This part contains regulations implementing the Order and addressing the national emergency declared in Executive Order 13873 of May 15, 2019 (Securing the Information and Communications Technology and Services Supply Chain), and further addressed with additional measures in Executive Order 14034 of June 9, 2021 (Protecting Americans' Sensitive Data from Foreign Adversaries) and Executive Order 14117.

§ 202.102 Rules of construction and interpretation.

(a) The examples included in this part are provided for informational purposes and should not be construed to alter the meaning of the text of the regulations in this part.

(b) As used in this part, the term "including" means "including but not limited to."

(c) All references to "days" in this part mean calendar days. In computing any time period specified in this part:

(1) Exclude the day of the event that triggers the period;

(2) Count every day, including Saturdays, Sundays, and legal holidays; and

(3) Include the last day of the period, but if the last day is a Saturday, Sunday, or Federal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or Federal holiday.

§ 202.103 Relation of this part to other laws and regulations.

Nothing in this part shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under any other provision of Federal law, including the International Emergency Economic Powers Act.

§ 202.104 Delegation of authorities.

Any action that the Attorney General is authorized to take pursuant to the Order or pursuant to this part may be taken by the Assistant Attorney General for National Security or by any other person to whom the Attorney General or Assistant Attorney General for National Security in writing delegates authority so to act.

§ 202.105 Amendment, modification, or revocation.

Except as otherwise provided by law, any determinations, prohibitions, decisions, licenses (whether general or specific), guidance, authorizations, instructions, orders, or forms issued pursuant to this part may be amended, modified, or revoked, in whole or in part, at any time.

§ 202.106 Severability.

If any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action or judicial review, the provision is to be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding will be one of utter invalidity or unenforceability, in which event the provision will be severable from this part and will not affect the remainder thereof.

Subpart B—Definitions

§ 202.201 Access.

The term *access* means logical or physical access, including the ability to obtain, read, copy, decrypt, edit, divert, release, affect, alter the state of, or otherwise view or receive, in any form, including through information systems, information technology systems, cloud-computing platforms, networks, security systems, equipment, or software. For purposes of determining whether a transaction is a covered data transaction, access is determined without regard for the application or effect of any security requirements.

§ 202.202 Attorney General.

The term *Attorney General* means the Attorney General of the United States or the Attorney General's designee.

§ 202.203 Assistant Attorney General.

The term *Assistant Attorney General* means the Assistant Attorney General, National Security Division, United States Department of Justice, or the Assistant Attorney General's designee.

§ 202.204 Biometric identifiers.

The term *biometric identifiers* means measurable physical characteristics or behaviors used to recognize or verify the identity of an individual, including facial images, voice prints and patterns, retina and iris scans, palm prints and fingerprints, gait, and keyboard usage patterns that are enrolled in a biometric system and the templates created by the system.

§ 202.205 Bulk.

The term *bulk* means any amount of sensitive personal data that meets or exceeds the following thresholds at any point in the preceding 12 months, whether through a single covered data transaction or aggregated across covered data transactions involving the same U.S. person and the same foreign person or covered person:

- (a) Human 'omic data collected about or maintained on more than 1,000 U.S. persons, or, in the case of human genomic data, more than 100 U.S. persons;
- (b) Biometric identifiers collected about or maintained on more than 1,000 U.S. persons;
- (c) Precise geolocation data collected about or maintained on more than 1,000 U.S. devices;
- (d) Personal health data collected about or maintained on more than 10,000 U.S. persons;
- (e) Personal financial data collected about or maintained on more than 10,000 U.S. persons;
- (f) Covered personal identifiers collected about or maintained on more than 100,000 U.S. persons; or
- (g) Combined data, meaning any collection or set of data that contains more than one of the categories in paragraphs (a) through (f) of this section, or that contains any listed identifier linked to categories in paragraphs (a) through (e) of this section, where any individual data type meets the threshold number of persons or devices collected or maintained in the aggregate for the lowest number of U.S. persons or U.S. devices in that category of data.

§ 202.206 Bulk U.S. sensitive personal data.

The term *bulk U.S. sensitive personal data* means a collection or set of sensitive personal data relating to U.S. persons, in any format, regardless of whether the data is anonymized,

pseudonymized, de-identified, or encrypted, where such data meets or exceeds the applicable threshold set forth in § 202.205.

§ 202.207 CFIUS action.

The term *CFIUS action* means any agreement or condition the Committee on Foreign Investment in the United States has entered into or imposed pursuant to 50 U.S.C. 4565(l)(1), (3), or (5) to resolve a national security risk involving access by a country of concern or covered person to sensitive personal data that the Committee on Foreign Investment in the United States has explicitly designated, in the agreement or document containing the condition, as a CFIUS action, including:

- (a) Suspension of a proposed or pending transaction, as authorized under 50 U.S.C. 4565(l)(1);
- (b) Entry into or imposition of any agreement or condition with any party to a covered transaction, as authorized under 50 U.S.C. 4565(l)(3); and
- (c) The establishment of interim protections for covered transactions withdrawn before CFIUS's review or investigation is completed, as authorized under 50 U.S.C. 4565(l)(5).

§ 202.208 China.

The term *China* means the People's Republic of China, including the Special Administrative Region of Hong Kong and the Special Administrative Region of Macau, as well as any political subdivision, agency, or instrumentality thereof.

§ 202.209 Country of concern.

The term *country of concern* means any foreign government that, as determined by the Attorney General with the concurrence of the Secretary of State and the Secretary of Commerce:

- (a) Has 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
- (b) Poses a significant risk of exploiting government-related data or bulk U.S. sensitive personal data to the detriment of the national security of the United States or security and safety of U.S. persons.

§ 202.210 Covered data transaction.

(a) *Definition.* A *covered data transaction* is any transaction that involves any access by a country of concern or covered person to any government-related data or bulk U.S. sensitive personal data and that involves:

- (1) Data brokerage;
- (2) A vendor agreement;

- (3) An employment agreement; or
- (4) An investment agreement.

(b) *Examples*—(1) *Example 1.* A U.S. institution conducts medical research at its own laboratory in a country of concern, including sending several U.S.-citizen employees to that laboratory to perform and assist with the research. The U.S. institution does not engage in data brokerage or a vendor, employment, or investment agreement that gives a covered person or country of concern access to government-related data or bulk U.S. sensitive personal data. Because the U.S. institution does not engage in any data brokerage or enter into a vendor, employment, or investment agreement, the U.S. institution's research activity is not a covered data transaction.

(2) *Example 2.* A U.S. person engages in a vendor agreement with a covered person involving access to bulk U.S. sensitive personal data. The vendor agreement is a restricted transaction. To comply with the CISA security requirements, the U.S. person, among other things, uses data-level requirements to mitigate the risk that the covered person could access the data. The vendor agreement remains a covered data transaction subject to the requirements of this part.

(3) *Example 3.* A covered person engages in a vendor agreement with a U.S. person involving the U.S. person accessing bulk U.S. sensitive personal data already possessed by the covered person. The vendor agreement is not a covered data transaction because the transaction does not involve access by the covered person.

§ 202.211 Covered person.

(a) *Definition.* The term *covered person* means:

(1) A foreign person that is an entity that is 50% or more owned, directly or indirectly, individually or in the aggregate, by one or more countries of concern or persons described in paragraph (a)(2) of this section; or that is organized or chartered under the laws of, or has its principal place of business in, a country of concern;

(2) A foreign person that is an entity that is 50% or more owned, directly or indirectly, individually or in the aggregate, by one or more persons described in paragraphs (a)(1), (3), (4), or (5) of this section;

(3) A foreign person that is an individual who is an employee or contractor of a country of concern or of an entity described in paragraphs (a)(1), (2), or (5) of this section;

(4) A foreign person that is an individual who is primarily a resident

in the territorial jurisdiction of a country of concern; or

(5) Any person, wherever located, determined by the Attorney General:

(i) To be, to have been, or to be likely to become owned or controlled by or subject to the jurisdiction or direction of a country of concern or covered person;

(ii) To act, to have acted or purported to act, or to be likely to act for or on behalf of a country of concern or covered person; or

(iii) To have knowingly caused or directed, or to be likely to knowingly cause or direct a violation of this part.

(b) *Examples*—(1) *Example 1.* Foreign persons primarily resident in Cuba, Iran, or another country of concern would be covered persons.

(2) *Example 2.* Chinese or Russian citizens located in the United States would be treated as U.S. persons and would not be covered persons (except to the extent individually designated). They would be subject to the same prohibitions and restrictions as all other U.S. persons with respect to engaging in covered data transactions with countries of concern or covered persons.

(3) *Example 3.* Citizens of a country of concern who are primarily resident in a third country, such as Russian citizens primarily resident in a European Union country or Cuban citizens primarily resident in a South American country that is not a country of concern, would not be covered persons except to the extent they are individually designated or to the extent that they are employees or contractors of a country of concern government or a covered person that is an entity.

(4) *Example 4.* A foreign person is located abroad and is employed by a company headquartered in China. Because the company is a covered person that is an entity and the employee is located outside the United States, the employee is a covered person.

(5) *Example 5.* A foreign person is located abroad and is employed by a company that has been designated as a covered person. Because the foreign person is the employee of a covered person that is an entity and the employee is a foreign person, the person is a covered person.

(6) *Example 6.* A foreign person individual investor who principally resides in Venezuela owns 50% of a technology company that is solely organized under the laws of the United States. The investor is a covered person because the investor is a foreign person that is an individual who is primarily a resident in the territorial jurisdiction of a country of concern. The technology company is a U.S. person because it is

an entity organized solely under the laws of the United States or any jurisdiction within the United States. The technology company is not a covered person because it is not a foreign person and therefore does not meet the criteria of § 202.211(a)(2).

However, the technology company could still be designated as a covered person following a determination that the technology company meets one or more criteria of § 202.211(a)(5).

(7) *Example 7.* Same as Example 6, but the technology company is additionally organized under the laws of Luxembourg. A U.S. company wishes to license bulk U.S. sensitive personal data to the technology company. The technology company is not a U.S. person because it is not solely organized under the laws of the United States. The technology company is a covered person because it is 50% or more owned, directly or indirectly, individually or in the aggregate, by a foreign person that is an individual who is primarily resident in the territorial jurisdiction of a country of concern. The transaction between the U.S. company and the technology company would be a prohibited data transaction.

(8) *Example 8.* A foreign person that lives in China owns 50% of Foreign Entity A. Foreign Entity A owns 100% of Foreign Entity B and 100% of Foreign Entity C. Foreign Entity B owns 20% of Foreign Entity D. Foreign Entity C owns 30% of Foreign Entity D. Foreign Entity D would be a covered person for two independent reasons. First, Foreign Entity D because it is “indirectly” 50% or more owned by Foreign Entity A (20% through Foreign Entity B and 30% through Foreign Entity C). Second, Foreign Entity D is directly 50% owned, in the aggregate, by Foreign Entity B and Foreign Entity C, each of which are covered persons because they are 50% or more owned by Foreign Entity A.

§ 202.212 Covered personal identifiers.

(a) *Definition.* The term *covered personal identifiers* means any listed identifier:

(1) In combination with any other listed identifier; or

(2) In combination with other data that is disclosed by a transacting party pursuant to the transaction such that the listed identifier is linked or linkable to other listed identifiers or to other sensitive personal data.

(b) *Exclusion.* The term *covered personal identifiers* excludes:

(1) Demographic or contact data that is linked only to other demographic or contact data (such as first and last name, birthplace, ZIP code, residential street or postal address, phone number, and

email address and similar public account identifiers); and

(2) A network-based identifier, account-authentication data, or call-detail data that is linked only to other network-based identifier, account-authentication data, or call-detail data as necessary for the provision of telecommunications, networking, or similar service.

(c) *Examples of listed identifiers in combination with other listed identifiers*—(1) *Example 1.* A standalone listed identifier in isolation (*i.e.*, that is not linked to another listed identifier, sensitive personal data, or other data that is disclosed by a transacting party pursuant to the transaction such that the listed identifier is linked or linkable to other listed identifiers or to other sensitive personal data)—such as a Social Security Number or account username—would not constitute a covered personal identifier.

(2) *Example 2.* A listed identifier linked to another listed identifier—such as a first and last name linked to a Social Security number, a driver’s license number linked to a passport number, a device Media Access Control (“MAC”) address linked to a residential address, an account username linked to a first and last name, or a mobile advertising ID linked to an email address—would constitute covered personal identifiers.

(3) *Example 3.* Demographic or contact data linked only to other demographic or contact data—such as a first and last name linked to a residential street address, an email address linked to a first and last name, or a customer loyalty membership record linking a first and last name to a phone number—would not constitute covered personal identifiers.

(4) *Example 4.* Demographic or contact data linked to other demographic or contact data and to another listed identifier—such as a first and last name linked to an email address and to an IP address—would constitute covered personal identifiers.

(5) *Example 5.* Account usernames linked to passwords as part of a sale of a dataset would constitute covered personal identifiers. Those pieces of account-authentication data are not linked as a necessary part of the provision of telecommunications, networking, or similar services. This combination would constitute covered personal identifiers.

(d) *Examples of a listed identifier in combination with other data disclosed by a transacting party*—(1) *Example 1.* A foreign person who is a covered person asks a U.S. company for a list of Media Access Control (“MAC”) identifiers.

addresses from devices that have connected to the wireless network of a U.S. fast-food restaurant located in a particular government building. The U.S. company then sells the list of MAC addresses, without any other listed identifiers or sensitive personal data, to the covered person. The disclosed MAC addresses, when paired with the other data disclosed by the covered person—that the devices “have connected to the wireless network of a U.S. fast-food restaurant located in a particular government building”—makes it so that the MAC addresses are linked or linkable to other sensitive personal data, in this case precise geolocation data of the location of the fast-food restaurant that the national security-related individuals frequent with their devices. This combination of data therefore meets the definition of covered personal identifiers.

(2) *Example 2.* A U.S. company sells to a country of concern a list of residential addresses that the company describes (whether in a heading on the list or separately to the country of concern as part of the transaction) as “addresses of members of a country of concern’s opposition political party in New York City” or as “addresses of active-duty military officers who live in Howard County, Maryland” without any other listed identifiers or sensitive personal data. The data disclosed by the U.S. company’s description, when paired with the disclosed addresses, makes the addresses linked or linkable to other listed identifiers or to other sensitive personal data of the U.S. individuals associated with them. This combination of data therefore meets the definition of covered personal identifiers.

(3) *Example 3.* A covered person asks a U.S. company for a bulk list of birth dates for “any American who visited a Starbucks in Washington, DC, in December 2023.” The U.S. company then sells the list of birth dates, without any other listed identifiers or sensitive personal data, to the covered person. The other data disclosed by the covered person—“any American who visited a Starbucks in Washington, DC, in December 2023”—does not make the birth dates linked or linkable to other listed identifiers or to other sensitive personal data. This combination of data therefore does not meet the definition of covered personal identifiers.

(4) *Example 4.* Same as Example 3, but the covered person asks the U.S. company for a bulk list of names (rather than birth dates) for “any American who visited a Starbucks in Washington, DC in December 2023.” The other data disclosed by the covered person—“any

American who visited a Starbucks in Washington, DC, in December 2023”—does not make the list of names, without more, linked or linkable to other listed identifiers or to other sensitive personal data. This combination of data therefore does not meet the definition of covered personal identifiers.

(5) *Example 5.* A U.S. company sells to a covered person a list of residential addresses that the company describes (in a heading in the list or to the covered person as part of the transaction) as “households of Americans who watched more than 50% of episodes” of a specific popular TV show, without any other listed identifiers or sensitive personal data. The other data disclosed by the U.S. company—“Americans who watched more than 50% of episodes” of a specific popular TV show—does not increase the extent to which the addresses are linked or linkable to other listed identifiers or to other sensitive personal data. This combination of data therefore does not meet the definition of covered personal identifiers.

§ 202.213 Cuba.

The term *Cuba* means the Republic of Cuba, as well as any political subdivision, agency, or instrumentality thereof.

§ 202.214 Data brokerage.

(a) *Definition.* The term *data brokerage* means the sale of data, licensing of access to data, or similar commercial transactions, excluding an employment agreement, investment agreement, or a vendor agreement, involving the transfer of data from any person (the provider) to any other person (the recipient), where the recipient did not collect or process the data directly from the individuals linked or linkable to the collected or processed data.

(b) *Examples.*—(1) *Example 1.* A U.S. company sells bulk U.S. sensitive personal data to an entity headquartered in a country of concern. The U.S. company engages in prohibited data brokerage.

(2) *Example 2.* A U.S. company enters into an agreement that gives a covered person a license to access government-related data held by the U.S. company. The U.S. company engages in prohibited data brokerage.

(3) *Example 3.* A U.S. organization maintains a database of bulk U.S. sensitive personal data and offers annual memberships for a fee that provide members a license to access that data. Providing an annual membership to a covered person that includes a license to access government-related data or bulk U.S. sensitive personal data

would constitute prohibited data brokerage.

(4) *Example 4.* A U.S. company owns and operates a mobile app for U.S. users with available advertising space. As part of selling the advertising space, the U.S. company provides IP addresses and advertising IDs of more than 100,000 U.S. users’ devices to an advertising exchange based in a country of concern in a twelve-month period. The U.S. company’s provision of this data as part of the sale of advertising space is a covered data transaction involving data brokerage and is a prohibited transaction because IP addresses and advertising IDs are listed identifiers that satisfy the definition of bulk covered personal identifiers in this transaction.

(5) *Example 5.* Same as Example 4, but the U.S. company provides the data to an advertising exchange based in the United States. As part of the sale of the advertising space, the U.S. advertising exchange provides the data to advertisers headquartered in a country of concern. The U.S. company’s provision of the data to the U.S. advertising exchange would not be a transaction because it is between U.S. persons. The advertising exchange’s provision of this data to the country of concern-based advertisers is data brokerage because it is a commercial transaction involving the transfer of data from the U.S. advertising exchange to the advertisers headquartered in the country of concern, where those country-of-concern advertisers did not collect or process the data directly from the individuals linked or linkable to the collected or processed data. Furthermore, the U.S. advertising exchange’s provision of this data to the country of concern-based advertisers is a prohibited transaction.

(6) *Example 6.* A U.S. information technology company operates an autonomous driving platform that collects the precise geolocation data of its cars operating in the United States. The U.S. company sells or otherwise licenses this bulk data to its parent company headquartered in a country of concern to help develop artificial intelligence technology and machine learning capabilities. The sale or license is data brokerage and a prohibited transaction.

(7) *Example 7.* A U.S. company owns or operates a mobile app or website for U.S. users. That mobile app or website contains one or more tracking pixels or software development kits that were knowingly installed or approved for incorporation into the app or website by the U.S. company. The tracking pixels or software development kits transfer or otherwise provide access to

government-related data or bulk U.S. sensitive personal data to a country of concern or covered person-owned social media app for targeted advertising. The U.S. company engages in prohibited data brokerage.

(8) *Example 8.* A non-U.S. company is contracted to develop a mobile app for a U.S. company. In developing the mobile app for that U.S. company, the non-U.S. company knowingly incorporates tracking pixels or software development kits into the mobile app that then transfer or otherwise provide access to government-related data or bulk U.S. sensitive personal data to a country of concern or covered person for targeted advertising, at the request of the U.S. company. The non-U.S. company has caused a violation of the data brokerage prohibition. If the U.S. company knowingly arranged the transfer of such data to the country of concern or covered person by requesting incorporation of the tracking pixels or software development kits, the U.S. company has engaged in prohibited data brokerage.

(9) *Example 9.* A U.S. researcher shares bulk human 'omic data on U.S. persons with a researcher in a country of concern (a covered person) with whom the U.S. researcher is drafting a paper for submission to an academic journal. The two researchers exchange country of concern and bulk U.S. human 'omic data over a period of several months to analyze and describe the findings of their research for the journal article. The U.S. person does not provide to or receive from the covered person or the covered person's employer any money or other valuable consideration as part of the authors' study. The U.S. person has not engaged in a covered data transaction involving data brokerage, because the transaction does not involve the sale of data, licensing of access to data, or similar commercial transaction involving the transfer of data to the covered person.

(10) *Example 10.* A U.S. researcher receives a grant from a university in a country of concern to study bulk personal health data and bulk human 'omic data on U.S. persons. The grant directs the researcher to share the underlying bulk U.S. sensitive personal data with the country of concern university (a covered person). The transaction is a covered data transaction because it involves access by a covered person to bulk U.S. sensitive personal data and is data brokerage because it involves the transfer of bulk U.S. sensitive personal data to a covered person in return for a financial benefit.

§ 202.215 Directing.

The term *directing* means having any authority (individually or as part of a group) to make decisions for or on behalf of an entity and exercising that authority.

§ 202.216 Effective date.

The term *effective date* refers to the effective date of this part, which is 12:01 a.m. ET on April 8, 2025.

§ 202.217 Employment agreement.

(a) *Definition.* The term *employment agreement* means any agreement or arrangement in which an individual, other than as an independent contractor, performs work or performs job functions directly for a person in exchange for payment or other consideration, including employment on a board or committee, executive-level arrangements or services, and employment services at an operational level.

(b) *Examples—(1) Example 1.* A U.S. company that conducts consumer human genomic testing collects and maintains bulk human genomic data from U.S. consumers. The U.S. company has global IT operations, including employing a team of individuals who are citizens of and primarily resident in a country of concern to provide back-end services. The agreements related to employing these individuals are employment agreements. Employment as part of the global IT operations team includes access to the U.S. company's systems containing the bulk human genomic data. These employment agreements would be prohibited transactions (because they involve access to bulk human genomic data).

(2) *Example 2.* A U.S. company develops its own mobile games and social media apps that collect the bulk U.S. sensitive personal data of its U.S. users. The U.S. company distributes these games and apps in the United States through U.S.-based digital distribution platforms for software applications. The U.S. company intends to hire as CEO an individual designated by the Attorney General as a covered person because of evidence the CEO acts on behalf of a country of concern. The agreement retaining the individual as CEO would be an employment agreement. The individual's authorities and responsibilities as CEO involve access to all data collected by the apps, including the bulk U.S. sensitive personal data. The CEO's employment would be a restricted transaction.

(3) *Example 3.* A U.S. company has derived U.S. persons' biometric identifiers by scraping public photos from social media platforms. The U.S.

company stores the derived biometric identifiers in bulk, including face-data scans, for the purpose of training or enhancing facial-recognition software. The U.S. company intends to hire a foreign person, who primarily resides in a country of concern, as a project manager responsible for the database. The agreement retaining the project manager would be an employment agreement. The individual's employment as the lead project manager would involve access to the bulk biometric identifiers. The project manager's employment would be a restricted transaction.

(4) *Example 4.* A U.S. financial-services company seeks to hire a data scientist who is a citizen of a country of concern who primarily resides in that country of concern and who is developing a new artificial intelligence-based personal assistant that could be sold as a standalone product to the company's customers. The arrangement retaining the data scientist would be an employment agreement. As part of that individual's employment, the data scientist would have administrator rights that allow that individual to access, download, and transmit bulk quantities of personal financial data not ordinarily incident to and part of the company's underlying provision of financial services to its customers. The data scientist's employment would be a restricted transaction.

(5) *Example 5.* A U.S. company sells goods and collects bulk personal financial data about its U.S. customers. The U.S. company appoints a citizen of a country of concern, who is located in a country of concern, to its board of directors. This director would be a covered person, and the arrangement appointing the director would be an employment agreement. In connection with the board's data security and cybersecurity responsibilities, the director could access the bulk personal financial data. The director's employment would be a restricted transaction.

§ 202.218 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 202.219 Exempt transaction.

The term *exempt transaction* means a data transaction that is subject to one or more exemptions described in subpart E of this part.

§ 202.220 Former senior official.

The term *former senior official* means either a "former senior employee" or a

“former very senior employee,” as those terms are defined in 5 CFR 2641.104.

§ 202.221 Foreign person.

The term *foreign person* means any person that is not a U.S. person.

§ 202.222 Government-related data.

(a) *Definition.* The term *government-related data* means the following:

(1) Any precise geolocation data, regardless of volume, for any location within any area enumerated on the Government-Related Location Data List in § 202.1401 which the Attorney General has determined poses a heightened risk of being exploited by a country of concern to reveal insights about locations controlled by the Federal Government, including insights about facilities, activities, or populations in those locations, to the detriment of national security, because of the nature of those locations or the personnel who work there. Such locations may include:

(i) The worksite or duty station of Federal Government employees or contractors who occupy a national security position as that term is defined in 5 CFR 1400.102(a)(4);

(ii) A military installation as that term is defined in 10 U.S.C. 2801(c)(4); or

(iii) Facilities or locations that otherwise support the Federal Government's national security, defense, intelligence, law enforcement, or foreign policy missions.

(2) Any sensitive personal data, regardless of volume, that a transacting party markets as linked or linkable to current or recent former employees or contractors, or former senior officials, of the United States Government, including the military and Intelligence Community.

(b) *Examples of government-related data marketed by a transacting party—*
(1) *Example 1.* A U.S. company advertises the sale of a set of sensitive personal data as belonging to “active duty” personnel, “military personnel who like to read,” “DoD” personnel, “government employees,” or “communities that are heavily connected to a nearby military base.” The data is government-related data.

(2) *Example 2.* In discussing the sale of a set of sensitive personal data with a covered person, a U.S. company describes the dataset as belonging to members of a specific named organization. The identified organization restricts membership to current and former members of the military and their families. The data is government-related data.

§ 202.223 Human biospecimens.

(a) The term *human biospecimens* means a quantity of tissue, blood, urine, or other human-derived material, including such material classified under any of the following 10-digit Harmonized System-based Schedule B numbers:

- (1) 0501.00.0000 Human hair, unworked, whether or not washed or scoured; waste of human hair
- (2) 3001.20.0000 Extracts of glands or other organs or of their secretions
- (3) 3001.90.0115 Glands and other organs, dried, whether or not powdered
- (4) 3002.12.0010 Human blood plasma
- (5) 3002.12.0020 Normal human blood sera, whether or not freeze-dried
- (6) 3002.12.0030 Human immune blood sera
- (7) 3002.12.0090 Antisera and other blood fractions, Other
- (8) 3002.51.0000 Cell therapy products
- (9) 3002.59.0000 Cell cultures, whether or not modified, Other
- (10) 3002.90.5210 Whole human blood
- (11) 3002.90.5250 Blood, human/animal, other
- (12) 9705.21.0000 Human specimens and parts thereof

(b) Notwithstanding paragraph (a) of this section, the term *human biospecimens* does not include human biospecimens, including human blood, cell, and plasma-derived therapeutics, intended by a recipient solely for use in diagnosing, treating, or preventing any disease or medical condition.

§ 202.224 Human ‘omic data.

(a) The term *human ‘omic data* means:

(1) *Human genomic data.* Data representing the nucleic acid sequences that constitute the entire set or a subset of the genetic instructions found in a human cell, including the result or results of an individual's “genetic test” (as defined in 42 U.S.C. 300gg–91(d)(17)) and any related human genetic sequencing data.

(2) *Human epigenomic data.* Data derived from a systems-level analysis of human epigenetic modifications, which are changes in gene expression that do not involve alterations to the DNA sequence itself. These epigenetic modifications include modifications such as DNA methylation, histone modifications, and non-coding RNA regulation. Routine clinical measurements of epigenetic modifications for individualized patient care purposes would not be considered epigenomic data under this rule because such measurements would not entail a

systems-level analysis of the epigenetic modifications in a sample.

(3) *Human proteomic data.* Data derived from a systems-level analysis of proteins expressed by a human genome, cell, tissue, or organism. Routine clinical measurements of proteins for individualized patient care purposes would not be considered proteomic data under this rule because such measurements would not entail a systems-level analysis of the proteins found in such a sample.

(4) *Human transcriptomic data.* Data derived from a systems-level analysis of RNA transcripts produced by the human genome under specific conditions or in a specific cell type. Routine clinical measurements of RNA transcripts for individualized patient care purposes would not be considered transcriptomic data under this rule because such measurements would not entail a systems-level analysis of the RNA transcripts in a sample.

(b) The term *human ‘omic data* excludes pathogen-specific data embedded in human ‘omic data sets.

§ 202.225 IEPPA.

The term *IEPPA* means the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*).

§ 202.226 Information or informational materials.

(a) *Definition.* The term *information or informational materials* is limited to expressive material and includes publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. It does not include data that is technical, functional, or otherwise non-expressive.

(b) *Exclusions.* The term *information or informational materials* does not include:

(1) Information or informational materials not fully created and in existence at the date of the data transaction, or the substantive or artistic alteration or enhancement of information or informational materials, or the provision of marketing and business consulting services, including to market, produce or co-produce, or assist in the creation of information or informational materials;

(2) Items that were, as of April 30, 1994, or that thereafter become, controlled for export to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by 18 U.S.C. chapter 37.

(c) *Examples—*(1) *Example 1.* A U.S. person enters into an agreement to

create a customized dataset of bulk U.S. sensitive personal data that meets a covered person's specifications (such as the specific types and fields of data, date ranges, and other criteria) and to sell that dataset to the covered person. This customized dataset is not fully created and in existence at the date of the agreement, and therefore is not information or informational materials.

(2) *Example 2.* A U.S. company has access to several pre-existing databases of different bulk U.S. sensitive personal data. The U.S. company offers, for a fee, to use data analytics to link the data across these databases to the same individuals and to sell that combined dataset to a covered person. This service constitutes a substantive alteration or enhancement of the data in the pre-existing databases and therefore is not information or informational materials.

§ 202.227 Interest.

Except as otherwise provided in this part, the term *interest*, when used with respect to property (e.g., "an interest in property"), means an interest of any nature whatsoever, direct or indirect.

§ 202.228 Investment agreement.

(a) *Definition.* The term *investment agreement* means an agreement or arrangement in which any person, in exchange for payment or other consideration, obtains direct or indirect ownership interests in or rights in relation to:

(1) Real estate located in the United States; or

(2) A U.S. legal entity.

(b) *Exclusion for passive investments.* The term *investment agreement* excludes any investment that:

(1) Is made:

(i) Into a publicly traded security, with "security" defined in section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)), denominated in any currency that trades on a securities exchange or through the method of trading that is commonly referred to as "over-the-counter," in any jurisdiction;

(ii) Into a security offered by:

(A) Any "investment company" (as defined in section 3(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)(1)) that is registered with the United States Securities and Exchange Commission, such as index funds, mutual funds, or exchange traded funds; or

(B) Any company that has elected to be regulated or is regulated as a business development company pursuant to section 54(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-53), or any derivative of either of the foregoing; or

(iii) As a limited partner into a venture capital fund, private equity fund, fund of funds, or other pooled investment fund, or private entity, if the limited partner's contribution is solely capital and the limited partner cannot make managerial decisions, is not responsible for any debts beyond its investment, and does not have the formal or informal ability to influence or participate in the fund's or a U.S. person's decision making or operations;

(2) Gives the covered person less than 10% in total voting and equity interest in a U.S. person; and

(3) Does not give a covered person rights beyond those reasonably considered to be standard minority shareholder protections, including (a) membership or observer rights on, or the right to nominate an individual to a position on, the board of directors or an equivalent governing body of the U.S. person, or (b) any other involvement, beyond the voting of shares, in substantive business decisions, management, or strategy of the U.S. person.

(c) *Examples*—(1) *Example 1.* A U.S. company intends to build a data center located in a U.S. territory. The data center will store bulk personal health data on U.S. persons. A foreign private equity fund located in a country of concern agrees to provide capital for the construction of the data center in exchange for acquiring a majority ownership stake in the data center. The agreement that gives the private equity fund a stake in the data center is an investment agreement. The investment agreement is a restricted transaction.

(2) *Example 2.* A foreign technology company that is subject to the jurisdiction of a country of concern and that the Attorney General has designated as a covered person enters into a shareholders' agreement with a U.S. business that develops mobile games and social media apps, acquiring a minority equity stake in the U.S. business. The shareholders' agreement is an investment agreement. These games and apps developed by the U.S. business systematically collect bulk U.S. sensitive personal data of its U.S. users. The investment agreement explicitly gives the foreign technology company the ability to access this data and is therefore a restricted transaction.

(3) *Example 3.* Same as Example 2, but the investment agreement either does not explicitly give the foreign technology company the right to access the data or explicitly forbids that access. The investment agreement nonetheless provides the foreign technology company with the sufficient ownership interest, rights, or other involvement in

substantive business decisions, management, or strategy such that the investment does not constitute a passive investment. Because it is not a passive investment, the ownership interest, rights, or other involvement in substantive business decisions, management, or strategy gives the foreign technology company the ability to obtain logical or physical access, regardless of how the agreement formally distributes those rights. The investment agreement therefore involves access to bulk U.S. sensitive personal data. The investment agreement is a restricted transaction.

(4) *Example 4.* Same as Example 3, but the U.S. business does not maintain or have access to any government-related data or bulk U.S. sensitive personal data (e.g., a pre-commercial company or startup company). Because the data transaction cannot involve access to any government-related data or bulk U.S. sensitive personal data, this investment agreement does not meet the definition of a covered data transaction and is not a restricted transaction.

§ 202.229 Iran.

The term *Iran* means the Islamic Republic of Iran, as well as any political subdivision, agency, or instrumentality thereof.

§ 202.230 Knowingly.

(a) *Definition.* The term *knowingly*, with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or reasonably should have known, of the conduct, the circumstance, or the result.

(b) *Examples*—(1) *Example 1.* A U.S. company sells DNA testing kits to U.S. consumers and maintains bulk human genomic data collected from those consumers. The U.S. company enters into a contract with a foreign cloud-computing company (which is not a covered person) to store the U.S. company's database of human genomic data. The foreign company hires employees from other countries, including citizens of countries of concern who primarily reside in a country of concern, to manage databases for its customers, including the U.S. company's human genomic database. There is no indication of evasion, such as the U.S. company knowingly directing the foreign company's employment agreements with covered persons, or the U.S. company engaging in and structuring these transactions to evade the regulations. The cloud-computing services agreement between the U.S. company and the foreign company would not be prohibited or restricted, because that covered data

transaction is between a U.S. person and a foreign company that does not meet the definition of a covered person. The employment agreements between the foreign company and the covered persons would not be prohibited or restricted because those agreements are between foreign persons.

(2) *Example 2.* A U.S. company transmits the bulk U.S. sensitive personal data of U.S. persons to a country of concern, in violation of this part, using a fiber optic cable operated by another U.S. company. The U.S. cable operator has not knowingly engaged in a prohibited transaction or a restricted transaction solely by virtue of operating the fiber optic cable because the U.S. cable operator does not know, and reasonably should not know, the content of the traffic transmitted across the fiber optic cable.

(3) *Example 3.* A U.S. service provider provides a software platform on which a U.S. company processes the bulk U.S. sensitive personal data of its U.S.-person customers. While the U.S. service provider is generally aware of the nature of the U.S. company's business, the U.S. service provider is not aware of the kind or volume of data that the U.S. company processes on the platform, how the U.S. company uses the data, or whether the U.S. company engages in data transactions. The U.S. company also primarily controls access to its data on the platform, with the U.S. service provider accessing the data only for troubleshooting or technical support purposes, upon request by the U.S. company. Subsequently, without the actual knowledge of the U.S. service provider and without providing the U.S. service provider with any information from which the service provider should have known, the U.S. company grants access to the data on the U.S. service provider's software platform to a covered person through a covered data transaction, in violation of this part. The U.S. service provider itself, however, has not knowingly engaged in a restricted transaction by enabling the covered persons' access via its software platform.

(4) *Example 4.* Same as Example 3, but in addition to providing the software platform, the U.S. company's contract with the U.S. service provider also outsources the U.S. company's processing and handling of the data to the U.S. service provider. As a result, the U.S. service provider primarily controls access to the U.S. company's bulk U.S. sensitive personal data on the platform. The U.S. service provider employs a covered person and grants access to this data as part of this employment. Although the U.S.

company's contract with the U.S. service provider is not a restricted transaction, the U.S. service provider's employment agreement with the covered person is a restricted transaction. The U.S. service provider has thus knowingly engaged in a restricted transaction by entering into an employment agreement that grants access to its employee because the U.S. service provider knew or should have known of its employee's covered person status and, as the party responsible for processing and handling the data, the U.S. service provider was aware of the kind and volume of data that the U.S. company processes on the platform.

(5) *Example 5.* A U.S. company provides cloud storage to a U.S. customer for the encrypted storage of the customer's bulk U.S. sensitive personal data. The U.S. cloud-service provider has an emergency back-up encryption key for all its customers' data, but the company is contractually limited to using the key to decrypt the data only at the customer's request. The U.S. customer's systems and access to the key become disabled, and the U.S. customer requests that the cloud-service provider use the back-up encryption key to decrypt the data and store it on a backup server while the customer restores its own systems. By having access to and using the backup encryption key to decrypt the data in accordance with the contractual limitation, the U.S. cloud-service provider does not and reasonably should not know the kind and volumes of the U.S. customer's data. If the U.S. customer later uses the cloud storage to knowingly engage in a prohibited transaction, the U.S. cloud-service provider's access to and use of the backup encryption key does not mean that the U.S. cloud-service provider has also knowingly engaged in a restricted transaction.

(6) *Example 6.* A prominent human genomics research clinic enters into a cloud-services contract with a U.S. cloud-service provider that specializes in storing and processing healthcare data to store bulk human genomic research data. The cloud-service provider hires IT personnel in a country of concern, who are thus covered persons. While the data that is stored is encrypted, the IT personnel can access the data in encrypted form. The employment agreement between the U.S. cloud-service provider and the IT professionals in the country of concern is a prohibited transaction because the agreement involves giving the IT personnel access to the encrypted data and constitutes a transfer of human genomic data. Given the nature of the

research institution's work and the cloud-service provider's expertise in storing healthcare data, the cloud-service provider reasonably should have known that the encrypted data is bulk U.S. sensitive personal data covered by the regulations. The cloud-service provider has therefore knowingly engaged in a prohibited transaction (because it involves access to human genomic data).

§ 202.231 Licenses; general and specific.

(a) *General license.* The term *general license* means a written license issued pursuant to this part authorizing a class of transactions and not limited to a particular person.

(b) *Specific license.* The term *specific license* means a written license issued pursuant to this part to a particular person or persons, authorizing a particular transaction or transactions in response to a written license application.

§ 202.232 Linked.

(a) *Definition.* The term *linked* means associated.

(b) *Examples—*(1) *Example 1.* A U.S. person transfers two listed identifiers in a single spreadsheet—such as a list of names of individuals and associated MAC addresses for those individuals' devices. The names and MAC addresses would be considered linked.

(2) *Example 2.* A U.S. person transfers two listed identifiers in different spreadsheets—such as a list of names of individuals in one spreadsheet and MAC addresses in another spreadsheet—to two related parties in two different covered data transactions. The names and MAC addresses would be considered linked, provided that some correlation existed between the names and MAC addresses (e.g., associated employee ID number is also listed in both spreadsheets).

(3) *Example 3.* A U.S. person transfers a standalone list of MAC addresses, without any additional listed identifiers. The standalone list does not include covered personal identifiers. That standalone list of MAC addresses would not become covered personal identifiers even if the receiving party is capable of obtaining separate sets of other listed identifiers or sensitive personal data through separate covered data transactions with unaffiliated parties that would ultimately permit the association of the MAC addresses to specific persons. The MAC addresses would not be considered linked or linkable to those separate sets of other listed identifiers or sensitive personal data.

§ 202.233 Linkable.

The term *linkable* means reasonably capable of being linked.

Note to § 202.233. Data is considered linkable when the identifiers involved in a single covered data transaction, or in multiple covered data transactions or a course of dealing between the same or related parties, are reasonably capable of being associated with the same person(s). Identifiers are not linked or linkable when additional identifiers or data not involved in the relevant covered data transaction(s) would be necessary to associate the identifiers with the same specific person(s).

§ 202.234 Listed identifier.

The term *listed identifier* means any piece of data in any of the following data fields:

(a) Full or truncated government identification or account number (such as a Social Security number, driver's license or State identification number, passport number, or Alien Registration Number);

(b) Full financial account numbers or personal identification numbers associated with a financial institution or financial-services company;

(c) Device-based or hardware-based identifier (such as International Mobile Equipment Identity ("IMEI"), Media Access Control ("MAC") address, or Subscriber Identity Module ("SIM") card number);

(d) Demographic or contact data (such as first and last name, birth date, birthplace, ZIP code, residential street or postal address, phone number, email address, or similar public account identifiers);

(e) Advertising identifier (such as Google Advertising ID, Apple ID for Advertisers, or other mobile advertising ID ("MAID"));

(f) Account-authentication data (such as account username, account password, or an answer to security questions);

(g) Network-based identifier (such as Internet Protocol ("IP") address or cookie data); or

(h) Call-detail data (such as Customer Proprietary Network Information ("CPNI")).

§ 202.235 National Security Division.

The term *National Security Division* means the National Security Division of the United States Department of Justice.

§ 202.236 North Korea.

The term *North Korea* means the Democratic People's Republic of North Korea, and any political subdivision, agency, or instrumentality thereof.

§ 202.237 Order.

The term *Order* means Executive Order 14117 of February 28, 2024 (Preventing Access to Americans' Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern), 89 FR 15421 (March 1, 2024).

§ 202.238 Person.

The term *person* means an individual or entity.

§ 202.239 Personal communications.

The term *personal communications* means any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value, as set out under 50 U.S.C. 1702(b)(1).

§ 202.240 Personal financial data.

The term *personal financial data* means data about an individual's credit, charge, or debit card, or bank account, including purchases and payment history; data in a bank, credit, or other financial statement, including assets, liabilities, debts, or trades in a securities portfolio; or data in a credit report or in a "consumer report" (as defined in 15 U.S.C. 1681a(d)).

§ 202.241 Personal health data.

The term *personal health data* means health information that indicates, reveals, or describes the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual. This term includes basic physical measurements and health attributes (such as bodily functions, height and weight, vital signs, symptoms, and allergies); social, psychological, behavioral, and medical diagnostic, intervention, and treatment history; test results; logs of exercise habits; immunization data; data on reproductive and sexual health; and data on the use or purchase of prescribed medications.

§ 202.242 Precise geolocation data.

The term *precise geolocation data* means data, whether real-time or historical, that identifies the physical location of an individual or a device with a precision of within 1,000 meters.

§ 202.243 Prohibited transaction.

The term *prohibited transaction* means a data transaction that is subject to one or more of the prohibitions described in subpart C of this part.

§ 202.244 Property; property interest.

The terms *property* and *property interest* include money; checks; drafts; bullion; bank deposits; savings accounts; debts; indebtedness; obligations; notes; guarantees; debentures; stocks; bonds; coupons; any other financial instruments; bankers acceptances; mortgages, pledges, liens, or other rights in the nature of security; warehouse receipts, bills of lading, trust receipts, bills of sale, or any other evidences of title, ownership, or indebtedness; letters of credit and any documents relating to any rights or obligations thereunder; powers of attorney; goods; wares; merchandise; chattels; stocks on hand; ships; goods on ships; real estate mortgages; deeds of trust; vendors' sales agreements; land contracts, leaseholds, ground rents, real estate and any other interest therein; options; negotiable instruments; trade acceptances; royalties; book accounts; accounts payable; judgments; patents; trademarks or copyrights; insurance policies; safe deposit boxes and their contents; annuities; pooling agreements; services of any nature whatsoever; contracts of any nature whatsoever; any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 202.245 Recent former employees or contractors.

The terms *recent former employees* or *recent former contractors* mean employees or contractors who worked for or provided services to the United States Government, in a paid or unpaid status, within the past 2 years of a potential covered data transaction.

§ 202.246 Restricted transaction.

The term *restricted transaction* means a data transaction that is subject to subpart D of this part.

§ 202.247 Russia.

The term *Russia* means the Russian Federation, and any political subdivision, agency, or instrumentality thereof.

§ 202.248 Security requirements.

The term *security requirements* means the Cybersecurity and Infrastructure Agency ("CISA") Security Requirements for Restricted Transactions E.O. 14117 Implementation, January 2025. This material 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. This incorporation by reference ("IBR") material is available for inspection at the Department of Justice and at the

National Archives and Records Administration (“NARA”). Please contact the Foreign Investment Review Section, National Security Division, U.S. Department of Justice, 175 N St. NE, Washington, DC 20002, telephone: 202–514–8648, *NSD.FIRS.datasecurity@usdoj.gov*; *www.justice.gov/nsd*. 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 National Security Division and the Cybersecurity and Infrastructure Security Agency (CISA), Mail Stop 0380, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0380; *central@cisa.gov*; 888–282–0870; *www.cisa.gov*.

§ 202.249 Sensitive personal data.

(a) *Definition*. The term *sensitive personal data* means covered personal identifiers, precise geolocation data, biometric identifiers, human ‘omic data, personal health data, personal financial data, or any combination thereof.

(b) *Exclusions*. The term *sensitive personal data*, and each of the categories of *sensitive personal data*, excludes:

(1) Public or nonpublic data that does not relate to an individual, including such data that meets the definition of a “trade secret” (as defined in 18 U.S.C. 1839(3)) or “proprietary information” (as defined in 50 U.S.C. 1708(d)(7));

(2) Data that is, at the time of the transaction, lawfully available to the public from a Federal, State, or local government record (such as court records) or in widely distributed media (such as sources that are generally available to the public through unrestricted and open-access repositories);

(3) Personal communications; and

(4) Information or informational materials and ordinarily associated metadata or metadata reasonably necessary to enable the transmission or dissemination of such information or informational materials.

§ 202.250 Special Administrative Region of Hong Kong.

The term *Special Administrative Region of Hong Kong* means the Special Administrative Region of Hong Kong, and any political subdivision, agency, or instrumentality thereof.

§ 202.251 Special Administrative Region of Macau.

The term *Special Administrative Region of Macau* means the Special Administrative Region of Macau, and any political subdivision, agency, or instrumentality thereof.

§ 202.252 Telecommunications service.

The term *telecommunications service* means the provision of voice and data communications services regardless of format or mode of delivery, including communications services delivered over cable, Internet Protocol, wireless, fiber, or other transmission mechanisms, as well as arrangements for network interconnection, transport, messaging, routing, or international voice, text, and data roaming.

§ 202.253 Transaction.

The term *transaction* means any acquisition, holding, use, transfer, transportation, exportation of, or dealing in any property in which a foreign country or national thereof has an interest.

§ 202.254 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 202.255 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 202.256 United States person or U.S. person.

(a) *Definition*. The terms *United States person* and *U.S. person* mean any

United States citizen, national, or lawful permanent resident; any individual admitted to the United States as a refugee under 8 U.S.C. 1157 or granted asylum under 8 U.S.C. 1158; any entity organized solely under the laws of the United States or any jurisdiction within the United States (including foreign branches); or any person in the United States.

(b) *Examples*—(1) *Example 1*. An individual is a citizen of a country of concern and is in the United States. The individual is a U.S. person.

(2) *Example 2*. An individual is a U.S. citizen. The individual is a U.S. person, regardless of location.

(3) *Example 3*. An individual is a dual citizen of the United States and a country of concern. The individual is a U.S. person, regardless of location.

(4) *Example 4*. An individual is a citizen of a country of concern, is not a permanent resident alien of the United States, and is outside the United States. The individual is a foreign person.

(5) *Example 5*. A company is organized under the laws of the United States and has a foreign branch in a country of concern. The company, including its foreign branch, is a U.S. person.

(6) *Example 6*. A parent company is organized under the laws of the United States and has a subsidiary organized under the laws of a country of concern. The subsidiary is a foreign person regardless of the degree of ownership by the parent company; the parent company is a U.S. person.

(7) *Example 7*. A company is organized under the laws of a country of concern and has a branch in the United States. The company, including its U.S. branch, is a foreign person.

(8) *Example 8*. A parent company is organized under the laws of a country of concern and has a subsidiary organized under the laws of the United States. The subsidiary is a U.S. person regardless of the degree of ownership by the parent company; the parent company is a foreign person.

§ 202.257 U.S. device.

The term *U.S. device* means any device with the capacity to store or transmit data that is linked or linkable to a U.S. person.

§ 202.258 Vendor agreement.

(a) *Definition*. The term *vendor agreement* means any agreement or arrangement, other than an employment agreement, in which any person provides goods or services to another person, including cloud-computing services, in exchange for payment or other consideration.

(b) *Examples*—(1) *Example 1.* A U.S. company collects bulk precise geolocation data from U.S. users through an app. The U.S. company enters into an agreement with a company headquartered in a country of concern to process and store this data. This vendor agreement is a restricted transaction.

(2) *Example 2.* A medical facility in the United States contracts with a company headquartered in a country of concern to provide IT-related services. The contract governing the provision of services is a vendor agreement. The medical facility has bulk personal health data on its U.S. patients. The IT services provided under the contract involve access to the medical facility's systems containing the bulk personal health data. This vendor agreement is a restricted transaction.

(3) *Example 3.* A U.S. company, which is owned by an entity headquartered in a country of concern and has been designated a covered person, establishes a new data center in the United States to offer managed services. The U.S. company's data center serves as a vendor to various U.S. companies to store bulk U.S. sensitive personal data collected by those companies. These vendor agreements are restricted transactions.

(4) *Example 4.* A U.S. company develops mobile games that collect bulk precise geolocation data and biometric identifiers of U.S.-person users. The U.S. company contracts part of the software development to a foreign person who is primarily resident in a country of concern and is a covered person. The contract with the foreign person is a vendor agreement. The software-development services provided by the covered person under the contract involve access to the bulk precise geolocation data and biometric identifiers. This is a restricted transaction.

(5) *Example 5.* A U.S. multinational company maintains bulk U.S. sensitive personal data of U.S. persons. This company has a foreign branch, located in a country of concern, that has access to this data. The foreign branch contracts with a local company located in the country of concern to provide cleaning services for the foreign branch's facilities. The contract is a vendor agreement, the foreign branch is a U.S. person, and the local company is a covered person. Because the services performed under this vendor agreement do not "involve access to" the bulk U.S. sensitive personal data, the vendor agreement would not be a covered data transaction.

§ 202.259 Venezuela.

The term *Venezuela* means the Bolivarian Republic of Venezuela, and any political subdivision, agency, or instrumentality thereof.

Subpart C—Prohibited Transactions and Related Activities

§ 202.301 Prohibited data-brokerage transactions.

(a) *Prohibition.* Except as otherwise authorized pursuant to subparts E or H of this part or any other provision of this part, no U.S. person, on or after the effective date, may knowingly engage in a covered data transaction involving data brokerage with a country of concern or covered person.

(b) *Examples*—(1) *Example 1.* A U.S. subsidiary of a company headquartered in a country of concern develops an artificial intelligence chatbot in the United States that is trained on the bulk U.S. sensitive personal data of U.S. persons. While not its primary commercial use, the chatbot is capable of reproducing or otherwise disclosing the bulk U.S. sensitive personal health data that was used to train the chatbot when responding to queries. The U.S. subsidiary knowingly licenses subscription-based access to that chatbot worldwide, including to covered persons such as its parent entity. Although licensing use of the chatbot itself may not necessarily "involve access" to bulk U.S. sensitive personal data, the U.S. subsidiary knows or should know that the license can be used to obtain access to the U.S. persons' bulk sensitive personal training data if prompted. The licensing of access to this bulk U.S. sensitive personal data is data brokerage because it involves the transfer of data from the U.S. company (*i.e.*, the provider) to licensees (*i.e.*, the recipients), where the recipients did not collect or process the data directly from the individuals linked or linkable to the collected or processed data. Even though the license did not explicitly provide access to the data, this is a prohibited transaction because the U.S. company knew or should have known that the use of the chatbot pursuant to the license could be used to obtain access to the training data, and because the U.S. company licensed the product to covered persons.

(2) [Reserved]

§ 202.302 Other prohibited data-brokerage transactions involving potential onward transfer to countries of concern or covered persons.

(a) *Prohibition.* Except as otherwise authorized pursuant to this part, no U.S. person, on or after the effective date, may knowingly engage in any

transaction that involves any access by a foreign person to government-related data or bulk U.S. sensitive personal data and that involves data brokerage with any foreign person that is not a covered person unless the U.S. person:

(1) Contractually requires that the foreign person refrain from engaging in a subsequent covered data transaction involving data brokerage of the same data with a country of concern or covered person; and

(2) Reports any known or suspected violations of this contractual requirement in accordance with paragraph (b) of this section.

(b) *Reporting known or suspected violations*—(1) *When reports are due.* U.S. persons shall file reports within 14 days of the U.S. person becoming aware of a known or suspected violation.

(2) *Contents of reports.* Reports on known or suspected violations shall include the following, to the extent the information is known and available to the person filing the report at the time of the report:

(i) The name and address of the U.S. person reporting the known or suspected violation of the contractual requirement in accordance with paragraph (b) of this section;

(ii) A description of the known or suspected violation, including:

(A) Date of known or suspected violation;

(B) Description of the data-brokerage transaction referenced in paragraph (a) of this section;

(C) Description of the contractual provision prohibiting the onward transfer of the same data to a country of concern or covered person;

(D) Description of the known or suspected violation of the contractual obligation prohibiting the foreign person from engaging in a subsequent covered data transaction involving the same data with a country of concern or a covered person;

(E) Any persons substantively participating in the transaction referenced in paragraph (a) of this section;

(F) Information about the known or suspected persons involved in the onward data transfer transaction, including the name and location of any covered persons or countries of concern;

(G) A copy of any relevant documentation received or created in connection with the transaction; and

(iii) Any other information that the Department of Justice may require or any other information that the U.S. person filing the report believes to be pertinent to the known or suspected violation or the implicated covered person.

(3) *Additional contents; format and method of submission.* Reports required by this section must be submitted in accordance with this section and with subpart L of this part.

(c) *Examples—(1) Example 1.* A U.S. business knowingly enters into an agreement to sell bulk human genomic data to a European business that is not a covered person. The U.S. business is required to include in that agreement a limitation on the European business' right to resell or otherwise engage in a covered data transaction involving data brokerage of that data to a country of concern or covered person. Otherwise, the agreement would be a prohibited transaction.

(2) *Example 2.* A U.S. company owns and operates a mobile app for U.S. users with available advertising space. As part of selling the advertising space, the U.S. company provides the bulk precise geolocation data, IP address, and advertising IDs of its U.S. users' devices to an advertising exchange based in Europe that is not a covered person. The U.S. company's provision of this data to the advertising exchange is data brokerage and a prohibited transaction unless the U.S. company obtains a contractual commitment from the advertising exchange not to engage in any covered data transactions involving data brokerage of that same data with a country of concern or covered person.

(3) *Example 3.* A U.S. business knowingly enters into an agreement to buy bulk human genomic data from a European business that is not a covered person. This provision does not require the U.S. business to include any contractual limitation because the transaction does not involve access by the foreign person.

§ 202.303 Prohibited human 'omic data and human biospecimen transactions.

Except as otherwise authorized pursuant to this part, no U.S. person, on or after the effective date, may knowingly engage in any covered data transaction with a country of concern or covered person that involves access by that country of concern or covered person to bulk U.S. sensitive personal data that involves bulk human 'omic data, or to human biospecimens from which bulk human 'omic data could be derived.

§ 202.304 Prohibited evasions, attempts, causing violations, and conspiracies.

(a) *Prohibition.* Any transaction on or after the effective date that has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this part is prohibited. Any conspiracy formed to

violate the prohibitions set forth in this part is prohibited.

(b) *Examples—(1) Example 1.* A U.S. data broker seeks to sell bulk U.S. sensitive personal data to a foreign person who primarily resides in China. With knowledge that the foreign person is a covered person and with the intent to evade the regulations, the U.S. data broker invites the foreign person to travel to the United States to consummate the data transaction and transfer the bulk U.S. sensitive personal data in the United States. After completing the transaction, the person returns to China with the bulk U.S. sensitive personal data. The transaction in the United States is not a covered data transaction because the person who resides in China is a U.S. person while in the United States (unless that person was individually designated as a covered person pursuant to § 202.211(a)(5), in which case their covered person status would remain, even while in the United States, and the transaction would be a covered data transaction). However, the U.S. data broker has structured the transaction to evade the regulation's prohibitions on covered data transactions with covered persons. As a result, this transaction has the purpose of evading the regulations and is prohibited.

(2) *Example 2.* A Russian national, who is employed by a corporation headquartered in Russia, travels to the United States to conduct business with the Russian company's U.S. subsidiary, including with the purpose of obtaining bulk U.S. sensitive personal data from the U.S. subsidiary. The U.S. subsidiary is a U.S. person, the Russian corporation is a covered person, and the Russian employee is a covered person while outside the United States but a U.S. person while temporarily in the United States (unless that Russian employee was individually designated as a covered person pursuant to § 202.211(a)(5), in which case their covered person status would remain, even while in the United States, and the transaction would be a covered data transaction). With knowledge of these facts, the U.S. subsidiary licenses access to bulk U.S. sensitive personal data to the Russian employee while in the United States, who then returns to Russia. This transaction has the purpose of evading the regulations and is prohibited.

(3) *Example 3.* A U.S. subsidiary of a company headquartered in a country of concern collects bulk precise geolocation data from U.S. persons. The U.S. subsidiary is a U.S. person, and the parent company is a covered person. With the purpose of evading the

regulations, the U.S. subsidiary enters into a vendor agreement with a foreign company that is not a covered person. The vendor agreement provides the foreign company access to the data. The U.S. subsidiary knows (or reasonably should know) that the foreign company is a shell company, and knows that it subsequently outsources the vendor agreement to the U.S. subsidiary's parent company. This transaction has the purpose of evading the regulations and is prohibited.

(4) *Example 4.* A U.S. company collects bulk personal health data from U.S. persons. With the purpose of evading the regulations, the U.S. company enters into a vendor agreement with a foreign company that is not a covered person. The agreement provides the foreign company access to the data. The U.S. company knows (or reasonably should know) that the foreign company is a front company staffed primarily by covered persons. The U.S. company has not complied with either the security requirements in § 202.248 or other applicable requirements for conducting restricted transactions as detailed in subpart J of this part. This transaction has the purpose of evading the regulations and is prohibited.

(5) *Example 5.* A U.S. online gambling company uses an artificial intelligence algorithm to analyze collected bulk covered personal identifiers to identify users based on impulsivity for targeted advertising. The algorithm is trained on bulk covered personal identifiers and may reveal that raw data. A U.S. subsidiary of a company headquartered in a country of concern knows that the algorithm can reveal the training data. For the purpose of evasion, the U.S. subsidiary licenses the derivative algorithm from the U.S. online gambling company for the purpose of accessing bulk sensitive personal identifiers from the training data that would not otherwise be accessible to the parent company and shares the algorithm with the parent company so that the parent company can obtain the bulk covered personal identifiers. The U.S. subsidiary's licensing transaction with the parent company has the purpose of evading the regulations and is prohibited.

§ 202.305 Knowingly directing prohibited or restricted transactions.

(a) *Prohibition.* Except as otherwise authorized pursuant to this part, no U.S. person, on or after the effective date, may knowingly direct any covered data transaction that would be a prohibited transaction or restricted transaction that fails to comply with the requirements of subpart D of this part and all other

applicable requirements under this part, if engaged in by a U.S. person.

(b) *Examples*—(1) *Example 1.* A U.S. person is an officer, senior manager, or equivalent senior-level employee at a foreign company that is not a covered person, and the foreign company undertakes a covered data transaction at that U.S. person's direction or with that U.S. person's approval when the covered data transaction would be prohibited if performed by a U.S. person. The U.S. person has knowingly directed a prohibited transaction.

(2) *Example 2.* Several U.S. persons launch, own, and operate a foreign company that is not a covered person, and that foreign company, under the U.S. persons' operation, undertakes covered data transactions that would be prohibited if performed by a U.S. person. The U.S. persons have knowingly directed a prohibited transaction.

(3) *Example 3.* A U.S. person is employed at a U.S.-headquartered multinational company that has a foreign affiliate that is not a covered person. The U.S. person instructs the U.S. company's compliance unit to change (or approve changes to) the operating policies and procedures of the foreign affiliate with the specific purpose of allowing the foreign affiliate to undertake covered data transactions that would be prohibited if performed by a U.S. person. The U.S. person has knowingly directed prohibited transactions.

(4) *Example 4.* A U.S. bank processes a payment from a U.S. person to a covered person, or from a covered person to a U.S. person, as part of that U.S. person's engagement in a prohibited transaction. The U.S. bank has not knowingly directed a prohibited transaction, and its activity would not be prohibited (although the U.S. person's covered data transaction would be prohibited).

(5) *Example 5.* A U.S. financial institution underwrites a loan or otherwise provides financing for a foreign company that is not a covered person, and the foreign company undertakes covered data transactions that would be prohibited if performed by a U.S. person. The U.S. financial institution has not knowingly directed a prohibited transaction, and its activity would not be prohibited.

(6) *Example 6.* A U.S. person, who is employed at a foreign company that is not a covered person, signs paperwork approving the foreign company's procurement of real estate for its operations. The same foreign company separately conducts data transactions that use or are facilitated by operations

at that real estate location and that would be prohibited transactions if performed by a U.S. person, but the U.S. employee has no role in approving or directing those separate data transactions. The U.S. person has not knowingly directed a prohibited transaction, and the U.S. person's activity would not be prohibited.

(7) *Example 7.* A U.S. company owns or operates a submarine telecommunications cable with one landing point in a foreign country that is not a country of concern and one landing point in a country of concern. The U.S. company leases capacity on the cable to U.S. customers that transmit bulk U.S. sensitive personal data to the landing point in the country of concern, including transmissions as part of prohibited transactions. The U.S. company's ownership or operation of the cable does not constitute knowingly directing a prohibited transaction, and its ownership or operation of the cable would not be prohibited (although the U.S. customers' covered data transactions would be prohibited).

(8) *Example 8.* A U.S. person engages in a vendor agreement involving bulk U.S. sensitive personal data with a foreign person who is not a covered person. Such vendor agreement is not a restricted or prohibited transaction. The foreign person then employs an individual who is a covered person and grants them access to bulk U.S. sensitive personal data without the U.S. person's knowledge or direction. There is no covered data transaction between the U.S. person and the covered person, and there is no indication that the parties engaged in these transactions with the purpose of evading the regulations (such as the U.S. person having knowingly directed the foreign person's employment agreement with the covered person or the parties knowingly structuring a restricted transaction into these multiple transactions with the purpose of evading the prohibition). The U.S. person has not knowingly directed a restricted transaction.

(9) *Example 9.* A U.S. company sells DNA testing kits to U.S. consumers and maintains bulk human genomic data collected from those consumers. The U.S. company enters into a contract with a foreign cloud-computing company (which is not a covered person) to store the U.S. company's database of human genomic data. The foreign company hires employees from other countries, including citizens of countries of concern who primarily reside in a country of concern, to manage databases for its customers, including the U.S. company's human genomic database. There is no

indication of evasion, such as the U.S. company knowingly directing the foreign company's employment agreements or the U.S. company knowingly engaging in and structuring these transactions to evade the regulations. The cloud-computing services agreement between the U.S. company and the foreign company would not be prohibited or restricted because that transaction is between a U.S. person and a foreign company that does not meet the definition of a covered person. The employment agreements between the foreign company and the covered persons would not be prohibited or restricted because those agreements are between foreign persons.

Subpart D—Restricted Transactions

§ 202.401 Authorization to conduct restricted transactions.

(a) *Restricted transactions.* Except as otherwise authorized pursuant to subparts E or H of this part or any other provision of this part, no U.S. person, on or after the effective date, may knowingly engage in a covered data transaction involving a vendor agreement, employment agreement, or investment agreement with a country of concern or covered person unless the U.S. person complies with the security requirements (as defined by § 202.408) required by this subpart D and all other applicable requirements under this part.

(b) This subpart D does not apply to covered data transactions involving access to bulk human 'omic data or human biospecimens from which such data can be derived, and which are subject to the prohibition in § 202.303.

(c) *Examples*—(1) *Example 1.* A U.S. company engages in an employment agreement with a covered person to provide information technology support. As part of their employment, the covered person has access to personal financial data. The U.S. company implements and complies with the security requirements. The employment agreement is authorized as a restricted transaction because the company has complied with the security requirements.

(2) *Example 2.* A U.S. company engages in a vendor agreement with a covered person to store bulk personal health data. Instead of implementing the security requirements as identified by reference in this subpart D, the U.S. company implements different controls that it believes mitigate the covered person's access to the bulk personal health data. Because the U.S. person has not complied with the security requirements, the vendor agreement is

not authorized and thus is a prohibited transaction.

(3) *Example 3.* A U.S. person engages in a vendor agreement involving bulk U.S. sensitive personal data with a foreign person who is not a covered person. The foreign person then employs an individual who is a covered person and grants them access to bulk U.S. sensitive personal data without the U.S. person's knowledge or direction. There is no covered data transaction between the U.S. person and the covered person, and there is no indication that the parties engaged in these transactions with the purpose of evading the regulations (such as the U.S. person having knowingly directed the foreign person's employment agreement with the covered person or the parties knowingly structuring a prohibited transaction into these multiple transactions with the purpose of evading the prohibition). As a result, neither the vendor agreement nor the employment agreement would be a restricted transaction.

§ 202.402 [Reserved]

Subpart E—Exempt Transactions

§ 202.501 Personal communications.

This part does not apply to data transactions to the extent that they involve any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

§ 202.502 Information or informational materials.

This part does not apply to data transactions to the extent that they involve the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials.

§ 202.503 Travel.

This part does not apply to data transactions to the extent that they are ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use; maintenance within any country, including payment of living expenses and acquisition of goods or services for personal use; and arrangement or facilitation of such travel, including nonscheduled air, sea, or land voyages.

§ 202.504 Official business of the United States Government.

(a) *Exemption.* Subparts C, and D, J, and K (other than § 202.1102 and § 202.1104) of this part do not apply to data transactions to the extent that they

are for the conduct of the official business of the United States Government by its employees, grantees, or contractors; any authorized activity of any United States Government department or agency (including an activity that is performed by a Federal depository institution or credit union supervisory agency in the capacity of receiver or conservator); or transactions conducted pursuant to a grant, contract, or other agreement entered into with the United States Government.

(b) *Examples—*(1) *Example 1.* A U.S. hospital receives a Federal grant to conduct human genomic research on U.S. persons. As part of that federally funded human genomic research, the U.S. hospital contracts with a foreign laboratory that is a covered person, hires a researcher that is a covered person, and gives the laboratory and researcher access to the human biospecimens and human genomic data in bulk. The contract with the foreign laboratory and the employment of the researcher are exempt transactions but would be prohibited transactions if they were not part of the federally funded research.

(2) *Example 2.* A U.S. research institution receives a Federal grant to conduct human genomic research on U.S. and foreign persons. The Federal grant directs the U.S. research institution to publicize the results of its research, including the underlying human genomic data, via an internet-accessible database open to public health researchers with valid log-in credentials who pay a small annual fee to access the database, including covered persons primarily resident in a country of concern. The Federal grant does not cover the full costs of the authorized human genomic research or creation and publication of the database. The U.S. research institution obtains funds from private institutions and donors to fund the remaining costs. The human genomic research authorized by the Federal grant and publication of the database at the direction of the Federal grant would constitute a “transaction[] conducted pursuant to a grant, contract, or other agreement entered into with the United States Government.” The U.S. research institution must still comply with any requirements or prohibitions on sharing bulk U.S. sensitive personal data with countries of concern or covered persons required by the Federal grantmaker.

(3) *Example 3.* Same as Example 2, but the Federal grant is limited in scope to funding the U.S. research institution's purchase of equipment needed to conduct the human genomic research and does not include funding related to publication of the data. The Federal

grant does not direct or authorize the U.S. research institution to publicize the human genomic research or make it available to country of concern or covered person researchers via the database for which researchers pay an annual fee to access, or otherwise fund the conduct of the human genomic research. The U.S. research institution contracts with a foreign laboratory that is a covered person and gives the laboratory access to the bulk human genomic data. The contract with the foreign laboratory is not an exempt transaction because that transaction is not within the scope of the Federal grant.

§ 202.505 Financial services.

(a) *Exemption.* Subparts C, D, J, and K (other than § 202.1102 and § 202.1104) of this part do not apply to data transactions, to the extent that they are ordinarily incident to and part of the provision of financial services, including:

(1) Banking, capital-markets (including investment-management services as well as trading and underwriting of securities, commodities, and derivatives), or financial-insurance services;

(2) A financial activity authorized for national banks by 12 U.S.C. 24 (Seventh) and rules and regulations and written interpretations of the Office of the Comptroller of the Currency thereunder;

(3) An activity that is “financial in nature or incidental to such financial activity” or “complementary to a financial activity,” section (k)(1), as set forth in section (k)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(4)) and rules and regulations and written interpretations of the Board of Governors of the Federal Reserve System thereunder;

(4) The transfer of personal financial data or covered personal identifiers incidental to the purchase and sale of goods and services (such as the purchase, sale, or transfer of consumer products and services through online shopping or e-commerce marketplaces);

(5) The provision or processing of payments or funds transfers (such as person-to-person, business-to-person, and government-to-person funds transfers) involving the transfer of personal financial data or covered personal identifiers, or the provision of services ancillary to processing payments and funds transfers (such as services for payment dispute resolution, payor authentication, tokenization, payment gateway, payment fraud detection, payment resiliency, mitigation and prevention, and

payment-related loyalty point program administration); and

(6) The provision of investment-management services that manage or provide advice on investment portfolios or individual assets for compensation (such as devising strategies and handling financial assets and other investments for clients) or provide services ancillary to investment-management services (such as broker-dealers or futures commission merchants executing trades within an investment portfolio based upon instructions from an investment advisor).

(b) *Examples*—(1) *Example 1.* A U.S. company engages in a data transaction to transfer personal financial data in bulk to a financial institution that is incorporated in, located in, or subject to the jurisdiction or control of a country of concern to clear and settle electronic payment transactions between U.S. individuals and merchants in a country of concern where both the U.S. individuals and the merchants use the U.S. company's infrastructure, such as an e-commerce platform. Both the U.S. company's transaction transferring bulk personal financial data and the payment transactions by U.S. individuals are exempt transactions because they involve access by a covered person to bulk personal financial data, but are ordinarily incident to and part of a financial service.

(2) *Example 2.* As ordinarily incident to and part of securitizing and selling asset-backed obligations (such as mortgage and nonmortgage loans) to a covered person, a U.S. bank provides bulk U.S. sensitive personal data to the covered person. The data transfers are exempt transactions because they involve access by a covered person to bulk personal financial data, but are ordinarily incident to and part of a financial service.

(3) *Example 3.* A U.S. bank or other financial institution, as ordinarily incident to and part of facilitating payments to U.S. persons in a country of concern, stores and processes the customers' bulk financial data using a data center operated by a third-party service provider in the country of concern. The use of this third-party service provider is a vendor agreement because it involves access by a covered person to personal financial data, but it is an exempt transaction that is ordinarily incident to and part of facilitating international payment.

(4) *Example 4.* Same as Example 3, but the underlying payments are between U.S. persons in the United States and do not involve a country of concern. The use of this third-party

service provider is a vendor agreement, but it is not an exempt transaction because it involves access by a covered person to bulk personal financial data and it is not ordinarily incident to facilitating this type of financial activity.

(5) *Example 5.* As part of operating an online marketplace for the purchase and sale of goods, a U.S. company, as ordinarily incident to and part of U.S. consumers' purchase of goods on that marketplace, transfers bulk contact information, payment information (e.g., credit-card account number, expiration data, and security code), and delivery address to a merchant in a country of concern. The data transfers are exempt transactions because they involve access by a covered person to bulk personal financial data, but they are ordinarily incident to and part of U.S. consumers' purchase of goods.

(6) *Example 6.* A U.S. investment adviser purchases securities of a company incorporated in a country of concern for the accounts of its clients. The investment adviser engages a broker-dealer located in a country of concern to execute the trade, and, as ordinarily incident to and part of the transaction, transfers to the broker-dealer its clients' covered personal identifiers and financial account numbers in bulk. This provision of data is an exempt transaction because it involves access by a covered person to bulk personal financial data, but it is ordinarily incident to and part of the provision of investment-management services.

(7) *Example 7.* A U.S. company that provides payment-processing services sells bulk U.S. sensitive personal data to a covered person. This sale is prohibited data brokerage and is not an exempt transaction because it involves access by a covered person to bulk personal financial data and is not ordinarily incident to and part of the payment-processing services provided by the U.S. company.

(8) *Example 8.* A U.S. bank facilitates international funds transfers to foreign persons not related to a country of concern, but through intermediaries or locations subject to the jurisdiction or control of a country of concern. These transfers result in access to bulk financial records by some covered persons to complete the transfers and manage associated risks. Providing this access as part of these transfers is ordinarily incident to the provision of financial services and is exempt.

(9) *Example 9.* A U.S. insurance company underwrites personal insurance to U.S. persons residing in foreign countries in the same region as

a country of concern. The insurance company relies on its own business infrastructure and personnel in the country of concern to support its financial activity in the region, which results in access to the bulk U.S. sensitive personal data of some U.S.-person customers residing in the region, to covered persons at the insurance company supporting these activities. Providing this access is ordinarily incident to the provision of financial services and is exempt.

(10) *Example 10.* A U.S. financial services provider operates a foreign branch in a country of concern and provides financial services to U.S. persons living within the country of concern. The financial services provider receives a lawful request from the regulator in the country of concern to review the financial activity conducted in the country, which includes providing access to the bulk U.S. sensitive personal data of U.S. persons resident in the country or U.S. persons conducting transactions through the foreign branch. The financial services provider is also subject to ongoing and routine reporting requirements from various regulators in the country of concern. Responding to the regulator's request, including providing access to this bulk U.S. sensitive personal data, is ordinarily incident to the provision of financial services and is exempt.

(11) *Example 11.* A U.S. bank voluntarily shares information, including relevant bulk U.S. sensitive personal data, with financial institutions organized under the laws of a country of concern for the purposes of, and consistent with industry practices for, fraud identification, combatting money laundering and terrorism financing, and U.S. sanctions compliance. Sharing this data for these purposes involves access by a covered person to bulk personal financial data, but is ordinarily incident to the provision of financial services and is exempt.

(12) *Example 12.* A U.S. company provides wealth-management services and collects bulk personal financial data on its U.S. clients. The U.S. company appoints a citizen of a country of concern, who is located in a country of concern, to its board of directors. In connection with the board's data security and cybersecurity responsibilities, the director could compel company personnel or influence company policies or practices to provide the director access to the underlying bulk personal financial data the company collects on its U.S. clients. The appointment of the director, who is a covered person, is a restricted

employment agreement and is not exempt because the board member does not need to access, and in normal circumstances would not be able to access, the bulk financial data to perform his or her responsibilities. The board member's access to the bulk personal financial data is not ordinarily incident to the U.S. company's provision of wealth-management services.

§ 202.506 Corporate group transactions.

(a) Subparts C, D, J, and K (other than § 202.1102 and § 202.1104) of this part do not apply to data transactions to the extent they are:

- (1) Between a U.S. person and its subsidiary or affiliate located in (or otherwise subject to the ownership, direction, jurisdiction, or control of) a country of concern; and
- (2) Ordinarily incident to and part of administrative or ancillary business operations, including:
 - (i) Human resources;
 - (ii) Payroll, expense monitoring and reimbursement, and other corporate financial activities;
 - (iii) Paying business taxes or fees;
 - (iv) Obtaining business permits or licenses;
 - (v) Sharing data with auditors and law firms for regulatory compliance;
 - (vi) Risk management;
 - (vii) Business-related travel;
 - (viii) Customer support;
 - (ix) Employee benefits; and
 - (x) Employees' internal and external communications.

(b) *Examples*—(1) *Example 1.* A U.S. company has a foreign subsidiary located in a country of concern, and the U.S. company's U.S.-person contractors perform services for the foreign subsidiary. As ordinarily incident to and part of the foreign subsidiary's payments to the U.S.-person contractors for those services, the U.S. company engages in a data transaction that gives the subsidiary access to the U.S.-person contractors' bulk personal financial data and covered personal identifiers. This is an exempt corporate group transaction.

(2) *Example 2.* A U.S. company aggregates bulk personal financial data. The U.S. company has a subsidiary that is a covered person because it is headquartered in a country of concern. The subsidiary is subject to the country of concern's national security laws requiring it to cooperate with and assist the country's intelligence services. The exemption for corporate group transactions would not apply to the U.S. parent's grant of a license to the subsidiary to access the parent's databases containing the bulk personal financial data for the purpose of

complying with a request or order by the country of concern under those national security laws to provide access to that data because granting of such a license is not ordinarily incident to and part of administrative or ancillary business operations.

(3) *Example 3.* A U.S. company's affiliate operates a manufacturing facility in a country of concern for one of the U.S. company's products. The affiliate uses employee fingerprints as part of security and identity verification to control access to that facility. To facilitate its U.S. employees' access to that facility as part of their job responsibilities, the U.S. company provides the fingerprints of those employees in bulk to its affiliate. The transaction is an exempt corporate group transaction.

(4) *Example 4.* A U.S. company has a foreign subsidiary located in a country of concern that conducts research and development for the U.S. company. The U.S. company sends bulk personal financial data to the subsidiary for the purpose of developing a financial software tool. The transaction is not an exempt corporate group transaction because it is not ordinarily incident to and part of administrative or ancillary business operations.

(5) *Example 5.* Same as Example 4, but the U.S. company has a foreign branch located in a country of concern instead of a foreign subsidiary. Because the foreign branch is a U.S. person as part of the U.S. company, the transaction occurs within the same U.S. person and is not subject to the prohibitions or restrictions. If the foreign branch allows employees who are covered persons to access the bulk personal financial data to develop the financial software tool, the foreign branch has engaged in restricted transactions.

(6) *Example 6.* A U.S. financial services provider has a subsidiary located in a country of concern. Customers of the U.S. company conduct financial transactions in the country of concern, and customers of the foreign subsidiary conduct financial transactions in the United States. To perform customer service functions related to these financial transactions, the foreign subsidiary accesses bulk U.S. sensitive personal data—specifically, personal financial data. The corporate group transactions exemption would apply to the foreign subsidiary's access to the personal financial data under these circumstances because it is ordinarily incident to and part of the provision of customer support. The foreign subsidiary's access to the personal financial data would also be

covered by the financial services exemption.

§ 202.507 Transactions required or authorized by Federal law or international agreements, or necessary for compliance with Federal law.

(a) *Required or authorized by Federal law or international agreements.*

Subparts C, D, J, and K (other than § 202.1102 and § 202.1104) of this part do not apply to data transactions to the extent they are required or authorized by Federal law or pursuant to an international agreement to which the United States is a party, including relevant provisions in the following:

(1) Annex 9 to the Convention on International Civil Aviation, International Civil Aviation Organization Doc. 7300 (2022);

(2) Section 2 of the Convention on Facilitation of International Maritime Traffic (1965);

(3) Articles 1, 12, 14, and 16 of the Postal Payment Services Agreement (2021);

(4) Articles 63, 64, and 65 of the Constitution of the World Health Organization (1946);

(5) Article 2 of the Agreement Between the Government of the United States of America and the Government of the People's Republic of China Regarding Mutual Assistance in Customs Matters (1999);

(6) Article 7 of the Agreement Between the Government of the United States of America and the Government of the People's Republic of China on Mutual Legal Assistance in Criminal Matters (2000);

(7) Article 25 of the Agreement Between the Government of the United States of America and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Tax Evasion with Respect to Taxes on Income (1987);

(8) Article 2 of the Agreement Between the United States of America and the Macao Special Administrative Region of the People's Republic of China for Cooperation to Facilitate the Implementation of FATCA (2021);

(9) The Agreement between the Government of the United States and the Government of the People's Republic of China on Cooperation in Science and Technology (1979), as amended and extended;

(10) Articles II, III, VII of the Protocol to Extend and Amend the Agreement Between the Department of Health and Human Services of the United States of America and the National Health and Family Planning Commission of the People's Republic of China for Cooperation in the Science and

Technology of Medicine and Public Health (2013);

(11) Article III of the Treaty Between the United States and Cuba for the Mutual Extradition of Fugitives from Justice (1905);

(12) Articles 3, 4, 5, 7 of the Agreement Between the Government of the United States of America and the Government of the Russian Federation on Cooperation and Mutual Assistance in Customs Matters (1994);

(13) Articles 1, 2, 5, 7, 13, and 16 of the Treaty Between the United States of America and the Russian Federation on Mutual Legal Assistance in Criminal Matters (1999);

(14) Articles I, IV, IX, XV, and XVI of the Treaty Between the Government of the United States of America and the Government of the Republic of Venezuela on Mutual Legal Assistance in Criminal Matters (1997); and

(15) Articles 5, 6, 7, 9, 11, 19, 35, and 45 of the International Health Regulations (2005).

(b) *Global health and pandemic preparedness.* Subparts C and D of this part do not apply to data transactions to the extent they are required or authorized by the following:

(1) The Pandemic Influenza Preparedness and Response Framework; and

(2) The Global Influenza Surveillance and Response System.

(c) *Compliance with Federal law.* Subparts C and D of this part do not apply to data transactions to the extent that they are ordinarily incident to and part of ensuring compliance with any Federal laws and regulations, including the Bank Secrecy Act, 12 U.S.C. 1829b, 1951 through 1960, 31 U.S.C. 310, 5311 through 5314, 5316 through 5336; the Securities Act of 1933, 15 U.S.C. 77a *et seq.*; the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*; the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*; the Investment Advisers Act of 1940, 15 U.S.C. 80b–1 *et seq.*; the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*; the Export Administration Regulations, 15 CFR 730 *et seq.*; or any notes, guidance, orders, directives, or additional regulations related thereto.

(d) *Examples—*(1) *Example 1.* A U.S. bank or other financial institution engages in a covered data transaction with a covered person that is ordinarily incident to and part of ensuring compliance with U.S. laws and regulations (such as OFAC sanctions and anti-money laundering programs required by the Bank Secrecy Act). This is an exempt transaction.

(2) [Reserved]

§ 202.508 Investment agreements subject to a CFIUS action.

(a) *Exemption.* Subparts C, D, J, and K (other than § 202.1102 and § 202.1104) of this part do not apply to data transactions to the extent that they involve an investment agreement that is subject to a CFIUS action.

(b) *Examples—*(1) *Example 1.* A U.S. software provider is acquired in a CFIUS covered transaction by a foreign entity in which the transaction parties sign a mitigation agreement with CFIUS. The agreement has provisions governing the acquirer's ability to access the data of the U.S. software provider and their customers. The mitigation agreement contains a provision stating that it is a CFIUS action for purposes of this part. Before the effective date of the CFIUS mitigation agreement, the investment agreement is not subject to a CFIUS action and remains subject to these regulations to the extent otherwise applicable. Beginning on the effective date of the CFIUS mitigation agreement, the investment agreement is subject to a CFIUS action and exempt from this part.

(2) *Example 2.* Same as Example 1, but CFIUS issues an interim order before entering a mitigation agreement. The interim order states that it constitutes a CFIUS action for purposes of this part. Before the effective date of the interim order, the investment agreement is not subject to a CFIUS action and remains subject to these regulations to the extent otherwise applicable. Beginning on the effective date of the interim order, the investment agreement is subject to a CFIUS action and is exempt from this part. The mitigation agreement also states that it constitutes a CFIUS action for purposes of this part. After the effective date of the mitigation agreement, the investment agreement remains subject to a CFIUS action and is exempt from this part.

(3) *Example 3.* A U.S. biotechnology company is acquired by a foreign multinational corporation. CFIUS reviews this acquisition and concludes action without mitigation. This acquisition is not subject to a CFIUS action, and the acquisition remains subject to this part to the extent otherwise applicable.

(4) *Example 4.* A U.S. manufacturer is acquired by a foreign owner in which the transaction parties sign a mitigation agreement with CFIUS. The mitigation agreement provides for supply assurances and physical access restrictions but does not address data security, and it does not contain a provision explicitly designating that it is a CFIUS action. This acquisition is not subject to a CFIUS action, and the

acquisition remains subject to this part to the extent otherwise applicable.

(5) *Example 5.* As a result of CFIUS's review and investigation of a U.S. human genomic company's acquisition by a foreign healthcare company, CFIUS refers the transaction to the President with a recommendation to require the foreign acquirer to divest its interest in the U.S. company. The President issues an order prohibiting the transaction and requiring divestment of the foreign healthcare company's interests and rights in the human genomic company. The presidential order itself does not constitute a CFIUS action. Unless CFIUS takes action, such as by entering into an agreement or imposing conditions to address risk prior to completion of the divestment, the transaction remains subject to this part to the extent otherwise applicable for as long as the investment agreement remains in existence following the presidential order and prior to divestment.

(6) *Example 6.* A U.S. healthcare company and foreign acquirer announce a transaction that they believe will be subject to CFIUS jurisdiction and disclose that they intend to file a joint voluntary notice soon. No CFIUS action has occurred yet, and the transaction remains subject to this part to the extent otherwise applicable.

(7) *Example 7.* Same as Example 6, but the transaction parties file a joint voluntary notice with CFIUS. No CFIUS action has occurred yet, and the transaction remains subject to this part to the extent otherwise applicable.

(8) *Example 8.* Company A, a covered person, acquires 100% of the equity and voting interest of Company B, a U.S. business that maintains bulk U.S. sensitive personal data of U.S. persons. After completing the transaction, the parties fail to implement the security requirements and other conditions required under this part. Company A and Company B later submit a joint voluntary notice to CFIUS with respect to the transaction. Upon accepting the notice, CFIUS determines that the transaction is a covered transaction and takes measures to mitigate interim risk that may arise as a result of the transaction until such time that the Committee has completed action, pursuant to 50 U.S.C. 4565(l)(3)(A)(iii). The interim order states that it constitutes a CFIUS action for purposes of this part. Beginning on the effective date of these measures imposed by the interim order, the security requirements and other applicable conditions under this part no longer apply to the transaction. The Department of Justice, however, may take enforcement action under this part, in coordination with

CFIUS, with respect to the violations that occurred before the effective date of the interim order issued by CFIUS.

(9) *Example 9.* Same as Example 8, but before engaging in the investment agreement for the acquisition, Company A and Company B submit the joint voluntary notice to CFIUS, CFIUS determines that the transaction is a CFIUS covered transaction, CFIUS identifies a risk related to data security arising from the transaction, and CFIUS negotiates and enters into a mitigation agreement with the parties to resolve that risk. The mitigation agreement contains a provision stating that it is a CFIUS action for purposes of this part. Because a CFIUS action has occurred before the parties engage in the investment agreement, the acquisition is exempt from this part.

(10) *Example 10.* Same as Example 8, but before engaging in the investment agreement for the acquisition, the parties implement the security requirements and other conditions required under these regulations. Company A and Company B then submit a joint voluntary notice to CFIUS, which determines that the transaction is a CFIUS covered transaction. CFIUS identifies a risk related to data security arising from the transaction but determines that the regulations in this part adequately resolve the risk. CFIUS concludes action with respect to the transaction without taking any CFIUS action. Because no CFIUS action has occurred, the transaction remains subject to this part.

(11) *Example 11.* Same facts as Example 10, but CFIUS determines that the security requirements and other conditions applicable under this part are inadequate to resolve the national security risk identified by CFIUS. CFIUS negotiates a mitigation agreement with the parties to resolve the risk, which contains a provision stating that it is a CFIUS action for purposes of this part. The transaction is exempt from this part beginning on the effective date of the CFIUS mitigation agreement.

§ 202.509 Telecommunications services.

(a) *Exemption.* Subparts C, D, J, and K (other than § 202.1102 and § 202.1104) of this part do not apply to data transactions, other than those involving data brokerage, to the extent that they are ordinarily incident to and part of the provision of telecommunications services.

(b) *Examples—(1) Example 1.* A U.S. telecommunications service provider collects covered personal identifiers from its U.S. subscribers. Some of those subscribers travel to a country of concern and use their mobile phone

service under an international roaming agreement. The local telecommunications service provider in the country of concern shares these covered personal identifiers with the U.S. service provider for the purposes of either helping provision service to the U.S. subscriber or receiving payment for the U.S. subscriber's use of the country of concern service provider's network under that international roaming agreement. The U.S. service provider provides the country of concern service provider with network or device information for the purpose of provisioning services and obtaining payment for its subscribers' use of the local telecommunications service provider's network. Over the course of 12 months, the volume of network or device information shared by the U.S. service provider with the country of concern service provider for the purpose of provisioning services exceeds the applicable bulk threshold. These transfers of bulk U.S. sensitive personal data are ordinarily incident to and part of the provision of telecommunications services and are thus exempt transactions.

(2) *Example 2.* A U.S. telecommunications service provider collects precise geolocation data on its U.S. subscribers. The U.S. telecommunications service provider sells this precise geolocation data in bulk to a covered person for the purpose of targeted advertising. This sale is not ordinarily incident to and part of the provision of telecommunications services and remains a prohibited transaction.

§ 202.510 Drug, biological product, and medical device authorizations.

(a) *Exemption.* Except as specified in paragraph (a)(2) of this section, subparts C, D, J, and K (other than § 202.1102 and § 202.1104) of this part do not apply to a data transaction that

(1) Involves “regulatory approval data” as defined in paragraph (b) of this section and

(2) Is necessary to obtain or maintain regulatory authorization or approval to research or market a drug, biological product, device, or a combination product, provided that the U.S. person complies with the recordkeeping and reporting requirements set forth in §§ 202.1101(a) and 202.1102 with respect to such transaction.

(b) *Regulatory approval data.* For purposes of this section, the term *regulatory approval data* means sensitive personal data that is de-identified or pseudonymized consistent with the standards of 21 CFR 314.80 and that is required to be submitted to a

regulatory entity, or is required by a regulatory entity to be submitted to a covered person, to obtain or maintain authorization or approval to research or market a drug, biological product, device, or combination product, including in relation to post-marketing studies and post-marketing product surveillance activities, and supplemental product applications for additional uses. The term excludes sensitive personal data not reasonably necessary for a regulatory entity to assess the safety and effectiveness of the drug, biological product, device, or combination product.

(c) *Other terms.* For purposes of this section, the terms “drug,” “biological product,” “device,” and “combination product” have the meanings given to them in 21 U.S.C. 321(g)(1), 42 U.S.C. 262(i)(1), 21 U.S.C. 321(h)(1), and 21 CFR 3.2(e), respectively.

(d) *Examples—(1) Example 1.* A U.S. pharmaceutical company seeks to market a new drug in a country of concern. The company submits a marketing application to the regulatory entity in the country of concern with authority to approve the drug in the country of concern. The marketing application includes the safety and effectiveness data reasonably necessary to obtain regulatory approval in that country. The transfer of data to the country of concern's regulatory entity is exempt from the prohibitions in this part.

(2) *Example 2.* Same as Example 1, except the regulatory entity in the country of concern requires that the data be de-anonymized. The transfer of data is not exempt under this section, because the data includes sensitive personal data that is identified to an individual.

(3) *Example 3.* Same as Example 1, except country of concern law requires foreign pharmaceutical companies to submit regulatory approval data using (1) a registered agent who primarily resides in the country of concern, (2) a country of concern incorporated subsidiary, or (3) an employee located in a country of concern. The U.S. pharmaceutical company enters into a vendor agreement with a registered agent in the country of concern to submit the regulatory approval data to the country of concern regulator. The U.S. pharmaceutical company provides to the registered agent only the regulatory approval data the U.S. pharmaceutical company intends the registered agent to submit to the country of concern regulator. The transaction with the registered agent is exempt, because it is necessary to obtain approval to market the drug in a country

of concern. The U.S. pharmaceutical company must comply with the recordkeeping and reporting requirements set forth in §§ 202.1101(a) and 202.1102 with respect to such transaction, however.

(4) *Example 4.* Same as Example 1, except the U.S. company enters a vendor agreement with a covered person located in the country of concern to store and organize the bulk U.S. sensitive personal data for eventual submission to the country of concern regulator. Country of concern law does not require foreign pharmaceutical companies to enter into such vendor agreements. The transaction is not exempt under this section, because the use of a covered person to store and organize the bulk U.S. sensitive personal data for the company's regulatory submission is not necessary to obtain regulatory approval.

(5) *Example 5.* A U.S. pharmaceutical company has obtained regulatory approval to market a new drug in a country of concern. The country of concern regulator requires the U.S. pharmaceutical company to submit de-identified sensitive personal data collected as part of the company's post-marketing product surveillance activities to assess the safety and efficacy of the drug to the country of concern regulator via a country of concern registered agent to maintain the U.S. pharmaceutical company's authorization to market the drug. Sharing the de-identified sensitive personal data with the country of concern regulator via the country of concern registered agent to maintain marketing authorization is exempt from the prohibitions and restrictions in subparts C and D of this part.

(6) *Example 6.* A U.S. medical device manufacturer provides de-identified bulk U.S. personal health data to a country of concern regulator to obtain authorization to research the safety and effectiveness of a medical device in the country of concern. Country of concern law requires medical device manufacturers to conduct such safety research to obtain regulatory approval to market a new device. The prohibitions and restrictions of subparts C and D of this part do not apply to the de-identified regulatory approval data submitted to the country of concern regulator to obtain authorization to research the device's safety and effectiveness.

§ 202.511 Other clinical investigations and post-marketing surveillance data.

(a) *Exemption.* Subparts C, D, J, and K (other than § 202.1102 and § 202.1104) of this part do not apply to

data transactions to the extent that those transactions are:

(1) Ordinarily incident to and part of clinical investigations regulated by the U.S. Food and Drug Administration ("FDA") under sections 505(i) and 520(g) of the Federal Food, Drug, and Cosmetic Act ("FD&C Act") or clinical investigations that support applications to the FDA for research or marketing permits for drugs, biological products, devices, combination products, or infant formula; or

(2) Ordinarily incident to and part of the collection or processing of clinical care data indicating real-world performance or safety of products, or the collection or processing of post-marketing surveillance data (including pharmacovigilance and post-marketing safety monitoring), and necessary to support or maintain authorization by the FDA, provided the data is de-identified or pseudonymized consistent with the standards of 21 CFR 314.80.

(b) *Other terms.* For purposes of this section, the terms "drug," "biological product," "device," "combination product," and "infant formula" have the meanings given to them in 21 U.S.C. 321(g)(1), 42 U.S.C. 262(i)(1), 21 U.S.C. 321(h)(1), 21 CFR 3.2(e), and 21 U.S.C. 321(z) respectively.

Subpart F—Determination of Countries of Concern

§ 202.601 Determination of countries of concern.

(a) *Countries of concern.* Solely for purposes of the Order and this part, the Attorney General has determined, with the concurrence of the Secretaries of State and Commerce, that the following foreign governments have 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 U.S. persons and pose a significant risk of exploiting government-related data or bulk U.S. sensitive personal data to the detriment of the national security of the United States or security and safety of U.S. persons:

- (1) China;
- (2) Cuba;
- (3) Iran;
- (4) North Korea;
- (5) Russia; and
- (6) Venezuela.

(b) *Effective date of amendments.* Any amendment to the list of countries of concern will apply to any covered data transaction that is initiated, pending, or completed on or after the effective date of the amendment.

Subpart G—Covered Persons

§ 202.701 Designation of covered persons.

(a) *Designations.* The Attorney General may designate any person as a covered person for purposes of this part if, after consultation with the Department of State and any other agencies as the Attorney General deems appropriate, the Attorney General determines the person meets any of the criteria set forth in § 202.211(a)(5) of this part.

(b) *Information considered.* In determining whether to designate a person as a covered person, the Attorney General may consider any information or material the Attorney General deems relevant and appropriate, classified or unclassified, from any Federal department or agency or from any other source.

(c) *Covered Persons List.* The names of persons designated as a covered person for purposes of this part, transactions with whom are prohibited or restricted pursuant to this part, are published in the **Federal Register** and incorporated into the National Security Division's Covered Persons List. The Covered Persons List is accessible through the following page on the National Security Division's website at <https://www.justice.gov/nsd>.

(d) *Non-exhaustive.* The list of designated covered persons described in this section is not exhaustive of all covered persons and supplements the categories in the definition of covered persons in § 202.211.

(e) *Effective date; actual and constructive knowledge.* (1) Designation as a covered person will be effective from the date of any public announcement by the Department. Except as otherwise authorized in this part, a U.S. person with actual knowledge of a designated person's status is prohibited from knowingly engaging in a covered data transaction with that person on or after the date of the Department's public announcement.

(2) Publication in the **Federal Register** is deemed to provide constructive knowledge of a person's status as a covered person.

§ 202.702 Procedures governing removal from the Covered Persons List.

(a) *Requests for removal from the Covered Persons List.* A person may petition to seek administrative reconsideration of their designation, or may assert that the circumstances resulting in the designation no longer apply, and thus seek to be removed from the Covered Persons List pursuant to the following administrative procedures:

(b) *Content of requests.* A covered person designated under paragraph (a) of this section may submit arguments or evidence that the person believes establish that insufficient basis exists for the designation. Such a person also may propose remedial steps on the person's part, such as corporate reorganization, resignation of persons from positions in a listed entity, or similar steps, that the person believes would negate the basis for designation.

(c) *Additional content; form and method of submission.* Requests for removal from the Covered Persons List must be submitted in accordance with this section and with subpart L of this part.

(d) *Requests for more information.* The information submitted by the listed person seeking removal will be reviewed by the Attorney General, who may request clarifying, corroborating, or other additional information.

(e) *Meetings.* A person seeking removal may request a meeting with the Attorney General; however, such meetings are not required, and the Attorney General may, in the Attorney General's discretion, decline to conduct such a meeting prior to completing a review pursuant to this section.

(f) *Decisions.* After the Attorney General has conducted a review of the request for removal, and after consultation with other agencies as the Attorney General deems appropriate, the Attorney General will provide a written decision to the person seeking removal. A covered person's status as a covered person—including its associated prohibitions and restrictions under this part—remains in effect during the pendency of any request to be removed from the Covered Persons List.

Subpart H—Licensing

§ 202.801 General licenses.

(a) *General course of procedure.* The Department may, as appropriate, issue general licenses to authorize, under appropriate terms and conditions, transactions that are subject to the prohibitions or restrictions in this part. In determining whether to issue a general license, the Attorney General may consider any information or material the Attorney General deems relevant and appropriate, classified or unclassified, from any Federal department or agency or from any other source.

(b) *Relationship with specific licenses.* It is the policy of the Department not to grant applications for specific licenses authorizing transactions to which the

provisions of a general license are applicable.

(c) *Reports.* Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instructions specified in those licenses, this part or the Order. Failure to file timely all required information in such reports or statements may nullify the authorization otherwise provided by the general license and result in apparent violations of the applicable prohibitions that may be subject to enforcement action.

§ 202.802 Specific licenses.

(a) *General course of procedure.* Transactions subject to the prohibitions or restrictions in this part or the Order, and that are not otherwise permitted under this part or a general license, may be permitted only under a specific license, under appropriate terms and conditions.

(b) *Content of applications for specific licenses.* Applications for specific licenses shall include, at a minimum, a description of the nature of the transaction, including each of the following requirements:

(1) The types and volumes of government-related data or bulk U.S. sensitive personal data involved in the transactions;

(2) The identity of the transaction parties, including any ownership of entities or citizenship or primary residence of individuals;

(3) The end-use of the data and the method of data transfer; and

(4) Any other information that the Attorney General may require.

(c) *Additional content; form and method of submissions.* Requests for specific licenses must be submitted in accordance with this section and with subpart L of this part.

(d) *Additional conditions.* Applicants should submit only one copy of a specific license application to the Department; submitting multiple copies may result in processing delays. Any person having an interest in a transaction or proposed transaction may file an application for a specific license authorizing such a transaction.

(e) *Further information to be supplied.* Applicants may be required to furnish such further information as the Department deems necessary to assist in making a determination. Any applicant or other party-in-interest desiring to present additional information concerning a specific license application may do so at any time before or after the Department makes its decision with respect to the application. In unique circumstances, the

Department may determine, in its discretion, that an oral presentation regarding a license application would assist in the Department's review of the issues involved. Any requests to make such an oral presentation must be submitted electronically by emailing the National Security Division at NSD.FIRS.datasecurity@usdoj.gov or using another official method to make such requests, in accordance with any instructions on the National Security Division's website.

(f) *Decisions.* In determining whether to issue a specific license, the Attorney General may consider any information or material the Attorney General deems relevant and appropriate, classified or unclassified, from any Federal department or agency or from any other source. The Department will advise each applicant of the decision respecting the applicant's filed application. The Department's decision with respect to a license application shall constitute final agency action.

(g) *Time to issuance.* The Department shall endeavor to respond to any request for a specific license within 45 days after receipt of the request and of any requested additional information and documents.

(h) *Scope.* (1) Unless otherwise specified in the license, a specific license authorizes the transaction:

(i) Only between the parties identified in the license;

(ii) Only with respect to the data described in the license; and

(iii) Only to the extent the conditions specified in the license are satisfied.

The applicant must inform any other parties identified in the license of the license's scope and of the specific conditions applicable to them.

(2) The Department will determine whether to grant specific licenses in reliance on representations the applicant made or submitted in connection with the license application, letters of explanation, and other documents submitted. Any license obtained based on a false or misleading representation in the license application, in any document submitted in connection with the license application, or during an oral presentation under this section shall be deemed void as of the date of issuance.

(i) *Reports under specific licenses.* As a condition for the issuance of any specific license, the licensee may be required to file reports or statements with respect to the transaction or transactions authorized by the specific license in such form and at such times as may be prescribed in the license. Failure to file timely all required information in such reports or

statements may nullify the authorization otherwise provided by the specific license and result in apparent violations of the applicable prohibitions that may be subject to enforcement action.

(j) *Effect of denial.* The denial of a specific license does not preclude the reconsideration of an application or the filing of a further application. The applicant or any other party-in-interest may at any time request, by written correspondence, reconsideration of the denial of an application based on new facts or changed circumstances.

§ 202.803 General provisions.

(a) *Effect of license.* (1) No license issued under this subpart H, or otherwise issued by the Department, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided for in such license or authorization.

(2) No license issued under this subpart H authorizes or validates any transaction prohibited under or subject to this part unless the license is properly issued by the Department and specifically refers to this part.

(3) Any license authorizing or validating any transaction that is prohibited under or otherwise subject to this part has the effect of removing or amending those prohibitions or other requirements from the transaction, but only to the extent specifically stated by the terms of the license. Unless the license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property that would not otherwise exist under ordinary principles of law.

(4) Nothing contained in this part shall be construed to supersede the requirements established under any other provision of law or to relieve a person from any requirement to obtain a license or authorization from another department or agency of the United States Government in compliance with applicable laws and regulations subject to the jurisdiction of that department or agency. For example, issuance of a specific license authorizing a transaction otherwise prohibited by this part does not operate as a license or authorization to conclude the transaction that is otherwise required from the U.S. Department of Commerce, U.S. Department of State, U.S. Department of the Treasury, or any other department or agency of the United States Government.

(b) *Amendment, modification, or rescission.* Except as otherwise provided by law, any licenses (whether general or specific), authorizations, instructions, or

forms issued thereunder may be amended, modified, or rescinded at any time.

(c) *Consultation.* The Department will issue, amend, modify, or rescind a general or specific license in concurrence with the Departments of State, Commerce, and Homeland Security and in consultation with other relevant agencies.

(d) *Exclusion from licenses and other authorizations.* The Attorney General reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Attorney General also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

Subpart I—Advisory Opinions

§ 202.901 Inquiries concerning application of this part.

(a) *General.* Any U.S. person party to a transaction potentially regulated under the Order and this part, or an agent of the party to such a transaction on the party's behalf, may request from the Attorney General a statement of the present enforcement intentions of the Department of Justice under the Order with respect to that transaction that may be subject to the prohibitions or restrictions in the Order and this part ("advisory opinion").

(b) *Anonymous, hypothetical, non-party and ex post facto review requests excluded.* The entire transaction that is the subject of the advisory opinion request must be an actual, as opposed to hypothetical, transaction and involve disclosed, as opposed to anonymous, parties to the transaction. Advisory opinion requests must be submitted by a U.S. person party to the transaction or that party's agent and have no application to a party that does not join the request. The transaction need not involve only prospective conduct, but an advisory opinion request will not be considered unless that portion of the transaction for which an opinion is sought involves only prospective conduct.

(c) *Contents.* Each advisory opinion request shall be specific and must be accompanied by all material information bearing on the conduct for which an advisory opinion is requested, and on the circumstances of the prospective conduct, including background information, complete copies of any and all operative documents, and detailed statements of

all collateral or oral understandings, if any. Each request must include, at a minimum:

(1) The identities of the transaction parties, including any ownership of entities or citizenship or primary residence of individuals;

(2) A description of the nature of the transaction, including the types and volumes of government-related data or bulk U.S. sensitive personal data involved in the transaction, the end-use of the data, the method of data transfer, and any restrictions or requirements related to a party's right or ability to control, access, disseminate, or dispose of the data; and

(3) Any potential basis for exempting or excluding the transaction from the prohibitions or restrictions imposed in the Order and this part.

(d) *Additional contents; format and method of submissions.* Requests for advisory opinions must be submitted in accordance with this section and with subpart L of this part.

(e) *Further information to be supplied.* Each party shall provide any additional information or documents that the Department of Justice may thereafter request in its review of the matter. Any information furnished orally shall be confirmed promptly in writing; signed by or on behalf of the party that submitted the initial review request; and certified to be a true, correct, and complete disclosure of the requested information. A request will not be deemed complete until the Department of Justice receives such additional information. In connection with an advisory opinion request, the Department of Justice may conduct any independent investigation it believes appropriate.

(f) *Outcomes.* After submission of an advisory opinion request, the Department, in its discretion, may state its present enforcement intention under the Order and this part with respect to the proposed conduct; may decline to state its present enforcement intention; or, if circumstances warrant, may take such other position or initiate such other action as it considers appropriate. Any requesting party or parties may withdraw a request at any time prior to issuance of an advisory opinion. The Department remains free, however, to submit such comments to the requesting party or parties as it deems appropriate. Failure to take action after receipt of a request, documents, or information, whether submitted pursuant to this procedure or otherwise, shall not in any way limit or stop the Department from taking any action at such time thereafter as it deems appropriate. The Department reserves the right to retain

any advisory opinion request, document, or information submitted to it under this procedure or otherwise, to disclose any advisory opinion and advisory opinion request, including the identities of the requesting party and foreign parties to the transaction, the general nature and circumstances of the proposed conduct, and the action of the Department in response to any advisory opinion request, consistent with applicable law, and to use any such request, document, or information for any governmental purpose.

(g) *Time for response.* The Department shall endeavor to respond to any advisory opinion request within 30 days after receipt of the request and of any requested additional information and documents.

(h) *Written decisions only.* The requesting party or parties may rely only upon a written advisory opinion signed by the Attorney General.

(i) *Effect of advisory opinion.* Each advisory opinion can be relied upon by the requesting party or parties to the extent the disclosures made pursuant to this subpart I were accurate and complete and to the extent the disclosures continue accurately and completely to reflect circumstances after the date of the issuance of the advisory opinion. An advisory opinion will not restrict enforcement actions by any agency other than the Department of Justice. It will not affect a requesting party's obligations to any other agency or under any statutory or regulatory provision other than those specifically discussed in the advisory opinion.

(j) *Amendment or revocation of advisory opinion.* An advisory opinion may be amended or revoked at any time after it has been issued. Notice of such will be given in the same manner as notice of the advisory opinion was originally given or in the **Federal Register**. Whenever possible, a notice of amendment or revocation will state when the Department will consider a party's reliance on the superseded advisory opinion to be unreasonable, and any transition period that may be applicable.

(k) *Compliance.* Neither the submission of an advisory opinion request, nor its pendency, shall in any way alter the responsibility or obligation of a requesting party to comply with the Order, this part, or any other applicable law.

Subpart J—Due Diligence and Audit Requirements

§ 202.1001 Due diligence for restricted transactions.

(a) *Data compliance program.* By no later than October 6, 2025, U.S. persons engaging in any restricted transactions shall develop and implement a data compliance program.

(b) *Requirements.* The data compliance program shall include, at a minimum, each of the following requirements:

(1) Risk-based procedures for verifying data flows involved in any restricted transaction, including procedures to verify and log, in an auditable manner, the following:

(i) The types and volumes of government-related data or bulk U.S. sensitive personal data involved in the transaction;

(ii) The identity of the transaction parties, including any ownership of entities or citizenship or primary residence of individuals; and

(iii) The end-use of the data and the method of data transfer;

(2) For restricted transactions that involve vendors, risk-based procedures for verifying the identity of vendors;

(3) A written policy that describes the data compliance program and that is annually certified by an officer, executive, or other employee responsible for compliance;

(4) A written policy that describes the implementation of the security requirements as defined in § 202.248 and that is annually certified by an officer, executive, or other employee responsible for compliance; and

(5) Any other information that the Attorney General may require.

§ 202.1002 Audits for restricted transactions.

(a) *Audit required.* U.S. persons that, on or after October 6, 2025, engage in any restricted transactions under § 202.401 shall conduct an audit that complies with the requirements of this section.

(b) *Who may conduct the audit.* The auditor:

(1) Must be qualified and competent to examine, verify, and attest to the U.S. person's compliance with and the effectiveness of the security requirements, as defined in § 202.248, and all other applicable requirements, as defined in § 202.401, implemented for restricted transactions;

(2) Must be independent; and

(3) Cannot be a covered person or a country of concern.

(c) *When required.* The audit must be performed once for each calendar year

in which the U.S. person engages in any restricted transactions.

(d) *Timeframe.* The audit must cover the preceding 12 months.

(e) *Scope.* The audit must:

(1) Examine the U.S. person's restricted transactions;

(2) Examine the U.S. person's data compliance program required under § 202.1001 and its implementation;

(3) Examine relevant records required under § 202.1101;

(4) Examine the U.S. person's security requirements, as defined by § 202.248; and

(5) Use a reliable methodology to conduct the audit.

(f) *Report.* (1) The auditor must prepare and submit a written report to the U.S. person within 60 days of the completion of the audit.

(2) The audit report must:

(i) Describe the nature of any restricted transactions engaged in by the U.S. person;

(ii) Describe the methodology undertaken, including the relevant policies and other documents reviewed, relevant personnel interviewed, and any relevant facilities, equipment, networks, or systems examined;

(iii) Describe the effectiveness of the U.S. person's data compliance program and its implementation;

(iv) Describe any vulnerabilities or deficiencies in the implementation of the security requirements that have affected or could affect the risk of access to government-related data or bulk U.S. sensitive personal data by a country of concern or covered person;

(v) Describe any instances in which the security requirements failed or were otherwise not effective in mitigating the risk of access to government-related data or bulk U.S. sensitive personal data by a country of concern or covered person; and

(vi) Recommend any improvements or changes to policies, practices, or other aspects of the U.S. person's business to ensure compliance with the security requirements.

(3) U.S. persons engaged in restricted transactions must retain the audit report for a period of at least 10 years, consistent with the recordkeeping requirements in § 202.1101.

Subpart K—Reporting and Recordkeeping Requirements

§ 202.1101 Records and recordkeeping requirements.

(a) *Records.* Except as otherwise provided, U.S. persons engaging in any transaction subject to the provisions of this part shall keep a full and accurate record of each such transaction engaged

in, and such record shall be available for examination for at least 10 years after the date of such transaction.

(b) *Additional recordkeeping requirements.* U.S. persons engaging in any restricted transaction shall create and maintain, at a minimum, the following records in an auditable manner:

(1) A written policy that describes the data compliance program and that is certified annually by an officer, executive, or other employee responsible for compliance;

(2) A written policy that describes the implementation of any applicable security requirements as defined in § 202.248 and that is certified annually by an officer, executive, or other employee responsible for compliance;

(3) The results of any annual audits that verify the U.S. person's compliance with the security requirements and any conditions on a license;

(4) Documentation of the due diligence conducted to verify the data flow involved in any restricted transaction, including:

(i) The types and volumes of government-related data or bulk U.S. sensitive personal data involved in the transaction;

(ii) The identity of the transaction parties, including any direct and indirect ownership of entities or citizenship or primary residence of individuals; and

(iii) A description of the end-use of the data;

(5) Documentation of the method of data transfer;

(6) Documentation of the dates the transaction began and ended;

(7) Copies of any agreements associated with the transaction;

(8) Copies of any relevant licenses or advisory opinions;

(9) The document reference number for any original document issued by the Attorney General, such as a license or advisory opinion;

(10) A copy of any relevant documentation received or created in connection with the transaction; and

(11) An annual certification by an officer, executive, or other employee responsible for compliance of the completeness and accuracy of the records documenting due diligence.

§ 202.1102 Reports to be furnished on demand.

(a) *Reports.* Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required by the Department of Justice, complete information relative to any act or transaction or covered data transaction,

regardless of whether such act, transaction, or covered data transaction is effected pursuant to a license or otherwise, subject to the provisions of this part and except as otherwise prohibited by Federal law. The Department of Justice may require that such reports include the production of any books, contracts, letters, papers, or other hard copy or electronic documents relating to any such act, transaction, or covered data transaction, in the custody or control of the persons required to make such reports. Reports may be required either before, during, or after such acts, transactions, or covered data transactions. The Department of Justice may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of any books, contracts, letters, papers, and other hard copy or electronic documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

(b) *Definition of the term "document."* For purposes of paragraph (a) of this section, the term *document* includes any written, recorded, or graphic matter or other means of preserving thought or expression (including in electronic format), and all tangible things stored in any medium from which information can be processed, transcribed, or obtained directly or indirectly, including correspondence, memoranda, notes, messages, contemporaneous communications such as text and instant messages, letters, emails, spreadsheets, metadata, contracts, bulletins, diaries, chronological data, minutes, books, reports, examinations, charts, ledgers, books of account, invoices, air waybills, bills of lading, worksheets, receipts, printouts, papers, schedules, affidavits, presentations, transcripts, surveys, graphic representations of any kind, drawings, photographs, graphs, video or sound recordings, and motion pictures or other film.

(c) *Format.* Persons providing documents to the Department of Justice pursuant to this section must produce documents in a usable format agreed upon by the Department of Justice. For guidance, see the Department of Justice's data delivery standards available on the National Security Division's website at <https://www.justice.gov/nsd>.

§ 202.1103 Annual reports.

(a) *Who must report.* An annual report must be filed, except as otherwise

prohibited by Federal law, by any U.S. person that, on or after October 6, 2025, is engaged in a restricted transaction involving cloud-computing services, and that has 25% or more of the U.S. person's equity interests owned (directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise) by a country of concern or covered person.

(b) *Primary responsibility to report.* A report may be filed on behalf of a U.S. person engaging in the data transaction described in § 202.1103(a) by an attorney, agent, or other person. Primary responsibility for reporting, however, rests with the actual U.S. person engaging in the data transaction. No U.S. person is excused from filing a report by reason of the fact that another U.S. person has submitted a report with regard to the same data transaction, except where the U.S. person has actual knowledge that the other U.S. person filed the report.

(c) *When reports are due.* A report on the data transactions described in § 202.1103(a) engaged in as of December 31 of the previous year shall be filed annually by March 1 of the subsequent year.

(d) *Contents of reports.* Annual reports on the data transactions described in § 202.1103(a) shall include the following:

(1) The name and address of the U.S. person engaging in the covered data transaction, and the name, telephone number, and email address of a contact from whom additional information may be obtained;

(2) A description of the covered data transaction, including:

(i) The date of the transaction;

(ii) The types and volumes of government-related data or bulk U.S. sensitive personal data involved in the transaction;

(iii) The method of data transfer; and

(iv) Any persons participating in the data transaction and their respective locations, including the name and location of each data recipient, the ownership of entities or citizenship or primary residence of individuals, the name and location of any covered persons involved in the transaction, and the name of any countries of concern involved in the transaction;

(3) A copy of any relevant documentation received or created in connection with the transaction; and

(4) Any other information that the Department of Justice may require.

(e) *Additional contents; format and method of submission.* Reports required by this section must be submitted in accordance with this section and with subpart L of this part.

§ 202.1104 Reports on rejected prohibited transactions.

(a) *Who must report.* A report must be filed, except as otherwise prohibited by Federal law, by any U.S. person that, on or after October 6, 2025, has received and affirmatively rejected (including automatically rejected using software, technology, or automated tools) an offer from another person to engage in a prohibited transaction involving data brokerage.

(b) *When reports are due.* U.S. persons shall file reports within 14 days of rejecting a transaction prohibited by this part.

(c) *Contents of reports.* Reports on rejected transactions shall include the following, to the extent known and available to the person filing the report at the time the transaction is rejected:

(1) The name and address of the U.S. person that rejected the prohibited transaction, and the name, telephone number, and email address of a contact from whom additional information may be obtained;

(2) A description of the rejected transaction, including:

(i) The date the transaction was rejected;

(ii) The types and volumes of government-related data or bulk U.S. sensitive personal data involved in the transaction;

(iii) The method of data transfer;

(iv) Any persons attempting to participate in the transaction and their respective locations, including the name and location of each data recipient, the ownership of entities or citizenship or primary residence of individuals, the name and location of any covered persons involved in the transaction, and the name of any countries of concern involved in the transaction;

(v) A copy of any relevant documentation received or created in connection with the transaction; and

(vi) Any other information that the Department of Justice may require.

(d) *Additional contents; format and method of submission.* Reports required by this section must be submitted in accordance with this section and with subpart L of this part.

Subpart L—Submitting Applications, Requests, Reports, and Responses**§ 202.1201 Procedures.**

(a) *Application of this subpart.* This subpart L applies to any submissions required or permitted by this part, including reports of known or suspected violations submitted pursuant to § 202.302, requests for removal from the Covered Persons List submitted pursuant to subpart G of this part,

requests for specific licenses submitted pursuant to § 202.802, advisory opinion requests submitted pursuant to subpart I of this part, annual reports submitted pursuant to § 202.1103, reports on rejected prohibited transactions submitted pursuant to § 202.1104, and responses to pre-penalty notices and findings of violations submitted pursuant to § 202.1306 (collectively, “submissions”).

(b) *Form of submissions.* Submissions must follow the instructions in this part and any instructions on the National Security Division’s website. With the exception of responses to pre-penalty notices or findings of violations submitted pursuant to subpart M of this part, submissions must use the forms on the National Security Division’s website or another official reporting option as specified by the National Security Division.

(c) *Method of submissions.* Submissions must be made to the National Security Division electronically by emailing the National Security Division at NSD.FIRS.datasecurity@usdoj.gov or using another official electronic reporting option, in accordance with any instructions on the National Security Division’s website.

(d) *Certification.* If the submitting party is an individual, the submission must be signed by the individual or the individual’s attorney. If the submitting party is not an individual, the submission must be signed on behalf of each submitting party by an officer, director, a person performing the functions of an officer or a director of, or an attorney for, the submitting party. Annual reports submitted pursuant to § 202.1103, and reports on rejected transactions submitted pursuant to § 202.1104, must be signed by an officer, a director, a person performing the functions of an officer or a director, or an employee responsible for compliance. In appropriate cases, the Department of Justice may require the chief executive officer of a requesting party to sign the request. Each such person signing a submission must certify that the submission is true, accurate, and complete.

Subpart M—Penalties and Finding of Violation**§ 202.1301 Penalties for violations.**

(a) *Civil and criminal penalties.* Section 206 of IEEPA, 50 U.S.C. 1705, is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the

Attorney General pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA.

(2) IEEPA provides for a maximum civil penalty not to exceed the greater of \$368,136 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(3) A person who willfully commits, willfully attempts to commit, willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition issued under IEEPA shall, upon conviction, be fined not more than \$1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

(b) *Adjustment of civil penalties.* The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410, as amended, 28 U.S.C. 2461 note).

(c) *Adjustment of criminal penalties.* The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(d) *False statements.* Pursuant to 18 U.S.C. 1001, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, imprisoned, or both.

(e) *Other applicable laws.* Violations of this part may also be subject to other applicable laws.

§ 202.1302 Process for pre-penalty notice.

(a) *When and how issued.* (1) If the Department of Justice has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Attorney General pursuant to this part or otherwise under IEEPA and determines that a civil monetary penalty is warranted, the

Department of Justice will issue a pre-penalty notice informing the alleged violator of the agency's intent to impose a monetary penalty.

(2) The pre-penalty notice shall be in writing.

(3) The pre-penalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(4) The Department shall provide the alleged violator with the relevant information that is not privileged, classified, or otherwise protected, and that forms the basis for the pre-penalty notice, including a description of the alleged violation and proposed penalty amount.

(b) *Opportunity to respond.* An alleged violator has the right to respond to a pre-penalty notice in accordance with § 202.1306.

(c) *Settlement.* Settlement discussion may be initiated by the Department of Justice, the alleged violator, or the alleged violator's authorized representative.

(d) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with the Department of Justice prior to a written submission regarding the specific allegations contained in the pre-penalty notice must be preceded by a written letter of representation, unless the pre-penalty notice was served upon the alleged violator in care of the representative.

§ 202.1303 Penalty imposition.

If, after considering any written response to the pre-penalty notice and any relevant facts, the Department of Justice determines that there was a violation by the alleged violator named in the pre-penalty notice and that a civil monetary penalty is appropriate, the Department of Justice may issue a penalty notice to the violator containing a determination of the violation and the imposition of the monetary penalty. The Department shall provide the violator with any relevant, non-classified information that forms the basis of the penalty. The issuance of the penalty notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in Federal district court.

§ 202.1304 Administrative collection and litigation.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Department of Justice,

the Department of Justice may refer the matter to the Department of the Treasury for administrative collection measures or take appropriate action to recover the penalty in any civil suit in Federal district court.

§ 202.1305 Finding of violation.

(a) *When and how issued.* (1) The Department of Justice may issue an initial finding of violation that identifies a violation if the Department of Justice:

(i) Determines that there has occurred a violation of any provision of this part, or a violation of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Attorney General pursuant to this part or otherwise under IEEPA;

(ii) Considers it important to document the occurrence of a violation; and

(iii) Concludes that an administrative response is warranted but that a civil monetary penalty is not the most appropriate response.

(2) An initial finding of violation shall be in writing and may be issued whether or not another agency has taken any action with respect to the matter.

(3) The Department shall provide the alleged violator with the relevant information that is not privileged, classified, or otherwise protected, that forms the basis for the finding of violation, including a description of the alleged violation.

(b) *Opportunity to respond.* An alleged violator has the right to contest an initial finding of violation in accordance with § 202.1306.

(c) *Determination—(1) Determination that a finding of violation is warranted.* If, after considering the response, the Department of Justice determines that a final finding of violation should be issued, the Department of Justice will issue a final finding of violation that will inform the violator of its decision. The Department shall provide the violator with the relevant information that is not privileged, classified, or otherwise protected, that forms the basis for the finding of violation. A final finding of violation shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in Federal district court.

(2) *Determination that a finding of violation is not warranted.* If, after considering the response, the Department of Justice determines a finding of violation is not warranted, then the Department of Justice will

inform the alleged violator of its decision not to issue a final finding of violation. A determination by the Department of Justice that a final finding of violation is not warranted does not preclude the Department of Justice from pursuing other enforcement actions.

(d) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with the Department of Justice prior to a written submission regarding the specific alleged violations contained in the initial finding of violation must be preceded by a written letter of representation, unless the initial finding of violation was served upon the alleged violator in care of the representative.

§ 202.1306 Opportunity to respond to a pre-penalty notice or finding of violation.

(a) *Right to respond.* An alleged violator has the right to respond to a pre-penalty notice or finding of violation by making a written presentation to the Department of Justice.

(b) *Deadline for response.* A response to a pre-penalty notice or finding of violation must be electronically submitted within 30 days of electronic service of the notice or finding. The failure to submit a response within 30 days shall be deemed to be a waiver of the right to respond.

(c) *Extensions of time for response.* Any extensions of time will be granted, at the discretion of the Department of Justice, only upon specific request to the Department of Justice.

(d) *Contents of response.* Any response should set forth in detail why the alleged violator either believes that a violation of the regulations did not occur or why a finding of violation or penalty is otherwise unwarranted under the circumstances. The response should include all documentary or other evidence available to the alleged violator that supports the arguments set forth in the response. The Department of Justice will consider all relevant materials submitted in the response.

Subpart N—Government-Related Location Data List

§ 202.1401 Government-Related Location Data List.

For each Area ID listed in this section, each of the latitude/longitude coordinate pairs forms a corner of the geofenced area.

TABLE 1 TO § 202.1401

Area ID	Latitude/longitude coordinates of geofenced areas			
1	38.935624, – 77.207888	38.931674, – 77.199387	38.929289, – 77.203229	38.932939, – 77.209328.
2	38.950446, – 77.125592	38.952077, – 77.120947	38.947468, – 77.120060	38.947135, – 77.122809.
3	38.953191, – 77.372792	38.953174, – 77.369764	38.951148, – 77.369759	38.951152, – 77.372781.
4	39.113546, – 76.777053	39.131086, – 76.758527	39.100086, – 76.749715	39.093304, – 76.760882.
5	33.416299, – 82.172772	33.416666, – 82.164366	33.406350, – 82.163645	33.406261, – 82.172947.
6	21.525093, – 158.019139	21.525362, – 158.002575	21.518161, – 158.002233	21.518010, – 158.018364.
7	21.475012, – 158.061844	21.483357, – 158.057568	21.479226, – 158.049881	21.472695, – 158.052371.
8	29.449322, – 98.646174	29.452872, – 98.637623	29.448069, – 98.637303	29.444547, – 98.640607.
9	39.273162771, – 76.362684384.	39.508996774, – 76.362684384.	39.508996774, – 76.049235582.	39.273162771, – 76.049235582.
10	39.0258436940001, – 76.9680962199999.	39.0402111820001, – 76.9680962199999.	39.0402111820001, – 76.9506770369999.	39.0258436940001, – 76.9506770369999.
11	20.7457155230001, – 156.440726997.	20.7494410490001, – 156.440726997.	20.7494410490001, – 156.431116699.	20.7457155230001, – 156.431116699.
12	38.8805363480001, – 77.1090209989999.	38.8811994730001, – 77.1090209989999.	38.8811994730001, – 77.1082027119999.	38.8805363480001, – 77.1082027119999.
13	32.765632877, – 97.460085871.	32.786292692, – 97.460085871.	32.786292692, – 97.445002478.	32.765632877, – 97.445002478.
14	34.602177924, – 118.126219217.	34.652496869, – 118.126219217.	34.652496869, – 118.040871203.	34.602177924, – 118.040871203.
15	32.0905440820001, – 110.959444035.	32.1053229630001, – 110.959444035.	32.1053229630001, – 110.922377001.	32.0905440820001, – 110.922377001.
16	33.8999448750001, – 84.540445929.	33.9364828150001, – 84.540445929.	33.9364828150001, – 84.511508719.	33.8999448750001, – 84.511508719.
17	36.6657671500001, – 76.163567934.	36.7187899800001, – 76.163567934.	36.7187899800001, – 76.098012048.	36.6657671500001, – 76.098012048.
18	27.8761052880001, – 98.061583281.	27.9157840450001, – 98.061583281.	27.9157840450001, – 98.0214386.	27.8761052880001, – 98.0214386.
19	21.3545686960001, – 157.926772605.	21.3700858780001, – 157.926772605.	21.3700858780001, – 157.89962502.	21.3545686960001, – 157.89962502.
20	39.529701323, – 78.871120656.	39.566862548, – 78.871120656.	39.566862548, – 78.819110448.	39.529701323, – 78.819110448.
21	31.227908115, – 85.654625655.	31.235020282, – 85.654625655.	31.235020282, – 85.646160343.	31.227908115, – 85.646160343.
22	45.0576284000001, – 83.5785134019999.	45.0972929400001, – 83.5785134019999.	45.0972929400001, – 83.5582903029999.	45.0576284000001, – 83.5582903029999.
23	34.6379009080001, – 99.303633301.	34.6889874940001, – 99.303633301.	34.6889874940001, – 99.25506291.	34.6379009080001, – 99.25506291.
24	32.6375106470001, – 117.168353987.	32.6816990190001, – 117.168353987.	32.6816990190001, – 117.138279193.	32.6375106470001, – 117.138279193.
25	32.666935251, – 117.172352209.	32.675675627, – 117.172352209.	32.675675627, – 117.163035197.	32.666935251, – 117.163035197.
26	13.5479750120001, 144.840656045.	13.6479224930001, 144.840656045.	13.6479224930001, 144.956626971.	13.5479750120001, 144.956626971.
27	33.610199773, – 86.013461889.	33.688770568, – 86.013461889.	33.688770568, – 85.910594886.	33.610199773, – 85.910594886.
28	27.6372285040001, – 81.364060357.	27.6776476600001, – 81.364060357.	27.6776476600001, – 81.326061341.	27.6372285040001, – 81.326061341.
29	38.869169115, – 77.079135005.	38.887908934, – 77.079135005.	38.887908934, – 77.058113411.	38.869169115, – 77.058113411.
30	38.865964869, – 77.081320445.	38.869010908, – 77.081320445.	38.869010908, – 77.07688713	38.865964869, – 77.07688713.
31	30.268965988, – 97.74101039	30.26898402, – 97.74101039	30.26898402, – 97.74098961	30.268965988, – 97.74098961.
32	28.585892605, – 81.197868843.	28.58638835, – 81.197868843	28.58638835, – 81.197094434	28.585892605, – 81.197094434.
33	35.9939351130001, – 78.8988567119999.	35.9939531280001, – 78.8988567119999.	35.9939531280001, – 78.8988345369999.	35.9939351130001, – 78.8988345369999.
34	35.290658975, – 86.1900228969999.	35.448152643, – 86.1900228969999.	35.448152643, – 85.9565678559999.	35.290658975, – 85.9565678559999.
35	39.668741192, – 74.486379079.	39.735566472, – 74.486379079.	39.735566472, – 74.38985998	39.668741192, – 74.38985998.
36	27.5433418430001, – 81.440651203.	27.7481014920001, – 81.440651203.	27.7481014920001, – 81.140127987.	27.5433418430001, – 81.140127987.
37	43.329662741, – 89.768817729.	43.3804415840001, – 89.768817729.	43.3804415840001, – 89.704814972.	43.329662741, – 89.704814972.
38	32.7213462890001, – 117.147436521.	32.7304327800001, – 117.147436521.	32.7304327800001, – 117.142819245.	32.7213462890001, – 117.142819245.
39	44.810736596, – 68.845190583.	44.824436067, – 68.845190583.	44.824436067, – 68.817759555.	44.810736596, – 68.817759555.
40	30.378935891, – 87.651017989.	30.406043932, – 87.651017989.	30.406043932, – 87.616693181.	30.378935891, – 87.616693181.

TABLE 1 TO § 202.1401—Continued

Area ID				
41	32.460689648, – 93.692932035.	32.533707929, – 93.692932035.	32.533707929, – 93.531044113.	32.460689648, – 93.531044113.
42	42.1637746650001, – 72.721474954.	42.1737587120001, – 72.721474954.	42.1737587120001, – 72.713127559.	42.1637746650001, – 72.713127559.
43	32.234848137, – 114.563241999.	32.74030585, – 114.563241999.	32.74030585, – 113.597922719.	32.234848137, – 113.597922719.
44	32.8717587680001, – 112.742209944.	32.9055316810001, – 112.742209944.	32.9055316810001, – 112.715649106.	32.8717587680001, – 112.715649106.
45	70.118081036, – 143.649422567.	70.13677672, – 143.649422567.	70.13677672, – 143.549196508.	70.118081036, – 143.549196508.
46	39.0718274430001, – 121.477278056.	39.1737524000001, – 121.477278056.	39.1737524000001, – 121.321123307.	39.0718274430001, – 121.321123307.
47	21.3446919420001, – 157.715961149.	21.3801950850001, – 157.715961149.	21.3801950850001, – 157.704152283.	21.3446919420001, – 157.704152283.
48	39.320337941, – 80.27238984	39.332562421, – 80.27238984	39.332562421, – 80.257518209.	39.320337941, – 80.257518209.
49	64.3151851490001, – 146.65232338.	64.3202659380001, – 146.65232338.	64.3202659380001, – 146.642748991.	64.3151851490001, – 146.642748991.
50	33.564586567, – 86.7593074919999.	33.577571506, – 86.7593074919999.	33.577571506, – 86.749335831.	33.564586567, – 86.749335831.
51	33.979025715, – 77.920042096.	33.98353888, – 77.920042096	33.98353888, – 77.911945012	33.979025715, – 77.911945012.
52	37.6569067660001, – 84.2697493539999.	37.7403075720001, – 84.2697493539999.	37.7403075720001, – 84.1739063399999.	37.6569067660001, – 84.1739063399999.
53	43.549701982, – 116.23995646.	43.565222364, – 116.23995646.	43.565222364, – 116.203444555.	43.549701982, – 116.203444555.
54	41.928394165, – 72.706470888.	41.940084218, – 72.706470888.	41.940084218, – 72.6950519379999.	41.928394165, – 72.6950519379999.
55	41.5399982100001, – 81.628180911.	41.5451316070001, – 81.628180911.	41.5451316070001, – 81.623066892.	41.5399982100001, – 81.623066892.
56	38.259480861, – 119.65128069.	38.488443466, – 119.65128069.	38.488443466, – 119.46086144.	38.259480861, – 119.46086144.
57	32.7116821270001, – 117.172842204.	32.7155456210001, – 117.172842204.	32.7155456210001, – 117.171235129.	32.7116821270001, – 117.171235129.
58	40.5796208020001, – 73.881158344.	40.5851822330001, – 73.881158344.	40.5851822330001, – 73.875044844.	40.5796208020001, – 73.875044844.
59	31.3815422060001, – 85.978073125.	31.3912525150001, – 85.978073125.	31.3912525150001, – 85.96646119.	31.3815422060001, – 85.96646119.
60	39.6792307960001, – 104.791155246.	39.7256386980001, – 104.791155246.	39.7256386980001, – 104.732681808.	39.6792307960001, – 104.732681808.
61	44.465375824, – 73.165872108.	44.481431105, – 73.165872108.	44.481431105, – 73.138589437.	44.465375824, – 73.138589437.
62	18.246447926, – 65.580288041.	18.250653732, – 65.580288041.	18.250653732, – 65.57513189	18.246447926, – 65.57513189.
63	31.2653802660001, – 85.730112602.	31.2900770820001, – 85.730112602.	31.2900770820001, – 85.701272345.	31.2653802660001, – 85.701272345.
64	13.488847714, 144.8237902 ...	13.650804937, 144.8237902 ...	13.650804937, 144.882806074	13.488847714, 144.882806074.
65	41.613354353, – 93.9831494479999.	42.134619451, – 93.9831494479999.	42.134619451, – 93.625230214.	41.613354353, – 93.625230214.
66	34.6199016640001, – 84.1105367119999.	34.6357614130001, – 84.1105367119999.	34.6357614130001, – 84.0950752379999.	34.6199016640001, – 84.0950752379999.
67	44.5103232180001, – 85.0727276169999.	44.8976058610001, – 85.0727276169999.	44.8976058610001, – 84.4513643499999.	44.5103232180001, – 84.4513643499999.
68	35.0011406840001, – 79.523939868.	35.0683094360001, – 79.523939868.	35.0683094360001, – 79.442653881.	35.0011406840001, – 79.442653881.
69	32.641816556, – 116.466773316.	32.70380767, – 116.466773316.	32.70380767, – 116.419479903.	32.641816556, – 116.419479903.
70	32.707519441, – 116.520980841.	32.714794633, – 116.520980841.	32.714794633, – 116.509578866.	32.707519441, – 116.509578866.
71	35.1488975340001, – 111.913136629.	35.2519317510001, – 111.913136629.	35.2519317510001, – 111.772220092.	35.1488975340001, – 111.772220092.
72	35.688234999, – 120.85951023.	35.893098334, – 120.85951023.	35.893098334, – 120.711509738.	35.688234999, – 120.711509738.
73	30.91049165, – 89.245591473	31.215207751, – 89.245591473.	31.215207751, – 88.825853545.	30.91049165, – 88.825853545.
74	40.3878151230001, – 112.116737638.	40.4646164020001, – 112.116737638.	40.4646164020001, – 111.91331559.	40.3878151230001, – 111.91331559.
75	34.40563345, – 103.337070541.	34.412489823, – 103.337070541.	34.412489823, – 103.319797859.	34.40563345, – 103.319797859.
76	34.3614483640001, – 103.354726446.	34.4053770780001, – 103.354726446.	34.4053770780001, – 103.295530382.	34.3614483640001, – 103.295530382.

TABLE 1 TO § 202.1401—Continued

Area ID				
77	28.410293461, – 80.611521457.	28.569239286, – 80.611521457.	28.569239286, – 80.525040895.	28.410293461, – 80.525040895.
78	58.6207566940001, – 162.088477025.	58.6671382160001, – 162.088477025.	58.6671382160001, – 162.051955173.	58.6207566940001, – 162.051955173.
79	39.843911672, – 89.673153301.	39.853707959, – 89.673153301.	39.853707959, – 89.664434939.	39.843911672, – 89.664434939.
80	40.1998354450001, – 77.1813079679999.	40.2155193840001, – 77.1813079679999.	40.2155193840001, – 77.1567188819999.	40.1998354450001, – 77.1567188819999.
81	48.720965666, – 97.91415126	48.732224729, – 97.91415126	48.732224729, – 97.892530954.	48.720965666, – 97.892530954.
82	30.3692267820001, – 89.145003244.	30.3839136300001, – 89.145003244.	30.3839136300001, – 89.1029689419999.	30.3692267820001, – 89.1029689419999.
83	34.133132274, – 119.113804625.	34.1468546850001, – 119.113804625.	34.1468546850001, – 119.107499465.	34.133132274, – 119.107499465.
84	35.2130798650001, – 80.93434288.	35.2209434880001, – 80.93434288.	35.2209434880001, – 80.924747233.	35.2130798650001, – 80.924747233.
85	37.268469865, – 76.6497831579999.	37.300168225, – 76.6497831579999.	37.300168225, – 76.5808454679999.	37.268469865, – 76.5808454679999.
86	38.652772446, – 76.537514883.	38.665190459, – 76.537514883.	38.665190459, – 76.526755785.	38.652772446, – 76.526755785.
87	38.730266928, – 104.854175709.	38.748479779, – 104.854175709.	38.748479779, – 104.830998169.	38.730266928, – 104.830998169.
88	41.1585808, – 104.827282882	41.163962628, – 104.827282882.	41.163962628, – 104.811583526.	41.1585808, – 104.811583526.
89	33.0433918000001, – 115.769002927.	33.561860554, – 115.769002927.	33.561860554, – 114.937048224.	33.0433918000001, – 114.937048224.
90	64.256937909, – 149.271311872.	64.318532807, – 149.271311872.	64.318532807, – 149.078782527.	64.256937909, – 149.078782527.
91	48.0181544170001, – 122.749058066.	48.0882406420001, – 122.749058066.	48.0882406420001, – 122.699833714.	48.0181544170001, – 122.699833714.
92	55.260399471, – 162.892009844.	55.266039599, – 162.892009844.	55.266039599, – 162.882133146.	55.260399471, – 162.882133146.
93	32.9238514580001, – 88.597781493.	33.6613396510001, – 88.597781493.	33.6613396510001, – 88.419408536.	32.9238514580001, – 88.419408536.
94	42.2857517910001, – 71.366797532.	42.2934966590001, – 71.366797532.	42.2934966590001, – 71.355575286.	42.2857517910001, – 71.355575286.
95	30.396955129, – 87.301358539.	30.41034727, – 87.301358539	30.41034727, – 87.278142462	30.396955129, – 87.278142462.
96	36.8832992170001, – 76.3808126719999.	36.8943868090001, – 76.3808126719999.	36.8943868090001, – 76.3390713729999.	36.8832992170001, – 76.3390713729999.
97	36.4941214200001, – 115.88042321.	36.7385429400001, – 115.88042321.	36.7385429400001, – 115.4868387.	36.4941214200001, – 115.4868387.
98	21.299764458, – 158.073065748.	21.327294536, – 158.073065748.	21.327294536, – 158.044610628.	21.299764458, – 158.044610628.
99	36.779547069, – 119.702471155.	36.782099199, – 119.702471155.	36.782099199, – 119.701514522.	36.779547069, – 119.701514522.
100	42.15393814, – 70.9374754149999.	42.158515225, – 70.9374754149999.	42.158515225, – 70.9301741339999.	42.15393814, – 70.9301741339999.
101	48.4214595020001, – 117.41300542.	48.5515751880001, – 117.41300542.	48.5515751880001, – 117.35926532.	48.4214595020001, – 117.35926532.
102	26.091587869, – 80.111818708.	26.092584016, – 80.111818708.	26.092584016, – 80.108205835.	26.091587869, – 80.108205835.
103	35.6459372400001, – 75.991669019.	35.7768890170001, – 75.991669019.	35.7768890170001, – 75.771652698.	35.6459372400001, – 75.771652698.
104	32.1193109110001, – 110.909314221.	32.1962087390001, – 110.909314221.	32.1962087390001, – 110.789766372.	32.1193109110001, – 110.789766372.
105	37.408487704, – 77.453738162.	37.439266805, – 77.453738162.	37.439266805, – 77.435618651.	37.408487704, – 77.435618651.
106	38.8781991000001, – 77.109040482.	38.8792949460001, – 77.109040482.	38.8792949460001, – 77.108174294.	38.8781991000001, – 77.108174294.
107	40.1972506380001, – 76.853865245.	40.226551520001, – 76.853865245.	40.226551520001, – 76.8221857039999.	40.1972506380001, – 76.8221857039999.
108	39.974582163, – 82.913383443.	39.985122185, – 82.913383443.	39.985122185, – 82.884325098.	39.974582163, – 82.884325098.
109	41.537901628, – 93.674402705.	41.549978514, – 93.674402705.	41.549978514, – 93.657102163.	41.537901628, – 93.657102163.
110	30.40946552, – 86.500613385	30.412738745, – 86.500613385.	30.412738745, – 86.4971744769999.	30.40946552, – 86.4971744769999.
111	37.9630717110001, – 122.027819871.	38.0227201040001, – 122.027819871.	38.0227201040001, – 121.939142028.	37.9630717110001, – 121.939142028.
112	39.8839370650001, – 75.190933843.	39.8984743260001, – 75.190933843.	39.8984743260001, – 75.16306509.	39.8839370650001, – 75.16306509.

TABLE 1 TO § 202.1401—Continued

Area ID				
113	42.4914812000001, – 83.046418438.	42.5026695230001, – 83.046418438.	42.5026695230001, – 83.037544269.	42.4914812000001, – 83.037544269.
114	42.4694829900001, – 71.691664547.	42.5765892500001, – 71.691664547.	42.5765892500001, – 71.603764233.	42.4694829900001, – 71.603764233.
115	46.9314271700001, – 67.8969077639999.	46.9342671660001, – 67.8969077639999.	46.9342671660001, – 67.8923200479999.	46.9314271700001, – 67.8923200479999.
116	21.567863645, – 158.21347981.	21.581952858, – 158.21347981.	21.581952858, – 158.180039671.	21.567863645, – 158.180039671.
117	28.0671354250001, – 98.778173769.	28.1245884970001, – 98.778173769.	28.1245884970001, – 98.685192869.	28.0671354250001, – 98.685192869.
118	33.8969244250001, – 84.542380856.	33.9367576460001, – 84.542380856.	33.9367576460001, – 84.495305955.	33.8969244250001, – 84.495305955.
119	39.10595655, – 75.494449085	39.152386899, – 75.494449085.	39.152386899, – 75.436634728.	39.10595655, – 75.436634728.
120	24.568031467, – 81.781745689.	24.585123807, – 81.781745689.	24.585123807, – 81.765170818.	24.568031467, – 81.765170818.
121	32.674333394, – 117.133765	32.692839739, – 117.133765	32.692839739, – 117.108967938.	32.674333394, – 117.108967938.
122	46.8330442210001, – 92.21102751.	46.8510308170001, – 92.21102751.	46.8510308170001, – 92.165423416.	46.8330442210001, – 92.165423416.
123	32.3941914100001, – 99.867572545.	32.4478988670001, – 99.867572545.	32.4478988670001, – 99.808678428.	32.3941914100001, – 99.808678428.
124	52.7044712040001, 174.053643507.	52.7410254930001, 174.053643507.	52.7410254930001, 174.156518998.	52.7044712040001, 174.156518998.
125	34.762486344, – 118.140763438.	35.017611389, – 118.140763438.	35.017611389, – 117.525081645.	34.762486344, – 117.525081645.
126	30.381138945, – 86.8509824239999.	30.405275435, – 86.8509824239999.	30.405275435, – 86.6331687359999.	30.381138945, – 86.6331687359999.
127	30.6217855130001, – 86.7554594279999.	30.6494843350001, – 86.7554594279999.	30.6494843350001, – 86.7303715759999.	30.6217855130001, – 86.7303715759999.
128	27.0764966720001, – 86.983116121.	30.7497294690001, – 86.983116121.	30.7497294690001, – 82.448862506.	27.0764966720001, – 82.448862506.
129	64.6012802210001, – 147.165786418.	64.7480079510001, – 147.165786418.	64.7480079510001, – 146.938371648.	64.6012802210001, – 146.938371648.
130	36.8644398160001, – 76.3344377989999.	36.8708429060001, – 76.3344377989999.	36.8708429060001, – 76.3299793119999.	36.8644398160001, – 76.3299793119999.
131	29.5899224830001, – 95.17474779.	29.6230511860001, – 95.17474779.	29.6230511860001, – 95.16633921.	29.5899224830001, – 95.16633921.
132	44.112997566, – 103.129144564.	44.176511165, – 103.129144564.	44.176511165, – 103.060660125.	44.112997566, – 103.060660125.
133	31.325926945, – 92.549004972.	31.34466339, – 92.549004972	31.34466339, – 92.532050872	31.325926945, – 92.532050872.
134	39.4012000000001, – 77.9954	39.4140000010001, – 77.9954	39.4140000010001, – 77.9708	39.4012000000001, – 77.9708.
135	47.5887747180001, – 117.693058242.	47.6428480860001, – 117.693058242.	47.6428480860001, – 117.623082729.	47.5887747180001, – 117.623082729.
136	33.3291382400001, – 117.313779432.	33.3984247810001, – 117.313779432.	33.3984247810001, – 117.249241913.	33.3291382400001, – 117.249241913.
137	38.826363557, – 118.950589204.	39.942237, – 118.950589204	39.942237, – 117.125199131	38.826363557, – 117.125199131.
138	36.9206436430001, – 76.324596591.	36.9225983950001, – 76.324596591.	36.9225983950001, – 76.321048116.	36.9206436430001, – 76.321048116.
139	30.395125636, – 81.633046236.	30.406669179, – 81.633046236.	30.406669179, – 81.613437212.	30.395125636, – 81.613437212.
140	24.567441214, – 81.801443736.	24.594738599, – 81.801443736.	24.594738599, – 81.79382837	24.567441214, – 81.79382837.
141	38.9355059150001, – 95.6866671779999.	38.9672269680001, – 95.6866671779999.	38.9672269680001, – 95.6739997489999.	38.9355059150001, – 95.6739997489999.
142	32.7263297590001, – 117.225651967.	32.7323354850001, – 117.225651967.	32.7323354850001, – 117.215769817.	32.7263297590001, – 117.215769817.
143	41.4732485420001, – 71.3429884129999.	41.4772592680001, – 71.3429884129999.	41.4772592680001, – 71.3354651549999.	41.4732485420001, – 71.3354651549999.
144	38.6728683430001, – 77.202015081.	38.7484680470001, – 77.202015081.	38.7484680470001, – 77.1209734769999.	38.6728683430001, – 77.1209734769999.
145	39.855326909, – 86.028620872.	39.864369447, – 86.028620872.	39.864369447, – 86.003845091.	39.855326909, – 86.003845091.
146	31.7888139250001, – 106.581474459.	32.6965880790001, – 106.581474459.	32.6965880790001, – 105.524846042.	31.7888139250001, – 105.524846042.
147	18.4046924090001, – 66.1341755349999.	18.4221096420001, – 66.1341755349999.	18.4221096420001, – 66.1054899209999.	18.4046924090001, – 66.1054899209999.
148	36.5354833810001, – 87.820914236.	36.7268240330001, – 87.820914236.	36.7268240330001, – 87.423400866.	36.5354833810001, – 87.423400866.

TABLE 1 TO § 202.1401—Continued

Area ID				
149	38.418237328, – 104.967064928.	38.765149965, – 104.967064928.	38.765149965, – 104.717754537.	38.418237328, – 104.717754537.
150	30.7215072980001, – 97.913021062.	31.3927951710001, – 97.913021062.	31.3927951710001, – 97.382600936.	30.7215072980001, – 97.382600936.
151	21.277988357, – 157.837039889.	21.28553417, – 157.837039889.	21.28553417, – 157.831141168.	21.277988357, – 157.831141168.
152	39.428600294, – 77.437471934.	39.450390568, – 77.437471934.	39.450390568, – 77.410819037.	39.428600294, – 77.410819037.
153	39.0020859900001, – 77.060006807.	39.0129141590001, – 77.060006807.	39.0129141590001, – 77.05003399.	39.0020859900001, – 77.05003399.
154	39.0320227890001, – 77.04385429.	39.0346693610001, – 77.04385429.	39.0346693610001, – 77.03866628.	39.0320227890001, – 77.03866628.
155	44.010913031, – 75.842125669.	44.256536804, – 75.842125669.	44.256536804, – 75.386367945.	44.010913031, – 75.386367945.
156	33.274519335, – 82.379611728.	33.440619771, – 82.379611728.	33.440619771, – 82.096232277.	33.274519335, – 82.096232277.
157	33.6089633770001, – 84.35154274.	33.6319158920001, – 84.35154274.	33.6319158920001, – 84.307486309.	33.6089633770001, – 84.307486309.
158	63.9388112670001, – 145.772613518.	64.0231208060001, – 145.772613518.	64.0231208060001, – 145.655809936.	63.9388112670001, – 145.655809936.
159	37.213516865, – 77.358595158.	37.298684924, – 77.358595158.	37.298684924, – 77.307488144.	37.213516865, – 77.307488144.
160	40.604582683, – 74.034049003.	40.613167841, – 74.034049003.	40.613167841, – 74.0206090659999.	40.604582683, – 74.0206090659999.
161	31.434363842, – 110.449131361.	31.686859773, – 110.449131361.	31.686859773, – 110.188946087.	31.434363842, – 110.188946087.
162	35.7935092910001, – 121.426498813.	36.1147194860001, – 121.426498813.	36.1147194860001, – 121.031600619.	35.7935092910001, – 121.031600619.
163	35.082504812, – 117.084003937.	35.627708795, – 117.084003937.	35.627708795, – 116.163545882.	35.082504812, – 116.163545882.
164	33.9829769470001, – 80.959251815.	34.0836392030001, – 80.959251815.	34.0836392030001, – 80.704124579.	33.9829769470001, – 80.704124579.
165	30.921870988, – 93.579998793.	31.490503162, – 93.579998793.	31.490503162, – 92.862745164.	30.921870988, – 92.862745164.
166	37.78807672, – 86.056877114	38.0073711200001, – 86.056877114.	38.0073711200001, – 85.747574551.	37.78807672, – 85.747574551.
167	39.3284266840001, – 94.949264706.	39.3922569280001, – 94.949264706.	39.3922569280001, – 94.880745646.	39.3284266840001, – 94.880745646.
168	37.6037963470001, – 92.2500513099999.	37.7999725520001, – 92.2500513099999.	37.7999725520001, – 92.0408380759999.	37.6037963470001, – 92.0408380759999.
169	35.039462073, – 79.38062969	35.274563988, – 79.38062969	35.274563988, – 78.901879671.	35.039462073, – 78.901879671.
170	43.90284867, – 90.765375865	44.159924233, – 90.765375865.	44.159924233, – 90.587856675.	43.90284867, – 90.587856675.
171	39.071479147, – 76.776616336.	39.130981819, – 76.776616336.	39.130981819, – 76.709232204.	39.071479147, – 76.709232204.
172	40.2844597280001, – 74.096750839.	40.3390552010001, – 74.096750839.	40.3390552010001, – 74.026249284.	40.2844597280001, – 74.026249284.
173	37.000205414, – 76.3170219039999.	37.035192566, – 76.3170219039999.	37.035192566, – 76.2925912169999.	37.000205414, – 76.2925912169999.
174	32.2387118290001, – 85.021200904.	32.5517604030001, – 85.021200904.	32.5517604030001, – 84.637054935.	32.2387118290001, – 84.637054935.
175	31.314144049, – 85.865695246.	31.505687537, – 85.865695246.	31.505687537, – 85.612193512.	31.314144049, – 85.612193512.
176	39.0366899860001, – 96.962729439.	39.3067854380001, – 96.962729439.	39.3067854380001, – 96.681803847.	39.0366899860001, – 96.681803847.
177	21.3344869650001, – 157.894073145.	21.3570876230001, – 157.894073145.	21.3570876230001, – 157.87189508.	21.3344869650001, – 157.87189508.
178	42.203459073, – 87.8100502569999.	42.216029281, – 87.8100502569999.	42.216029281, – 87.7987031449999.	42.203459073, – 87.7987031449999.
179	34.637509069, – 98.755961597.	34.768015017, – 98.755961597.	34.768015017, – 98.282396833.	34.637509069, – 98.282396833.
180	35.247127112, – 94.374048025.	35.345197662, – 94.374048025.	35.345197662, – 94.080609487.	35.247127112, – 94.080609487.
181	31.8490945500001, – 81.889069385.	32.1248422650001, – 81.889069385.	32.1248422650001, – 81.304927888.	31.8490945500001, – 81.304927888.
182	63.495426454, – 148.652607873.	64.877948104, – 148.652607873.	64.877948104, – 145.011700164.	63.495426454, – 145.011700164.
183	38.018142733, – 77.395133849.	38.2229469870001, – 77.395133849.	38.2229469870001, – 77.136746906.	38.018142733, – 77.136746906.
184	35.4225141090001, – 108.629517745.	35.5234010050001, – 108.629517745.	35.5234010050001, – 108.546488603.	35.4225141090001, – 108.546488603.

TABLE 1 TO § 202.1401—Continued

Area ID				
185	66.558440788, – 145.217198219.	66.562635721, – 145.217198219.	66.562635721, – 145.196865879.	66.558440788, – 145.196865879.
186	41.131595797, – 104.888175803.	41.201251583, – 104.888175803.	41.201251583, – 104.839386748.	41.131595797, – 104.839386748.
187	40.8317168790001, – 72.646569509.	40.8404590060001, – 72.646569509.	40.8404590060001, – 72.637878307.	40.8317168790001, – 72.637878307.
188	36.7652210320001, – 119.726849268.	36.7866408030001, – 119.726849268.	36.7866408030001, – 119.702290588.	36.7652210320001, – 119.702290588.
189	39.046072102, – 76.689705918.	39.068500337, – 76.689705918.	39.068500337, – 76.660214864.	39.046072102, – 76.660214864.
190	42.9373147850001, – 87.891735357.	42.9447209110001, – 87.891735357.	42.9447209110001, – 87.88532841.	42.9373147850001, – 87.88532841.
191	40.6559953350001, – 89.713436026.	40.6713177760001, – 89.713436026.	40.6713177760001, – 89.691898535.	40.6559953350001, – 89.691898535.
192	42.297663631, – 87.8562319869999.	42.303204758, – 87.8562319869999.	42.303204758, – 87.8518457849999.	42.297663631, – 87.8518457849999.
193	42.0902179130001, – 87.8412161049999.	42.0929537750001, – 87.8412161049999.	42.0929537750001, – 87.8329821559999.	42.0902179130001, – 87.8329821559999.
194	31.410361906, – 85.4658208399999.	31.419467447, – 85.4658208399999.	31.419467447, – 85.4610573259999.	31.410361906, – 85.4610573259999.
195	33.422394339, – 112.015046889.	33.427659719, – 112.015046889.	33.427659719, – 112.006740103.	33.422394339, – 112.006740103.
196	31.4211524990001, – 100.421423136.	31.4502936180001, – 100.421423136.	31.4502936180001, – 100.386562872.	31.4211524990001, – 100.386562872.
197	41.5355012680001, – 71.3460647429999.	41.5398354990001, – 71.3460647429999.	41.5398354990001, – 71.3433558969999.	41.5355012680001, – 71.3433558969999.
198	47.921128756, – 97.4238744209999.	48.00111753, – 97.4238744209999.	48.00111753, – 97.3251566139999.	47.921128756, – 97.3251566139999.
199	32.7378756470001, – 96.960057831.	32.7421326520001, – 96.960057831.	32.7421326520001, – 96.951545219.	32.7378756470001, – 96.951545219.
200	47.471916874, – 111.370342141.	47.482136373, – 111.370342141.	47.482136373, – 111.35856852.	47.471916874, – 111.35856852.
201	38.935411516, – 110.143618375.	38.983389468, – 110.143618375.	38.983389468, – 110.064497018.	38.935411516, – 110.064497018.
202	40.629836335, – 86.175582897.	40.6784136910001, – 86.175582897.	40.6784136910001, – 86.124933251.	40.629836335, – 86.124933251.
203	30.404753499, – 89.06446994	30.416012997, – 89.06446994	30.416012997, – 89.05803309	30.404753499, – 89.05803309.
204	62.384524694, – 145.202752458.	62.438701327, – 145.202752458.	62.438701327, – 145.108315	62.384524694, – 145.108315.
205	43.0985925350001, – 76.1175710329999.	43.1204055300001, – 76.1175710329999.	43.1204055300001, – 76.0811541549999.	43.0985925350001, – 76.0811541549999.
206	42.449141119, – 71.2922332959999.	42.477596104, – 71.2922332959999.	42.477596104, – 71.263228187.	42.449141119, – 71.263228187.
207	32.728744878, – 117.208959019.	32.730100028, – 117.208959019.	32.730100028, – 117.205155926.	32.728744878, – 117.205155926.
208	44.220163461, – 90.111781241.	44.249174018, – 90.111781241.	44.249174018, – 89.996184064.	44.220163461, – 89.996184064.
209	38.229497861, – 118.850468214.	38.675823329, – 118.850468214.	38.675823329, – 118.465402259.	38.229497861, – 118.465402259.
210	46.9082501180001, – 96.813335915.	46.9192707510001, – 96.813335915.	46.9192707510001, – 96.797905722.	46.9082501180001, – 96.797905722.
211	21.530784666, – 158.026158574.	21.541312201, – 158.026158574.	21.541312201, – 158.012928076.	21.530784666, – 158.012928076.
212	21.4521601660001, – 158.036478816.	21.4580696550001, – 158.036478816.	21.4580696550001, – 158.032403386.	21.4521601660001, – 158.032403386.
213	31.1479145100001, – 85.744240415.	31.1546432720001, – 85.744240415.	31.1546432720001, – 85.729933472.	31.1479145100001, – 85.729933472.
214	41.0983339530001, – 112.024399889.	41.1651189630001, – 112.024399889.	41.1651189630001, – 111.942395214.	41.0983339530001, – 111.942395214.
215	32.7930228270001, – 106.204383402.	33.0771885310001, – 106.204383402.	33.0771885310001, – 106.049512667.	32.7930228270001, – 106.049512667.
216	36.4958650950001, – 82.684996348.	36.5518898770001, – 82.684996348.	36.5518898770001, – 82.546522187.	36.4958650950001, – 82.546522187.
217	32.828679521, – 115.288498013.	32.846906967, – 115.288498013.	32.846906967, – 115.14568048.	32.828679521, – 115.14568048.
218	25.4901310220001, – 80.4045291039999.	25.5181528940001, – 80.4045291039999.	25.5181528940001, – 80.3779792709999.	25.4901310220001, – 80.3779792709999.
219	39.446631245, – 87.304009056.	39.458100621, – 87.304009056.	39.458100621, – 87.290668741.	39.446631245, – 87.290668741.
220	31.3751890450001, – 85.5828701299999.	31.3850761720001, – 85.5828701299999.	31.3850761720001, – 85.5773414419999.	31.3751890450001, – 85.5773414419999.

TABLE 1 TO § 202.1401—Continued

Area ID				
221	31.9832369490001, – 81.198805141.	32.0349005460001, – 81.198805141.	32.0349005460001, – 81.113375475.	31.9832369490001, – 81.113375475.
222	30.406119645, – 86.74211065	30.45486409, – 86.74211065	30.45486409, – 86.655360926	30.406119645, – 86.655360926.
223	32.5545594160001, – 117.133035356.	32.5724338440001, – 117.133035356.	32.5724338440001, – 117.089509557.	32.5545594160001, – 117.089509557.
224	65.9646785140001, – 153.812691683.	66.1009999220001, – 153.812691683.	66.1009999220001, – 153.662067587.	65.9646785140001, – 153.662067587.
225	38.435308005, – 85.627248303.	38.4668353, – 85.627248303	38.4668353, – 85.584713152	38.435308005, – 85.584713152.
226	40.7516430220001, – 91.325065862.	40.8294821280001, – 91.325065862.	40.8294821280001, – 91.178786412.	40.7516430220001, – 91.178786412.
227	32.311624454, – 90.0879237459999.	32.328439256, – 90.0879237459999.	32.328439256, – 90.0778932449999.	32.311624454, – 90.0778932449999.
228	30.402512915, – 81.628884649.	30.408229141, – 81.628884649.	30.408229141, – 81.613589029.	30.402512915, – 81.613589029.
229	29.9570817420001, – 81.972797144.	30.4921986090001, – 81.972797144.	30.4921986090001, – 81.69382023.	29.9570817420001, – 81.69382023.
230	38.8109873670001, – 85.4822157569999.	39.0601368300001, – 85.4822157569999.	39.0601368300001, – 85.3594923629999.	38.8109873670001, – 85.3594923629999.
231	48.1670940830001, – 121.958243024.	48.2248098330001, – 121.958243024.	48.2248098330001, – 121.887559225.	48.1670940830001, – 121.887559225.
232	43.5700133340001, – 96.7515566289999.	43.5962111540001, – 96.7515566289999.	43.5962111540001, – 96.7347550689999.	43.5700133340001, – 96.7347550689999.
233	38.823559833, – 77.026428621.	38.867319001, – 77.026428621.	38.867319001, – 77.002855219.	38.823559833, – 77.002855219.
234	38.7822985190001, – 76.90343143.	38.829021577, – 76.90343143	38.829021577, – 76.8490210659999.	38.7822985190001, – 76.8490210659999.
235	41.6372929940001, – 70.5993199659999.	41.7708974620001, – 70.5993199659999.	41.7708974620001, – 70.4886883249999.	41.6372929940001, – 70.4886883249999.
236	32.873792952, – 81.104787366.	33.621879998, – 81.104787366.	33.621879998, – 79.90958174	32.873792952, – 79.90958174.
237	61.1317682310001, – 149.879980832.	61.4090492570001, – 149.879980832.	61.4090492570001, – 149.522914627.	61.1317682310001, – 149.522914627.
238	37.063373746, – 76.627940713.	37.182586941, – 76.627940713.	37.182586941, – 76.336599693.	37.063373746, – 76.336599693.
239	45.8002376150001, – 122.802079191.	47.2187487550001, – 122.802079191.	47.2187487550001, – 119.30029009.	45.8002376150001, – 119.30029009.
240	39.9443860000001, – 74.661412648.	40.0586108630001, – 74.661412648.	40.0586108630001, – 74.304547511.	39.9443860000001, – 74.304547511.
241	38.8611352610001, – 77.084491842.	38.8880351040001, – 77.084491842.	38.8880351040001, – 77.013817583.	38.8611352610001, – 77.013817583.
242	21.2966123480001, – 158.17382288.	21.6863899190001, – 158.17382288.	21.6863899190001, – 157.850223188.	21.2966123480001, – 157.850223188.
243	29.346205018, – 98.690308725.	29.893089367, – 98.690308725.	29.893089367, – 97.884281333.	29.346205018, – 97.884281333.
244	36.892714836, – 76.1925524759999.	36.932892732, – 76.1925524759999.	36.932892732, – 75.9873603089999.	36.892714836, – 75.9873603089999.
245	37.8190118270001, – 75.514689614.	37.9512715100001, – 75.514689614.	37.9512715100001, – 75.413609963.	37.8190118270001, – 75.413609963.
246	40.6939221220001, – 84.148196529.	40.7086310680001, – 84.148196529.	40.7086310680001, – 84.127525454.	40.6939221220001, – 84.127525454.
247	41.3409958870001, – 88.082958084.	41.3733639960001, – 88.082958084.	41.3733639960001, – 88.046036417.	41.3409958870001, – 88.046036417.
248	41.4073674850001, – 88.187831293.	41.4365859010001, – 88.187831293.	41.4365859010001, – 88.107459928.	41.4073674850001, – 88.107459928.
249	21.560298554, – 158.266932035.	21.572360392, – 158.266932035.	21.572360392, – 158.237835914.	21.560298554, – 158.237835914.
250	21.6027392400001, – 158.033515202.	21.6936355750001, – 158.033515202.	21.6936355750001, – 157.95298898.	21.6027392400001, – 157.95298898.
251	22.035974347, – 159.75916373.	22.042080758, – 159.75916373.	22.042080758, – 159.750865139.	22.035974347, – 159.750865139.
252	20.0291620130001, – 155.834320072.	20.0374297880001, – 155.834320072.	20.0374297880001, – 155.823440805.	20.0291620130001, – 155.823440805.
253	30.398126636, – 88.9508689469999.	30.420139346, – 88.9508689469999.	30.420139346, – 88.896527048.	30.398126636, – 88.896527048.
254	36.7153178120001, – 98.128361282.	36.7547185190001, – 98.128361282.	36.7547185190001, – 98.110051089.	36.7153178120001, – 98.110051089.
255	60.558793666, – 151.257835885.	60.560759837, – 151.257835885.	60.560759837, – 151.254274297.	60.558793666, – 151.254274297.
256	19.4318712580001, – 155.27720251.	19.4367646340001, – 155.27720251.	19.4367646340001, – 155.271614951.	19.4318712580001, – 155.271614951.

TABLE 1 TO § 202.1401—Continued

Area ID				
257	58.638365343, – 156.693447262.	58.708746999, – 156.693447262.	58.708746999, – 156.459187473.	58.638365343, – 156.459187473.
258	42.1444655070001, – 121.753628091.	42.1707914760001, – 121.753628091.	42.1707914760001, – 121.727677654.	42.1444655070001, – 121.727677654.
259	21.4148860290001, – 158.014284187.	21.4580033840001, – 158.014284187.	21.4580033840001, – 157.991853913.	21.4148860290001, – 157.991853913.
260	34.9471711320001, – 106.613226109.	35.0673284870001, – 106.613226109.	35.0673284870001, – 106.360768374.	34.9471711320001, – 106.360768374.
261	57.816486609, – 152.341066882.	57.826001907, – 152.341066882.	57.826001907, – 152.325036589.	57.816486609, – 152.325036589.
262	66.837046801, – 162.617184378.	66.856648663, – 162.617184378.	66.856648663, – 162.565302627.	66.837046801, – 162.565302627.
263	36.900584673, – 76.30409839	36.903859448, – 76.30409839	36.903859448, – 76.300769409.	36.900584673, – 76.300769409.
264	39.080371583, – 94.283657449.	39.111476783, – 94.283657449.	39.111476783, – 94.21198472	39.080371583, – 94.21198472.
265	38.0785775370001, – 92.6119067879999.	38.0962204240001, – 92.6119067879999.	38.0962204240001, – 92.5989103479999.	38.0785775370001, – 92.5989103479999.
266	29.1085864770001, – 100.811107299.	29.3792559920001, – 100.811107299.	29.3792559920001, – 100.460775759.	29.1085864770001, – 100.460775759.
267	39.979501278, – 77.766381881.	40.061676766, – 77.766381881.	40.061676766, – 77.627738092.	39.979501278, – 77.627738092.
268	40.8367062990001, – 96.759207222.	40.8453505060001, – 96.759207222.	40.8453505060001, – 96.74825231.	40.8367062990001, – 96.74825231.
269	68.865164727, – 166.153805131.	68.877996761, – 166.153805131.	68.877996761, – 166.053355378.	68.865164727, – 166.053355378.
270	34.881841514, – 92.178033909.	34.928710282, – 92.178033909.	34.928710282, – 92.097368909.	34.881841514, – 92.097368909.
271	33.7407601990001, – 118.234788427.	33.7451476500001, – 118.234788427.	33.7451476500001, – 118.232155662.	33.7407601990001, – 118.232155662.
272	32.646434739, – 94.170119305.	32.694891651, – 94.170119305.	32.694891651, – 94.10955796	32.646434739, – 94.10955796.
273	33.916514003, – 118.449299679.	34.057048416, – 118.449299679.	34.057048416, – 118.378717014.	33.916514003, – 118.378717014.
274	33.8581476250001, – 118.23660337.	33.8593838490001, – 118.23660337.	33.8593838490001, – 118.235035273.	33.8581476250001, – 118.235035273.
275	38.173833589, – 85.7272245249999.	38.181490413, – 85.7272245249999.	38.181490413, – 85.7200947549999.	38.173833589, – 85.7200947549999.
276	31.812802193, – 85.654704728.	31.818371904, – 85.654704728.	31.818371904, – 85.646082241.	31.812802193, – 85.646082241.
277	18.439120508, – 65.9970120469999.	18.446769386, – 65.9970120469999.	18.446769386, – 65.9877331199999.	18.439120508, – 65.9877331199999.
278	33.5136616820001, – 112.545349748.	33.7241408570001, – 112.545349748.	33.7241408570001, – 112.319683167.	33.5136616820001, – 112.319683167.
279	27.821277411, – 82.537659279.	27.869304053, – 82.537659279.	27.869304053, – 82.469154309.	27.821277411, – 82.469154309.
280	22.127046405, – 159.731450362.	22.13630275, – 159.731450362.	22.13630275, – 159.71827724	22.127046405, – 159.71827724.
281	21.5127546910001, – 158.239749591.	21.5514708600001, – 158.239749591.	21.5514708600001, – 158.173991939.	21.5127546910001, – 158.173991939.
282	47.4870471620001, – 111.21562151.	47.5233762890001, – 111.21562151.	47.5233762890001, – 111.152194907.	47.4870471620001, – 111.152194907.
283	47.562267374, – 122.556511461.	47.570404086, – 122.556511461.	47.570404086, – 122.531291341.	47.562267374, – 122.531291341.
284	40.8062092000001, – 82.5260369709999.	40.8156897690001, – 82.5260369709999.	40.8156897690001, – 82.5130393979999.	40.8062092000001, – 82.5130393979999.
285	33.855508925, – 117.319151995.	33.916474896, – 117.319151995.	33.916474896, – 117.239122083.	33.855508925, – 117.239122083.
286	34.2011154190001, – 116.717969816.	34.7339793100001, – 116.717969816.	34.7339793100001, – 115.720717569.	34.2011154190001, – 115.720717569.
287	32.280961146, – 80.76567248	32.510825803, – 80.76567248	32.510825803, – 80.65947492	32.280961146, – 80.65947492.
288	34.6814644040001, – 77.2763334639999.	35.076192102, – 77.2763334639999.	35.076192102, – 76.3302441729999.	34.6814644040001, – 76.3302441729999.
289	32.833111095, – 117.188623475.	32.920651119, – 117.188623475.	32.920651119, – 116.984937219.	32.833111095, – 116.984937219.
290	34.558215246, – 77.4842054699999.	34.746048414, – 77.4842054699999.	34.746048414, – 77.370277147.	34.558215246, – 77.370277147.
291	32.622994906, – 114.64004722.	32.679820865, – 114.64004722.	32.679820865, – 114.578207704.	32.622994906, – 114.578207704.
292	34.4950770080001, – 77.6073096539999.	34.7485511280001, – 77.6073096539999.	34.7485511280001, – 77.177756721.	34.4950770080001, – 77.177756721.

TABLE 1 TO § 202.1401—Continued

Area ID				
293	33.205532089, – 117.596249485.	33.503658101, – 117.596249485.	33.503658101, – 117.249972307.	33.205532089, – 117.249972307.
294	21.4274913960001, – 157.778625985.	21.4626192360001, – 157.778625985.	21.4626192360001, – 157.722086618.	21.4274913960001, – 157.722086618.
295	21.38026423, – 157.914545183.	21.392788317, – 157.914545183.	21.392788317, – 157.897882367.	21.38026423, – 157.897882367.
296	38.4790113490001, – 77.609862936.	38.6440896410001, – 77.609862936.	38.6440896410001, – 77.283059322.	38.4790113490001, – 77.283059322.
297	31.5437915750001, – 84.095978531.	31.5617240260001, – 84.095978531.	31.5617240260001, – 84.007643854.	31.5437915750001, – 84.007643854.
298	34.8434594240001, – 116.97121195.	34.8817582680001, – 116.97121195.	34.8817582680001, – 116.909128396.	34.8434594240001, – 116.909128396.
299	38.5154624990001, – 77.3711151099999.	38.5235364690001, – 77.3711151099999.	38.5235364690001, – 77.3589766939999.	38.5154624990001, – 77.3589766939999.
300	30.391006078, – 81.537656096.	30.413437169, – 81.537656096.	30.413437169, – 81.509630857.	30.391006078, – 81.509630857.
301	38.828254514, – 77.120041471.	38.831963061, – 77.120041471.	38.831963061, – 77.114666209.	38.828254514, – 77.114666209.
302	39.32514001, – 76.4241855929999.	39.337202481, – 76.4241855929999.	39.337202481, – 76.4075152099999.	39.32514001, – 76.4075152099999.
303	48.1206874690001, – 122.17350321.	48.1263336970001, – 122.17350321.	48.1263336970001, – 122.168283314.	48.1206874690001, – 122.168283314.
304	32.365364879, – 86.376531674.	32.415623844, – 86.376531674.	32.415623844, – 86.232684034.	32.365364879, – 86.232684034.
305	21.3463596610001, – 157.732313131.	21.3809869910001, – 157.732313131.	21.3809869910001, – 157.706839578.	21.3463596610001, – 157.706839578.
306	34.75300134, – 96.021930066	34.887500702, – 96.021930066.	34.887500702, – 95.825334438.	34.75300134, – 95.825334438.
307	38.6375594030001, – 121.429181885.	38.6902393680001, – 121.429181885.	38.6902393680001, – 121.382899272.	38.6375594030001, – 121.382899272.
308	37.5874487990001, – 97.29929204.	37.6560529930001, – 97.29929204.	37.6560529930001, – 97.2134855509999.	37.5874487990001, – 97.2134855509999.
309	33.90292894, – 80.822110255	33.94386779, – 80.822110255	33.94386779, – 80.780803864	33.90292894, – 80.780803864.
310	35.800297926, – 84.013675843.	35.822581272, – 84.013675843.	35.822581272, – 83.989979889.	35.800297926, – 83.989979889.
311	38.36798888, – 81.594851531	38.378026582, – 81.594851531.	38.378026582, – 81.58529054	38.36798888, – 81.58529054.
312	32.7348147280001, – 117.209483129.	32.7455697900001, – 117.209483129.	32.7455697900001, – 117.184267844.	32.7348147280001, – 117.184267844.
313	34.214686409, – 103.863834999.	34.383336857, – 103.863834999.	34.383336857, – 103.668558352.	34.214686409, – 103.668558352.
314	35.021000852, – 89.9701571149999.	35.030015831, – 89.9701571149999.	35.030015831, – 89.9638125029999.	35.021000852, – 89.9638125029999.
315	35.815792593, – 88.754286881.	35.946160368, – 88.754286881.	35.946160368, – 88.646037805.	35.815792593, – 88.646037805.
316	38.015441735, – 122.065438909.	38.095180461, – 122.065438909.	38.095180461, – 121.969625159.	38.015441735, – 121.969625159.
317	33.9560292030001, – 78.0749530269999.	34.2460740690001, – 78.0749530269999.	34.2460740690001, – 77.9056468759999.	33.9560292030001, – 77.9056468759999.
318	44.8853655020001, – 93.222511412.	44.8980690540001, – 93.222511412.	44.8980690540001, – 93.19773597.	44.8853655020001, – 93.19773597.
319	48.3955222490001, – 101.391958779.	48.4441800980001, – 101.391958779.	48.4441800980001, – 101.29967086.	48.3955222490001, – 101.29967086.
320	32.792070847, – 117.105638208.	32.815502529, – 117.105638208.	32.815502529, – 117.081336656.	32.792070847, – 117.081336656.
321	32.302879454, – 86.410672153.	32.306804183, – 86.410672153.	32.306804183, – 86.3958063469999.	32.302879454, – 86.3958063469999.
322	30.935302703, – 83.219069939.	31.014479318, – 83.219069939.	31.014479318, – 83.1288484929999.	30.935302703, – 83.1288484929999.
323	43.0246506180001, – 115.895653384.	43.0755981900001, – 115.895653384.	43.0755981900001, – 115.836219587.	43.0246506180001, – 115.836219587.
324	39.041961471, – 85.545884974.	39.059126926, – 85.545884974.	39.059126926, – 85.502112731.	39.041961471, – 85.502112731.
325	32.8074254250001, – 115.698918811.	32.8401116740001, – 115.698918811.	32.8401116740001, – 115.646437997.	32.8074254250001, – 115.646437997.
326	28.5876565020001, – 97.628083873.	28.6265345250001, – 97.628083873.	28.6265345250001, – 97.584907879.	28.5876565020001, – 97.584907879.
327	71.310648094, – 156.674424861.	71.344323368, – 156.674424861.	71.344323368, – 156.617754628.	71.310648094, – 156.617754628.
328	43.8597372520001, – 69.95330606.	43.9103207020001, – 69.95330606.	43.9103207020001, – 69.909873769.	43.8597372520001, – 69.909873769.

TABLE 1 TO § 202.1401—Continued

Area ID				
329	32.743470873, – 97.44549275	32.787133199, – 97.44549275	32.787133199, – 97.413267401.	32.743470873, – 97.413267401.
330	30.1941004770001, – 81.7076006299999.	30.2458023780001, – 81.7076006299999.	30.2458023780001, – 81.6593342339999.	30.1941004770001, – 81.6593342339999.
331	40.1857296150001, – 75.164926593.	40.2167846540001, – 75.164926593.	40.2167846540001, – 75.134209434.	40.1857296150001, – 75.134209434.
332	24.5560839770001, – 81.722408305.	24.5971158050001, – 81.722408305.	24.5971158050001, – 81.653518462.	24.5560839770001, – 81.653518462.
333	27.4674233900001, – 97.832157771.	27.5231989330001, – 97.832157771.	27.5231989330001, – 97.788047634.	27.4674233900001, – 97.788047634.
334	36.255073843, – 119.977147505.	36.386386503, – 119.977147505.	36.386386503, – 119.869576662.	36.255073843, – 119.869576662.
335	30.326507308, – 87.352445013.	30.375924031, – 87.352445013.	30.375924031, – 87.257235015.	30.326507308, – 87.257235015.
336	30.683881264, – 87.043781272.	30.738102029, – 87.043781272.	30.738102029, – 86.997376436.	30.683881264, – 86.997376436.
337	36.106696485, – 86.67860059	36.114637747, – 86.67860059	36.114637747, – 86.67190118	36.106696485, – 86.67190118.
338	32.6696509240001, – 117.114230685.	32.6740385570001, – 117.114230685.	32.6740385570001, – 117.111967973.	32.6696509240001, – 117.111967973.
339	38.9746589920001, – 76.4937690629999.	39.0026084470001, – 76.4937690629999.	39.0026084470001, – 76.4487817289999.	38.9746589920001, – 76.4487817289999.
340	27.61946242, – 97.4505952709999.	27.718208017, – 97.4505952709999.	27.718208017, – 97.2437083949999.	27.61946242, – 97.2437083949999.
341	29.8014398060001, – 90.0485449769999.	29.8575240390001, – 90.0485449769999.	29.8575240390001, – 89.9938950499999.	29.8014398060001, – 89.9938950499999.
342	32.499252175, – 88.6318691439999.	32.602832677, – 88.6318691439999.	32.602832677, – 88.5064742839999.	32.499252175, – 88.5064742839999.
343	36.7852781730001, – 76.063232016.	36.8386906080001, – 76.063232016.	36.8386906080001, – 75.99817255.	36.7852781730001, – 75.99817255.
344	36.760031462, – 75.9846076869999.	36.818318534, – 75.9846076869999.	36.818318534, – 75.9490831369999.	36.760031462, – 75.9490831369999.
345	38.2488191400001, – 76.46369128.	38.3093935480001, – 76.46369128.	38.3093935480001, – 76.373549279.	38.2488191400001, – 76.373549279.
346	48.311418739, – 122.708096597.	48.369700655, – 122.708096597.	48.369700655, – 122.617753395.	48.311418739, – 122.617753395.
347	35.2654343400001, – 117.8902031.	36.2318077000001, – 117.8902031.	36.2318077000001, – 116.9249447.	35.2654343400001, – 116.9249447.
348	13.3091094070001, 144.618332428.	13.5883222610001, 144.618332428.	13.5883222610001, 144.916357575.	13.3091094070001, 144.916357575.
349	47.6909210600001, – 122.628044406.	47.705184112, – 122.628044406.	47.705184112, – 122.613798201.	47.6909210600001, – 122.613798201.
350	47.6767991730001, – 122.747424327.	47.7726169310001, – 122.747424327.	47.7726169310001, – 122.691878973.	47.6767991730001, – 122.691878973.
351	47.5449361660001, – 122.671768178.	47.5653870590001, – 122.671768178.	47.5653870590001, – 122.623883723.	47.5449361660001, – 122.623883723.
352	32.675119312, – 117.256218377.	32.713082807, – 117.256218377.	32.713082807, – 117.234025189.	32.675119312, – 117.234025189.
353	32.6582935910001, – 117.135977498.	32.6884541840001, – 117.135977498.	32.6884541840001, – 117.112975083.	32.6582935910001, – 117.112975083.
354	34.088069982, – 119.160456826.	34.13946678, – 119.160456826.	34.13946678, – 119.064184636.	34.088069982, – 119.064184636.
355	34.142955882, – 119.221480878.	34.175763756, – 119.221480878.	34.175763756, – 119.195140105.	34.142955882, – 119.195140105.
356	55.5394297110001, – 131.764707731.	55.5429794870001, – 131.764707731.	55.5429794870001, – 131.755720856.	55.5394297110001, – 131.755720856.
357	46.3564572000001, – 98.3483000209999.	46.3745994580001, – 98.3483000209999.	46.3745994580001, – 98.3233449679999.	46.3564572000001, – 98.3233449679999.
358	28.581333934, – 81.200124825.	28.586585157, – 81.200124825.	28.586585157, – 81.194259644.	28.581333934, – 81.194259644.
359	18.392254736, – 67.185834374.	18.405878229, – 67.185834374.	18.405878229, – 67.170701901.	18.392254736, – 67.170701901.
360	44.6232594310001, – 67.328272859.	44.7036300010001, – 67.328272859.	44.7036300010001, – 67.254518602.	44.6232594310001, – 67.254518602.
361	38.9186807040001, – 77.070549603.	38.9241721890001, – 77.070549603.	38.9241721890001, – 77.063519892.	38.9186807040001, – 77.063519892.
362	38.8200046750001, – 77.027450812.	38.8300043240001, – 77.027450812.	38.8300043240001, – 77.017462058.	38.8200046750001, – 77.017462058.
363	38.406152209, – 77.110740786.	38.43740876, – 77.110740786	38.43740876, – 77.0729468369999.	38.406152209, – 77.0729468369999.
364	30.33369265, – 89.64817211	30.417826484, – 89.64817211	30.417826484, – 89.557854425.	30.33369265, – 89.557854425.

TABLE 1 TO § 202.1401—Continued

Area ID				
365	38.6769074200001, – 76.34415482.	38.6792870940001, – 76.34415482.	38.6792870940001, – 76.343227801.	38.6769074200001, – 76.343227801.
366	42.3047750280001, – 87.845909294.	42.3249165520001, – 87.845909294.	42.3249165520001, – 87.828493071.	42.3047750280001, – 87.828493071.
367	41.503275973, – 71.330843392.	41.554006671, – 71.330843392.	41.554006671, – 71.30062478	41.503275973, – 71.30062478.
368	36.9170290100001, – 76.335615748.	36.9640415810001, – 76.335615748.	36.9640415810001, – 76.2618193489999.	36.9170290100001, – 76.2618193489999.
369	30.748875362, – 81.576797991.	30.837030033, – 81.576797991.	30.837030033, – 81.479993971.	30.748875362, – 81.479993971.
370	41.3859700670001, – 72.09385059.	41.4104621860001, – 72.09385059.	41.4104621860001, – 72.07728596.	41.3859700670001, – 72.07728596.
371	36.8809746540001, – 76.427321462.	36.8890977200001, – 76.427321462.	36.8890977200001, – 76.419013745.	36.8809746540001, – 76.419013745.
372	38.74493505, – 86.905209651	38.919755352, – 86.905209651.	38.919755352, – 86.6788119869999.	38.74493505, – 86.6788119869999.
373	30.158883738, – 85.760741626.	30.188382598, – 85.760741626.	30.188382598, – 85.738993885.	30.158883738, – 85.738993885.
374	40.0361710110001, – 75.101397768.	40.0471374300001, – 75.101397768.	40.0471374300001, – 75.088731354.	40.0361710110001, – 75.088731354.
375	38.871230644, – 76.9994186819999.	38.876356839, – 76.9994186819999.	38.876356839, – 76.9912418639999.	38.871230644, – 76.9912418639999.
376	38.9719405210001, – 77.203514559.	38.9783021020001, – 77.203514559.	38.9783021020001, – 77.180406372.	38.9719405210001, – 77.180406372.
377	38.3186054830001, – 77.051455995.	38.3591595940001, – 77.051455995.	38.3591595940001, – 77.014266139.	38.3186054830001, – 77.014266139.
378	38.5619658580001, – 77.2103647979999.	38.6069805630001, – 77.2103647979999.	38.6069805630001, – 77.1602485849999.	38.5619658580001, – 77.1602485849999.
379	47.9738990070001, – 116.566365931.	47.9810063290001, – 116.566365931.	47.9810063290001, – 116.520622995.	47.9738990070001, – 116.520622995.
380	40.2250093260001, – 74.214186736.	40.2823128210001, – 74.214186736.	40.2823128210001, – 74.101728286.	40.2250093260001, – 74.101728286.
381	33.9177546080001, – 117.576534598.	33.9314446460001, – 117.576534598.	33.9314446460001, – 117.562312486.	33.9177546080001, – 117.562312486.
382	37.208022726, – 76.633932842.	37.273612882, – 76.633932842.	37.273612882, – 76.522493597.	37.208022726, – 76.522493597.
383	45.6322259620001, – 119.895359741.	45.8065550300001, – 119.895359741.	45.8065550300001, – 119.455477367.	45.6322259620001, – 119.455477367.
384	32.681825013, – 117.229713083.	32.715125046, – 117.229713083.	32.715125046, – 117.180755171.	32.681825013, – 117.180755171.
385	36.842303428, – 76.3151234269999.	36.849661128, – 76.3151234269999.	36.849661128, – 76.3024406369999.	36.842303428, – 76.3024406369999.
386	35.180398117, – 111.749899909.	35.195319693, – 111.749899909.	35.195319693, – 111.736545714.	35.180398117, – 111.736545714.
387	40.6710820530001, – 112.091693872.	40.6820119650001, – 112.091693872.	40.6820119650001, – 112.057868517.	40.6710820530001, – 112.057868517.
388	37.4104380160001, – 122.031548936.	37.4153630160001, – 122.031548936.	37.4153630160001, – 122.025261936.	37.4104380160001, – 122.025261936.
389	47.966605751, – 122.271045712.	47.994496312, – 122.271045712.	47.994496312, – 122.21398207.	47.966605751, – 122.21398207.
390	30.361267243, – 81.4636657189999.	30.400329774, – 81.4636657189999.	30.400329774, – 81.392276891.	30.361267243, – 81.392276891.
391	38.976796961, – 76.4937690629999.	38.986732986, – 76.4937690629999.	38.986732986, – 76.4761382759999.	38.976796961, – 76.4761382759999.
392	38.9970659050001, – 77.097142558.	39.0074154440001, – 77.097142558.	39.0074154440001, – 77.083297186.	38.9970659050001, – 77.083297186.
393	36.9181778190001, – 76.317281615.	36.933520845, – 76.317281615.	36.933520845, – 76.2811604669999.	36.9181778190001, – 76.2811604669999.
394	40.216016376, – 77.001594842.	40.239975455, – 77.001594842.	40.239975455, – 76.970791628.	40.216016376, – 76.970791628.
395	35.3183642820001, – 89.890382347.	35.3408744740001, – 89.890382347.	35.3408744740001, – 89.85751768.	35.3183642820001, – 89.85751768.
396	36.593508146, – 121.878756787.	36.600645199, – 121.878756787.	36.600645199, – 121.867184688.	36.593508146, – 121.867184688.
397	36.8096651020001, – 76.311406446.	36.8288368000001, – 76.311406446.	36.8288368000001, – 76.291685476.	36.8096651020001, – 76.291685476.
398	32.384281554, – 80.685725766.	32.394141164, – 80.685725766.	32.394141164, – 80.678089804.	32.384281554, – 80.678089804.
399	33.729669684, – 118.099622184.	33.774096004, – 118.099622184.	33.774096004, – 118.041605831.	33.729669684, – 118.041605831.
400	36.5872707780001, – 121.866360531.	36.5945029280001, – 121.866360531.	36.5945029280001, – 121.851862108.	36.5872707780001, – 121.851862108.

TABLE 1 TO § 202.1401—Continued

Area ID				
401	36.2034528880001, – 115.073249953.	36.3992515790001, – 115.073249953.	36.3992515790001, – 114.91920859.	36.2034528880001, – 114.91920859.
402	36.4668551030001, – 117.094718948.	37.9076912670001, – 117.094718948.	37.9076912670001, – 115.3004082.	36.4668551030001, – 115.3004082.
403	42.919235051, – 71.671337464.	42.952654138, – 71.671337464.	42.952654138, – 71.616026331.	42.919235051, – 71.616026331.
404	39.6829375310001, – 75.600492457.	39.6923952360001, – 75.600492457.	39.6923952360001, – 75.593307553.	39.6829375310001, – 75.593307553.
405	43.10473267, – 70.797901469	43.107704771, – 70.797901469.	43.107704771, – 70.7919169979999.	43.10473267, – 70.7919169979999.
406	33.568962911, – 86.751872966.	33.57308195, – 86.751872966	33.57308195, – 86.748821474	33.568962911, – 86.748821474.
407	61.599438526, – 149.390055835.	61.606721914, – 149.390055835.	61.606721914, – 149.35973238.	61.599438526, – 149.35973238.
408	36.013579803, – 115.202476334.	36.020786485, – 115.202476334.	36.020786485, – 115.198858962.	36.013579803, – 115.198858962.
409	45.079114062, – 93.178546539.	45.108075439, – 93.178546539.	45.108075439, – 93.147375066.	45.079114062, – 93.147375066.
410	33.7189514350001, – 84.361650185.	33.7254539750001, – 84.361650185.	33.7254539750001, – 84.356222295.	33.7189514350001, – 84.356222295.
411	44.080835533, – 70.290540358.	44.094617619, – 70.290540358.	44.094617619, – 70.272902712.	44.080835533, – 70.272902712.
412	42.546251763, – 71.589424731.	42.551133712, – 71.589424731.	42.551133712, – 71.5781617369999.	42.546251763, – 71.5781617369999.
413	44.8040301450001, – 68.8467649249999.	44.8172629220001, – 68.8467649249999.	44.8172629220001, – 68.8068680369999.	44.8040301450001, – 68.8068680369999.
414	30.354065667, – 91.146045237.	30.360422127, – 91.146045237.	30.360422127, – 91.1353207689999.	30.354065667, – 91.1353207689999.
415	31.4025019330001, – 92.335343385.	31.4795765740001, – 92.335343385.	31.4795765740001, – 92.245795576.	31.4025019330001, – 92.245795576.
416	40.0877668460001, – 83.068853255.	40.0907737950001, – 83.068853255.	40.0907737950001, – 83.066002311.	40.0877668460001, – 83.066002311.
417	44.022196352, – 121.133291583.	44.029392756, – 121.133291583.	44.029392756, – 121.123271772.	44.022196352, – 121.123271772.
418	30.173439579, – 97.674627878.	30.178958121, – 97.674627878.	30.178958121, – 97.668747043.	30.173439579, – 97.668747043.
419	38.5445306760001, – 75.0682735199999.	38.5510787900001, – 75.0682735199999.	38.5510787900001, – 75.0589773919999.	38.5445306760001, – 75.0589773919999.
420	44.1016551610001, – 121.17360693.	44.3272733540001, – 121.17360693.	44.3272733540001, – 121.058161787.	44.1016551610001, – 121.058161787.
421	46.827120683, – 100.725445186.	46.832772324, – 100.725445186.	46.832772324, – 100.715045706.	46.827120683, – 100.715045706.
422	44.392304805, – 70.947124474.	44.402273905, – 70.947124474.	44.402273905, – 70.928234819.	44.392304805, – 70.928234819.
423	47.549068751, – 122.684072241.	47.556350796, – 122.684072241.	47.556350796, – 122.678571789.	47.549068751, – 122.678571789.
424	33.4426391850001, – 112.60836981.	33.4939449270001, – 112.60836981.	33.4939449270001, – 112.590831261.	33.4426391850001, – 112.590831261.
425	41.788965498, – 80.0518139389999.	41.798009108, – 80.0518139389999.	41.798009108, – 80.0425795319999.	41.788965498, – 80.0425795319999.
426	44.708559069, – 123.281143191.	44.72023512, – 123.281143191.	44.72023512, – 123.259641857.	44.708559069, – 123.259641857.
427	41.056686573, – 96.34425821	41.096850084, – 96.34425821	41.096850084, – 96.326681639.	41.056686573, – 96.326681639.
428	39.2163393430001, – 86.1037530039999.	39.3929446850001, – 86.1037530039999.	39.3929446850001, – 85.9785740709999.	39.2163393430001, – 85.9785740709999.
429	31.3661086110001, – 92.4083963209999.	31.3916242780001, – 92.4083963209999.	31.3916242780001, – 92.3608840609999.	31.3661086110001, – 92.3608840609999.
430	31.6146126890001, – 98.960277256.	31.6667772080001, – 98.960277256.	31.6667772080001, – 98.901021764.	31.6146126890001, – 98.901021764.
431	41.607753723, – 71.505549174.	41.623638419, – 71.505549174.	41.623638419, – 71.491180453.	41.607753723, – 71.491180453.
432	47.6525289910001, – 98.9417105379999.	48.0636008830001, – 98.9417105379999.	48.0636008830001, – 98.6003789309999.	47.6525289910001, – 98.6003789309999.
433	35.5952678190001, – 95.22118754.	35.7838291280001, – 95.22118754.	35.7838291280001, – 95.126697455.	35.5952678190001, – 95.126697455.
434	41.9394829350001, – 72.670901858.	41.9441994120001, – 72.670901858.	41.9441994120001, – 72.661211157.	41.9394829350001, – 72.661211157.
435	34.8124732220001, – 92.3897548209999.	34.9614877180001, – 92.3897548209999.	34.9614877180001, – 92.2396274969999.	34.8124732220001, – 92.2396274969999.
436	30.3094558060001, – 97.768694553.	30.3273409100001, – 97.768694553.	30.3273409100001, – 97.756391927.	30.3094558060001, – 97.756391927.

TABLE 1 TO § 202.1401—Continued

Area ID				
437	33.774194279, – 95.606477742.	33.832753059, – 95.606477742.	33.832753059, – 95.526066382.	33.774194279, – 95.526066382.
438	32.5353248810001, – 93.475517374.	32.5878534930001, – 93.475517374.	32.5878534930001, – 93.320012082.	32.5353248810001, – 93.320012082.
439	41.328015147, – 72.192567648.	41.334274179, – 72.192567648.	41.334274179, – 72.18300523	41.328015147, – 72.18300523.
440	43.2872218000001, – 116.090973157.	43.3084647600001, – 116.090973157.	43.3084647600001, – 116.006279152.	43.2872218000001, – 116.006279152.
441	41.5296110640001, – 83.029247488.	41.5564763520001, – 83.029247488.	41.5564763520001, – 83.011583492.	41.5296110640001, – 83.011583492.
442	44.0771040870001, – 103.272190023.	44.0820854380001, – 103.272190023.	44.0820854380001, – 103.262202287.	44.0771040870001, – 103.262202287.
443	41.1628317710001, – 81.1929117339999.	41.2310363250001, – 81.1929117339999.	41.2310363250001, – 80.97584481.	41.1628317710001, – 80.97584481.
444	46.07222877, – 94.558733336	46.331943757, – 94.558733336.	46.331943757, – 94.325692646.	46.07222877, – 94.325692646.
445	39.34839557, – 82.9650961519999.	39.360752962, – 82.9650961519999.	39.360752962, – 82.9383779209999.	39.34839557, – 82.9383779209999.
446	41.29766305, – 73.975066263	41.324571403, – 73.975066263.	41.324571403, – 73.930650098.	41.29766305, – 73.930650098.
447	30.2132250780001, – 97.335768978.	30.310193057, – 97.335768978.	30.310193057, – 97.247469425.	30.2132250780001, – 97.247469425.
448	30.310456754, – 89.821504134.	30.336315048, – 89.821504134.	30.336315048, – 89.7963621059999.	30.310456754, – 89.7963621059999.
449	43.922486604, – 90.276809935.	43.932735952, – 90.276809935.	43.932735952, – 90.261339487.	43.922486604, – 90.261339487.
450	45.4105970370001, – 122.564234834.	45.4146313790001, – 122.564234834.	45.4146313790001, – 122.546020519.	45.4105970370001, – 122.546020519.
451	30.192979226, – 91.136406361.	30.209958464, – 91.136406361.	30.209958464, – 91.120742129.	30.192979226, – 91.120742129.
452	33.671756665, – 86.017370951.	33.757794604, – 86.017370951.	33.757794604, – 85.882188551.	33.671756665, – 85.882188551.
453	40.2117159210001, – 75.432393416.	40.2164501770001, – 75.432393416.	40.2164501770001, – 75.42374491.	40.2117159210001, – 75.42374491.
454	33.6765084310001, – 89.7534024129999.	33.7542460250001, – 89.7534024129999.	33.7542460250001, – 89.6202355929999.	33.6765084310001, – 89.6202355929999.
455	39.378532207, – 79.708317675.	39.454188743, – 79.708317675.	39.454188743, – 79.639802717.	39.378532207, – 79.639802717.
456	42.27527302, – 85.3763242809999.	42.336654723, – 85.3763242809999.	42.336654723, – 85.2764495459999.	42.27527302, – 85.2764495459999.
457	34.222785926, – 84.1147041419999.	34.225953578, – 84.1147041419999.	34.225953578, – 84.1115279319999.	34.222785926, – 84.1115279319999.
458	46.8328736340001, – 92.1598417499999.	46.8345283600001, – 92.1598417499999.	46.8345283600001, – 92.1578269679999.	46.8328736340001, – 92.1578269679999.
459	43.14072293, – 115.657766227.	43.147995984, – 115.657766227.	43.147995984, – 115.647820427.	43.14072293, – 115.647820427.
460	38.949813614, – 79.985745343.	38.958420468, – 79.985745343.	38.958420468, – 79.972014372.	38.949813614, – 79.972014372.
461	31.3824479420001, – 92.317091139.	31.4098514070001, – 92.317091139.	31.4098514070001, – 92.279692875.	31.3824479420001, – 92.279692875.
462	44.4989956200001, – 73.174626073.	44.5216654230001, – 73.174626073.	44.5216654230001, – 73.151341101.	44.4989956200001, – 73.151341101.
463	33.05649478, – 111.387806148.	33.118281303, – 111.387806148.	33.118281303, – 111.318954206.	33.05649478, – 111.318954206.
464	36.276929619, – 115.061711815.	36.307014017, – 115.061711815.	36.307014017, – 115.024997297.	36.276929619, – 115.024997297.
465	36.9652916110001, – 78.019676053.	37.1220791840001, – 78.019676053.	37.1220791840001, – 77.838557255.	36.9652916110001, – 77.838557255.
466	35.177556168, – 94.342568303.	35.36254474, – 94.342568303	35.36254474, – 94.026321036	35.177556168, – 94.026321036.
467	40.3805917540001, – 76.740923494.	40.4828843550001, – 76.740923494.	40.4828843550001, – 76.526125382.	40.3805917540001, – 76.526125382.
468	33.7233962760001, – 85.799971241.	33.7412047100001, – 85.799971241.	33.7412047100001, – 85.77787227.	33.7233962760001, – 85.77787227.
469	32.8348369830001, – 98.0657312119999.	32.8906953370001, – 98.0657312119999.	32.8906953370001, – 97.9964332349999.	32.8348369830001, – 97.9964332349999.
470	32.775847904, – 97.4626718379999.	32.781682325, – 97.4626718379999.	32.781682325, – 97.4528046649999.	32.775847904, – 97.4528046649999.
471	38.1716157600001, – 84.921448944.	38.1966283680001, – 84.921448944.	38.1966283680001, – 84.894209462.	38.1716157600001, – 84.894209462.
472	18.002735849, – 66.5139236319999.	18.025884249, – 66.5139236319999.	18.025884249, – 66.4942110159999.	18.002735849, – 66.4942110159999.

TABLE 1 TO § 202.1401—Continued

Area ID				
473	21.2573388270001, – 157.811868495.	21.2696069680001, – 157.811868495.	21.2696069680001, – 157.793708924.	21.2573388270001, – 157.793708924.
474	33.910428789, – 84.5361533929999.	33.916196229, – 84.5361533929999.	33.916196229, – 84.522565546.	33.910428789, – 84.522565546.
475	40.959663633, – 98.301445179.	40.964149849, – 98.301445179.	40.964149849, – 98.296290336.	40.959663633, – 98.296290336.
476	40.515397589, – 98.298239402.	40.567785704, – 98.298239402.	40.567785704, – 98.259993615.	40.515397589, – 98.259993615.
477	13.471680227, 144.807392696	13.476445623, 144.807392696	13.476445623, 144.812949999	13.471680227, 144.812949999.
478	30.4045289490001, – 89.065284316.	30.4205257120001, – 89.065284316.	30.4205257120001, – 89.059168989.	30.4045289490001, – 89.059168989.
479	30.520223183, – 90.417497467.	30.526889408, – 90.417497467.	30.526889408, – 90.406882911.	30.520223183, – 90.406882911.
480	39.528072455, – 76.1100913129999.	39.536739552, – 76.1100913129999.	39.536739552, – 76.0982416589999.	39.528072455, – 76.0982416589999.
481	46.6059564510001, – 111.975646726.	46.6106942060001, – 111.975646726.	46.6106942060001, – 111.967693583.	46.6059564510001, – 111.967693583.
482	40.4376721520001, – 78.4170869339999.	40.4407479890001, – 78.4170869339999.	40.4407479890001, – 78.4124497679999.	40.4376721520001, – 78.4124497679999.
483	43.659487912, – 70.674869746.	43.67992728, – 70.674869746	43.67992728, – 70.654823081	43.659487912, – 70.654823081.
484	39.7424976190001, – 86.230956444.	39.7462615480001, – 86.230956444.	39.7462615480001, – 86.225390797.	39.7424976190001, – 86.225390797.
485	35.3048305680001, – 120.756679866.	35.3717978880001, – 120.756679866.	35.3717978880001, – 120.664040578.	35.3048305680001, – 120.664040578.
486	35.594877598, – 88.916399526.	35.601416549, – 88.916399526.	35.601416549, – 88.909521524.	35.594877598, – 88.909521524.
487	29.9497813040001, – 90.0120117979999.	29.9740232620001, – 90.0120117979999.	29.9740232620001, – 89.9987827089999.	29.9497813040001, – 89.9987827089999.
488	38.8833909860001, – 81.8464996549999.	38.905765642, – 81.8464996549999.	38.905765642, – 81.8170444439999.	38.8833909860001, – 81.8170444439999.
489	39.01630591, – 95.6872730109999.	39.022374526, – 95.6872730109999.	39.022374526, – 95.6797306829999.	39.01630591, – 95.6797306829999.
490	36.4178126140001, – 82.493381518.	36.4246402130001, – 82.493381518.	36.4246402130001, – 82.484291574.	36.4178126140001, – 82.484291574.
491	21.3142785630001, – 158.069986235.	21.3240454770001, – 158.069986235.	21.3240454770001, – 158.056465611.	21.3142785630001, – 158.056465611.
492	39.764279425, – 85.527190456.	39.778947386, – 85.527190456.	39.778947386, – 85.508361982.	39.764279425, – 85.508361982.
493	44.0647301270001, – 122.982252253.	44.0670417360001, – 122.982252253.	44.0670417360001, – 122.973786312.	44.0647301270001, – 122.973786312.
494	42.766389845, – 84.576207556.	42.769800145, – 84.576207556.	42.769800145, – 84.567413358.	42.766389845, – 84.567413358.
495	32.270748628, – 106.939138534.	32.280280019, – 106.939138534.	32.280280019, – 106.930519974.	32.270748628, – 106.930519974.
496	40.2658142980001, – 74.748095306.	40.2734112650001, – 74.748095306.	40.2734112650001, – 74.740257715.	40.2658142980001, – 74.740257715.
497	35.0150424290001, – 97.239011654.	35.0295356340001, – 97.239011654.	35.0295356340001, – 97.223711786.	35.0150424290001, – 97.223711786.
498	40.8356006820001, – 96.758767006.	40.8404020610001, – 96.758767006.	40.8404020610001, – 96.749174181.	40.8356006820001, – 96.749174181.
499	33.7812372280001, – 118.067627933.	33.8016134000001, – 118.067627933.	33.8016134000001, – 118.032767969.	33.7812372280001, – 118.032767969.
500	32.8597198360001, – 83.6073436619999.	32.8630748340001, – 83.6073436619999.	32.8630748340001, – 83.6039690959999.	32.8597198360001, – 83.6039690959999.
501	39.636663701, – 92.534704178.	39.721017576, – 92.534704178.	39.721017576, – 92.464676968.	39.636663701, – 92.464676968.
502	41.267041534, – 88.7046910729999.	41.305913573, – 88.7046910729999.	41.305913573, – 88.6608137729999.	41.267041534, – 88.6608137729999.
503	29.426494618, – 98.3843199139999.	29.437625079, – 98.3843199139999.	29.437625079, – 98.3746227379999.	29.426494618, – 98.3746227379999.
504	39.6487077620001, – 81.847046613.	39.6734994180001, – 81.847046613.	39.6734994180001, – 81.831592537.	39.6487077620001, – 81.831592537.
505	44.9048285740001, – 123.003047071.	44.9170262920001, – 123.003047071.	44.9170262920001, – 122.995194144.	44.9048285740001, – 122.995194144.
506	41.1829986970001, – 96.49160163.	41.2049128990001, – 96.49160163.	41.2049128990001, – 96.425755553.	41.1829986970001, – 96.425755553.
507	43.7601885300001, – 98.047917175.	43.7638707560001, – 98.047917175.	43.7638707560001, – 98.039102093.	43.7601885300001, – 98.039102093.
508	32.4031817050001, – 86.263631114.	32.4082452810001, – 86.263631114.	32.4082452810001, – 86.2557011.	32.4031817050001, – 86.2557011.

TABLE 1 TO § 202.1401—Continued

Area ID				
509	36.1649285010001, – 78.833628877.	36.2232305700001, – 78.833628877.	36.2232305700001, – 78.75963967.	36.1649285010001, – 78.75963967.
510	37.81235573, – 94.3097107569999.	37.828354979, – 94.3097107569999.	37.828354979, – 94.2731087829999.	37.81235573, – 94.2731087829999.
511	36.7579974450001, – 94.387727354.	36.8328900980001, – 94.387727354.	36.8328900980001, – 94.326852463.	36.7579974450001, – 94.326852463.
512	42.5267790020001, – 71.08203514.	42.5603767370001, – 71.08203514.	42.5603767370001, – 71.063291358.	42.5267790020001, – 71.063291358.
513	39.4912259380001, – 76.8607346809999.	39.5046787930001, – 76.8607346809999.	39.5046787930001, – 76.8318924949999.	39.4912259380001, – 76.8318924949999.
514	46.1080148720001, – 123.964495138.	46.1501140200001, – 123.964495138.	46.1501140200001, – 123.92502133.	46.1080148720001, – 123.92502133.
515	17.9872158480001, – 66.333706182.	18.0695436220001, – 66.333706182.	18.0695436220001, – 66.240579825.	17.9872158480001, – 66.240579825.
516	33.780577163, – 82.2952040439999.	33.807394959, – 82.2952040439999.	33.807394959, – 82.26292394	33.780577163, – 82.26292394.
517	46.6005921770001, – 112.190250013.	46.6592451280001, – 112.190250013.	46.6592451280001, – 112.094472322.	46.6005921770001, – 112.094472322.
518	39.423596381, – 76.51081268	39.439023401, – 76.51081268	39.439023401, – 76.496156333.	39.423596381, – 76.496156333.
519	46.220510372, – 111.635118944.	46.337394743, – 111.635118944.	46.337394743, – 111.504109039.	46.220510372, – 111.504109039.
520	42.1437413450001, – 104.948278987.	42.4788211760001, – 104.948278987.	42.4788211760001, – 104.703889369.	42.1437413450001, – 104.703889369.
521	35.656031539, – 95.375341077.	35.664828514, – 95.375341077.	35.664828514, – 95.369972431.	35.656031539, – 95.369972431.
522	36.0958233040001, – 86.7615681459999.	36.1023428190001, – 86.7615681459999.	36.1023428190001, – 86.7562354.	36.0958233040001, – 86.7562354.
523	40.9786701780001, – 80.325759923.	40.9800945050001, – 80.325759923.	40.9800945050001, – 80.323839076.	40.9786701780001, – 80.323839076.
524	35.2622862810001, – 97.4851407689999.	35.2681205800001, – 97.4851407689999.	35.2681205800001, – 97.4768490759999.	35.2622862810001, – 97.4768490759999.
525	33.6157453390001, – 84.3128273029999.	33.6193347170001, – 84.3128273029999.	33.6193347170001, – 84.3074772369999.	33.6157453390001, – 84.3074772369999.
526	33.4618850200001, – 111.969623276.	33.4727567890001, – 111.969623276.	33.4727567890001, – 111.952212294.	33.4618850200001, – 111.952212294.
527	32.6578846960001, – 111.495190228.	32.6688813430001, – 111.495190228.	32.6688813430001, – 111.481955968.	32.6578846960001, – 111.481955968.
528	35.804791455, – 78.715406802.	35.81355058, – 78.715406802	35.81355058, – 78.707216709	35.804791455, – 78.707216709.
529	39.8002476090001, – 82.9570252779999.	39.8098625370001, – 82.9570252779999.	39.8098625370001, – 82.94567622.	39.8002476090001, – 82.94567622.
530	35.3683435470001, – 106.65493619.	35.3777845520001, – 106.65493619.	35.3777845520001, – 106.648878128.	35.3683435470001, – 106.648878128.
531	39.627394171, – 75.6147487649999.	39.639382105, – 75.6147487649999.	39.639382105, – 75.6006753489999.	39.627394171, – 75.6006753489999.
532	43.9963073710001, – 92.433533997.	43.9977499120001, – 92.433533997.	43.9977499120001, – 92.428949024.	43.9963073710001, – 92.428949024.
533	44.7463851480001, – 93.12881708.	44.7488195410001, – 93.12881708.	44.7488195410001, – 93.125978095.	44.7463851480001, – 93.125978095.
534	32.284284584, – 86.3990584479999.	32.295043619, – 86.3990584479999.	32.295043619, – 86.392323549.	32.284284584, – 86.392323549.
535	32.847954014, – 97.3530685539999.	32.861579522, – 97.3530685539999.	32.861579522, – 97.3432426939999.	32.847954014, – 97.3432426939999.
536	37.030464438, – 113.549169301.	37.037578732, – 113.549169301.	37.037578732, – 113.544639	37.030464438, – 113.544639.
537	38.7817203050001, – 97.642976177.	38.7897490390001, – 97.642976177.	38.7897490390001, – 97.633242512.	38.7817203050001, – 97.633242512.
538	37.49085725, – 77.3171608389999.	37.498350787, – 77.3171608389999.	37.498350787, – 77.3077128829999.	37.49085725, – 77.3077128829999.
539	35.5622835610001, – 106.10286838.	35.5754168170001, – 106.10286838.	35.5754168170001, – 106.071788538.	35.5622835610001, – 106.071788538.
540	40.1177429000001, – 74.044914025.	40.1299027480001, – 74.044914025.	40.1299027480001, – 74.030081087.	40.1177429000001, – 74.030081087.
541	39.576923987, – 85.816200007.	39.580378098, – 85.816200007.	39.580378098, – 85.807738311.	39.576923987, – 85.807738311.
542	32.519546491, – 111.340100133.	32.527987523, – 111.340100133.	32.527987523, – 111.325196238.	32.519546491, – 111.325196238.
543	43.5730602740001, – 96.6930749859999.	43.5983048400001, – 96.6930749859999.	43.5983048400001, – 96.6759672029999.	43.5730602740001, – 96.6759672029999.
544	25.9569713660001, – 80.31070355.	25.9681289730001, – 80.31070355.	25.9681289730001, – 80.298558922.	25.9569713660001, – 80.298558922.

TABLE 1 TO § 202.1401—Continued

Area ID				
545	38.131120233, – 89.745599204.	38.190313565, – 89.745599204.	38.190313565, – 89.703313722.	38.131120233, – 89.703313722.
546	40.1880831510001, – 75.561069736.	40.1918052850001, – 75.561069736.	40.1918052850001, – 75.552580986.	40.1880831510001, – 75.552580986.
547	39.8160693520001, – 89.673473292.	39.8306927080001, – 89.673473292.	39.8306927080001, – 89.664369884.	39.8160693520001, – 89.664369884.
548	37.2490490960001, – 93.395772062.	37.2571610570001, – 93.395772062.	37.2571610570001, – 93.384982394.	37.2490490960001, – 93.384982394.
549	45.5372774640001, – 94.060060866.	45.5419761270001, – 94.060060866.	45.5419761270001, – 94.051145099.	45.5372774640001, – 94.051145099.
550	45.5645070200001, – 94.179496597.	45.5652420030001, – 94.179496597.	45.5652420030001, – 94.175345802.	45.5645070200001, – 94.175345802.
551	36.8110053980001, – 75.9894743689999.	36.8227442360001, – 75.9894743689999.	36.8227442360001, – 75.9659250589999.	36.8110053980001, – 75.9659250589999.
552	41.3451753470001, – 72.293373883.	41.3813569730001, – 72.293373883.	41.3813569730001, – 72.253317667.	41.3451753470001, – 72.253317667.
553	36.285694226, – 95.309758124.	36.300130892, – 95.309758124.	36.300130892, – 95.278470963.	36.285694226, – 95.278470963.
554	43.2708696780001, – 71.1288204539999.	43.2848092560001, – 71.1288204539999.	43.2848092560001, – 71.1155219099999.	43.2708696780001, – 71.1155219099999.
555	44.4965394450001, – 73.168838485.	44.5034995140001, – 73.168838485.	44.5034995140001, – 73.160140825.	44.4965394450001, – 73.160140825.
556	44.442952367, – 72.960320316.	44.500157333, – 72.960320316.	44.500157333, – 72.836710736.	44.442952367, – 72.836710736.
557	38.546453582, – 92.080098162.	38.556080633, – 92.080098162.	38.556080633, – 92.055385571.	38.546453582, – 92.055385571.
558	19.696784098, – 155.052848025.	19.715068265, – 155.052848025.	19.715068265, – 155.023635733.	19.696784098, – 155.023635733.
559	36.8796769900001, – 90.310798339.	36.9046015270001, – 90.310798339.	36.9046015270001, – 90.255783907.	36.8796769900001, – 90.255783907.
560	39.441791832, – 79.6837218599999.	39.464465755, – 79.6837218599999.	39.464465755, – 79.6475069149999.	39.441791832, – 79.6475069149999.
561	34.9067538520001, – 85.070727678.	34.9506642170001, – 85.070727678.	34.9506642170001, – 85.045031881.	34.9067538520001, – 85.045031881.
562	35.814732012, – 88.7542933719999.	35.923989023, – 88.7542933719999.	35.923989023, – 88.6437411839999.	35.814732012, – 88.6437411839999.
563	36.006276454, – 86.516501852.	36.027518046, – 86.516501852.	36.027518046, – 86.492335009.	36.006276454, – 86.492335009.
564	44.067527784, – 103.325214534.	44.0784787400001, – 103.325214534.	44.0784787400001, – 103.287313773.	44.067527784, – 103.287313773.
565	43.0833898060001, – 72.4562338169999.	43.0889316040001, – 72.4562338169999.	43.0889316040001, – 72.4474520169999.	43.0833898060001, – 72.4474520169999.
566	37.2459669690001, – 87.264708566.	37.3155568590001, – 87.264708566.	37.3155568590001, – 87.143105234.	37.2459669690001, – 87.143105234.
567	39.3487643610001, – 81.448406511.	39.3590411380001, – 81.448406511.	39.3590411380001, – 81.437125672.	39.3487643610001, – 81.437125672.
568	43.230983715, – 78.987693814.	43.244098627, – 78.987693814.	43.244098627, – 78.957641634.	43.230983715, – 78.957641634.
569	38.414110285, – 90.4008158519999.	38.51933631, – 90.4008158519999.	38.51933631, – 89.8873624389999.	38.414110285, – 89.8873624389999.
570	43.1058774480001, – 78.9722862359999.	43.1213964380001, – 78.9722862359999.	43.1213964380001, – 78.9269798539999.	43.1058774480001, – 78.9269798539999.
571	38.8465829040001, – 76.9406129989999.	38.8511023340001, – 76.9406129989999.	38.8511023340001, – 76.9338436309999.	38.8465829040001, – 76.9338436309999.
572	36.799812242, – 76.299262352.	36.806581273, – 76.299262352.	36.806581273, – 76.291663588.	36.799812242, – 76.291663588.
573	36.824516203, – 76.2911109619999.	36.82654125, – 76.2911109619999.	36.82654125, – 76.2870895149999.	36.824516203, – 76.2870895149999.
574	31.0389879680001, – 87.076766692.	31.0572498550001, – 87.076766692.	31.0572498550001, – 87.053283792.	31.0389879680001, – 87.053283792.
575	30.486569113, – 86.966743959.	30.523283452, – 86.966743959.	30.523283452, – 86.940434633.	30.486569113, – 86.940434633.
576	31.4033835660001, – 87.057347927.	31.4251772980001, – 87.057347927.	31.4251772980001, – 87.022039826.	31.4033835660001, – 87.022039826.
577	30.417555556, – 86.9026103099999.	30.432862018, – 86.9026103099999.	30.432862018, – 86.8837180249999.	30.417555556, – 86.8837180249999.
578	30.599791442, – 86.950876547.	30.619098213, – 86.950876547.	30.619098213, – 86.9265002429999.	30.599791442, – 86.9265002429999.
579	30.5546267450001, – 87.8164634139999.	30.5687059560001, – 87.8164634139999.	30.5687059560001, – 87.8015463849999.	30.5546267450001, – 87.8015463849999.
580	30.617963515, – 87.148395847.	30.632703528, – 87.148395847.	30.632703528, – 87.131141293.	30.617963515, – 87.131141293.

TABLE 1 TO § 202.1401—Continued

Area ID				
581	30.499075884, – 87.6626447849999.	30.520323757, – 87.6626447849999.	30.520323757, – 87.6311911829999.	30.499075884, – 87.6311911829999.
582	30.338386572, – 87.5495986079999.	30.351971261, – 87.5495986079999.	30.351971261, – 87.5332728869999.	30.338386572, – 87.5332728869999.
583	35.3381397860001, – 89.875828209.	35.3503400000001, – 89.875828209.	35.3503400000001, – 89.848676466.	35.3381397860001, – 89.848676466.
584	36.535830635, – 76.292027831.	36.580439287, – 76.292027831.	36.580439287, – 76.243039727.	36.535830635, – 76.243039727.
585	33.891359251, – 118.072946629.	33.894991619, – 118.072946629.	33.894991619, – 118.067394654.	33.891359251, – 118.067394654.
586	38.3285014350001, – 76.4841629759999.	38.3442330700001, – 76.4841629759999.	38.3442330700001, – 76.4639193759999.	38.3285014350001, – 76.4639193759999.
587	43.077684909, – 73.823802707.	43.082196982, – 73.823802707.	43.082196982, – 73.818216923.	43.077684909, – 73.818216923.
588	18.4266523270001, – 66.188700669.	18.4276186450001, – 66.188700669.	18.4276186450001, – 66.187788338.	18.4266523270001, – 66.187788338.
589	35.086256399, – 90.1438097929999.	35.090263498, – 90.1438097929999.	35.090263498, – 90.138466962.	35.086256399, – 90.138466962.
590	42.4740966470001, – 71.292022302.	42.4801271500001, – 71.292022302.	42.4801271500001, – 71.286586841.	42.4740966470001, – 71.286586841.
591	41.0982621430001, – 95.9280611469999.	41.1364452900001, – 95.9280611469999.	41.1364452900001, – 95.8780365989999.	41.0982621430001, – 95.8780365989999.
592	32.7452306660001, – 117.200217282.	32.7528565660001, – 117.200217282.	32.7528565660001, – 117.192605845.	32.7452306660001, – 117.192605845.
593	32.783231948, – 88.8532491779999.	32.814254912, – 88.8532491779999.	32.814254912, – 88.8124127399999.	32.783231948, – 88.8124127399999.
594	30.37231968, – 87.429057305	30.394059181, – 87.429057305.	30.394059181, – 87.396697185.	30.37231968, – 87.396697185.
595	48.1708872200001, – 122.648186576.	48.2120255960001, – 122.648186576.	48.2120255960001, – 122.615173447.	48.1708872200001, – 122.615173447.
596	30.338350216, – 81.889129182.	30.377897748, – 81.889129182.	30.377897748, – 81.84492402	30.338350216, – 81.84492402.
597	70.488162834, – 149.926235024.	70.509905742, – 149.926235024.	70.509905742, – 149.855544128.	70.488162834, – 149.855544128.
598	43.098523582, – 116.31428757.	43.37173967, – 116.31428757	43.37173967, – 115.957075202.	43.098523582, – 115.957075202.
599	38.0231563570001, – 122.170412652.	38.0284346090001, – 122.170412652.	38.0284346090001, – 122.162692799.	38.0231563570001, – 122.162692799.
600	21.979075729, – 159.787895529.	22.073530219, – 159.787895529.	22.073530219, – 159.750843749.	21.979075729, – 159.750843749.
601	37.709457716, – 121.91515472.	37.747451286, – 121.91515472.	37.747451286, – 121.871676143.	37.709457716, – 121.871676143.
602	28.2124892410001, – 80.6189925959999.	28.2719774110001, – 80.6189925959999.	28.2719774110001, – 80.5967212699999.	28.2124892410001, – 80.5967212699999.
603	21.3812730710001, – 157.972837384.	21.3857579590001, – 157.972837384.	21.3857579590001, – 157.969830103.	21.3812730710001, – 157.969830103.
604	43.0830098340001, – 70.8265315799999.	43.095680228, – 70.8265315799999.	43.095680228, – 70.8118178159999.	43.0830098340001, – 70.8118178159999.
605	38.8665872170001, – 77.06187689.	38.8804333410001, – 77.06187689.	38.8804333410001, – 77.0457741439999.	38.8665872170001, – 77.0457741439999.
606	38.805877954, – 104.720171001.	38.838836254, – 104.720171001.	38.838836254, – 104.673427575.	38.805877954, – 104.673427575.
607	40.9140682660001, – 74.590780383.	40.9956152640001, – 74.590780383.	40.9956152640001, – 74.494014259.	40.9140682660001, – 74.494014259.
608	18.26752057, – 65.759072139	18.26922761, – 65.759072139	18.26922761, – 65.757502273	18.26752057, – 65.757502273.
609	37.495160689, – 122.500638613.	37.504255663, – 122.500638613.	37.504255663, – 122.494186302.	37.495160689, – 122.494186302.
610	34.2702027120001, – 92.13996888.	34.3785932240001, – 92.13996888.	34.3785932240001, – 92.033468658.	34.2702027120001, – 92.033468658.
611	18.2467234310001, – 65.600381523.	18.2570859030001, – 65.600381523.	18.2570859030001, – 65.5822592889999.	18.2467234310001, – 65.5822592889999.
612	37.339590329, – 104.173059108.	37.644554428, – 104.173059108.	37.644554428, – 103.576450075.	37.339590329, – 103.576450075.
613	40.489967456, – 80.215160815.	40.497923194, – 80.215160815.	40.497923194, – 80.205677052.	40.489967456, – 80.205677052.
614	40.4899753650001, – 80.215361211.	40.4979311050001, – 80.215361211.	40.4979311050001, – 80.205680084.	40.4899753650001, – 80.205680084.
615	19.580002141, – 155.753584385.	19.935340889, – 155.753584385.	19.935340889, – 155.482149063.	19.580002141, – 155.482149063.
616	33.737668318, – 80.5168304859999.	33.849728431, – 80.5168304859999.	33.849728431, – 80.4450008049999.	33.737668318, – 80.4450008049999.

TABLE 1 TO § 202.1401—Continued

Area ID				
617	38.887515787, – 123.552272552.	38.895551718, – 123.552272552.	38.895551718, – 123.538718114.	38.887515787, – 123.538718114.
618	71.323665191, – 156.649567453.	71.336534761, – 156.649567453.	71.336534761, – 156.601540334.	71.323665191, – 156.601540334.
619	45.57436111, – 122.604832246.	45.583315392, – 122.604832246.	45.583315392, – 122.585382407.	45.57436111, – 122.585382407.
620	42.9087822710001, – 71.4221747879999.	43.0870732990001, – 71.4221747879999.	43.0870732990001, – 70.722436956.	42.9087822710001, – 70.722436956.
621	36.594597106, – 121.926941695.	36.608467628, – 121.926941695.	36.608467628, – 121.894607972.	36.594597106, – 121.894607972.
622	38.263930139, – 104.386297178.	38.360999196, – 104.386297178.	38.360999196, – 104.275724057.	38.263930139, – 104.275724057.
623	38.290060253, – 77.0671300829999.	38.31683736, – 77.0671300829999.	38.31683736, – 77.0170631189999.	38.290060253, – 77.0170631189999.
624	21.3139823400001, – 157.992793478.	21.3226045200001, – 157.992793478.	21.3226045200001, – 157.982066252.	21.3139823400001, – 157.982066252.
625	41.5907533440001, – 71.42348666.	41.6007626130001, – 71.42348666.	41.6007626130001, – 71.41187911.	41.5907533440001, – 71.41187911.
626	37.163382287, – 80.5791188709999.	37.207412609, – 80.5791188709999.	37.207412609, – 80.5101282629999.	37.163382287, – 80.5101282629999.
627	18.5087916470001, – 67.099861576.	18.5101598370001, – 67.099861576.	18.5101598370001, – 67.098621282.	18.5087916470001, – 67.098621282.
628	33.397278645, – 94.4116859869999.	33.464838472, – 94.4116859869999.	33.464838472, – 94.3047919909999.	33.397278645, – 94.3047919909999.
629	44.9551877580001, – 70.513638005.	45.0169721250001, – 70.513638005.	45.0169721250001, – 70.379987151.	44.9551877580001, – 70.379987151.
630	34.550284843, – 86.7237782349999.	34.710900354, – 86.7237782349999.	34.710900354, – 86.5815630549999.	34.550284843, – 86.5815630549999.
631	39.4978523080001, – 119.778804811.	39.5024544730001, – 119.778804811.	39.5024544730001, – 119.771926612.	39.4978523080001, – 119.771926612.
632	39.806889794, – 82.949783742.	39.819444408, – 82.949783742.	39.819444408, – 82.937417355.	39.806889794, – 82.937417355.
633	38.1508457090001, – 78.418005901.	38.1586875990001, – 78.418005901.	38.1586875990001, – 78.409329548.	38.1508457090001, – 78.409329548.
634	37.7110124880001, – 120.921809782.	37.7227924600001, – 120.921809782.	37.7227924600001, – 120.9168393.	37.7110124880001, – 120.9168393.
635	32.5734846130001, – 83.613041736.	32.6644753900001, – 83.613041736.	32.6644753900001, – 83.555394419.	32.5734846130001, – 83.555394419.
636	41.5101975790001, – 90.566624136.	41.5236820390001, – 90.566624136.	41.5236820390001, – 90.515679261.	41.5101975790001, – 90.515679261.
637	39.816797712, – 104.880637268.	39.895272909, – 104.880637268.	39.895272909, – 104.796958344.	39.816797712, – 104.796958344.
638	61.756264087, – 166.062507434.	61.799913075, – 166.062507434.	61.799913075, – 165.913701567.	61.756264087, – 165.913701567.
639	43.2183336890001, – 75.415282906.	43.2263537340001, – 75.415282906.	43.2263537340001, – 75.407014028.	43.2183336890001, – 75.407014028.
640	39.762626991, – 94.904952104.	39.769793541, – 94.904952104.	39.769793541, – 94.897835881.	39.762626991, – 94.897835881.
641	31.3342942350001, – 86.0977289259999.	31.3453725330001, – 86.0977289259999.	31.3453725330001, – 86.085558079.	31.3342942350001, – 86.085558079.
642	40.7838318330001, – 111.959489583.	40.7949147800001, – 111.959489583.	40.7949147800001, – 111.953751907.	40.7838318330001, – 111.953751907.
643	32.8003673640001, – 118.606292107.	33.0377362220001, – 118.606292107.	33.0377362220001, – 118.348994062.	32.8003673640001, – 118.348994062.
644	33.2121599560001, – 119.582134532.	33.29062044, – 119.582134532.	33.29062044, – 119.418213784.	33.2121599560001, – 119.418213784.
645	33.7662733170001, – 118.309268541.	33.7813000720001, – 118.309268541.	33.7813000720001, – 118.293960351.	33.7662733170001, – 118.293960351.
646	33.991029047, – 119.635878529.	33.997444378, – 119.635878529.	33.997444378, – 119.625797527.	33.991029047, – 119.625797527.
647	30.458179069, – 87.351595059.	30.481667064, – 87.351595059.	30.481667064, – 87.33104122	30.458179069, – 87.33104122.
648	42.1757726720001, – 90.4077834729999.	42.284196191, – 90.4077834729999.	42.284196191, – 90.2282601739999.	42.1757726720001, – 90.2282601739999.
649	32.119801635, – 81.1976294959999.	32.13505162, – 81.1976294959999.	32.13505162, – 81.1837630719999.	32.119801635, – 81.1837630719999.
650	42.5925001000001, – 115.678838723.	42.8511848830001, – 115.678838723.	42.8511848830001, – 115.453730372.	42.5925001000001, – 115.453730372.
651	42.8436851000001, – 73.932567765.	42.8583933770001, – 73.932567765.	42.8583933770001, – 73.917508999.	42.8436851000001, – 73.917508999.
652	38.7843530810001, – 104.551986183.	38.8241032480001, – 104.551986183.	38.8241032480001, – 104.48867271.	38.7843530810001, – 104.48867271.

TABLE 1 TO § 202.1401—Continued

Area ID				
653	38.524439918, – 89.882877352.	38.558372905, – 89.882877352.	38.558372905, – 89.822791153.	38.524439918, – 89.822791153.
654	41.402655098, – 75.6679100109999.	41.405858099, – 75.6679100109999.	41.405858099, – 75.6641420559999.	41.402655098, – 75.6641420559999.
655	36.9172616480001, – 76.320386974.	36.9234795100001, – 76.320386974.	36.9234795100001, – 76.310890414.	36.9172616480001, – 76.310890414.
656	48.26740571, – 122.645903557.	48.3084303770001, – 122.645903557.	48.3084303770001, – 122.555529232.	48.26740571, – 122.555529232.
657	42.5944000000001, – 82.8511999999999.	42.6303400000001, – 82.8511999999999.	42.6303400000001, – 82.8038799999999.	42.5944000000001, – 82.8038799999999.
658	36.237894413, – 119.894821285.	36.250497998, – 119.894821285.	36.250497998, – 119.869682611.	36.237894413, – 119.869682611.
659	60.1318770720001, – 149.434449035.	60.1347511870001, – 149.434449035.	60.1347511870001, – 149.431802327.	60.1318770720001, – 149.431802327.
660	35.3214638170001, – 77.997073351.	35.368940398, – 77.997073351.	35.368940398, – 77.930639313.	35.3214638170001, – 77.930639313.
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Dated: December 26, 2024.

Matthew G. Olsen,*Assistant Attorney General for National
Security, U.S. Department of Justice.*

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Part IV

Department of Housing and Urban Development

Common Application, Waivers, and Alternative Requirements for
Community Development Block Grant Disaster Recovery Grantees: The
Universal Notice; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6489-N-01]

Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees: The Universal Notice

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice contains a preamble and the *Community Development Block Grant Disaster Recovery Universal Notice: Waivers and Alternative Requirements* (the “Universal Notice”). The Universal Notice describes the processes, procedures, timelines, waivers, and alternative requirements that U.S. Department of Housing and Urban Development (HUD) intends to implement with each allocation of Community Development Block Grant Disaster Recovery (CDBG–DR) funding after a qualifying presidential disaster declaration. Specifically, following the appropriation of CDBG–DR funds for qualifying disasters, HUD will publish an Allocation Announcement Notice in the **Federal Register** that incorporates, via cross-reference, the waivers and alternative requirements provided in the Universal Notice, as appropriate, along with any other new requirements imposed by the specific appropriation. This notice also describes the grant award process, pre-award certification submissions, criteria for Action Plan approval, and eligible disaster recovery activities to streamline post-disaster processes for future grantees. By publishing the Universal Notice, HUD intends to provide grantees and the public with increased transparency, consistency, and more timely access to CDBG–DR funds, helping to minimize program delays and accelerate recovery.

DATES: *Applicability Date:* January 13, 2025.

FOR FURTHER INFORMATION CONTACT:

Tennille Parker, Director, Office of Disaster Recovery (ODR), HUD, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202–708–3587 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications->

relay-service-trs. Email inquiries may be sent to Disaster_Recovery@hud.gov.

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Preamble

Purpose and Policy Objectives

HUD has developed this preamble and the Universal Notice, to assist States, local governments, Indian Tribes, CDBG–DR subrecipients, and the public in planning for the award of CDBG–DR funds. Because not all the requirements in the Universal Notice are appropriate or applicable to Indian Tribes, HUD will publish an Addendum to the Universal Notice at a later date to establish requirements that will apply when Indian Tribes receive a CDBG–DR grant directly from HUD. This process will allow HUD to ensure that the requirements imposed are fair and consistent with the Indian Community Development Block Grant (ICDBG) Program.

In December 2022, HUD published a Request for Information (RFI) for HUD’s Community Development Block Grant Disaster Recovery (CDBG–DR) Rules,

Waivers, and Alternative Requirements (FR–6336–N–01)¹ seeking public input to strengthen and improve CDBG–DR requirements. Based on the feedback received through the RFI,² HUD is establishing a revised process for CDBG–DR grants for qualifying disasters whereby HUD will incorporate applicable provisions of the Universal Notice, to the extent they are consistent with future appropriations acts, in a **Federal Register** notice that announces allocations of the appropriated CDBG–DR funds (the “Allocation Announcement Notice”). The Allocation Announcement Notice (AAN) will impose the waivers and alternative requirements of the Universal Notice for the subject CDBG–DR grants. The AAN will also add or modify requirements of the Universal Notice as necessary to comply with statutory provisions.

The Universal Notice has no legal effect on a CDBG–DR grant until funds are appropriated by Congress and the appropriation authorizes the HUD Secretary to waive or specify alternative requirements for the assistance, and the AAN that incorporates appropriate provisions of the Universal Notice is published by the Department and goes into effect. HUD will make the required findings in support of the waivers and alternative requirements incorporated into and made effective through AANs contemporaneously with the publication of each AAN. Because the Universal Notice has no legal effect on its own but rather requires authority provided by Congress through enacting special disaster appropriations and contemporaneous publication of an AAN by HUD, this is being published as a notice and is not a rulemaking.

The Universal Notice is designed to inform potential CDBG–DR grantees and other stakeholders about each phase of the CDBG–DR grant process, including but not limited to, pre-award grantee submissions; grantee steps and timelines; and Action Plan development, submittal, and implementation.

Through the Universal Notice, HUD seeks to:

- Outline a comprehensive and uniform set of waivers and alternative requirements that HUD intends to apply to govern future allocations of CDBG–DR funds, including all timelines, documentation, and other requirements

¹ View the request for information notice (FR–6336–N–01) here: <https://www.govinfo.gov/content/pkg/FR-2022-12-20/pdf/2022-27547.pdf>.

² View a summary of the comments received, and HUD’s responses here: https://www.hud.gov/program_offices/comm_planning/cdbg-dr/universal_notice_grantees.

for pre-award grantee submission to reduce the administrative burden for future CDBG–DR grantees and assigned HUD Community Planning and Development (CPD) staff member (*e.g.*, CPD Representative, CPD Specialist, etc. . . .);

- Encourage intentional and early coordination between CDBG–DR grantees; other agencies/departments at the Federal, State, or local level; and other regional or local planning efforts to better align disaster recovery assistance and projects with the goals of regional redevelopment plans, resilience plans, long-term recovery plans, and State and local Hazard Mitigation Plans (HMP);

- Increase awareness of the availability of disaster recovery assistance and advance fair disaster recovery outcomes, including community engagement efforts and pre-disaster planning for targeted assistance to historically marginalized groups that can be adversely affected by disasters that often exacerbate inequalities for residents of underserved communities, members of protected classes under fair housing and civil rights laws, and vulnerable populations; and

- Improve long-term community resilience by fully integrating resilience planning and hazard mitigation activities into disaster recovery to reduce the impacts of a changing climate and future disasters, encourage green recovery efforts (focusing on healthier water and air, and effective debris and waste management), address environmental justice concerns associated with disaster recovery efforts, and address recovery needs for accessible, resilient, and affordable housing for low- and moderate-income persons.

Management and Oversight

Prior to accessing CDBG–DR funding, grantees must demonstrate that they have the capacity to administer funds in a compliant manner as described by the Universal Notice. Consistent with 2 CFR 200.206(b) of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Requirements), HUD will evaluate each CDBG–DR grantee's capacity to effectively manage its funds through a review of its pre-award submissions as provided in section II. of the Universal Notice, which includes the grantee's submissions in response to the Financial Management and Grant Compliance Certification Requirements in section II.A.1. of the Universal Notice.

Authority To Grant Waivers

CDBG–DR grants are generally subject to CDBG regulations outlined in 24 CFR part 570.³ The appropriations acts (*i.e.*, public laws) that provide CDBG–DR funds typically allow the Secretary to waive requirements or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the grantee of CDBG–DR funds. Generally, the appropriations acts specify that there are four types of requirements that the Secretary cannot waive under that authority, these include fair housing, nondiscrimination, labor standards, and the environment. However, HUD may also exercise its regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5.⁴

The waivers and alternative requirements in the Universal Notice draw from HUD's knowledge of the needs of grantees, public feedback, and HUD's previously established waivers and alternative requirements and the determinations by the Secretary regarding good cause and consistency with the overall purposes of title I of the HCDA that supported the waivers and alternative requirements. Historically, HUD has established waivers and alternative requirements based on findings of good cause that they provided additional flexibility to grantees in program design and implementation, supported a full and swift recovery from the most devastating disasters, and streamlined administrative requirements that would otherwise increase the time it takes for disaster funds to reach those most in need.

Unless otherwise provided, HUD intends to make these same findings of good cause when the waivers and alternative requirements in the Universal Notice are incorporated into and made effective through later AANs. HUD will provide a statement regarding the Secretary's finding of good cause and consistency with the purpose of title I of the HCDA, or such other applicable standard, in each AAN. If HUD's findings of good cause differ on certain waivers or alternative requirements from the findings identified in this Universal Notice, HUD will include the updated findings in

³ View 24 CFR part 570—Community Development Block Grants Regulations here: <https://www.ecfr.gov/current/title-24/subtitle-B/chapter-V/subchapter-C/part-570>.

⁴ View HUD's policy concerning the procedures that govern the waiver of regulations and directives issued by HUD here: <https://www.govinfo.gov/content/pkg/FR-2024-08-06/pdf/2024-17034.pdf>.

support of those waivers and alternative requirements in the AAN. CDBG–DR activities will be governed by the regulations cited in the requirements of this notice, as incorporated in the applicable AAN, as may be amended.

Grantees who have received previous allocations of CDBG–DR funds must follow the requirements outlined in their applicable **Federal Register** notice(s). However, any CDBG–DR grantee may request waivers and alternative requirements to better align requirements across grants, as long as good cause is provided. In addition, the waivers and alternative requirements herein do not apply to funds provided under the annual State or Entitlement CDBG programs or those provided under any other component of the CDBG program, such as the Section 108 Loan Guarantee Program.

After Congress appropriates CDBG–DR funds and HUD announces the allocations, grantees may request that HUD grant additional waivers and alternative requirements to address specific needs related to their recovery activities. Waiver requests must be accompanied by supporting data and must be submitted to the assigned HUD CPD staff member and to the ODR mailbox at Disaster_Recovery@hud.gov. HUD will aim to publish grantee-specific waivers and alternative requirements at least quarterly in the **Federal Register** or on HUD's website. Grantees may consult with their assigned HUD CPD staff member for anticipated **Federal Register** publication timelines ahead of any waiver request submittal.

Overview of Grant Life Cycle

To begin expending CDBG–DR funds, the following expedited steps are necessary as broken out by each phase:

- (1) *Phase One: The Action Plan*
 - a. Grantee follows its citizen participation plan for disaster recovery (I.C.2.).
 - i. Grantee consults with stakeholders, including all required consultations (I.C.2.a.).
 - ii. Grantee publishes its Action Plan on its website for no less than 30 calendar days to solicit public comment (I.C.2.b.).
 - iii. Grantee responds to public comments and incorporates feedback into its Action Plan.
 - b. Grantee submits its Action Plan (including the SF–424, SF–424B and SF–424D, as applicable) within 90 calendar days from the applicability date of the AAN (I.C.3.).
 - c. Grantee requests and receives Disaster Recovery Grant Reporting (DRGR) system access (if the grantee

does not already have DRGR access) and may enter activities into the DRGR system before or after submission of the Action Plan to HUD.

d. HUD reviews the Action Plan (allotted 45 calendar days from date of receipt) and approves the Action Plan according to criteria identified in this notice (I.C.5.).

e. HUD sends an Action Plan approval letter to the grantee. If the Action Plan is not approved, HUD will notify the grantee of the deficiencies. The grantee must then resubmit the Action Plan within 45 calendar days of the written notification. HUD will respond to approve or disapprove the Action Plan within 30 calendar days of receiving the revisions or resubmission.

(2) *Phase Two: Financial Certification and Oversight of Funds.*

a. Within 135 calendar days of the applicability date of the AAN, the grantee submits documentation for the certification of financial controls and procurement processes, and adequate procedures for grant management (II.A.).

b. HUD will review the grantee's documentation for the certification of financial controls and procurement processes, and adequate procedures for grant management or any provided updates if the grantee is relying on a prior certification (allotted 45 calendar days from date of receipt).

c. The Secretary will certify to the proficiency of the grantee's financial controls and procurement processes, and adequate procedures for grant management in accordance with the requirements and HUD will send the grantee the grant agreement.

d. Grantee signs and returns the grant agreement to HUD.

e. HUD signs and returns a fully executed grant agreement to the grantee with a period of performance identified.

f. Grantee publishes the final HUD-approved Action Plan on its official disaster recovery website.

g. HUD establishes the grantee's line of credit.

h. Grantee enters the activities from its approved Action Plan into the DRGR system if it has not previously done so and submits its DRGR action plan to HUD (funds can be drawn from the line of credit only for activities that are in an approved DRGR Action Plan).

i. The grantee may draw down funds from the line of credit for an activity after the Responsible Entity (1)

completes an environmental review(s) pursuant to 24 CFR part 58 and receives from HUD or the State, as outlined in 24 CFR 58.18, an approved Request for Release of Funds (RROF) and certification (as applicable), or (2) adopts another Federal agency's environmental review and receives from HUD or the State an approved RROF and certification (as applicable).

(3) *Phase Three: Implementation of Universal Notice Requirements.*

a. Within one year from the applicability date of the AAN, the grantee must create and finalize policies and procedures for its housing programs. If the grantee is not funding housing programs, see section III.A. for more details.

b. Within eighteen months from the applicability date of the AAN, the grantee must create and finalize policies and procedures governing the rest of its CDBG-DR funded programs (e.g., economic revitalization, public service, infrastructure programs, etc.).

c. Within two years from the applicability date of the AAN, these policies and procedures will be subject to HUD review.

d. The grantee should begin to draw down funds from DRGR no later than 180 calendar days after HUD executes a grant agreement with the grantee (II.C.) or HUD approves the Action Plan and financial certification and oversight of funds, whichever is later. Additionally, all funds must be expended within six years of the date of obligation (III.F.1.).

HUD provides additional flexibility to streamline access to CDBG-DR funds, through the following options:

(1) Grantees may submit an Optional Action Plan for Program Administrative Costs ("Admin Action Plan") to access administrative funds prior to the grantee's submission of its Action Plan (I.B.).

(2) Previous grantees covered by the Universal Notice or other prior notices may rely on their previous financial certification submissions as described in section II.B.

There may be times when appropriations acts allow additional flexibilities for timing of financial certification and action plan submissions, signing of grant agreements, and the availability of administrative funds. HUD will adapt this grant life cycle to be in compliance with any additional flexibilities provided in the appropriations acts.

Community Development Block Grant Disaster Recovery Universal Notice: Waivers and Alternative Requirements (the "Universal Notice")

The Universal Notice outlines the waivers and alternative requirements that grantees are required to demonstrate compliance with over the course of three phases of the grant life cycle which include: (1) Phase One: The Action Plan, (2) Phase Two: Financial Certification and Oversight of Funds, and (3) Phase Three: Implementation of Universal Notice Requirements. Any references to the "Universal Notice" or "this notice" in this document refer to sections I. through V. and the attached appendices.

CDBG-DR grantees that are subject to the Universal Notice, must comply with all waivers and alternative requirements, unless expressly made inapplicable (e.g., a State only waiver does not apply to local governments). Except as described in applicable waivers and alternative requirements, the statutory and regulatory provisions governing the CDBG program shall apply to grantees receiving a CDBG-DR allocation. Statutory provisions (title I of the HCDA) that apply to all grantees can be found at 42 U.S.C. 5301 *et seq.* and regulatory requirements, which differ for each type of grantee, are described in each of the paragraphs below.

Except as modified, the State CDBG program rules shall apply to State grantees receiving a CDBG-DR allocation. Applicable State CDBG program regulations are found at 24 CFR part 570, subpart I.

For insular areas (as defined under 42 U.S.C. 5302(a)(24)), HUD waives the provisions of 24 CFR 570, subpart F and imposes the following alternative requirement: Insular areas shall administer their CDBG-DR allocations in accordance with the regulatory and statutory provisions governing the State CDBG program, as modified by the Universal Notice.

Except as modified, statutory and regulatory provisions governing the Entitlement CDBG program shall apply to local government grantees (often referred to as units of local government in appropriations acts). Applicable Entitlement CDBG program regulations are found at 24 CFR 570, as described in § 570.1(a).

Each grantee shall administer its award in compliance with all applicable laws and regulations and shall be financially accountable for the use of all awarded funds. CDBG–DR grantees must comply with the recordkeeping requirements of 24 CFR 570.506 or 24 CFR 570.490, as amended by the Universal Notice waivers and alternative requirements. All grantees must follow all cross-cutting requirements, as applicable, for all CDBG–DR funded activities including but not limited to the environmental requirements outlined in the Universal Notice,⁵ the Davis Bacon Act, Civil Rights Requirements, the Lead Safe Housing Rule, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (“URA”) and its implementing regulations.

All grantees must maintain records of performance in DRGR, as described elsewhere in the Universal Notice. Additionally, grantees must comply with the requirements in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200, as amended (Uniform Requirements).

Any references to “subrecipient” in this notice refer to the term as defined in 24 CFR 570.500(c). Subrecipients include, but are not limited to, nonprofit organizations, units of general local government, partner agencies, subgrantees, and Indian Tribes.

I. Phase One: The Action Plan

I.A. CDBG–DR Action Plans Defined

The action plan is a key mechanism for grantees to inform the public and HUD of the intended use of the funds within their community and how this plan connects to the community’s remaining unmet needs and mitigation needs associated with the qualifying disaster(s). It is important that grantees understand the difference between the two action plans associated with CDBG–DR funds.

- **Admin Action Plan (Optional Action Plan for Program Administrative Costs):** This is an optional submission that allows a grantee to access their funds for program administrative costs prior to the award of the full grant (*e.g.*, to increase staffing and capacity to develop the required Action Plan). The Admin Action Plan has streamlined requirements, including no public

comment period or deadline for submission, and is sent to HUD for review (as described in the applicable AAN).

- **Action Plan:** The Action Plan is a required plan that a grantee must develop to have access to grant funds. The Action Plan must identify the use of all CDBG–DR funds—including criteria for eligibility and how the uses address long-term recovery needs, restoration of infrastructure and housing, economic revitalization, and mitigation in the most impacted and distressed (MID) areas. The Action Plan has a required 30-day public comment period, must be submitted within 90 days of a grantee’s AAN, and is sent to HUD for review (the submission process will be described in the applicable AAN). References to the “Action Plan” shall mean the Action Plan required by the Universal Notice and not the consolidated plan or action plan required by 24 CFR part 91.

I.B. Admin Action Plan

Typically, CDBG–DR awards are all subject to a five percent administrative cap as specified by the appropriations acts and outlined in section III.B.3. of this notice. Recent appropriations acts have allowed the special treatment of administrative funds (as described in section III.B.3.a.) and allowed grantees to access funding for program administrative costs prior to the Secretary’s certification as described in section II.A. Note, the appropriations acts typically require that all CDBG–DR funds be used pursuant to an action plan. Grantees will follow the process described in this section, which includes the submission of the Admin Action Plan, to access funds for program administrative costs prior to the Secretary’s certification.

- **I.B.1. Developing the Admin Action Plan.** The grantee shall describe the use of all grant funds for administrative costs in the Admin Action Plan, including for any eligible pre-award program administrative costs the grantee plans to reimburse itself or its subrecipients as described in section III.B.14.a. The Admin Action Plan must include the criteria for eligibility of administrative activities and the amount to be budgeted for administrative activities. If a grantee submits the Admin Action Plan, the grantee must consider the need to cover program administrative costs over the life of the grant, which is six years from HUD’s signature on the initial grant agreement as described in section III.F.1. of this notice. Therefore, grantees are strongly encouraged to budget for these costs early in the grant lifecycle.

- **I.B.2. Submission and publication of the Admin Action Plan.** Normally, a grantee must publish any proposed action plan and substantial amendments to the plan for public comment. However, because the Admin Action Plan will only include program administrative costs, and to allow for a more streamlined process and timely awarding of grants, no public comment period is required.

Therefore, for Admin Action Plans and substantial amendments to these plans *only*, the provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 1003.604, 24 CFR 91.105(b) through (d), and 24 CFR 91.115(b) through (d), with respect to citizen participation requirements, are waived and replaced by the alternative requirements in this section.

Additionally, for Admin Action Plans only, grantees are not subject to the action plan requirements in section I.C.

Grantees must publish the Admin Action Plan online when it is submitted to HUD (as described in the applicable AAN). The manner of publication of the Admin Action Plan must include prominent posting on the grantee’s official disaster recovery website and include any substantial amendments to the Admin Action Plan. When the grantee submits its Admin Action Plan or substantial amendment to the Admin Action Plan to HUD for approval, it must include the Standard Form 424 (SF–424). There is no due date for the Admin Action Plan as it is optional and may be submitted any time prior to the grantee’s Action Plan. HUD will review the Admin Action Plan or substantial amendment to the Admin Action Plan within 15 calendar days from the date of receipt and determine whether to approve the Admin Action Plan per the criteria identified here in section I.B. of the Universal Notice.

- **I.B.3. Entering administrative activities into DRGR.** After HUD’s approval of the Admin Action Plan, the grantee enters the administrative activities from its approved Admin Action Plan (or substantial amendment to that plan) into the DRGR system, as described in section III.G. Grantees are required to populate their DRGR Action Plan since grant funds can only be drawn from the line of credit through projects and activities that are established in the DRGR system. This process will allow a grantee to access funds for program administrative costs while the grantee begins developing its Action Plan.

- **I.B.4. Applicability of the Admin Action Plan.** A grantee’s use of grant funds for program administrative costs before approval of the Action Plan must

⁵ View HUD’s guidance on addressing Radon in the Environmental Review process published in CPD Notice 23–103 here: https://www.hud.gov/sites/dfiles/CPD/documents/CPD_Note_on_Addressing_Radon_in_the_Environmental_Review_Process.pdf.

be consistent with the Admin Action Plan. Once the Action Plan is approved, the use of all grant funds must be consistent with the Action Plan. Upon HUD's approval of the Action Plan, the optional Admin Action Plan shall only be relevant to administrative costs charged to the grant *before* the date of approval of the Action Plan.

I.B.5. Admin Action Plan certifications waiver and alternative requirement. Sections 104(b)(4), (c), and (m) of the HCDA (42 U.S.C. 5304(b)(4), (c), and (m)), sections 106(d)(2)(C) and (D) of the HCDA (42 U.S.C. 5306(d)(2)(C) and (D)), and section 106 of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (42 U.S.C. 12706), and regulations at 24 CFR 91.225 and 91.325 are waived and replaced with the following alternative requirement. Each grantee choosing to submit an Admin Action Plan must also complete the certifications in Appendix A and submit them with the Admin Action Plan.

Additionally, HUD is waiving section 104(a)–(c) and (d)(1) of the HCDA (42 U.S.C. 5304), section 106(c)(1) and (d) of the HCDA (42 U.S.C. 5306), section 210 of the URA (42 U.S.C. 4630), section 305 of the URA (42 U.S.C. 4655), and regulations at 24 CFR 91.225(a)(2), (6), and (7), 91.225(b)(7), 91.325(a)(2), (6), and (7), 49 CFR 24.4(a), and 24 CFR 42.325 only to the extent necessary to allow grantees to receive a portion of their allocation for program administrative costs before submitting other statutorily required certifications.

I.C. Action Plan

Requirements for CDBG actions plans, located at 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(a)(1), 42 U.S.C. 5306(d)(2)(C)(iii), 42 U.S.C. 12705(a)(2), and 24 CFR 91.220 and 91.320, are waived for CDBG–DR grants. Instead, grantees must submit to HUD an action plan for disaster recovery which will describe programs and activities that conform to applicable requirements as specified in the Universal Notice and the applicable AAN. HUD will return all Action Plans that are substantially incomplete as described in section I.C.5. The Action Plan is substantially incomplete if the plan does not satisfy all the required elements identified in the Universal Notice and the applicable AAN. Grantees receiving an allocation are required to submit an Action Plan within 90 calendar days of the applicability date of the AAN, unless the grantee has requested, and HUD has approved an extension of the submission deadline. HUD will monitor the grantee's actions and use of funds

for consistency with the Action Plan, as well as meeting the performance and timeliness objectives therein.

I.C.1. Developing the Action Plan. The Action Plan must identify the use of all CDBG–DR funding, including eligibility criteria for accessing the funds and how the proposed uses will address long-term recovery needs. At a minimum, the Action Plan must cover the impacts of the qualifying disaster, restoration of housing, infrastructure, economic revitalization, and mitigation in the MID areas. The CDBG–DR allocations are based on the unmet needs of specific communities, which are the least likely to fully recover without additional assistance. Therefore, it is critical that the Action Plan demonstrates the following, as described in the referenced sections:

1. An unmet needs assessment (review section I.C.1.a.).
2. A mitigation needs assessment (review section I.C.1.b.).
3. A fair housing and civil rights data assessment (review section I.C.1.c.).
4. Connection between proposed programs and projects and unmet needs, mitigation needs, and fair housing and civil rights assessments (review section I.C.1.d.).
5. Set allocation and award caps (review section I.C.1.e.).
6. Establish funding criteria (review section I.C.1.f.).
7. Establish protocols for substantial amendments (review section I.C.1.g.).

As grantees develop their Action Plan, they must consult with various stakeholders, including the public (*i.e.*, citizen participation) and inform residents about their funding decisions prior to submitting the Action Plan to HUD for review. Grantees will receive specific instructions for Action Plan submittal in the applicable AAN. Note, the citizen participation requirements to develop the action plan are described in section I.C.2.

I.C.1.a. Unmet needs assessment. Each grantee must develop an unmet needs assessment to strategically inform the use of the grant funds. The unmet needs assessment will help a grantee evaluate community needs across its jurisdiction by assessing the remaining effects of the qualifying disaster as they relate to housing, infrastructure, and the economy. Note, HUD can assist grantees in obtaining FEMA data to support the development of the Action Plan and implementation of recovery programs.⁶

I.C.1.a.(i). Unmet needs in the MID areas. A grantee must describe the

unmet need in the MID areas (see section III.D.2.), as the allocations are based on the unmet needs of these specific communities, which are the least likely to fully recover without additional assistance. Grantees are required to use at least 80 percent of the CDBG–DR award to benefit the HUD-identified MID areas. Local government grantees whose HUD-identified MID areas include their entire jurisdiction, must use 100 percent of the CDBG–DR award to benefit the HUD-identified MID area. However, HUD encourages all grantees to consider using 100 percent of its award to benefit HUD-identified MID areas since the data from these areas were used to determine the amount of the award. If allowed, and the grantee does choose to spend a portion (*i.e.*, up to 20 percent) of its award outside of the HUD-identified MID area, it will determine and identify in the Action Plan where the grantee will use that amount (“grantee-identified MID areas”), and that portion of the allocation may only be used to address those areas that the grantee determines are most impacted and distressed, meaning the areas that have the greatest amount of damage and unmet need outside of the HUD-identified MID areas. Additionally, any grantee-identified MID areas must have received a presidential major disaster declaration identified by the disaster numbers listed in the applicable AAN. The grantee must use quantifiable and verifiable data in its analysis, and reference it in its Action Plan, to identify the grantee-identified MID areas and indicate how the proposed use of funds will prioritize the remaining unmet needs for low- and moderate-income (LMI) individuals and areas. The addition of a grantee-identified MID area after the submittal of the initial Action Plan would result in a substantial amendment to the grantee's Action Plan (see section I.C.1.g.).

I.C.1.a.(ii). Unmet needs assessment requirements. At a minimum, the unmet needs assessment must include the following, as they relate to the HUD-identified and grantee-identified MID areas, and cite the appropriate data sources:

1. Description of the effects of the qualifying disaster(s) and the greatest remaining recovery needs that have not been addressed by other sources of funds, including insurance proceeds, other Federal assistance, or any other funding source; and

2. Evaluation of the three core aspects of recovery—housing, infrastructure, and the economy (*e.g.*, estimated job losses), which considers the pre-disaster needs (*e.g.*, a lack of affordable housing)

⁶ View more information about how to access this data on HUD's website here: https://www.hud.gov/program_offices/comm_planning/cdbg-dr/data-sharing.

that have been exacerbated by the disaster. The assessment of housing needs must address: (1) emergency shelters; (2) interim and permanent housing; (3) rental and owner-occupied single family and multifamily housing; (4) public housing (including HUD-assisted housing) and other types of affordable housing, including housing for vulnerable populations (including those who were unhoused prior to the disaster).

Disaster recovery needs evolve over time and grantees must amend the Action Plan, including the unmet needs assessment, as additional needs are identified, and/or additional resources become available. At a minimum, grantees must revisit and update the unmet needs assessment when reallocating funds from one program to another through a substantial amendment (as described in section I.C.1.g.).

I.C.1.b. Mitigation needs assessment. While the purpose of CDBG–DR funds is to recover from a Presidentially declared disaster, integrating hazard mitigation and resilience planning with recovery efforts will promote a more resilient long-term recovery. Mitigation solutions designed to be resilient only for threats and hazards related to a prior disaster can leave a community vulnerable to negative effects from future extreme events related to other threats or hazards. For purposes of grants subject to the Universal Notice, mitigation activities are defined as those activities that increase resilience and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters.

At a minimum, the mitigation needs assessment must include a risk-based assessment to identify current and future hazards (e.g., sea level rise, strong winds, tornados, storm surge, flooding, volcanic activity, earthquakes, extreme heat, drought, and wildfire risk, where appropriate). The assessment must describe how the hazards do or can impact the HUD-identified and grantee-identified MID areas and cite the appropriate data sources. Grantees must explain how the risk-based assessment will inform the use of the CDBG–DR funds and identify if other sources of funding are available to address its identified mitigation needs.

At a minimum, grantees must use the risks identified in the current FEMA-approved State or local HMP, Community Wildfire Protection Plan (CWPP), or other resilience or long-term recovery plans to inform the assessment. If a jurisdiction is currently updating an expired HMP, the grantee's agency

administering the CDBG–DR funds must consult with the agency administering the HMP update to identify the risks that will be included in the assessment.

A grantee may choose to simply cite the current FEMA-approved HMP, CWPP, or other resilience or long-term recovery plan to address the mitigation needs assessment, if there is a clear connection of programs and projects to the mitigation needs. If a grantee chooses this option, the grantee must make the HMP, CWPP, or other resilience or long-term recovery plan available on the grantee's official disaster recovery website and provide a direct link to the selected plan in the mitigation needs assessment section of the Action Plan.

Mitigation needs evolve over time and grantees must amend the mitigation needs assessment and Action Plan as conditions change, as additional mitigation needs are identified, and additional resources become available. At a minimum, grantees must revisit and update the mitigation needs assessment when reallocating funds from one program to another through a substantial amendment (as described in section I.C.1.g.).

I.C.1.c. Fair Housing and Civil Rights Assessment

I.C.1.c.(i). Fair housing and civil rights laws and terminology defined. The grantee must use its CDBG–DR funds in a manner that complies with its fair housing and nondiscrimination obligations,⁷ which include:

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*;
- Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act), 42 U.S.C. 3601–19;
- Section 504 and 508 of the Rehabilitation Act of 1973, 29 U.S.C. 794;
- The Americans with Disabilities Act of 1990, 42 U.S.C. 12131 *et seq.*; and
- Section 109 of the HCDA, 42 U.S.C. 5309.

For purposes of the Universal Notice, HUD defines the following terms as they relate to the requirements set forth in the Universal Notice:

- **Protected Classes:** Race, color, national origin, religion, sex (including sexual orientation and gender identity), familial status, and disability.
- **Vulnerable Populations:** Groups or communities whose circumstances present barriers to obtaining or understanding information or accessing

resources which may include: (1) persons at risk of or experiencing homelessness; (2) older adults; (3) persons with disabilities (mental, physical, developmental); (4) survivors of domestic violence, dating violence, sexual assault, or stalking; (5) persons with alcohol or other substance-use disorder; (6) persons with HIV/AIDS and their families; or (7) public housing residents.

• **Underserved Communities:** Populations or geographic communities, often comprised of protected classes, sharing a particular characteristic that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life. Underserved communities that were economically distressed before the disaster include, but are not limited to, those areas that were designated as a Promise Zone, Opportunity Zone, a Neighborhood Revitalization Strategy Area, a Tribal area, a Community Disaster Resilience Zone (CDRZ), or those areas that meet at least one of the distress criteria established for the designation of an investment area of a Community Development Financial Institution at 12 CFR 1805.201(b)(3)(ii)(D).

Grantees must take the following actions to comply with affirmatively furthering fair housing (AFFH):⁸

1. Submit a certification to AFFH in accordance with 24 CFR 91.225 or 325, as applicable and 24 CFR 5.150, *et seq.*;
2. Update any policies and procedures to remain in compliance with AFFH requirements, as amended by HUD and reflected in updated HUD guidance and rules; and
3. Use their CDBG–DR funds in a manner that affirmatively furthers fair housing.

I.C.1.c.(ii). Fair housing and civil rights data collection. Collecting fair housing and civil rights data will position the grantee to provide a fair and holistic recovery. At a minimum, the grantee must collect the following data in terms of number and percentage for each identified group, as defined above, and as they relate to the HUD-identified and grantee-identified MID areas and cite the appropriate data sources:

1. Populations with Limited English Proficiency (LEP) by language spoken;
2. Persons belonging to protected classes;

⁷ Visit HUD's Office of Fair Housing and Equal Opportunity's website for more information about fair housing and civil rights obligations here: <https://www.hud.gov/fairhousing>.

⁸ Visit HUD's Office of Fair Housing and Equal Opportunity's website for more information about requirements for affirmatively furthering fair housing here: https://www.hud.gov/program_offices/fair_housing_equal_opp/affh.

3. Persons belonging to protected classes by housing tenure (*i.e.*, homeowner vs renter);

4. Persons belonging to vulnerable populations;

5. Persons belonging to historically distressed and underserved communities;

6. Indigenous populations and Tribal communities; and

7. Racially or ethnically concentrated areas of poverty (R/ECAPs).

Grantees are encouraged to consider housing tenure as it relates to these data sets when available.

I.C.1.d. *Connection of proposed programs and projects to unmet needs, mitigation needs, and fair housing and civil rights assessments.* The grantee must describe the connection between identified unmet needs, mitigation needs, fair housing and civil rights data, and the allocation of CDBG–DR resources within its Action Plan. At a minimum, the Action Plan must:

1. Provide a clear connection between a grantee's assessments and its proposed programs and projects in the MID areas (or outside in connection to the MID areas as described in section III.D.2.). Such description must demonstrate a reasonably proportionate allocation of resources relative to areas and categories (*i.e.*, housing, economic revitalization, and infrastructure) of greatest needs identified in the grantee's unmet needs and mitigation needs assessments or provide an acceptable justification for a disproportional allocation.

2. Describe how the grantee is incorporating hazard mitigation measures to reduce the impacts of future disasters and considering all hazard risks, as identified in its mitigation needs assessment.

3. Based on the fair housing and civil rights data collected, the grantee must:

- Describe how protected classes will benefit from CDBG–DR funds in proportion to their communities' needs.
- Assess the impact of its planned use of CDBG–DR funds on identified vulnerable populations and other identified historically underserved communities. If programs are aimed at these groups, the Action Plan should clearly define those populations.

4. Describe all reasonable efforts the grantee will take to minimize displacement of persons or entities, assist any persons or entities displaced, and ensure accessibility needs of displaced persons with disabilities.

I.C.1.e. *Allocation and award caps.* It is critical for grantees to demonstrate their planned use of funds through their Action Plan so the public can understand what types of assistance disaster survivors can apply for and

what limits there are on possible awards.

Therefore, grantees must create a high-level budget for the full amount of the CDBG–DR allocation so the public can understand how funds will be split among program administration (subject to the five percent cap, plus five percent of program income generated, as described in section III.B.3.), planning (subject to the 15 percent cap, as described in section III.B.4.), housing, infrastructure, and economic revitalization (*e.g.*, by program, subrecipient, grantee-administered activity, or other category).

Grantees are also encouraged to budget for any planned public service activities. The grantee's budget should also be consistent with the requirements to integrate hazard mitigation into all its programs and projects that involve construction, as described in section III.D.3. Finally, grantees must develop an executive summary describing the contents of the Action Plan and its proposed use of funds so that interested parties will be able to understand and comment on the Action Plan.

For each program it intends to fund, the grantee must include the following in its Action Plan:

1. Provide a description of the disaster recovery program to be funded;

2. Identify the CDBG–DR eligible activity and national objective, including only those allowed under title I of the HCDA or otherwise eligible pursuant to a waiver or alternative requirement;

3. Identify the responsible entity assuming the authority for the decision making and completion of the environmental review per 24 CFR 58.4. State grantees who exercise HUD's environmental review responsibilities must follow the requirements per 24 CFR 58.4(b)(2) and 24 CFR 58.18;

4. Identify which geographic areas (*i.e.*, HUD-identified and/or grantee-identified MID areas) that may benefit from CDBG–DR funds;

5. Explain how the grantee will identify and then reduce barriers that individuals face or may face to access assistance, including protected classes, vulnerable populations, and other historically underserved communities;

6. If the appropriations act that funded the grantee's award includes additional funds for mitigation, the grantee must also identify how the proposed use of CDBG–DR mitigation set-aside funds will meet the definition of mitigation activities (as described in section I.C.1.b.);

7. Describe (1) the maximum amount of assistance (*i.e.*, award cap) available to a beneficiary under each of the

grantee's disaster recovery programs and (2) the maximum income (*i.e.*, income cap) of any beneficiary receiving CDBG–DR assistance for direct-benefit activities. Each grantee must also indicate in its Action Plan that it will make exceptions to the maximum award amounts, when necessary, to comply with Federal accessibility standards or to reasonably accommodate a person with disabilities. If the maximum amount of assistance is unknown for a specific program or project when the grantee is submitting the initial Action Plan to HUD, the grantee must update the Action Plan through a substantial amendment (as described in section I.C.1.g.) once the information is known. The substantial amendment must be submitted and approved before awarding funds to applicants; and

8. Any other known eligibility criteria established by the grantee for assistance (*e.g.*, priority intake).

I.C.1.e.(i). *Prioritization for allocations less than \$20 million.* Section I.C.1.d. requires that the Action Plan demonstrates a reasonably proportionate allocation of resources relative to areas and categories (*i.e.*, housing, economic revitalization, and infrastructure) of greatest needs identified in the grantee's unmet needs and mitigation needs assessments or provide an acceptable justification to HUD for a disproportional allocation.

HUD recognizes that grantees receiving an allocation of less than \$20 million for a qualifying disaster(s) may most effectively advance recovery by more narrowly targeting these limited recovery and mitigation resources. HUD will consider the small size of the grant and HUD's allocation methodology as an acceptable justification for a grantee to propose a disproportional allocation when the grantee is allocating funds to address: (1) unmet affordable rental housing needs in a MID area caused by or exacerbated by the disaster(s) that incorporates mitigation, or (2) unmet infrastructure needs necessary to build affordable rental housing in a MID area that incorporates mitigation.

I.C.1.f. *Funding criteria.* The Action Plan must describe how the grantee will distribute its grant funds, which can include the following methodologies:

1. Direct implementation (through employees, contractors, or through subrecipients); or

2. A method of distribution to local governments and Indian Tribes (for States, as permitted by III.C.4.); or

3. A combination of a direct implementation model and a method of distribution model.

Because grantees must spend at least 80 percent of the CDBG–DR award to

benefit the HUD-identified MID area (see section III.D.2.), they should consider how they will meet this requirement when developing funding criteria. At a minimum, the grantee must establish the following criteria within its Action Plan so the public can clearly understand its funding criteria for funds sub-granted to eligible entities through a method of distribution or for applications that the grantee solicits for programs to be carried out directly:

1. All criteria used to allocate and award the funds, including the relative importance of each criterion and any priorities;
2. Establish the maximum grant size available;
3. Describe how the distribution and selection criteria will address disaster-related unmet needs or mitigation needs in a manner that does not have an unjustified discriminatory effect on nor a failure to benefit protected classes in proportion to their communities' needs, including in racially and ethnically concentrated areas of poverty; and
4. Describe the steps to be followed to encourage the participation of those belonging to protected classes. Such description must include an assessment of the following: (1) who may be expected to benefit, (2) the timing of who will be prioritized, and (3) the amount or proportion of benefits expected to be received.

If some required information is unknown when the grantee is submitting its initial Action Plan to HUD, the grantee must update the Action Plan through a substantial amendment once the information is known. Historically, appropriations acts require a grantee to submit a plan detailing the proposed use of all funds before HUD can obligate funding to the grantee. Without all the required information in the initial Action Plan, HUD may obligate only a portion of the grant funds until the substantial amendment providing the required information is submitted and approved by HUD.

I.C.1.g. *Protocols for substantial amendments.* In its Action Plan, each grantee must specify criteria for determining what changes in the grantee's Action Plan would constitute a substantial amendment to the Action Plan and thus require public comment. At a minimum, the following modifications will constitute a substantial amendment:

1. A change in program benefit or eligibility criteria (including the expansion of eligible beneficiaries (e.g., establishing a new grantee-identified MID area));

2. The addition or deletion of an activity;

3. A proposed reduction in the overall benefit requirement (as described in section III.B.1.);

4. The allocation or reallocation of a reasonable monetary threshold specified by the grantee in its Action Plan; and

5. An update to the submitted initial Action Plan if the original submission was incomplete as allowed under section I.C.1.e. paragraph 7 and section I.C.1.f.

Once a grantee has set a reasonable monetary threshold in which a reallocation or allocation of funds would constitute a substantial amendment, grantees cannot disregard this threshold by submitting multiple nonsubstantial amendments back-to-back in order to avoid following a substantial amendment process (e.g., submitting two budget reallocations within 30 days of each other that if taken together would require a substantial amendment).

I.C.2. *Citizen participation requirements.* To permit a more streamlined process and ensure disaster recovery grants are awarded in a timely manner, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 1003.604, 24 CFR 91.105(b) through (d), and 24 CFR 91.115(b) through (d), with respect to citizen participation requirements, are waived and replaced by the alternative requirements in this section. Under the streamlined requirements, the grantee may be required to hold a public hearing(s) on the proposed Action Plan and must provide a reasonable opportunity (i.e., at least 30 calendar days) for public comment.

The grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in notices providing waivers and alternative requirements). Each local government receiving assistance from a State grantee must follow its citizen participation requirements at 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements). The grantee's records must demonstrate that it has notified affected residents through electronic mailings, press releases, statements by public officials, media advertisements, social media, public service announcements, and/or contacts with neighborhood organizations.

In addition to the requirements above, the streamlined citizen participation alternative requirements for CDBG-DR grants are as follows:

- Requirement for consultation during plan preparation (see section I.C.2.a.);
- Publication of the Action Plan and opportunity for public comment (see section I.C.2.b.);
- Consideration of public comments (see section I.C.2.c.).

I.C.2.a. *Consultation during Action Plan preparation.* All grantees must consult with States, Indian Tribes, local governments, Federal partners, nongovernmental organizations, the private sector, and other stakeholders and affected parties in the surrounding geographic area during Action Plan preparation to ensure consistency of the Action Plan with applicable regional development plans. This requirement also includes consulting with organizations that advocate on behalf of members of protected classes, vulnerable populations, and other underserved communities impacted by the disaster to help address requirements defined in section I.C.1.c. for the fair housing and civil rights data collection. A grantee must consult with other relevant government and local agencies, including State and local emergency management agencies that have primary responsibility for the administration of FEMA funds, agencies that manage local Continuum of Care,⁹ Public Housing Agencies,¹⁰ and HUD-approved housing counseling agencies,¹¹ as applicable. Grantees must coordinate with State Housing Finance Agencies to verify that all available funding sources and opportunities for leverage are noted in the Action Plan. Given the extensive coordination that is required to develop a grantee's Action Plan, HUD recommends that grantees give their partners a clear timeline on receiving feedback and create a consistent process for how feedback will be received from these stakeholders.

I.C.2.b. *Public comment period and minimum public hearing requirement.* Following the creation of the Action Plan or substantial amendment, the grantee must publish the proposed Action Plan or substantial amendment for public comment. The manner of publication must include prominent posting on the grantee's official disaster recovery website and must afford residents, affected local governments,

⁹ Find your local Continuum of Care here: <https://www.hudexchange.info/grantees/>.

¹⁰ Find your local Public Housing Agency on HUD's website here: https://www.hud.gov/program_offices/public_indian_housing/pha/contacts.

¹¹ Find a HUD-approved housing counseling agency on HUD's website here: https://answers.hud.gov/housingcounseling/s/?language=en_US.

and other interested parties a reasonable opportunity to review the Action Plan or substantial amendment (*i.e.*, at least 30 calendar days). Grantees shall identify and redress any potential barriers that may limit or prohibit protected classes, vulnerable populations, or other underserved communities and individuals affected by the disaster from providing public comment on the grantee's Action Plan or substantial amendments. For example, grantees should consider how to address barriers like lack of childcare and/or transportation that can limit certain populations or communities from participating in public hearings, providing comments, or other engagement events or techniques.

HUD anticipates that every community and every grantee will have some identified barriers to address. Based on the specific barriers the grantee identifies, particularly those that may limit or prohibit equitable participation, the grantee must describe the reasonable measures it will take to increase coordination, such as affirmative marketing, targeted outreach, and engagement with underserved communities and individuals, including protected classes such as persons with disabilities and persons with LEP.

HUD strongly encourages grantees to hold as many hearings or convenings as may be necessary to ensure they capture all citizen comments to inform the comprehensive development of their Action Plan. The minimum number of public hearings a grantee must convene on the Action Plan to obtain interested parties' views and to respond to comments and questions shall be determined by the amount of the grantee's CDBG-DR allocation: (1) CDBG-DR grantees with allocations under \$20 million are not required to hold a public hearing; (2) CDBG-DR grantees with allocations equal to or greater than \$20 million but less than \$100 million are required to hold at least one public hearing; (3) CDBG-DR grantees with allocations equal to or greater than \$100 million but less than \$500 million are required to hold at least two public hearings; and (4) CDBG-DR grantees with allocations equal to or greater than \$500 million shall convene at least three public hearings. These are only minimum hearing requirements and the form and structure of the hearings and convenings may vary to effectively solicit meaningful engagement and feedback. Grantees may find they need additional hearings to adequately capture and address all citizen questions, concerns, and comments.

If the grantee is required to hold multiple public hearings, and a grantee holds those hearings in-person, it must hold each hearing in a different location within the HUD-identified MID area. Specifically, the grantee should select locations that will promote a geographic balance and maximize accessibility for stakeholders to actively participate.

FIGURE ONE: MINIMUM PUBLIC HEARING REQUIREMENT BASED ON GRANT SIZE

CDBG-DR grant value	Minimum public hearing requirement
<\$20 Million	No public hearing requirement.
≥\$20 Million but < \$100 Million.	One (1) public hearing required.
≥\$100 Million but < \$500 Million.	Two (2) public hearings required.
≥\$500 Million	Three (3) public hearings required.

Grantees may convene public hearings virtually (alone, or in concert with an in-person hearing). All in-person hearings must be held within HUD-identified MID areas and in facilities that are physically accessible to persons with disabilities. When conducting a virtual hearing, the grantee must allow questions in real time, with answers coming directly from the grantee representatives to all attendees.

A grantee's citizen participation plan must specify that it will meet the requirements in the previous paragraph and the requirements in section III.B.8.a. of this notice on vital documents. Additionally, for both virtual and in-person hearings, the citizen participation plan must include how the grantee will complete the following: (1) hold hearings at times and locations convenient to potential and actual beneficiaries, (2) provide accommodations for persons with disabilities, and (3) to ensure effective communication for individuals with disabilities, including through the provision of auxiliary aids and services. See 24 CFR 8.6 for HUD's regulations about effective communication.

Grantees must also provide meaningful access for individuals with LEP at both in-person and virtual hearings. Meaningful access may include live translation of attendees' questions and comments. In the citizen participation plan, State and local government grantees shall identify how the needs of non-English-speaking residents will be met in the case of virtual and in-person public hearings where a significant number of non-English-speaking residents live in the MID areas. In addition, for both virtual

or in-person hearings, the grantee shall provide reasonable notification and access for residents in accordance with the grantee's certifications at section I.C.4., timely responses to all citizen questions and issues, and public access to all questions and responses.

I.C.2.c. Consideration of public comments. The grantee must provide a reasonable time frame (no less than 30 calendar days) and reasonable method(s) (including but not limited to electronic submission) for receiving comments on the Action Plan or substantial amendment. The grantee must consider all oral and written comments on the Action Plan or any substantial amendment. Any updates or changes made to the Action Plan in response to public comments should be clearly identified in the Action Plan. A summary of comments on the Action Plan or amendment, and the grantee's response to each, must be included with the Action Plan or substantial amendment. Grantee responses shall address the substance of the comment rather than merely acknowledge that the comment was received.

I.C.3. Submission of the Action Plan. The Action Plan (including the SF-424, SF-424B and SF-424D, as applicable) and the certifications included in Appendix B of the Universal Notice must be submitted to HUD for review and approval. Note, the submission process will be described in the applicable AAN. HUD will review each Action Plan within 45 calendar days from the date of receipt, as described in section I.C.5. By submitting the required standard forms, the grantee is providing assurances that it and its recipients will comply with statutory requirements, including, but not limited to Federal civil rights requirements.

I.C.4. Action Plan certifications waiver and alternative requirement. Sections 104(b)(4), (c), and (m) of the HCDA (42 U.S.C. 5304(b)(4), (c) and (m)), sections 106(d)(2)(C) and (D) of the HCDA (42 U.S.C. 5306(d)(2)(C) and (D)), section 106 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12706), and regulations at 24 CFR 91.225 and 91.325 are waived and replaced with the following alternative requirement. Each grantee receiving an allocation under an AAN must make all the certifications included in Appendix B of the Universal Notice.

I.C.5. HUD Action Plan review process. HUD may return an Action Plan or substantial amendment to an Action Plan if it is incomplete. HUD will work with grantees to resolve or provide additional information during the review period to avoid having to unnecessarily formally disapprove an

Action Plan or substantial amendments. There may be several issues related to the Action Plan or substantial amendments, as submitted, that can be fully resolved through discussion and revision during the review period, rather than through HUD's formal disapproval of the Action Plan or substantial amendment. Therefore, the Secretary has determined that good cause exists and is waiving 24 CFR 91.500 and providing the alternative requirement described below.

I.C.5.a. General HUD review of an Action Plan. HUD will review the Action Plan upon receipt. The Action Plan will be deemed approved 45 calendar days after HUD receives the plan, unless before that date HUD notifies the jurisdiction that the plan is being returned or disapproved (see definitions below). The grantee must publish the final HUD-approved Action Plan on its official disaster recovery website.

I.C.5.b. Standard of review of an Action Plan. HUD may disapprove or return an Action Plan or a portion of an Action Plan if it is inconsistent with the purposes of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12703), if it is substantially incomplete, or if the certifications under section I.C.4. of the Universal Notice are not satisfactory to the Secretary in accordance with 24 CFR 570.304 or 570.485(c), as applicable. The following are examples of an Action Plan that is substantially incomplete:

- An Action Plan that fails to satisfy a required element in the Universal Notice or applicable AAN (for example, an Action Plan that was developed without the required citizen participation or the required consultation); or
- An Action Plan that fails to describe how protected classes would benefit from CDBG-DR funds in proportion to their communities' needs.

I.C.5.c. Written notice of return of an Action Plan. HUD is establishing an alternative process that offers a grantee the option to voluntarily provide a revised Action Plan if HUD has identified sections of the Action Plan that are substantially incomplete. If HUD finds errors with the Action Plan submission, no later than day twenty in HUD's 45-day review, HUD may return the Action Plan to the grantee to resolve the identified errors. The review timeline will pause while the grantee is updating the Action Plan for resubmission to HUD. Once the grantee has resubmitted the Action Plan, the review timeline will resume. A grantee is not required to revise the Action Plan submission, but if they choose not to

after being notified of errors, the Secretary may disapprove the Action Plan as substantially incomplete if HUD determines the Action Plan does not meet the requirements of the Universal Notice and the applicable AAN.

I.C.5.d. Written notice of disapproval of an Action Plan. Within 15 calendar days after HUD notifies a grantee that it is disapproving its Action Plan (initial notice should occur via email), it must inform the jurisdiction in writing of the reasons for disapproval and actions that the jurisdiction could take to meet the criteria for approval.

I.C.5.e. Revisions and resubmission of an Action Plan. After the first notification of disapproval, the grantee must revise or resubmit an Action Plan within 45 calendar days. HUD must respond to approve or disapprove the Action Plan within 30 calendar days of receiving the revisions or resubmission.

I.C.6. Amendments to the Action Plan. The grantee must amend its Action Plan to update its needs assessments, modify or create new activities, or reprogram funds, as necessary. Each amendment must be published on the grantee's official website and describe the changes within the context of the entire Action Plan. A grantee's current version of its entire Action Plan must be accessible for viewing as a single document at any given point in time, rather than require the public or HUD to view and cross reference changes among multiple amendments.

I.C.6.a. Substantial amendment. In its Action Plan, each grantee must specify criteria outlined in section I.C.1.g. to clearly define what changes constitute a substantial amendment to the Action Plan. For all substantial amendments, the grantee must follow the same procedures required for the preparation and submission of an Action Plan for disaster recovery, with the exception of the public hearing requirements described in section I.C.2.b. and the consultation requirements described in section I.C.2.a., which are not required for substantial amendments. Every amendment to the Action Plan (substantial and nonsubstantial) must be numbered sequentially and posted on the grantee's website. A substantial amendment shall require a 30-day public comment period and must be posted on the grantee's website.

I.C.6.a.(i). General HUD review of a substantial amendment to an Action Plan. HUD will review a substantial amendment to an Action Plan upon receipt. The substantial amendment will be deemed approved 45 calendar days after HUD receives the amendment, unless before that date HUD has notified

the jurisdiction that the amendment is disapproved.

I.C.6.a.(ii). Standard of review of a substantial amendment to an Action Plan. HUD may disapprove a substantial amendment to an Action Plan if it is substantially incomplete. HUD must notify the grantee in writing that it is disapproving the substantial amendment and must include the reasons for disapproval and actions that the jurisdiction could take to meet the criteria for approval.

I.C.6.a.(iii). Revisions and resubmission of a substantial amendment to an Action Plan. After the first notification of disapproval, the grantee must revise or resubmit the substantial amendment to the Action Plan within 45 calendar days. HUD must respond to approve or disapprove the substantial amendment within 30 calendar days of receiving the revisions or resubmission.

I.C.6.b. Nonsubstantial amendment. The grantee must notify HUD, but is not required to seek public comment, when it makes any amendment to the Action Plan that is not substantial. HUD must be notified at least five business days before the amendment becomes effective. However, as mentioned above, every amendment to the Action Plan (substantial and nonsubstantial) must be numbered sequentially and posted on the grantee's website. The Department will acknowledge receipt of the notification of nonsubstantial amendments via email within five business days.

II. Phase Two: Financial Certification and Oversight of Funds

II.A. Certification of Adequate Financial Controls and Procurement Processes, and Procedures for Proper Grant Management

Appropriations acts typically require that the Secretary certify that the grantee has proficient financial controls and procurement processes and procedures in place to prevent any duplication of benefits (DOB) as defined by section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, as amended ("the Stafford Act"), (42 U.S.C. 5155), to ensure timely expenditure of funds, to maintain a comprehensive website regarding all disaster recovery activities assisted with these funds, and to detect and prevent waste, fraud, and abuse of funds.

II.A.1. Documentation requirements. To enable the Secretary to make this certification, each grantee must submit to HUD the certification documentation listed below. This information must be submitted within 135 calendar days of

the applicability date of the AAN. Historically, grant agreements have not been executed until the Secretary has issued a certification for the grantee. For each of the items outlined in sections II.A.1.a. through II.A.1.g. below (collectively referred to as the “Financial Management and Grant Compliance Certification Requirements”), the grantee must certify to the accuracy of its submission when submitting the Financial Management and Grant Compliance Certification Checklist (the “Certification Checklist”). The Certification Checklist is a document that incorporates all of the Financial Management and Grant Compliance Certification Requirements. HUD will review the grantee’s certification documentation within 45 calendar days from the date of receipt.

II.A.1.a. *Proficient financial management controls.* A grantee has proficient financial management controls if the grantee’s agency administering this grant submits its most recent single audit and Annual Comprehensive Financial Report (ACFR), which in HUD’s determination indicates that the grantee has no material weaknesses, deficiencies, or concerns that HUD considers to be relevant to the financial management of CDBG, CDBG-DR, or Community Development Block Grant Mitigation (CDBG-MIT) funds. If the single audit or ACFR identified weaknesses or deficiencies, the grantee must provide documentation satisfactory to HUD showing how those weaknesses have been removed or are being addressed.

II.A.1.b. *Procedures for procurement.* Each grantee must provide HUD with its procurement processes for review, so HUD may evaluate the grantee’s processes to determine that they are based on principles of full and open competition. A grantee has adequate procurement processes if the grantee complies with the procurement requirements at section III.B.7., including:

(i) A State grantee has proficient procurement processes if HUD determines that its procurement processes reflect that it:

(1) adopted 2 CFR 200.318 through 200.327 for both its own procurement processes and for its subrecipients;

(2) follows its own State procurement policies and procedures based on full and open competition and establishes requirements for procurement processes for local governments and subrecipients based on full and open competition pursuant to 24 CFR 570.489(g), and the requirements for the State, its local governments, and subrecipients to evaluate the cost or price of the product

or service and comply with 2 CFR 570.489(l); or

(3) adopted 2 CFR 200.317, meaning that it will follow its own State procurement processes based on full and open competition, evaluate the cost or price of the product or service, and comply with 2 CFR 570.489(l), but impose 2 CFR 200.318 through 200.327 on its subrecipients.

Additionally, if the State agency designated as the administering agency chooses to provide funding to another State agency, the administering agency must specify in its procurement processes whether the agency implementing the CDBG-DR activity must follow either i.) the procurement processes that the administering agency is subject to, or ii.) the same processes to which other local governments and subrecipients are subject, or iii.) the procurement processes that the agency carrying out the activity normally follows.

(ii) A local government grantee has proficient procurement processes if the processes are consistent with the specific applicable procurement standards identified in 2 CFR 200.318 through 200.327, and 200.214. When the grantee provides a copy of its procurement processes, it must indicate the sections that incorporate these provisions.

II.A.1.c. *Policies and procedures to maintain a comprehensive disaster recovery website.* A grantee has adequate policies and procedures to maintain a comprehensive and accessible disaster recovery website if it submits policies and procedures indicating to HUD that the grantee will have a separate web page dedicated to its CDBG-DR funded activities including the information described at section III.B.8. The procedures must also indicate the frequency of website updates. At a minimum, grantees must update their official disaster recovery website quarterly.

II.A.1.d. *Procedures to detect and prevent fraud, waste, and abuse.* A grantee has adequate procedures to detect and prevent fraud, waste, and abuse if it submits procedures that indicate:

(i) how the grantee will verify the accuracy of information provided by applicants;

(ii) the criteria to be used to evaluate the capacity of potential subrecipients;

(iii) the frequency with which the grantee will monitor other agencies of the grantee that will administer CDBG-DR funds, and how it will monitor subrecipients, contractors, and other program participants, and why

monitoring is to be conducted, and which items are to be monitored;

(iv) if the grant size is \$100 million or more, the grantee has or will employ an internal auditor that provides both programmatic and financial oversight of grantee activities and has adopted policies that describe the auditor’s role in detecting and preventing fraud, waste, and abuse;

(v) (1) for States or grantees subject to the same requirements as States, a written standard of conduct and conflicts of interest policy that complies with the requirements of 24 CFR 570.489(g), (h), and (l) and subparagraph II.A.1.b.(i) *Procedures for procurement* of the Universal Notice, which policy includes the process for promptly identifying and addressing such conflicts;

(2) for local government grantees, a written standard of conduct and conflicts of interest policy that complies with 24 CFR 570.611 and 2 CFR 200.318, as applicable, which policy includes the process for promptly identifying and addressing such conflicts; and

(vi) how it will assist in investigating and taking action when fraud occurs within the grantee’s CDBG-DR activities and/or programs. Following a disaster, property owners and renters are frequently the targets of people fraudulently posing as government employees, creditors, mortgage servicers, insurance adjusters, and contractors. All grantees receiving CDBG-DR funds for the first time shall attend and require subrecipients to attend fraud related training provided by HUD Office of Inspector General (OIG), when offered, to assist in the proper management of CDBG-DR grant funds. Grantees must report to the appropriate HUD CPD staff member that it met this requirement and who attended the training. In accordance with 2 CFR 200.113, grantees and subrecipients of CDBG-DR must promptly inform in writing the OIG and HUD when it has credible evidence of violations of Federal criminal law involving fraud, bribery, or gratuities or a violation of the civil False Claims Act that could potentially affect the Federal award at <https://www.hudoig.gov/hotline/report-fraud> (a subrecipient of CDBG-DR must also inform the CDBG-DR grantee that awarded it funding). All other instances of fraud, waste, and abuse should be referred to the HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email: hotline@hudoig.gov).

Grantees must address in their policies and procedures:

(1) how it will provide CDBG-DR beneficiaries with information that

raises awareness of possible fraudulent activity, how fraud can be avoided, and what local or State agencies to contact to take action and protect the grantee and beneficiary investment:

(2) how the grantee will make CDBG–DR beneficiaries aware of the risks of contractor fraud and other potentially fraudulent activity that can occur in communities recovering from a disaster; and

(3) the steps it will take to assist a CDBG–DR beneficiary if the beneficiary experiences contractor or other fraud. If the beneficiary is eligible for additional CDBG–DR assistance because the fraudulent activity results in the creation of additional unmet need, the procedures must also address what steps the grantee will follow to provide additional assistance.

II.A.1.e. Policies and procedures to prevent DOB. A grantee has adequate policies and procedures to prevent the DOB if the grantee submits and identifies a uniform process that reflects the requirements in Appendix C of the Universal Notice, including:

(i) determining all disaster assistance received by the grantee or applicant and all reasonably identifiable financial assistance available to the grantee or applicant, as applicable, before committing funds or awarding assistance;

(ii) determining a grantee's or an applicant's unmet need(s) for CDBG–DR assistance before committing funds or awarding assistance;

(iii) requiring beneficiaries to enter into a signed agreement to repay any duplicative assistance if they later receive assistance for the same purpose for which the CDBG–DR award was provided. The grantee must identify a method to monitor compliance with the agreement for a reasonable period (*i.e.*, a time period commensurate with risk) and must articulate this method in its policies and procedures, including the basis for the period during which the grantee will monitor compliance. This agreement must also include the following language: “Warning: Any person who knowingly makes a false claim or statement to HUD or causes another to do so may be subject to civil or criminal penalties under 18 U.S.C. 2, 287, 1001 and 31 U.S.C. 3729.”; and

(iv) verifying that CDBG–DR funds will not be used for activities reimbursable by, or for which funds are made available by, FEMA or the U.S. Army Corps of Engineers (USACE). Although the language may vary among appropriations acts, CDBG–DR funds may not be used for activities reimbursable by, or for which funds are made available by FEMA or the USACE.

Policies and procedures of the grantee submitted to support the certification must provide that before the award of assistance, the grantee will use the best, most recent available data from FEMA, the Small Business Administration (SBA), insurers, and any other sources of local, State, and Federal sources of funding to prevent a DOB.

Additionally, HUD can assist CDBG–DR grantees with access to the necessary data to support a DOB review.¹²

II.A.1.f. Policies and procedures for timely expenditures of grant funds. A grantee has adequate policies and procedures to determine timely expenditures if it submits policies and procedures that indicate the following to HUD:

(i) how it will track and document expenditures of the grantee and its subrecipients (both actual and projected reported in performance reports);

(ii) how it will ensure proper reporting, tracking, and expenditure of program income, including how it will ensure that program income is substantially disbursed before making additional withdrawals from the United States Treasury, except when carrying out the same activities through a revolving fund (see section III.B.12. and section III.B.13. for additional requirements);

(iii) how it will reprogram funds in a timely manner for activities that are stalled (*e.g.*, a project is more than six months behind schedule); and

(iv) how it will project expenditures of all CDBG–DR funds within the period provided for in section III.F.1.

II.A.1.g. Capacity assessment and staffing analysis. To enable HUD to assess risk as described in 2 CFR 200.206, the grantee must submit a capacity assessment and staffing analysis to HUD. The capacity assessment must describe the grantee's capacity to carry out the recovery and how it will address any capacity gaps. HUD will determine that the grantee has sufficient management capacity to adequately reduce risk if the grantee submits a capacity assessment and staffing analysis that meets the following requirements.

II.A.1.g.(i). Capacity assessment.

(1) Identify the lead agency responsible for implementation of the CDBG–DR award and indicate that the head of that agency will report directly to the chief executive officer of the jurisdiction.

(2) Conduct an assessment of its capacity to carry out CDBG–DR recovery efforts.

(3) Develop a timeline with milestones describing when and how the grantee will address all capacity gaps that are identified.

(4) Include a list of any open monitoring and HUD OIG audit findings related to any CPD program and an update on the corrective actions undertaken to address each finding.

II.A.1.g.(ii). Staffing analysis.

(1) Submit an organizational chart of the department or division and provide a table that clearly indicates which personnel, or organizational unit will be responsible for each of the Financial Management and Grant Compliance Certification Requirements identified in section II.A.1.a. through f. along with staff contact information, if available.

(2) Submit documentation demonstrating that it has assessed staff capacity and identified positions for the purpose of: case management in proportion to the applicant pool; program managers who will be assigned responsibility for each primary recovery area (*e.g.*, housing, infrastructure, and economic revitalization); staff who have demonstrated experience in housing, infrastructure (as applicable), and economic revitalization (as applicable); staff responsible for procurement/contract management, regulations implementing Section 3 of the Housing and Urban Development Act of 1968, as amended (24 CFR 75) (Section 3), URA and its implementing regulations, section 104(d) of the HCDA and its implementing regulations, and CDBG acquisition and relocation requirements, fair housing compliance, and environmental compliance.

Additionally, demonstrate that the internal auditor, if applicable, and responsible audit staff report independently to the chief elected or executive officer or board of the governing body of any designated administering entity.

(3) Describe how it will provide training and technical assistance for any personnel that are not employed by the grantee at the time of Action Plan submission, and how it will fill gaps in knowledge or technical expertise required for successful and timely recovery. Grantees must also include how it will provide training and technical assistance to its subrecipients.

To fully complete the certification process, the grantee must have completed and submitted the certification documentation required in the applicable Certification Checklist. The grantee's documentation must demonstrate that the standards meet the

¹² View more information about how to access this data, visit HUD's website here: https://www.hud.gov/program_offices/comm_planning/cdbg-dr/data-sharing.

requirements in the Universal Notice and the Certification Checklist.

II.B. Relying on Prior Financial Certification Submissions

This section applies to a grantee that has received CDBG–DR funds that are subject to the requirements of the Universal Notice or that received CDBG–DR funds under Public Laws 117–43, 117–180, and 117–328.

For five years after the execution of a grant agreement for an initial allocation of funds a grantee received subject to the Universal Notice, HUD will rely on the grantee's prior submissions provided in response to the Financial Management and Grant Compliance Certification Requirements for any subsequent allocation of funds that is also subject to the Universal Notice. HUD will continue to monitor the grantee's submissions and updates to policies and procedures during the normal course of business.¹³

For grantees that have received CDBG–DR funds under Public Laws 117–43, 117–180, and 117–328, HUD may rely on a grantee's prior submissions provided in response to the Financial Management and Grant Compliance Certification Requirements for five years after the execution of a grant agreement for an initial allocation of funds under those Public Laws.

If it has been more than five years since the executed grant agreement for the original CDBG–DR grant under the Universal Notice or under Public Laws 117–43, 117–180, and 117–328, grantees must update and resubmit the documentation required by section II.A.1. with the completed Certification Checklist. However, the Secretary may require any CDBG–DR grantee to update and resubmit the documentation required by section II.A.1., if there is good cause to require it.

II.C. Obligation and Expenditure of Funds

Once HUD approves the Action Plan and makes the required certification of financial controls and procurement processes, and adequate procedures for proper grant management HUD will then sign a grant agreement obligating funds to the grantee. In addition, HUD will establish the line of credit, and the grantee will receive DRGR system access (if it does not already have DRGR system access). The grantee will follow the DRGR Action Plan process to draw funds (see section III.G.).

The grantee must meet the applicable environmental requirements before the use or commitment of funds for each activity. After the responsible entity (1) completes an environmental review(s) pursuant to 24 CFR part 58 and receives from HUD or the State, as outlined in 24 CFR 58.18, an approved RROF and certification (as applicable), or (2) adopts another Federal agency's environmental review and receives from HUD or the State, an approved RROF and certification (as applicable), the grantee may draw down funds from the line of credit for an activity. The disbursement of CDBG–DR funds must begin no later than 180 calendar days after HUD (1) executes a grant agreement with the grantee, or (2) approves the Action Plan and financial certification and oversight of funds, whichever is later. Failure to draw funds within this timeframe may result in HUD's review of the grantee's certification of its financial controls, procurement processes, and capacity, and may result in the imposition of any corrective actions deemed appropriate by HUD pursuant to 24 CFR 570.495, 24 CFR 570.910, or 24 CFR 1003.

III. Phase Three: Implementation of Universal Notice Requirements

III.A. Policies and Procedures—Universal Notice Requirements

III.A.1. Development of program-specific policies and procedures. Grantees must develop program-specific policies and procedures governing the use of funds. The Universal Notice requires each grantee to prioritize policies and procedures for its programs that address its unmet housing recovery needs. Grantees must create and finalize policies and procedures for their housing programs no later than one year from the applicability date of the AAN. Not later than eighteen months from the applicability date of the AAN, grantees must create and finalize policies and procedures governing the rest of its CDBG–DR funded programs (e.g., economic revitalization, infrastructure, public service activities, and any other eligible activities the grantee will fund) that shall be subject to HUD review. If a grantee has determined that it does not have unmet housing needs in the MID areas, the grantee must create policies and procedures for its other programs and activities no later than one year from the applicability date of the AAN.

III.A.2. Required policies and procedures for all CDBG–DR funded programs. This section outlines the specific requirements that grantees must adhere to when developing their policies and procedures. Grantees must

ensure their procedures comply with several key requirements, such as fair housing and civil rights compliance and minimizing displacement. Additionally, there are program-specific requirements that grantees must meet depending on the type of program (e.g., housing programs). Beyond the requirements described below, each grantee's program-specific policies and procedures must adhere to the overarching policies and procedures they certified to (refer to *Phase Two: Financial Certification and Oversight of Funds* of the Universal Notice) including the requirement to build procedures to detect and prevent fraud, waste, and abuse; and any requirements set forth in this notice or the regulations on other cross-cutting requirements (e.g., environmental reviews, Davis Bacon Act, Section 3, Lead Safe Housing, etc.). Additionally, the grantee's program-specific policies and procedures must align with the information in the Action Plan (including the grantee's proposed allocations), as amended and approved by HUD.

III.A.2.a. Fair housing and civil rights policies and procedures. Each program-specific policy and procedure must address the following requirements on fair housing and civil rights:

(i) a description of how the grantee's use of their CDBG–DR funds is consistent with their obligation to AFFH. For example, grantees may undertake a variety of actions consistent with the requirements to AFFH such as: (1) overcoming prior disinvestment in housing, infrastructure, and public services for protected class groups in the MID areas, especially where such groups are highly concentrated; (2) enhancing (a) the accessibility of disaster preparedness, resilience, or recovery services, including the accessibility of evacuation services and shelters for individuals with disabilities in the MID areas; (b) the provision of critical disaster-related information in accessible formats; and/or (c) the availability of integrated, accessible housing and supportive services; or (3) using CDBG–DR funds to mitigate environmental concerns and increase resilience among protected class groups to protect against the effects of extreme weather events and other natural hazards in the MID areas. Note, grantees must update these policies and procedures to remain in compliance with AFFH requirements as HUD may update its guidance and rules;

(ii) a description of how their proposed allocations to projects and activities, selection criteria, and other actions can be expected to reduce

¹³ View the Community Planning and Development's Monitoring Handbook for more information on HUD monitoring here: https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2.

barriers for individuals, vulnerable populations, protected classes, and other underserved communities (as applicable);

(iii) a description of how each program will enhance for individuals with disabilities in the MID areas (1) the accessibility of disaster preparedness, resilience, or recovery services, including the accessibility of evacuation services and shelters; (2) the provision of critical disaster-related information in accessible formats; and/or (3) the availability of integrated, accessible housing and supportive services;

(iv) identification of the proximity of natural and environmental hazards (e.g., industrial corridors, sewage treatment facilities, waterways, EPA superfund sites, brownfields, etc.) to affected populations in the MID area, including members of protected classes, vulnerable populations, and other underserved communities; and a description of how each program will mitigate these specific environmental concerns and increase resilience among these populations in the MID area to protect against current and future hazard risks.

III.A.2.b. *Minimizing displacement and relocation policies and procedures.* Each program-specific policy and procedure must address the following requirements on minimizing displacement and relocation assistance, as appropriate:

(i) a description of how the grantee plans to minimize displacement of persons or entities, and assist any persons or entities displaced, and ensure accessibility needs of displaced persons with disabilities. Grantees must seek to minimize displacement or the adverse impacts from displacement, consistent with the requirements of section III.B.15.a. of the Universal Notice, Section 104(d) of the HCDA (42 U.S.C. 5304(d)) and implementing regulations at 24 CFR part 42, and 24 CFR 570.488 or 24 CFR 570.606, as applicable;

(ii) grantees must amend an existing Residential Anti-displacement and Relocation Assistance Plan (RARAP) or create a new RARAP specific to CDBG-DR. Grantees must meet the requirements in section III.B.15.a., related to the RARAP prior to implementing any activity with CDBG-DR grant funds, such as buyouts and other disaster recovery activities; and

(iii) grantees must also describe how they will provide relocation assistance to persons or entities displaced under the URA and its implementing regulations at 49 CFR part 24, and under an optional relocation policy under 24 CFR 570.606(d), when applicable.

Grantees must also plan and budget for such relocation activities. The description will outline methods for identifying the needs of the potentially displaced persons including site visits, interviews, and orientations. It will also cover budget development variables like housing market conditions, acquisition costs, relocation payments, and professional services costs. Planning and budgeting must precede any action that will cause displacement and/or temporary relocation (including programmatic optional relocation) and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations.

Finally, not all eligible activities will trigger displacement (e.g., planning). In such cases, the grantee should include in its policies and procedures an explanation that minimizing displacement is not applicable because displacement will not occur.

III.A.2.c. *Mitigation policies and procedures.* Each program-specific policy and procedure must address the following requirements on mitigation and resilience:

(i) how mitigation measures and strategies to reduce natural hazard risks will be integrated into the construction, reconstruction, or rehabilitation of residential or non-residential buildings;

(ii) how CDBG-DR investments will be designed and constructed to withstand chronic stresses and extreme events related to a changing climate by identifying and implementing resilience performance measures in DRGR.

III.A.2.d. *Timeliness policies and procedures.* As part of the development of a grantee's program-specific policies and procedures, each grantee must also develop projected expenditures and outcomes. The projections must be based on each quarter's expected performance—beginning with the first quarter funds are available to the grantee and continuing each quarter until all funds are expended. The grantee must include in its policies and procedures how it will monitor its expenditures and outcomes against the projections. The grantee must upload these projections into DRGR and then post this information on its public website as required by section III.B.8.

III.A.3. *Required policies and procedures for housing programs.*

In addition to the requirements in III.A.2., all policies and procedures related to housing activities must also address the following requirements:

(i) a description of the process the grantee will use to provide exceptions to the maximum amount of assistance on

a case-by-case basis. At a minimum, the grantee's policies and procedures must communicate how it will analyze the circumstances under which an exception is needed and how it will demonstrate that the amount of assistance is necessary and reasonable;

(ii) a description of how its program will align and build upon any funding received from HUD's Rapid Unsheltered Survivor Housing (RUSH) program, as applicable;

(iii) a description of the building standards and codes to be used by construction contractors performing work in the jurisdiction and the mechanisms to be used by the grantee to assist beneficiaries in responding to contractor fraud, poor quality work, and associated issues. Grantee policies and procedures must require a warranty period post-construction with a formal notification to beneficiaries on a periodic basis (e.g., one year and one month before expiration date of the warranty);

(iv) a description of the grantee's affordability standards, including "affordable rents," the enforcement mechanisms, and applicable timeframes, that will apply to the new construction of affordable rental housing of five or more units, as required in section III.D.5.d;

(v) a description of how the grantee will use social media platforms to alert its residents when its applications for housing activities are open and when it is holding public hearings on CDBG-DR plans or projects;

(vi) a description of the grantee's process for accepting alternative methods for documenting ownership. Grantees may include the following documentation as acceptable: deed, title, mortgage documentation, tax receipts or bills, home insurance, home purchase contracts, will or affidavit or heirship naming them as heir, receipts of major repairs completed prior to the disaster, court documents, letter from a manufactured housing community owner or public official, self-certification, or utility bills; and

(vii) a description of the basic DOB framework for housing activities. Grantee policies and procedures must follow the process outlined in Appendix C in the Universal Notice and include how the grantee will carry out the following steps for each beneficiary: (1) assess applicant's total need; (2) identify total assistance; (3) exclude non-duplicative amounts; (4) exclude funds for a different purpose; (5) exclude funds for the same purpose, different allowable use; (6) identify a final DOB amount (if any) and calculate the CDBG-DR award; and (7) reassess

unmet need when necessary. Grantees must include the requirement to have beneficiaries sign an agreement to repay any assistance later received for the same purpose as the CDBG-DR funds (e.g., a subrogation agreement) and include any other required steps listed in Appendix C.

A grantee that will be coordinating with a HUD-approved Housing Counseling Agency¹⁴ would include what information and services it will make available to both renters and homeowners.

III.A.4. Required policies and procedures for infrastructure programs. In addition to the requirements in section III.A.2., all policies and procedures related to infrastructure activities must also address the following requirements:

(i) how the grantee will address the construction or rehabilitation of disaster-related systems (e.g., storm water management systems) or other disaster-related community-based mitigation systems (e.g., using FEMA's community lifelines). State grantees carrying out infrastructure activities must work with local governments and Indian Tribes in the MID areas to identify the unmet needs and associated costs of disaster-related infrastructure improvements;

(ii) how the grantee will plan for the long-term operation and maintenance of infrastructure and public facility projects funded by CDBG-DR, as maintenance and repair of public facilities and improvements is generally ineligible. Grantees must plan for the long-term sustainability of these projects, including who will pay these costs and who will operate and maintain the projects once they are complete;

(iii) the extent to which CDBG-DR funded infrastructure activities will achieve objectives outlined in regionally or locally established plans and policies that are designed to reduce future risk to the jurisdiction;

(iv) how the grantee will align infrastructure investments with other planned Federal, State, or local capital improvements and infrastructure development efforts, and will work to foster the potential for additional infrastructure funding from multiple sources, including State and local capital improvement projects and private investment;

(v) how the grantee will prioritize infrastructure within historically

underserved communities that lacked adequate investments in housing, transportation, water, and wastewater infrastructure prior to the disaster; and

(vi) a description of the basic DOB framework for infrastructure activities. Grantee policies and procedures must follow the process outlined in Appendix C in the Universal Notice and include how the grantee will carry out the following steps for each entity (e.g., local government) assisted: (1) assess applicant's total need; (2) identify total assistance; (3) exclude non-duplicative amounts; (4) exclude funds for a different purpose; (5) exclude funds for the same purpose, different allowable use; (6) identify a final DOB amount (if any) and calculate the CDBG-DR award; and (7) reassess unmet need when necessary. In its policies and procedures, the grantee must include how it will identify whether any local or State funds are available for these types of activities. And if local or State funds were previously designated or planned for the activity, but are no longer available, the grantee must describe how it will document that the local government recipient does not have funds set aside for the activity in any capital improvement plan (or similar document showing planned use of funds). The grantee must include any other required steps listed in Appendix C.

III.A.5. Required policies and procedures for economic revitalization programs. In addition to the requirements in section III.A.2., all policies and procedures related to economic revitalization activities must also address the following requirements:

(i) a description of how the grantee will prioritize underserved communities that have been impacted by the disaster and that were economically distressed before the disaster, as described in section III.D.7.a. While HUD defines the minimum standard for underserved communities in section I.C.1.c., grantees must describe how they will further define areas that are considered underserved communities;

(ii) a description of how the grantee will use social media platforms to alert its residents when its applications for economic development activities are open and when it is holding public hearings on CDBG-DR plans or projects; and

(iii) a description of the basic DOB framework for economic revitalization activities. Grantee policies and procedures must follow the process outlined in Appendix C in the Universal Notice and include how the grantee will carry out the following steps for each business assisted: (1) assess applicant's

total need; (2) identify total assistance; (3) exclude non-duplicative amounts; (4) exclude funds for a different purpose; (5) exclude funds for the same purpose, different allowable use; (6) identify a final DOB amount (if any) and calculate the CDBG-DR award; and (7) reassess unmet need when necessary. Grantees must include the requirement to have entities sign an agreement to repay any assistance later received for the same purpose as the CDBG-DR funds (e.g., a subrogation agreement) and include any other required steps listed in Appendix C.

III.A.6. Consultation and website requirements for program implementation policies. To promote effective program design and public transparency, grantees must comply with the consultation and disaster recovery website requirements for program implementation policies as described in this section. Note, grantees are not expected to release all program policies and procedures at once and can develop and publish program-specific policies and procedures in phases, as programs are ready to launch. However, grantees must comply with the timelines identified in section III.A.1. of the Universal Notice for creating and finalizing program-specific policies and procedures. The grantee must also update its citizen participation plan (see section I.C.2.) to describe how it will comply with the requirements of sections III.A.6.a. and III.A.6.b.

III.A.6.a. Consultation with citizen advisory groups. Grantees are required to gather feedback and recommendations on key program decisions from its citizen advisory group at least annually. A citizen advisory group is a body composed of individuals from a community who volunteer or are appointed to provide input, advice, and recommendations on various issues and policies affecting their community. These groups typically serve as a bridge between the general public and decision-makers, offering insights, perspectives, and expertise to help inform and shape decisions that impact the community's well-being and development. A citizen advisory group will look different in each community because each community is unique. Generally, the individuals who volunteer or are appointed should represent the demographics of the community it is supporting. For example, a citizen advisory group in a community that is predominantly renters should include individuals who are renters. A citizen advisory group in a community that has a large share of a specific racial or ethnic minority group should include

¹⁴ View additional information to locate a HUD-approved Housing Counseling Agency here: <https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?weblistaction=summary>.

members of that specific racial or ethnic minority group. Each grantee can determine the cadence of meetings and how the group will provide feedback to the grantee. As an example, a citizen advisory group may review program-specific policies and procedures to determine if programs are adequately reaching and assisting intended beneficiaries and are achieving intended program outcomes. The grantee must describe the process it will follow for the citizen advisory group in its citizen participation plan.

III.A.6.b. Publication of program-specific policies and procedures. Grantees must prominently post final program-specific policies and procedures on their official disaster recovery website within the timeline identified in section III.A.1. of the Universal Notice. In addition, these program-specific policies and procedures must be available to the public on the website before the grantee formally begins accepting applications for that program. Grantees must also comply with the general website requirements of section III.B.8. of the Universal Notice.

III.A.7. HUD program-specific policies and procedures review process. Within two years from the applicability date of the AAN, HUD will review the grantee's program-specific policies and procedures, either onsite or through remote monitoring, for compliance with the requirements in section III. If a grantee's program-specific policies and procedures are not in compliance with the requirements of the Universal Notice, HUD may undertake corrective and remedial actions as described in section III.F.2.a. HUD will continue to monitor the grantee's program-specific policies and procedures during the normal course of business (*i.e.*, CPD's Monitoring Handbook and applicable CPD Notice Implementing Risk Analyses for CPD programs).

III.B. Grant Administration

III.B.1. Overall benefit. Consistent with the HCDA, 24 CFR 570.484 and 24 CFR 570.200(a)(3), the Universal Notice requires grantees to comply with the overall benefit requirement that 70 percent of funds be used for activities that benefit LMI persons. For purposes of a CDBG-DR grant, HUD is establishing an alternative requirement that the overall benefit test shall apply only to the grant of CDBG-DR funds described in the AAN and related program income.

A grantee may request a waiver of the overall benefit requirement to reduce the LMI benefit requirement below 70 percent of the total grant. To request a

waiver, the grantee must submit a substantial amendment, and provide a justification that, at a minimum: (a) identifies the planned activities that meet the needs of its LMI population; (b) describes proposed activities and programs that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee's long-term disaster recovery plan; (c) describes how the activities/programs identified in (b) prevent the grantee from meeting the 70 percent requirement; (d) demonstrates that LMI persons' disaster-related needs have been sufficiently met and that the needs of non-LMI persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve non-LMI persons; and (e) demonstrates a compelling need for HUD to lower the percentage of the grant that must benefit LMI persons.

III.B.1.a. Use of the "upper quartile" or "exception criteria." The LMA benefit requirement is modified when communities have few, if any, areas within their jurisdiction that have 51 percent or more LMI residents. In such a community, activities must serve an area that contains a percentage of LMI residents that is within the upper quartile of all census-block groups within its jurisdiction in terms of the degree of concentration of LMI residents. HUD determines the lowest proportion a grantee may use to qualify an area for this purpose and advises the grantee, accordingly. The "exception criteria" (*i.e.*, upper quartile) applies to CDBG-DR funded activities in entitlement communities covered by such criteria, including entitlement communities that receive disaster recovery funds from a State. Each year, HUD publishes the most recent data here: <https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-exception-grantees/>.

III.B.1.b. Clarification of the use of "uncapped" income limits. The Quality Housing and Work Responsibility Act of 1998 (Title V of Pub. L. 105-276) enacted a provision that directs the Department to grant exceptions to at least 10 jurisdictions that are currently "capped" under HUD's low and moderate-income limits. Under this exception, several CDBG entitlement grantees may use "uncapped" income limits that reflect 80 percent of the actual median income for the area. Each year, HUD publishes guidance on its website identifying which grantees may use uncapped limits: <https://www.huduser.gov/portal/datasets/cdbg-income-limits.html>.

Accordingly, HUD clarifies that the annual uncapped income limits published by HUD apply to CDBG-DR funded activities in jurisdictions covered by the uncapped limits, including jurisdictions that receive disaster recovery funds from a State CDBG-DR grantee.

III.B.2. Use of the urgent need national objective. Because HUD provides CDBG-DR funds only to grantees with documented disaster-related impacts and each grantee is limited to spending funds only for the benefit of areas that received a Presidential disaster declaration, the Secretary finds good cause to waive the urgent need national objective criteria in section 104(b)(3) of the HCDA (42 U.S.C. 5304(b)(3)) and to establish the following alternative requirement for any CDBG-DR grantee using the urgent need national objective for a period of 36 months after the applicability date of the grantee's AAN.

Pursuant to this alternative requirement, grantees that use the urgent need national objective must address the following three criteria in their Action Plan: (i) describe in the unmet needs assessment why specific needs have a particular urgency, including how the existing conditions pose a serious and immediate threat to the health or welfare of the community; (ii) identify each program or activity that will use the urgent need national objective—either through its initial submission or through a substantial amendment to the Action Plan submitted by the grantee within 36 months of the applicability date of the grantee's initial AAN; and (iii) document how each program and/or activity funded under the urgent need national objective responds to the urgency, type, scale, and location of the disaster-related impact as described in the grantee's unmet needs assessment.

This alternative urgent need national objective is in effect for a period of 36 months following the applicability date of the grantee's initial AAN. After 36 months, the grantee will be required to follow the criteria established in section 104(b)(3) of the HCDA (42 U.S.C. 5304(b)(3)) and its implementing regulations in 24 CFR part 570 when using the urgent need national objective for any new programs and/or activities added to an action plan.

III.B.3. Administration cap. Historically, the appropriations acts authorize up to five percent of the grant (plus five percent of program income generated by the grant) to be used for administrative costs (*i.e.*, program administrative costs) by the grantee or its subrecipients. The Secretary does not

have the authority to waive or specify an alternative requirement to increase the grant administration cap. Thus, the total of all costs classified as administrative for a CDBG–DR grant must be less than or equal to the five percent cap (plus five percent of program income generated by the grant). The cap for administrative costs is subject to the combined technical assistance and administrative cap for State grantees as discussed in section III.C.1. For example, administrative activities include the grantee's overall grant management, internal auditor activities, and DRGR recordkeeping.¹⁵

III.B.3.a. Use of funds for administrative costs across multiple grants. The appropriations acts may authorize special treatment of grant administrative funds. Grantees receiving funds under the Universal Notice, and that have received CDBG–DR or CDBG–MIT grants in the past or in any future acts, may use eligible administrative funds (up to five percent of each grant award plus up to five percent of program income generated by the grant) appropriated by these acts for the cost of administering any CDBG–DR or CDBG–MIT grant without regard to the particular disaster appropriation from which such funds originated. If the grantee chooses to exercise this authority, the grantee must (i) have appropriate financial controls to comply with the requirement that the amount of grant administration expenditures for each CDBG–DR or CDBG–MIT grant will not exceed five percent of the total grant award for each grant (plus five percent of program income generated by the grant); (ii) review and modify its financial management policies and procedures regarding the tracking and accounting of administration costs, as necessary; and (iii) address the adoption of this treatment of administrative costs in the applicable portions of its Financial Management and Grant Compliance submissions as referenced in section II.A. Grantees are reminded that all uses of funds for program administrative activities must qualify as an eligible administration cost.

III.B.4. Planning cap. Both State and local government grantees are limited to spending a maximum of 15 percent of their total grant amount on planning costs. Planning costs subject to the 15 percent cap are those defined in 42 U.S.C. 5305(a)(12) and more broadly in 24 CFR 570.205. For example, planning

activities can include grantees conducting feasibility studies, marketing studies, local mitigation plans, and long-term disaster recovery plans.¹⁶

III.B.5. Public service cap. Both State and local government grantees are limited to spending a maximum of 15 percent of their total grant amount on public services. Public service costs subject to the 15 percent cap are those defined in 42 U.S.C. 5305(a)(8) and more broadly in 24 CFR 570.201(e). For example, public service activities can include mental health services and counseling, and legal services for disaster impacted individuals. The Universal Notice identifies specific activities in III.D. that are exempt from this cap with the waiver and alternate requirements established for each activity.

III.B.6. Consolidated Plan. The requirements for consistency with the consolidated plan in Section 106 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12706), and regulations at 24 CFR 91.225(a)(5), and 24 CFR 91.325(a)(5)) are temporarily waived because the effects of a major disaster alter a grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e) is also waived, to the extent that it would require HUD to annually review grantee performance under the consistency criteria. These waivers apply only for 24 months after the applicability date of the grantee's AAN. If the grantee is not scheduled to submit a new three-to-five-year consolidated plan within the next two years, the grantee must update its existing three-to-five-year consolidated plan to reflect disaster-related needs no later than 24 months after the applicability date of the grantee's AAN.

III.B.7. Procurement. To have a proficient procurement process, the grantee must submit the policies and procedures to HUD as required by section II.A.1.b.; and post the required documentation to the official website as described in section III.B.8. below. Additionally, the grantee must include the following alternative requirements in this section in its submitted procurement policies and procedures, as appropriate.

III.B.7.a. Procurement alternative requirements. HUD is establishing an additional alternative requirement for

all procurement actions to provide goods and services, as follows:

1. The grantee (or procuring entity) is required to clearly state the period of performance or date of completion in all contracts;

2. The grantee (or procuring entity) must incorporate performance requirements and liquidated damages into each procured contract. Contracts that describe work performed by general management consulting services need not adhere to the requirement on liquidated damages but must incorporate performance requirements; and

3. The grantee (or procuring entity) may contract for administrative support, in compliance with 2 CFR 200.459, but may not delegate or contract to any other party any inherently governmental responsibilities related to oversight of the grant, including policy development, fair housing and civil rights compliance, and financial management.

III.B.7.b. Procurement when using CDBG–DR as non-Federal match. When using CDBG–DR grant funds as the non-Federal match as explained in section III.D.6.d., grantees can adopt the procurement policies and procedures that satisfy the other Federal agency's requirements to promote consistency and seamlessly leverage their funding, so long as they meet other cross-cutting requirements that apply to the CDBG–DR funds (e.g., Section 3 requirements, Davis Bacon Act, etc.). Grantees must identify which procurement policies and procedures will apply and keep any decision document in its files. For example, CDBG–DR grants to local governments are subject to the same procurement requirements that apply to procurements by local governments using FEMA Public Assistance (PA) funds. State CDBG–DR grantees (and other CDBG–DR grantees subject to State CDBG rules under a waiver and alternative requirement) should consider including a provision in their procurement requirements that adopts FEMA procurement requirements for activities that will be used to satisfy the non-Federal match. This will eliminate confusion about which procurement rules apply.

Additionally, when CDBG–DR funds are used as the non-Federal match in another Federal program, grantees are not required to comply with the alternative requirements in section III.B.7.a. above.

III.B.8. Public disaster recovery website. The grantee must maintain a public website that permits individuals and entities awaiting assistance and the general public to see how all grant funds

¹⁵ View HUD's guidance on allocating costs between program administrative costs, activity delivery costs, and planning costs for CDBG–DR Grantees published in CPD Notice 23–06 here: <https://www.hud.gov/sites/dfiles/OA/images/2023-06cpdn.pdf>.

¹⁶ View HUD's guidance on allocating costs between program administrative costs, activity delivery costs, and planning costs for CDBG–DR Grantees published in CPD Notice 23–06 here: <https://www.hud.gov/sites/dfiles/OA/images/2023-06cpdn.pdf>.

are used and administered. The public website must be accessible to persons with disabilities and individuals with LEP in compliance with Section 504, Title II of the ADA,¹⁷ Title VI, and Executive Order 13166.

III.B.8.a. *Publication and accessibility of required documents.* The website must include copies of all relevant procurement documents and, except as noted in the next paragraph, all grantee administrative contracts, details of ongoing procurement processes, and action plans and amendments. To meet this requirement, each grantee must make the following items available on its website: the Admin Action Plan (if applicable) and the Action Plan (including all amendments); each performance report (as created using the DRGR system); citizen participation plan; procurement policies and procedures; program-specific policies and procedures including a projection of expenditures and outcomes (III.A.6.b.); all contracts, as defined in 2 CFR 200.22, that will be paid with CDBG–DR funds (including, but not limited to, subrecipients' contracts); and a summary including the description and status of services or goods currently being procured by the grantee or the subrecipient (e.g., phase of the procurement, requirements for proposals, etc.). Contracts and procurement actions that do not exceed the micro-purchase threshold, as defined in 2 CFR 200.1, are not required to be posted to a grantee's website.

The grantee must make the required documents available on the grantee's website in a form accessible to persons with disabilities and those with LEP.¹⁸ Grantees must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons, members of protected classes, vulnerable populations, and individuals from other underserved communities, and address any possible digital inequities and related barriers. In their citizen participation plan, State and local government grantees shall describe their procedures for assessing their language needs and identify any need for translation of notices and other vital documents. At a minimum, the citizen participation plan shall require that the grantee take reasonable steps to provide language assistance to ensure meaningful access to participation by

non-English-speaking residents of the grantee's jurisdiction.

III.B.9. *Application status.* The grantee must provide multiple methods of communication, such as websites, dashboards, social media, toll-free numbers, TTY and relay services, email address, fax number, or other means to provide applicants for recovery assistance with timely information to determine the status of their application and when the application period begins. While grantees must identify multiple methods, one of the methods identified must be to include this information on the grantee's disaster recovery website. This must include specific information on application status, including what quarter the grantee projects it will open application intake for each program, and then on a monthly basis, the grantee must include information on which specific applications are under review, any other relevant status update determined by the grantee, and which applications are approved/disapproved. Grantees must use unique application number identifiers to ensure personally identifiable information (PII) is protected. Grantees must also describe how they will use social media in their policies and procedures to announce when applications are open as required by sections III.A.3. and III.A.5. HUD strongly encourages grantees to consider how their application process can be inclusive of persons who are home-bound or unable to move freely.

III.B.10. *Environmental requirements.*

III.B.10.a. *Process for environmental release of funds when a State carries out activities directly.* For CDBG–DR grants, HUD allows State grantees to carry out activities directly and to distribute funds to subrecipients. Per 24 CFR 58.4(b)(1), when a State carries out activities directly (including through subrecipients that are not local governments), the State must submit the RROF and Certification to HUD for approval.

III.B.10.b. *Responsibilities of States assuming HUD environmental responsibilities.* When a State grantee distributes funds to subrecipients that have Responsible Entity authority under 24 CFR part 58 (i.e., units of general local government), the State must exercise HUD's responsibilities in accordance with 24 CFR 58.18. In its policies and procedures, a State must designate the agency or agencies that will be responsible for carrying out the requirements and administrative responsibilities set forth in 24 CFR part 58, subpart H. The designated State agency must develop a monitoring and enforcement program for post-review actions on environmental reviews and

monitor compliance with any environmental conditions included in the award.

III.B.10.c. *Adoption of another Federal agency's environmental review.* Recipients of CDBG–DR funds that supplement other Federal assistance may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, so long as the actions covered by the existing environmental review, approval, or permit and the actions proposed for the CDBG–DR supplemental funds are substantially the same. Such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit.

Projects originally funded by another agency that are later supplemented with CDBG–DR do not have to supplement the other agency's environmental review with any HUD environmental requirements that differ from the originating agency (e.g., Federal Flood Risk Management Standard (FFRMS) floodplain and elevation, noise, etc.). However, if the activity is modified so the other agency's environmental review no longer covers the activity, the grantee is required to reevaluate and supplement the other agency's environmental review to comply with all applicable HUD environmental regulations in 24 CFR part 58. The grantee's environmental review obligations are considered complete when adopting another agency's environmental review as outlined in this section. To be adequate:

1. The grantee must obtain a completed electronic or paper copy of the Federal agency's review and retain a copy of the full file in its environmental review record.

2. The grantee must review the scope of work completed by the Federal agency's review and verify that the scope of work is substantially the same with a memo to file in its environmental review record.

3. The grantee must notify HUD on the RROF (HUD-Form 7015.15) (or the State, if the State is acting as HUD under 24 CFR 58.18) that another agency review is being used. The grantee must include the name of the other Federal agency, the name of the project, and the date of the project's review as prepared by the other Federal agency.

When permitted by the applicable appropriations acts, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary or a State may, upon receipt of a RROF and Certification, immediately approve the release of funds for an activity or project assisted with CDBG–DR funds if the recipient

¹⁷ Note: the technical standards of Section 508 provide a practical benchmark when seeking to comply with nondiscrimination and effective communication obligations under Section 504 and the ADA.

¹⁸ View HUD's guidance on LEP for more information on vital documents here: https://www.lep.gov/guidance/HUD_guidance_Jan07.pdf.

has adopted an environmental review, approval, or permit under this section, or if the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA).

III.B.10.d. *Historic preservation reviews.* The responsible entity must comply with section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108). Early coordination under section 106 is important to the recovery process and required by 24 CFR 58.5(a).

III.B.10.e. *Tiered environmental reviews.* Tiering, as described at 40 CFR 1508.1(o), 40 CFR 1501.11, and 24 CFR 58.15, is a means of making the environmental review process more efficient by allowing parties to “eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided” (40 CFR 1501.11(b)). Tiering is appropriate when a responsible entity is evaluating a single-family housing program with similar activities within a defined local geographic area and timeframe (e.g., rehabilitating single-family homes within a city district or county over the course of one to five years) but where the specific sites and activities are not yet known. Public notice and the RROF are processed at a broad level, eliminating the need for publication at the site-specific level. However, funds cannot be spent or committed on a specific site or activity until both the broad level and the site-specific review have been completed and approved.

III.B.10.f. *FFRMS floodplain and elevation.* HUD published the FFRMS Final Rule on April 23, 2024, the rule became effective on May 23, 2024, and the compliance date for CDBG–DR funds was on June 24, 2024.¹⁹ CDBG–DR grantees must update their construction standards and any related policies and procedures to comply with the requirements outlined in the FFRMS final rule. While this section in the notice summarizes the new rule, grantees should reference the new requirements in Part 55 to ensure compliance.

The floodplain area is determined by the FFRMS based on available data in the project area and whether the project scope contains a Critical Action (as defined in 24 CFR 55.2(b)(3)). Residential buildings (as defined in 44

CFR 59.1) and nonresidential buildings (as defined in 44 CFR 59.1) that are located in the floodplain and receive assistance for new construction, reconstruction, rehabilitation of substantial damage, or rehabilitation that results in substantial improvement, must be elevated to those floodplain standards. HUD requires grantees to follow a three-tiered data standard to determine the FFRMS floodplain, as follows:

- *Non-critical Actions:* (1) use the climate-informed science approach (CISA), if available and actionable and formally adopted by HUD; (2) if CISA is not available, then use the 0.2-percent-annual-chance-floodplain (500-year floodplain), determined by FEMA; or (3) if neither of these options are available, then use the freeboard value approach (FVA) by adding two feet to the base flood elevation (BFE).

- *Critical Actions:* (1) use the CISA, if available and actionable and formally adopted by HUD; (2) if CISA is not available, then use the 500-year floodplain or the FVA by adding three feet to the BFE, whichever results in the larger floodplain and higher elevation; or (3) if the 500-year floodplain is not available, then use the FVA by adding three feet to the BFE.

For residential buildings undergoing new construction or substantial improvement located in the FFRMS floodplain, the lowest floor (or FEMA-approved equivalent) must be designed using the elevation of the FFRMS floodplain as the baseline standard for elevation (except where higher elevations are required by Tribal, State, or locally adopted code or standards, in which case those higher elevations apply). Residential buildings (including multi-family) that have no dwelling units below the FFRMS floodplain that are not critical actions, and nonresidential buildings, undergoing new construction or substantial improvement shall be designed, either with the lowest floor (including basement) elevated to or above the elevation of the FFRMS floodplain or with the structure floodproofed at least up to the elevation of the FFRMS floodplain (using floodproofing standards as outlined in FEMA regulations found in 44 CFR 60.3(c)(3)(ii) and (c)(4)(i), or successor standard.

In addition to the requirements described in the FFRMS final rule, grantees must comply with (1) all applicable environmental review requirements found in 24 CFR part 55; and (2) all applicable State, local, and Tribal codes and standards for floodplain management, including

elevation, setbacks, and cumulative substantial damage requirements. Grantees should note that structures that are elevated must meet Federal accessibility standards.

III.B.11. *Flood insurance requirements.* Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements described below, before providing assistance. Grantees are encouraged to work with State insurance regulators and industry to assess availability and affordability of insurance.

III.B.11.a. *Flood insurance purchase requirements.* When grantees use CDBG–DR funds to rehabilitate or reconstruct existing residential buildings in a Special Flood Hazard Area (SFHA), the grantee must comply with applicable Federal, State, local, and Tribal laws and regulations related to both flood insurance and floodplain management. SFHA is defined by FEMA as the area that will be inundated by the flood event having a one-percent chance of being equaled or exceeded in any given year. The one-percent annual chance flood is also referred to as the base flood or 100-year flood. The grantee must comply with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) which mandates the purchase of flood insurance protection for any property receiving HUD assistance for acquisition or construction (including rehabilitation) within a Special Flood Hazard Area and with 24 CFR 58.6(a)(2), which requires that flood insurance under the National Flood Insurance Program be obtained. Therefore, a HUD-assisted homeowner for a property located in a Special Flood Hazard Area must obtain and maintain flood insurance in the amount and duration prescribed by FEMA’s National Flood Insurance Program.

III.B.11.b. *Federal assistance to owners remaining in a floodplain.*

III.B.11.b.(i) *Prohibition on flood disaster assistance for failure to obtain and maintain flood insurance.* Grantees must comply with section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a), which prohibits flood disaster assistance in certain circumstances. No Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for “repair, replacement, or restoration” for damage to any personal, residential, or commercial property if that person at any time has received Federal flood

¹⁹ Visit HUD’s Office of Environment and Energy’s website for additional information on FFRMS here: https://www.hud.gov/program_offices/comm_planning/environment_energy/ffrms.

disaster assistance that was (1) conditioned on the person first having obtained flood insurance under applicable Federal law, and (2) the person has subsequently failed to obtain and maintain flood insurance as required on such property.

The grantee must implement a process to verify and monitor for compliance with section 582 and the requirement to obtain and maintain flood insurance.

III.B.11.b.(ii) *Prohibition on flood disaster assistance for households above 120 percent of AMI for failure to obtain flood insurance.* When a homeowner located in the floodplain allows their flood insurance policy to lapse, it is assumed that the homeowner is unable to afford insurance and/or is accepting responsibility for future flood damage to the home. Higher income homeowners who reside in a floodplain, but who failed to secure or decided to not maintain their flood insurance, should not be assisted at the expense of lower income households. To ensure that adequate recovery resources are available to assist lower income homeowners who reside in a floodplain but who are unlikely to be able to afford flood insurance, the Secretary finds good cause to establish an alternative requirement.

The alternative requirement to 42 U.S.C. 5305(a)(4) is as follows: Grantees receiving CDBG–DR funds are prohibited from providing CDBG–DR assistance for the rehabilitation/reconstruction of a house, if (1) the combined household income is greater than either 120 percent of AMI or the national median, (2) the property was located in a SFHA at the time of the disaster, and (3) the property owner did not obtain or maintain flood insurance on the damaged property, even when the property owner was not required to obtain and maintain such insurance.

III.B.11.b.(iii) *Responsibility to inform property owners to obtain and maintain flood insurance.* Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) is a statutory requirement that property owners receiving disaster assistance that triggers the flood insurance purchase requirement have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance and to maintain such written notification in the documents evidencing the transfer of the property, and that the transferring owner may be liable if he or she fails to do so. A grantee or subrecipient receiving CDBG–DR funds must notify property owners of their responsibilities under section 582.

III.B.12. *Program income.* For State or local government grantees, HUD is waiving all applicable program income rules at 42 U.S.C. 5304(j), 24 CFR 570.489(e) and (f), 24 CFR 570.500, 24 CFR 570.504, and 24 CFR 570.509(a)(4) and providing the alternative requirement described below.²⁰ Program income earned by Indian Tribes that are subrecipients of State or local government grantees will be subject to the program income requirements for subrecipients of those grantees.

III.B.12.a. *Definition of program income.* “Program income” is defined as gross income generated from the use of CDBG–DR funds, except as provided in III.B.12.b. below, and received by State or local government grantees, including subrecipients. When program income is generated by an activity that is only partially assisted with CDBG–DR funds, the income shall be prorated to reflect the percentage of CDBG–DR funds used (e.g., a single loan supported by CDBG–DR funds and other funds, or a single parcel of land purchased with CDBG–DR funds and other funds). If CDBG funds are used with CDBG–DR funds on an activity, any income earned on the CDBG portion would not be subject to the waiver and alternative requirement in the Universal Notice.

Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG–DR funds.

(ii) Proceeds from the disposition of equipment purchased with CDBG–DR funds.

(iii) Gross income from the use or rental of real or personal property acquired by State or unit of general local government grantees, including subrecipients, with CDBG–DR funds less costs incidental to generation of the income.

(iv) Gross income from the use or rental of real property owned by State or local government grantees, including subrecipient, that was constructed or improved with CDBG–DR funds, less costs incidental to generation of the income.

(v) Payments of principal and interest on loans made using CDBG–DR funds, including interest paid by borrowers on loans made from a revolving fund, as defined in section III.B.13.

(vi) Proceeds from the sale of loans made with CDBG–DR funds.

(vii) Proceeds from the sale of obligations secured by loans made with CDBG–DR funds.

(viii) Interest earned on program income pending disposition of the income, including interest earned on funds held in a revolving fund, as defined in section III.B.13.

(ix) Interest earned on lump sum drawdowns for financing of property rehabilitation activities as described in 24 CFR 570.513;

(x) Funds collected through special assessments made against non-residential properties and properties owned and occupied by non-LMI households, where the special assessments are used to recover all or part of the CDBG–DR portion of a public improvement.

(xi) Gross income paid to a State or local government grantees, including subrecipients, from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG–DR assistance.

(xii) Any income received by State or local government grantees related to the CDBG–DR grant after closeout, including income received by subrecipients after closeout (see section II.D.12.e.).

III.B.12.b. *Program income—does not include.* Program income does not include the following:

(i) The total amount of funds that is less than \$35,000 received over the life of the grant and retained by State or local government grantees, including subrecipients. Once a grantee, including subrecipients, meets or exceeds the \$35,000 threshold, only funds over the threshold are considered program income and are subject to the requirements of the Universal Notice.

(ii) Amounts generated by activities eligible under section 105(a)(15) of the HCDA (42 U.S.C. 5305(a)(15) and carried out by an entity under the authority of section 105(a)(15) of the HCDA.

(iii) Income (except for interest described in 24 CFR 570.513) earned on grant advances from the U.S. Treasury; this income must be remitted to HUD for transmittal to the U.S. Treasury.

III.B.12.c. *Recording program income.* For State or local government grantees, including their subrecipients, the receipt and expenditure of program income shall be recorded using both DRGR and internal financial records as part of the financial transactions of the CDBG–DR grant.

III.B.12.d. *Retention of program income.* State grantees may permit local governments that receive or will receive program income to retain the program income but are not required to do so.

²⁰ View HUD's instructions and templates on how to handle CDBG–DR program income here: https://www.hud.gov/program_offices/comm_planning/cdbg-dr/program_income.

Additionally, State or local government grantees may permit subrecipients that receive or will receive program income to retain the program income but are not required to do so. In all cases, program income retained by local governments or subrecipients is treated as additional CDBG–DR funds subject to the requirements of the Universal Notice.

The written agreement between the grantee and the subrecipient, shall specify whether program income received is to be returned to the grantee or retained by the subrecipient. When program income is to be retained by the subrecipient, the agreement shall specify the activities that will be undertaken with program income and that all provisions of the written agreement shall apply to the specified activities. When the subrecipient retains program income, transfers of grant funds by the grantee to the subrecipient shall be adjusted according to the disbursement principles described in section III.B.12.e. Any program income on hand when the agreement expires, or received after the agreement's expiration, shall be paid to the grantee.

III.B.12.e. *Program income—use, close out, and transfer.* Program income received (and retained, if applicable) before or after closeout of the grant that generated the program income, and used to continue disaster recovery activities, is treated as additional CDBG–DR funds subject to the requirements of the Universal Notice and must be used in accordance with the grantee's Action Plan for disaster recovery. Grantees must substantially disburse program income before making additional withdrawals from the United States Treasury, except as provided in section III.B.13. State grantees may meet this requirement by carrying out activities directly or by distributing program income to local governments in accordance with the State's approved method of distribution, as provided in section I.C.1.f. Local government grantees may meet this requirement by carrying out activities directly as provided in section I.C.1.f.

Any income received by State or local government grantees related to the CDBG–DR grant after closeout, including income received by subrecipients after closeout, shall be treated as program income and shall be subject to the requirements of the Universal Notice, unless transferred to an annual CDBG program. If transferred to an annual CDBG program, the following rules apply:

(1) Program income received by State or local government grantees before or after closeout, including program income received by subrecipients, may

be transferred by the State or local government grantees to the annual CDBG program before or after closeout of the grant that generated the program income. In all cases, the grantee must first seek and then receive HUD's approval;

(2) Any program income transferred will not be subject to the waivers and alternative requirements of the Universal Notice. Rather, those funds will be subject to the applicable regular CDBG program rules. Any other transfer of program income not specifically addressed in the Universal Notice may be carried out if the grantee first seeks and then receives HUD's approval; and

(3) CDBG–DR grantees must continue to report annually in DRGR on any program income received following closeout of the grant.

III.B.13. *Revolving funds.* State or local government grantees may establish revolving funds to carry out specific, identified activities. State grantees may also establish a revolving fund to distribute funds to a local government, including subrecipients, to carry out specific identified activities. A revolving fund, for these purposes, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities must generate payments used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not required to be used or disbursed for nonrevolving fund activities. A revolving fund established by a CDBG–DR grantee shall not be directly funded or capitalized with CDBG–DR grant funds. Given that funds in a revolving loan fund, including interest earned on funds held in the revolving loan fund as well as interest paid by borrowers on loans made from the fund, are considered program income, grantees may transfer revolving loan funds before or after closeout, pursuant to section III.B.12.e.

III.B.14. *Reimbursement of disaster recovery expenses.* A grantee may not charge such pre-award or pre-application costs to grants if the grantee cannot meet all requirements at 24 CFR part 58. Pre-award costs are defined in 2 CFR 200.458 and are allowed in instances in which the CDBG–DR grantee anticipated an allocation and incurred an eligible cost prior to the award. For all pre-award costs, compliance with 24 CFR part 58 must

be completed before the start of the activity. Pre-application costs are costs incurred by an applicant to CDBG–DR funded programs on or after the incident date of the qualifying disaster but before the time of application to a grantee or subrecipient (this may be before or after the grantee signs its CDBG–DR grant agreement). For all pre-application costs, compliance with 24 CFR part 58 must be completed prior to the commitment of funds (*i.e.*, prior to the grantee or subrecipient committing to reimburse the qualifying entity for costs incurred). Under CDBG–DR appropriations acts and HUD's environmental regulations in 24 CFR part 58, the CDBG–DR "recipient" (as defined in 24 CFR 58.2(a)(5), which differs from the definition in 2 CFR part 200) is the responsible entity that assumes the responsibility for completing environmental reviews under all applicable Federal laws and authorities. The responsible entity assumes all legal liability for the application, compliance, and enforcement of these requirements.

Grantees are also required to consult with the State Historic Preservation Officer, Fish and Wildlife Service, and National Marine Fisheries Service, to obtain formal agreements for compliance with section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) when designing a reimbursement program.

III.B.14.a. *Reimbursement of pre-award costs by a grantee or subrecipient.* The provisions at 24 CFR 570.200(h)(1)(i), (v), and (vi) are waived; however, the rest of the provisions at 24 CFR 570.200(h) will continue to apply to State and local governments to permit grantees to incur pre-award costs. Additionally, HUD is establishing the following alternative requirement: the provisions at 24 CFR 570.489(b) are applied to all CDBG–DR grantees to permit States and local governments to allow subrecipients to incur costs before the establishment of a formal grant relationship between the grantee and the subrecipient. Grantees may reimburse themselves or their subrecipients for otherwise allowable costs incurred on or after the incident date of the qualifying disaster, if the environmental review and all other cross-cutting requirements are met before the underlying activity (*e.g.*, rehabilitation of a government building) begins. As an alternative requirement, grantees must include any pre-award activities in their Action Plan, including eligible activities that were funded with short-term subsidized loans (*e.g.*, bridge

loans) that the grantee intends to reimburse or otherwise charge to the grant, consistent with applicable program requirements.

III.B.14.b. *Reimbursement of pre-application costs of homeowners, renters, businesses, and other qualifying entities.* Grantees are permitted to charge to grants the pre-application costs of homeowners, renters, businesses, and other qualifying entities for otherwise allowable costs incurred on or after the incident date of the qualifying disaster as identified in a grantees' applicable AAN. In addition to the terms described in the remainder of the Universal Notice, grantees may only charge costs to the grant that meet the following requirements:

- Grantees may only charge the costs incurred for disaster relief payments (see section III.D.5.h.) and rehabilitation, demolition, and reconstruction of single family, multifamily, and nonresidential buildings, including commercial properties, owned by private individuals and entities, before the owner or renter applies to a CDBG-DR grantee, recipient, or subrecipient for CDBG-DR assistance;

- For rehabilitation and reconstruction costs, grantees may only charge costs for activities completed within the same footprint of the damaged structure, sidewalk, driveway, parking lot, or other developed area;

- As required by 24 CFR 200.403(g), costs must be adequately documented; and

- Grantees must complete a DOB check before providing assistance pursuant to Appendix C.

Grantees are required to ensure that all costs charged to a CDBG-DR grant are necessary expenses related to authorized recovery purposes. Grantees may charge to CDBG-DR grants the eligible pre-application costs of individuals and private entities related to single family, multifamily, and nonresidential buildings, only if: (1) the person or private entity incurred the expenses within two years after the applicability date of the grantee's *initial* AAN for that disaster; and (2) the person or entity incurs the cost before the date on which the person or entity applies for CDBG-DR assistance. Exempt activities as defined at 24 CFR 58.34, but not including 24 CFR 58.34(a)(12), and categorical exclusions as defined at 24 CFR 58.35(b) are not subject to the time limit on pre-application costs outlined above. Actions that convert or potentially convert to exempt under 24 CFR 58.34(a)(12) remain subject to the reimbursement requirements provided herein. If a grantee cannot meet all

requirements at 24 CFR part 58, the pre-application costs cannot be reimbursed with CDBG-DR.

Grantees must comply with the necessary and reasonable cost principles for State, local, and Indian Tribal governments (described at 24 CFR 200.403). Grantees must incorporate into their policies and procedures the basis for determining that the assistance provided is necessary and reasonable.

III.B.15. *URA, Section 104(d), and related CDBG program requirements.*

Certain activities and projects undertaken with CDBG-DR funds are subject to the URA (49 CFR part 24), section 104(d) of the HCDA (42 U.S.C. 5304(d)), and CDBG program requirements related to displacement, relocation, acquisition, and replacement of housing (24 CFR 570.606), except as modified by these waivers and alternative requirements:

1. Process for updating existing RARAP or establishing a CDBG-DR specific RARAP (review section III.B.15.a.).

2. Optional relocation assistance policies (review section III.B.15.b.).

3. Relocation assistance requirements under Section 104(d) (review section III.B.15.c.).

4. One-for-one replacement waiver process (review section III.B.15.d.).

5. Lump-sum relocation assistance to displaced residential tenants (review section III.B.15.e.).

6. Voluntary acquisition—homebuyer primary residence purchase (review section III.B.15.f.).

7. Applicability of Section 414 of the Stafford Act for projects that begin one year after the applicable presidential disaster (review section III.B.15.g.).

The implementing regulations for the URA are at 49 CFR part 24. The regulations implementing section 104(d) are at 24 CFR part 42. The regulations for applicable CDBG program requirements are at 24 CFR 570.488 and 24 CFR 570.606. HUD is waiving and/or providing alternative requirements in this section for the purpose of providing enough flexibility while preserving minimum standards of tenant and property owner protections, and promoting the stable supply of decent, safe, and sanitary affordable housing.

III.B.15.a. *Section 104(d) RARAP.*

CDBG-DR grantees must certify that they have in effect and are following a RARAP as required by section 104(d)(1) and (2) of the HCDA and 24 CFR 42.325 and covered under section III.A.2.b. In addition to the requirements in 24 CFR 42.325 and 24 CFR 570.488 or 24 CFR 570.606(c), as applicable, HUD is specifying the following alternative requirements:

Grantees who are following an existing RARAP for CDBG purposes must either: (1) amend their existing RARAP; or (2) create a separate RARAP for CDBG-DR purposes, to reflect the requirements listed in this section and applicable waivers and alternative requirements.

Grantees who do not have an existing RARAP in place because they do not manage CDBG programs must create a separate RARAP for CDBG-DR purposes.

As each grantee establishes and supports feasible and cost-effective recovery efforts to make communities more resilient against future disasters, the RARAP must describe how the grantee plans to minimize displacement of families and individuals from their homes and neighborhoods as a result of any CDBG-DR assisted activities, potentially through non-displacing disaster recovery activities (e.g., housing rehabilitation programs). Across disaster recovery activities—such as buyouts and other eligible acquisition activities, where minimizing displacement is not reasonable, feasible, or cost-efficient or would not help prevent future or repetitive loss—the grantee must describe how it plans to minimize the adverse impacts of displacement.

The description shall focus on proposed disaster recovery activities that may directly or indirectly result in displacement and the assistance that would be required for those displaced. This description must also focus on relocation assistance under the URA and its implementing regulations at 49 CFR part 24, section 104(d) and its implementing regulations at 24 CFR part 42, 24 CFR 570.488, and/or 24 CFR 570.606, and relocation assistance pursuant to this section of the Universal Notice, as well as any other assistance being made available to displaced persons. The RARAP must include a description of how the grantee will plan CDBG-DR programs or projects in such a manner that recognizes the substantial challenges experienced by displaced individuals, families, businesses, farms, and nonprofit organizations and develop solutions to minimize displacement or the adverse impacts of displacement especially among vulnerable populations. Any solutions to minimize permanent displacement, such as the implementation of temporary relocations or construction in phases, are strongly encouraged. The description must be scoped to the complexity and nature of the anticipated displacing activities, including the evaluation of the grantee's available resources to carry out timely and orderly relocations in compliance

with all applicable relocation requirements.

Grantees must include in their RARAP, their plans to replace, on a one-for-one basis, all occupied and vacant occupiable low-income dwelling units that are demolished or converted with CDBG–DR funds to another use according to 24 CFR 42.325(b) and 24 CFR 49.375, unless a waiver is pursued by the grantee and granted by HUD, as described in III.B.15.d.

The RARAP, including section 104(d) one-for-one housing replacement plans and protocols (if not waived), must be included in the grantee's program-specific policies and procedures as required in III.A.2.b.(ii).

III.B.15.b. *Optional relocation.* The regulations at 24 CFR 570.606(d) are waived to the extent that they require optional relocation policies to be established at the grantee level. Unlike the regular CDBG program, States may carry out disaster recovery activities directly or through subrecipients, but 24 CFR 570.606(d) does not account for this distinction. This waiver makes clear that grantees receiving CDBG–DR funds may establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies. The written policy must: be available to the public, describe the relocation assistance that the grantee or subrecipient (as applicable) has elected to provide, and provide for equal relocation assistance within each class of displaced persons according to 24 CFR 570.606(d). This waiver is intended to provide States with maximum flexibility in developing optional relocation policies for CDBG–DR funds.

III.B.15.c. *Section 104(d) relocation assistance.* The relocation assistance requirements at section 104(d)(2)(A)(iii) and 104(d)(2)(B) of the HCDA and 24 CFR 42.350, are waived. This waiver limits the types and amount of relocation assistance a section 104(d) displaced person, as defined under 24 CFR 42.305, is eligible to receive. The relocation assistance will now align with the types and amounts provided under the URA and implementing regulations at 49 CFR part 24. This waiver does not impact a person's eligibility as a displaced person under section 104(d), rather it limits the amounts and types of relocation assistance under section 104(d) to the amounts and types of assistance for displaced persons under the URA, as amended. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (e.g., buyouts and relocation). Both FEMA and CDBG–DR funds are subject to the

requirements of the URA; however, only CDBG–DR funds are subject to section 104(d), while FEMA funds are not. This limited waiver of the section 104(d) relocation assistance requirements ensures uniform and equitable treatment of individuals eligible to receive benefits under section 104(d) by establishing that all forms of relocation assistance provided to those individuals must comply with URA requirements.

III.B.15.d. *One-for-one replacement requirement.* All occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than lower-income dwelling units in connection with a CDBG–DR assisted activity must be replaced with comparable lower-income dwelling units in compliance with 24 CFR 42.375. CDBG–DR grantees must follow the requirements at 24 CFR 42.375 and HUD will follow up the publication of the Universal Notice with guidance on how to meet these requirements in communities impacted by a disaster.

A grantee may request a waiver of section 104(d) one-for-one replacement requirement and its regulations at section 104(d)(2)(A)(i) and (ii) and 104(d)(3) of the HCDA and 24 CFR 42.375. To request a waiver, a grantee must submit a good cause justification that includes a data-driven analysis that indicates that there is an adequate supply of vacant lower-income dwelling units in standard condition that will be available to meet the housing needs of LMI owners and tenants in the MID areas or surrounding communities in alignment with the requirement to affirmatively further fair housing.

III.B.15.e. *Lump sum rental assistance payments for residential tenants.* The requirements of 42 U.S.C. 3537(c) are waived to the extent necessary to permit a grantee to make lump-sum relocation rental assistance payments to displaced residential tenants. Waiving this requirement allows grantees to provide lump sum rental assistance payments to displaced residential tenants, thereby reducing grantees' administrative burden of disbursing installment payments, in addition to accelerating the availability of the rental assistance, to displaced disaster survivors.

III.B.15.f. *Voluntary acquisition—homebuyer primary residence purchase.* Grantees may implement disaster recovery program activities that provide financial assistance to eligible homebuyers to purchase and occupy residential properties as their primary residence. Such purchases are generally considered voluntary acquisitions under the URA and subject to the URA regulatory requirements at 49 CFR 24.101(b)(2). For CDBG–DR, 49 CFR

24.101(b)(2), as it may be amended, is waived to the extent that it applies to a homebuyer, who does not have the power of eminent domain, and uses CDBG–DR funds in connection with the voluntary purchase and occupancy of a home the homebuyer intends to make their primary residence. This waiver is necessary to reduce burdensome administrative requirements for homebuyers following a disaster. Tenants displaced by these voluntary acquisitions may be eligible for relocation assistance.

III.B.15.g. *Waiver of Section 414 of the Stafford Act.* Section 414 of the Stafford Act (42 U.S.C. 5181) provides that “Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 . . . shall be denied such eligibility as a result of [their] being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.” Accordingly, homeowner occupants and tenants displaced from their homes as a result of the identified disasters who would have otherwise not have been displaced as a direct result of any acquisition, rehabilitation, or demolition of real property for a federally funded program or project may become eligible for a replacement housing payment notwithstanding their inability to meet occupancy requirements prescribed in the URA. Section 414 of the Stafford Act and its implementing regulation at 49 CFR 24.403(d)(1) are waived to the extent that they would apply to real property acquisition, rehabilitation, or demolition of real property undertaken by a grantee or subrecipient for a CDBG–DR funded project commencing more than one year after the date of the latest applicable Presidentially declared disaster, provided that the project was not planned, approved, or otherwise underway before the disaster.

For purposes of this waiver, a CDBG–DR funded project shall be determined to have commenced on the earliest of: (1) the date of an approved RROF and certification; (2) the date of completion of the site-specific review when a program utilizes tiering; or (3) the date of sign-off by the approving official when a project converts to exempt under 24 CFR 58.34(a)(12).

This waiver will simplify the administration of the disaster recovery process and reduce the administrative burden associated with the implementation of Stafford Act Section 414 requirements for projects

commencing more than one year after the date of the Presidentially declared disaster considering most of such persons displaced by the disaster will have returned to their dwellings or found another place of permanent residence. Notwithstanding the flexibility provided by this waiver, grantees are encouraged to carefully assess housing needs and provide programmatic relocation assistance or other benefits to eligible homeowner occupants and tenants displaced by the disaster that may not have returned to their dwellings or found another place of permanent residence one year after the disaster.

This waiver does not apply to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced or relocated temporarily by other HUD-funded programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted by this waiver.

III.B.16. *DOB*. CDBG–DR grants are one of multiple Federal sources that assist disaster recovery. These Federal funding sources are often made available for the same purposes to grantees and disaster survivors. For this reason, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5207) (Stafford Act) and CDBG–DR appropriations acts require HUD and its grantees to coordinate with other Federal agencies that provide disaster assistance to prevent the DOB. The Stafford Act's prohibition on DOB aims to ensure that Federal assistance serves only to “supplement insurance and other forms of disaster assistance” (42 U.S.C. 5170).

CDBG–DR grantees must prevent DOB when carrying out eligible activities. A duplication occurs when a person, household, business, or other entity receives disaster assistance from multiple sources for the same recovery purpose, and the total assistance received for that purpose is more than the total need. Total assistance can include cash awards; insurance proceeds; grants and loans, including awards under local, State, or Federal programs; and assistance from private or nonprofit charity organizations. The amount of the DOB is the amount received in excess of the total need for the same purpose. When total need for eligible activities is more than total assistance for the same purpose, the difference between these amounts is an “unmet need.” Grantees must limit their assistance to unmet needs for eligible activities to prevent a DOB. Additionally, when reimbursement is

permitted, unmet needs can include amounts needed for reimbursement. Grantees must follow the detailed DOB requirements listed in Appendix C.

III.B.17. *Citizen complaints*. The grantee will provide a timely written response to every citizen complaint. The grantee response must be provided within 15 calendar days of the receipt of the complaint, or the grantee must document why additional time for the response was required. Complaints regarding fraud, waste, or abuse of government funds should be forwarded to the HUD OIG Fraud Hotline (phone: 1–800–347–3735 or email: hotline@hudoig.gov).

III.C. State Grantee Only Requirements

III.C.1. *Combined technical assistance and administrative cap (state grantees only)*. The provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii), and 24 CFR 570.489(a)(2) shall not apply to the extent that they cap administration and technical assistance expenditures, limit a State's ability to charge a nominal application fee for grant applications for activities the State carries out directly, and require a dollar-for-dollar match of State funds for administrative costs exceeding \$100,000. 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for administrative and technical assistance expenditures must not exceed five percent of the grant, plus five percent of program income generated by the grant.

III.C.2. *Planning-only activities (state grantees only)*. The State CDBG Program requires that, for planning-only grants, local government grant recipients must document that the use of funds meets a national objective. In the CDBG Entitlement Program, these more general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). HUD notes that almost all effective recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. To assist State grantees, HUD is waiving the requirements at 24 CFR 570.483(b)(5) and (c)(3), which limit the circumstances under which the planning activity can meet a low- and moderate-income or slum-and-bligh national objective. Instead, as an alternative requirement, 24 CFR 570.208(d)(4) applies to States when funding disaster recovery, planning-only grants, or when directly administering planning activities that

guide disaster recovery. In addition, 42 U.S.C. 5305(a)(12) is waived to the extent necessary so the types of planning activities that States may fund or undertake are expanded to be consistent with those of CDBG Entitlement grantees identified at 24 CFR 570.205.

III.C.3. *Direct grant administration and means of carrying out eligible activities (state grantees only)*. Requirements at 42 U.S.C. 5306(d) are waived to allow a State to use its disaster recovery grant allocation directly to carry out State-administered activities eligible under the Universal Notice, rather than distribute all funds to local governments. Pursuant to this waiver and alternative requirement, the standard at 24 CFR 570.480(c) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the State carries out directly. Activities eligible under the Universal Notice may be carried out by a State, subject to State law and consistent with the requirement of 24 CFR 570.200(f), through its employees, through procured contracts, or through assistance provided under agreements with subrecipients. State grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements, for compliance with 24 CFR 570.489(g), (h) and (l), and subparagraph II.A.1.d. of the Universal Notice relating to conflicts of interest, and for compliance with 24 CFR 570.489(m) relating to monitoring and management of subrecipients.

A State grantee may also carry out activities in Tribal areas. A State must coordinate with the Indian Tribe with jurisdiction over the Tribal area when providing CDBG–DR assistance to beneficiaries in tribal areas. State grantees carrying out projects in Tribal areas, either directly or through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients, must obtain the consent of and coordinate with the Indian Tribe with jurisdiction over the Tribal area to carry out or to fund CDBG–DR projects in the Tribal area.

III.C.4. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties (state grantees only)*. 42 U.S.C. 5302(a)(7) (definition of “nonentitlement area”) and related provisions of 24 CFR part 570, including 24 CFR 570.480, are waived to permit State grantees to distribute CDBG–DR funds to CDBG metropolitan cities and urban counties and Indian Tribes. When a State distributes funds through a method of distribution or by other means, the requirements applying to

State grantees may apply to the grant funds unless otherwise amended by the Universal Notice, or by subrecipient agreements.

III.C.5. Use of subrecipients (state grantees only). Section III.C.3. provides a waiver and alternative requirement that a State may carry out activities directly, including through assistance provided under agreements with subrecipients. Therefore, when States carry out activities directly through subrecipients, the following alternative requirements apply: the State is subject to the definition of subrecipients at 24 CFR 570.500(c) and must adhere to the requirements for agreements with subrecipients at 24 CFR 570.503. Additionally, 24 CFR 570.503(b)(4) is modified to require the subrecipient to comply with applicable uniform requirements, as described in 24 CFR 570.502, except that the subrecipient shall follow procurement requirements imposed by the State in accordance with section II.A.1.(b) of the Universal Notice. When 24 CFR 570.503 applies, notwithstanding 24 CFR 570.503(b)(5)(i), local governments that are subrecipients are defined as recipients under 24 CFR part 58 and are therefore responsible entities that assume environmental review responsibilities. Grantees are reminded that they are responsible for providing on-going oversight and monitoring of subrecipients and are ultimately responsible for subrecipient compliance with all CDBG–DR requirements as stated in 24 CFR 58.18.

III.C.6. Recordkeeping (state grantees only). When a State carries out activities directly, 24 CFR 570.490(b) is waived and the following alternative provision shall apply: a State grantee shall establish and maintain such records as may be necessary to facilitate review and audit by HUD and HUD OIG of the State's administration of CDBG–DR funds, under 24 CFR 570.493 and reviews and audits by the State as described in section III.C.8. below. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to: (a) enable HUD to make the applicable determinations described at 24 CFR 570.493; (b) make compliance determinations for activities carried out directly by the State; and (c) show how activities funded are consistent with the descriptions of activities proposed for funding in the Action Plan and/or DRGR system.

III.C.7. Change of use of real property (state grantees only). This alternative requirement conforms the change of use

of real property rule to the waiver allowing a State to carry out activities directly. For purposes of these grants, all references to “unit of general local government” in 24 CFR 570.489(j), shall be read as “state, local governments, or Indian tribes (either as subrecipients or through a method of distribution), or other state subrecipient.”

III.C.8. Responsibility for review and handling of noncompliance (state grantees only). This change is in conformance with the waiver allowing a State to carry out activities directly. 24 CFR 570.492 is waived, and the following alternative requirement applies for any State receiving a direct award: the State shall make reviews and audits, including on-site reviews of any local governments or Indian Tribes (either as subrecipients or through a method of distribution), designated public agencies, and other subrecipients, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCDA (42 U.S.C. 5304(e)(2), as amended, and as modified by the Universal Notice. In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The State shall establish remedies for noncompliance by any subrecipients, designated public agencies, or local governments.

III.C.9. Consultation (state grantees only). Currently, the HCDA and regulations require a State grantee to consult with affected local governments in nonentitlement areas of the State in determining the State's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b)(2), and 24 CFR 91.110, and imposing an alternative requirement that States consult with all disaster-affected local governments (including any CDBG-entitlement grantees), Indian Tribes, and any public housing authorities in determining the use of funds. This approach ensures that a State grantee will assess the recovery needs of all areas affected by the disaster. Requirements related to consultation for all CDBG–DR grantees are described in detail in sections I.C.2.a. and III.A.6. of the Universal Notice.

III.D. Waivers and Alternative Requirements Related to Eligible Activities

This section provides an overview of the waivers and alternative requirements HUD has established for CDBG–DR grant funds as it relates to

eligible activities listed at 24 CFR 570.201 and section 105(a) of the HCDA. Projects funded with CDBG–DR must be classified as an eligible activity either through the program regulations cited in the previous sentence or through a waiver and alternative requirement issued in the Universal Notice or applicable AAN.

III.D.1. Connection to the disaster. CDBG–DR funds are provided for necessary expenses for activities authorized under title I of the HCDA related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation of risk associated with activities carried out for these purposes, in the “most impacted and distressed” (MID) areas (identified by HUD or the grantee) resulting from a major disaster. All CDBG–DR funded activities must address an impact of the disaster for which funding was allocated (*i.e.*, tie-back to the disaster). Accordingly, each activity must: (1) address a direct or indirect impact from the disaster in a MID area; (2) be a CDBG-eligible activity (or be eligible under a waiver or alternative requirement); and (3) meet a national objective. This is true for all activities except for mitigation activities funded by an additional mitigation set-aside in the appropriations acts that do not require a connection to the qualifying major disaster as described below in section III.D.1.a. Requirements for the use of these mitigation set aside funds are covered in section III.D.4.

III.D.1.a. Documenting a connection to the disaster. Grantees must maintain records that document how each funded activity addresses a direct or indirect impact from the disaster. Grantees may do this by linking activities to a disaster recovery need that is described in the unmet needs assessment in the Action Plan (requirements for the assessment are addressed in section I.C.1.a.). Sufficient documentation of physical loss must include damage or rebuilding estimates, insurance loss reports, images, or similar information that documents damage caused by the disaster. Sufficient documentation for non-physical disaster-related impacts must clearly show how the activity addresses the disaster impact (*e.g.*, for economic development activities, data about job loss or businesses closing after the disaster or data showing how pre-disaster economic stressors were aggravated by the disaster; or for housing activities, a post-disaster housing analysis that describes the activities that are necessary to address the post-disaster housing needs).

III.D.2. MID areas. Funds must be used for costs related to unmet needs in

the MID areas resulting from qualifying disasters. HUD allocates funds using the best available data that covers the eligible affected areas and identifies MID areas. The HUD-identified MID areas and the minimum dollar amount that must be spent to benefit those areas will be identified for each grantee in the applicable AAN. Grantees can request that an additional area(s) be classified as a HUD-identified MID area by contacting their assigned HUD staff member. To be eligible, the area(s) must have received a presidential major disaster declaration identified by the disaster numbers listed in the applicable AAN. Grantees must submit the request with a data-driven analysis that illustrates the basis for designating the additional area(s) as most impacted and distressed as a result of the qualifying disaster. An additional area(s) being classified as a HUD-identified MID area would only result in a substantial amendment to the grantees' Action Plan, if it was not already included as a grantee-identified MID area (see section I.C.1.g.).

Grantees may use up to five percent of the total grant award for grant administration and up to 15 percent of the total grant award for planning costs. Therefore, HUD will include 80 percent of a grantee's expenditures for grant administration in its determination that 80 percent of the total award has benefited the HUD-identified MID area. Expenditures for planning activities may also be counted towards the HUD-identified MID area requirement, only if the grantee describes in its Action Plan how those planning activities benefit those areas.

HUD may identify an entire jurisdiction or a ZIP code as a MID area. If HUD designates a ZIP code as a MID area for the purposes of allocating funds, the grantee may expand program operations to the whole county(ies), borough(s), parish(es), municipio/municipios, or equivalent jurisdictions that overlap with the HUD designated ZIP code. A grantee must indicate the decision to expand eligibility in its action plan.

Grantee expenditures for eligible unmet needs outside of the HUD-identified or grantee-identified MID areas are allowable, provided that the grantee can demonstrate how the expenditure of CDBG-DR funds outside of the MID areas will address unmet needs identified within the HUD-identified or grantee-identified MID area (e.g., upstream water retention projects to reduce downstream flooding in the HUD-identified MID area).

III.D.3. Mitigation measures. Additionally, HUD is adopting the

following alternative requirement to section 105(a) of the HCDA (42 U.S.C. 5305(a)): Grantees may carry out the activities described in section 105(a) of the HCDA, as modified by waivers and alternative requirements, to the extent that the activities comply with the following:

Grantees must incorporate mitigation measures when carrying out activities to construct, reconstruct, or rehabilitate residential or non-residential buildings with CDBG-DR funds as part of activities eligible under 42 U.S.C. 5305(a) (including activities authorized by waiver and alternative requirement). To meet this alternative requirement, grantees must demonstrate that they have incorporated mitigation measures into CDBG-DR activities as a construction standard to create communities that are more resilient to the impacts of recurring natural disasters and the impacts of a changing climate. When determining which mitigation measures to incorporate, grantees should design and construct structures to withstand existing and future climate impacts expected to occur over the life of the project. For all mitigation measures adopted, grantees must report resilience performance measures available in DRGR. For example, when building or reconstructing homes in a floodplain, a grantee must follow HUD's elevation requirements and will report the number of structures to be elevated as a performance measure in DRGR.

III.D.4. Mitigation activities—CDBG-DR mitigation set-aside. Unlike recovery activities where grantees must demonstrate that their activities "tie-back" to the specific disaster and address a specific unmet recovery need for which the CDBG-DR funds were appropriated, activities funded by additional mitigation funds do not require such a "tie-back" to the specific qualified disaster that has served as the basis for the grantee's allocation. Instead, grantees must demonstrate that activities funded by the additional mitigation funds will (1) meet the definition of mitigation activities; (2) address the current and future risks as identified in the grantee's mitigation needs assessment in the MID areas; (3) be CDBG-eligible activities under title I of the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and (4) meet a national objective. For purposes of grants subject to the Universal Notice, mitigation activities are defined as those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship,

by lessening the impact of future disasters. Grantees must report activities as a "MIT" activity type in DRGR so that HUD and the public can determine that the grantee has fulfilled the requirement for the additional mitigation funds.

Grantees may also meet the requirement of the additional mitigation funds by including eligible recovery activities that both address the impacts of the disaster (i.e., have "tie-back" to the specific qualified disaster) and incorporate mitigation measures. In section III.D.3., grantees are instructed to incorporate mitigation measures when carrying out activities to construct, reconstruct, or rehabilitate residential or non-residential buildings. If grantees wish to count those activities towards the grantee's additional mitigation funds, grantees must: (1) document how those activities and the incorporated mitigation measures will meet the definition of mitigation, as provided above; and (2) report those activities as a "MIT" activity type in DRGR so they are easily tracked.

III.D.4.a. Alignment with mitigation plans. Grantees must ensure that activities funded with the CDBG-DR mitigation set-aside identified in their Action Plan will align with existing hazard mitigation plans submitted to the Federal Emergency Management Agency (FEMA) under section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165) or other State, local, or Tribal hazard mitigation or long-term recovery plans.

III.D.5. Housing activities and standards. Grantees may use CDBG-DR funds for activities that may include, but are not limited to, new construction, reconstruction, and rehabilitation of single-family or multifamily housing, homeownership assistance, buyouts, and rental assistance. The broadening of eligible CDBG-DR activities related to housing under the HCDA is necessary following major disasters in which housing, including large numbers of affordable housing units, have been damaged or destroyed. Note, CDBG-DR does not have a requirement of "proof of ownership" when grantees are carrying out housing recovery programs. Any decisions about requiring applicants to submit proof of ownership is up to the grantee and its chosen program design. However, grantees may choose to obtain documentation to protect the CDBG-DR investment. In doing so, grantees must include in their program-specific policies and procedures alternative methods for documenting ownership. While grantees have flexibility on what type of documentation they will require to

prove ownership, HUD strongly recommends that grantees consider the following documentation options in their required policies and procedures: deed, title, mortgage documentation, tax receipts or bills, home insurance, home purchase contracts, will or affidavit or heirship naming them as heir, receipts of major repairs completed prior to the disaster, court documents, letter from a manufactured housing community owner or public official, self-certification, or utility bills.

As grantees consider different eligible housing activities, States and local governments are encouraged to adopt the latest edition or editions of the International Residential Code (IRC) for single family new construction and International Building Code (IBC) for multi-family construction, and respective subcodes (e.g., plumbing, electrical, fire). HUD encourages grantees to adopt the recent edition or editions of the International Existing Building Code (IEBC) when using CDBG-DR funds for rehabilitation. If a grantee chooses to adopt these codes, HUD encourages the adoption without the removal of any provisions. Grantees can find required building and energy standards in section III.D.5.b.(i).

The following waivers and alternative requirements will assist grantees in addressing the full range of unmet housing needs arising from a disaster.

III.D.5.a. *New housing construction waiver.* 42 U.S.C. 5305(a) and 24 CFR 570.207(b)(3) are waived to the extent necessary to permit new housing construction, subject to the following alternative requirement. When a CDBG-DR grantee funds a new housing construction activity, 24 CFR 570.202 shall apply and shall be read to extend to new construction in addition to rehabilitation assistance. Private individuals and entities must remain compliant with Federal accessibility requirements as well as with the applicable site selection requirements of 24 CFR 1.4(b)(3) and 8.4(b)(5).

III.D.5.b. *Standards for new construction, reconstruction, and rehabilitation.* HUD is adopting an alternative requirement to require grantees to adhere to the applicable standards in III.D.5.b.(i), through III.D.5.b.(ii) when carrying out activities to construct, reconstruct, or rehabilitate residential buildings. For purposes of the Universal Notice, the terms “substantial damage” and “substantial improvement” shall be as defined in 44 CFR 59.1.

III.D.5.b.(i). *Standards for new construction and reconstruction of residential buildings.* Grantees must meet at least one Green and Resilient

Building Standard and at least one minimum energy efficiency standard, as defined in this subparagraph, for: (i) all new construction and reconstruction (i.e., demolishing a housing unit and rebuilding it on the same lot in substantially the same manner) of residential buildings and (ii) all rehabilitation activities of substantially damaged residential buildings, including changes to structural elements such as flooring systems, columns, or load-bearing interior or exterior walls. As described in 44 CFR 59.1, substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(1) The Green and Resilient Building Standard requires that all construction covered by the paragraph above also meet an industry-recognized standard or rating system that has achieved certification under:

- (i) Enterprise Green Communities;
- (ii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development);
- (iii) ICC-700 National Green Building Standard (NGBS) Green or NGBS Green+ Resilience;
- (iv) International Living Future Institute, Living Building Challenge;
- (v) Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label);
- (vi) Earth Advantage New Homes;
- (vii) IBHS FORTIFIED Home (Roof, Silver, Gold); IBHS FORTIFIED Commercial (Roof, Silver, Gold); IBHS FORTIFIED Multifamily (Roof, Silver, Gold);²¹
- (viii) NFPA 1140, Standard for Wildland Fire Protection;
- (ix) 2024 Wildland Urban Interface (WUI) Code;²²

(x) NFPA Firewise USA;²³ or

(xi) Any other equivalent comprehensive green and/or resilient building standard acceptable to HUD.

(2) The minimum energy efficiency standard, as defined by the IECC as referenced by the building code, requires that all construction covered by the paragraph above achieve

certification under one of the following programs:

- (i) EPA ENERGY STAR® V 3.2 or ENERGY STAR® NextGen certification or ENERGY STAR (Certified Homes or Multifamily High-Rise High Performance);
- (ii) DOE Zero Energy Ready Home;
- (iii) EarthCraft House, EarthCraft Multifamily;
- (iv) Passive House Institute Passive Building or EnerPHit certification from the Passive House Institute US (PHIUS), International Passive House Association;
- (v) Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label);
- (vi) Earth Advantage New Homes; or
- (vii) Any other equivalent energy efficiency standard acceptable to HUD.

Grantees must identify, in each project file, which of these (1) Green and Resilient Building Standards and (2) minimum energy standard will be used for any building subject to this paragraph. However, grantees are not required to use the same standards for each project or building (i.e., grantees may allow the use of any of the specified standards either at the discretion of the grantee or the builder-developer as long as it is documented in the project file).

III.D.5.b.(ii). *Standards for rehabilitation of non-substantially damaged residential buildings.* For rehabilitation other than the rehabilitation of substantially damaged residential buildings, grantees must follow the HUD CPD Green Building Retrofit Checklist guidelines as posted and updated on HUD's website.²⁴

Grantees must apply these guidelines to the extent applicable for the rehabilitation work undertaken, for example, the use of mold resistant products when replacing surfaces such as drywall. Products and appliances replaced as part of the rehabilitation work, must be ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products or appliances.

III.D.5.c. *Broadband infrastructure or technology to support housing.* Any substantial rehabilitation, as defined by 24 CFR 5.100, reconstruction, or new construction of a building with five or more rental units must include installation of broadband infrastructure or technology, except where the grantee documents that: (i) the location of the new construction or substantial

²¹ View Institute for Business and Home Safety (IBHS) FORTIFIED programs here: <https://fortifiedhome.org/fortified-multifamily/> or <https://fortifiedhome.org/about/>.

²² View 2021 Wildland Urban Interface (WUI) code here: <https://planningforhazards.com/wildland-urban-interface-code-wui-code>.

²³ View NFPA Firewise USA here: <https://www.nfpa.org/education-and-research/wildfire/firewise-usa>.

²⁴ View HUD's CPD Green Building Retrofit Checklist here: <https://www.hud.gov/sites/dfiles/CPD/documents/CPD-Green-Building-Retrofit-Checklist.pdf>.

rehabilitation makes installation of broadband infeasible; (ii) the cost of installing broadband would result in a fundamental alteration in the nature of its program or activity, or in an undue financial burden; or (iii) the structure of the housing to be substantially rehabilitated makes installation of broadband infeasible.

III.D.5.d. *Periods of affordability for new construction of affordable rental housing.* To meet the low- and moderate-income housing national objective, rental housing assisted with CDBG-DR funds must be rented to LMI households at affordable rents. Because the waiver and alternative requirement in III.D.5.a. authorizes the use of grant funds for new housing construction, HUD is imposing the following alternative requirement to modify the low- and moderate-income housing national objective criteria in 24 CFR 570.208(a)(3) and 570.483(b)(3) for activities involving the new construction of affordable rental housing of five or more units. For activities that will construct five or more units, in addition to other applicable criteria in 24 CFR 570.208(a)(3) and 570.483(b)(3), a grantee must define in its program-specific policies and procedures the affordability standards, including “affordable rents,” the enforcement mechanisms, and applicable timeframes, that will apply to the new construction of affordable rental housing. The minimum timeframe and other related requirements acceptable for compliance with this alternative requirement are the HOME Investment Partnerships Program (HOME) requirements. Specifically, the affordability requirements must last for 20 years and must:

(i) Apply without regard to the term of any loan or mortgage, repayment of the CDBG-DR investment, or the transfer of ownership;

(ii) Must be imposed by a deed restriction, a covenant running with the land, an agreement restricting the use of the property, or other mechanisms approved by HUD and must give the grantee or recipient the right to require specific performance (except that the grantee may provide that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure); and

(iii) Must be recorded in accordance with State recordation laws.

III.D.5.e. *Homeownership assistance.* 42 U.S.C. 5305(a)(24) is waived and replaced with the following alternative requirement. Provision of direct assistance to facilitate and expand homeownership among persons at or

below 120 percent of area median income (except that such assistance shall not be considered a public service for purposes of 42 U.S.C. 5305(a)(8)) by using such assistance to:

(i) subsidize interest rates and mortgage principal amounts for homebuyers with incomes at or below 120 percent of area median income;

(ii) finance the acquisition of housing by homebuyers with incomes at or below 120 percent of area median income that is occupied by the homebuyers;

(iii) acquire guarantees for mortgage financing obtained by homebuyers with incomes at or below 120 percent of area median income from private lenders, meaning that if a private lender selected by the homebuyer offers a guarantee of the mortgage financing, the grantee may purchase the guarantee to ensure repayment in case of default by the homebuyer. This subparagraph allows the purchase of mortgage insurance by the household but not the direct issuance of mortgage insurance by the grantee;

(iv) provide up to 100 percent of any down payment required from homebuyers with incomes at or below 120 percent of area median income; or

(v) pay reasonable closing costs (normally associated with the purchase of a home) incurred by homebuyers with incomes at or below 120 percent of area median income.

While homeownership assistance, as described above, may be provided to households with incomes at or below 120 percent of the area median income, HUD will only consider those funds used for households with incomes at or below 80 percent of the area median income to qualify as meeting the LMI person benefit national objective.

III.D.5.f. *Interim mortgage assistance.* 42 U.S.C. 5305(a)(8), 24 CFR 570.201(e), 24 CFR 570.207(b)(4), and 24 CFR 1003.207(b)(4) are modified to allow grantees to extend interim mortgage assistance (IMA) to qualified individuals from three months to up to 20 months. IMA must be used in conjunction with a buyout program, or the rehabilitation or reconstruction of single-family housing, during which mortgage payments may be due but the home is not habitable. A grantee using this alternative requirement must document, in its policies and procedures, how it will determine that the amount of assistance to be provided is necessary and reasonable. This public services activity shall be exempt from the cap on public service expenditures found in section 105(a)(8) of the HCDA (42 U.S.C. 5305(a)(8)), as amended.

III.D.5.g. *Rental assistance.* 42 U.S.C. 5305(a)(8), 24 CFR 570.201(e), 24 CFR 570.207(b)(4), and 24 CFR 1003.207(b)(4) are modified to allow grantees to provide rental assistance (e.g., rent, security deposits, and utility deposits) and utility payments for up to 24 months. This rental assistance can only be used in conjunction with the development of affordable rental housing or other forms of housing assistance, such as rehabilitation, reconstruction, new construction of affordable housing, and homeownership assistance, for persons displaced by the qualifying disaster.

This public service activity shall be exempt from the cap on public service expenditures found in section 105(a)(8) of the HCDA (42 U.S.C. 5305(a)(8)), as amended. If, despite concerted efforts to permanently rehouse survivors, a grantee identifies the need for continued rental assistance, a grantee may submit a request to HUD to extend the 24-month limit on rental assistance. Such a request should include a justification for the continued need for rental assistance and how the extension will enable the grantee to stabilize persons or households in permanent housing. HUD may provide this extension administratively upon a determination that good cause for such an extension exists. A homeowner receiving any form of interim mortgage assistance is not eligible for CDBG-DR rental assistance or utility payments for the same period.

Grantees must determine that the rental assistance and utility payments are needed because the household moved from their primary residence due to rehabilitation or reconstruction to repair damage from a qualified disaster or because the household is experiencing or is at risk of experiencing homelessness and the assistance is part of a homelessness prevention or rapid rehousing program or activity. While this waiver and alternative requirement will allow these grantees to provide rental assistance and utility payments to households impacted by a qualifying major disaster, this does not relieve grantees of the duty to comply with other applicable requirements relating to the temporary relocation or permanent displacement of persons. If a person meets the definition of a “displaced person” under the URA, (42 U.S.C. 4601 *et seq.*) or section 104(d) of the HCDA (42 U.S.C. 5304(d)) (“section 104(d)”) and their implementing regulations, grantees must provide the displaced person with any relocation assistance to which they are entitled under law, including but not limited to assistance authorized under the URA or section 104(d) and

their implementing regulations, as those requirements may be modified by applicable current or future waivers and alternative requirements.

III.D.5.h. *Disaster relief assistance for LMI persons.* HUD is providing an alternative requirement to extend the period that grantees can make disaster relief payments on behalf of individuals and families impacted by a disaster event. Normally, CDBG funds may not be used for income payments, which are not included among eligible activities in section 105(a) of the HCDA for States, and which are expressly prohibited by 24 CFR 570.207(b)(4) in the Entitlement CDBG regulations. The phrase “income payments” means a series of subsistence type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes disaster relief payments made over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family.

Because disasters qualifying for CDBG–DR awards represent the worst levels of destruction and hardship, those recovering often struggle to maintain employment, make rent or mortgage payments, access or pay for food, clothing, and basic utilities, and access many other essential items and services while also trying to fully recover from the disaster months and years after the event. To allow grantees to help individuals and families address these challenges, HUD is waiving 42 U.S.C. 5305(a) only to the extent necessary to establish the following alternative requirement:

CDBG–DR funds may be used to provide disaster relief assistance for low- and moderate-income persons only for items such as food, clothing, housing (rent or mortgage), utilities or medical care related to the qualifying disaster for a period of up to six consecutive months. To be eligible, the beneficiary must use all Federal assistance for losses suffered as a result of the major disaster that qualified for CDBG–DR assistance. Disaster relief payments must be made to the provider of such items or services on behalf of an individual or family, and not directly to an individual or family in the form of income payments, debit cards, or similar direct income payments.

Grantees must maintain documentation, at least at a programmatic level, describing how the grantee determined the amount of assistance for the disaster relief payment was necessary and reasonable, proof of the DOB analysis as outlined in Appendix C, how the payment meets a

national objective, and that the payments are in accordance with the grantee’s approved Action Plan and published program design(s). This public service activity shall be subject to the cap on public service expenditures found in section 105(a)(8) of the HCDA (42 U.S.C. 5305(a)(8)), as amended. A homeowner receiving any form of IMA as described in section III.D.5.f., is not eligible for CDBG–DR disaster relief assistance to cover their mortgage or utilities for the same period and anyone receiving rental assistance is not eligible for CDBG–DR disaster relief assistance to cover their rent or utilities for the same period.

III.D.5.i. *Buyouts.* CDBG–DR grantees may carry out property acquisition for a variety of purposes, but buyouts are a type of acquisition for the specific purpose of reducing the risk of property damage. HUD has determined that creating a new activity and alternative requirement for buyouts is necessary for consistency with the application of other Federal resources commonly used for this type of activity. Therefore, HUD is waiving 42 U.S.C. 5305(a) and establishing an alternative requirement only to the extent necessary to create a new eligible activity for voluntary buyouts. The term “buyouts” for CDBG–DR purposes means the voluntary acquisition of properties located in a floodway, FFRMS floodplain, or other Disaster Risk Reduction Area that is intended to reduce risk from future hazards. Requiring buyouts to be voluntary acquisitions will focus the buyout activities on areas where relocation plans are community driven. Grantees may designate a Disaster Risk Reduction Area, as defined below.

Grantees carrying out buyout activities must establish an open space management plan or equivalent, if one has not already been established, before implementation. The open space management plan or equivalent must establish full transparency about the planned use of acquired properties post-buyout, or the process by which the planned use will be determined and enforced.

Buyout activities are subject to all requirements that apply to acquisition activities generally including but not limited to, the URA (42 U.S.C. 4601 *et seq.*) and its implementing regulations at 49 CFR part 24, subpart B, unless waived or modified by alternative requirements. Only acquisitions that meet the definition of a “buyout” are subject to the post-acquisition land use restrictions imposed by the alternative requirement (III.D.5.i.(i). below). The key factor in determining whether the acquisition is a buyout is whether the

intent of the purchase is to reduce the risk of property damage from future flooding or other hazards in a floodway, FFRMS floodplain, or a Disaster Risk Reduction Area. A grantee that will acquire property for purposes of a buyout in a Disaster Risk Reduction Area must establish criteria in its policies and procedures to designate an area as a Disaster Risk Reduction Area for the buyout, pursuant to the following requirements:

(1) the area has been impacted by the hazard that has been caused or exacerbated by the disaster for which the grantee received its CDBG–DR allocation or address the current and future risks as identified in the grantee’s mitigation needs assessment;

(2) the hazard identified must be a predictable environmental threat to the safety and well-being of program beneficiaries, including members of protected classes, vulnerable populations, and underserved communities, as evidenced by the best available data (e.g., FEMA Repetitive Loss Data, EPA’s Environmental Justice Screening and Mapping Tool, National Risk Index, etc.) and science (such as engineering and structural solutions propounded by FEMA, USACE, other Federal agencies, etc.); and

(3) the area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area.

III.D.5.i.(i). *Buyout requirements:*

1. Property to be acquired or accepted must be located within a floodway, FFRMS floodplain, or Disaster Risk Reduction Area.

2. Any property acquired or accepted must be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, floodplain and wetlands management practices, or other disaster-risk reduction practices.

3. No new structure will be erected on property acquired or accepted under the buyout program other than:

(a) a public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area);

(b) a restroom; or

(c) a flood control structure, provided that:

(i) the structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream; and

(ii) the local floodplain manager approves the structure, in writing, before commencement of construction of the structure.

4. After the purchase of a buyout property with CDBG–DR funds, the owner of the buyout property (including subsequent owners) is prohibited from making any applications to any Federal entity in perpetuity for additional disaster assistance for any purpose related to the property acquired through the CDBG–DR funded buyout, unless the assistance is for an allowed use as described in paragraph (2) above. The entity acquiring the property may lease or sell it to adjacent property owners or other parties for compatible uses that comply with buyout requirements in return for a maintenance agreement.

5. A deed restriction or covenant running with the property must require that the buyout property be dedicated and maintained for compatible uses that comply with buyout requirements in perpetuity.

6. Grantees must choose from one of two valuation methods (pre-disaster value or post-disaster value) for a buyout program (or a single buyout activity). The grantee must apply its valuation method for all buyouts carried out under the program. However, a grantee may provide exceptions to its established valuation method on a case-by-case basis (e.g., if the grantee determines the post-disaster value of a property is higher than the pre-disaster value). The grantee must describe the process for such exceptions and how it will analyze the circumstances to permit an exception in its buyout policies and procedures. Each grantee must adopt policies and procedures on how it will demonstrate that the amount of assistance for a buyout is necessary and reasonable.

7. All buyout activities must be classified using the “buyout” activity type in the DRGR system.

8. Any State grantee implementing a buyout program or activity must consult with local or Tribal governments within the areas in which buyouts will occur.

9. All buyouts must be voluntary. Grantees are prohibited from using eminent domain to buyout properties. However, a grantee may request and HUD may approve a waiver of this limitation, if good cause for such a waiver exists.

III.D.5.i.(ii). *National objectives for buyouts.* Activities that assist LMI persons and meet the criteria for the national objectives will be considered to benefit LMI persons, unless there is substantial evidence to the contrary, and will count towards the calculation of a grantee’s overall LMI benefit requirement as described in section III.B.1. The grantee shall appropriately ensure that activities that meet the criteria for any of the national objectives

below do not benefit moderate-income persons to the exclusion of low-income persons.

When undertaking buyout activities, to demonstrate that a buyout meets the low- and moderate-income housing (LMH) national objective, grantees must meet all requirements of the HCDA, and the applicable regulatory criteria described below. 42 U.S.C. 5305(c)(3) provides that any assisted activity that involves the acquisition of property to provide housing shall be considered to benefit LMI persons only to the extent such housing will, upon completion, be occupied by such persons. In addition, 24 CFR 570.483(b)(3), 24 CFR 570.208(a)(3), and 24 CFR 1003.208(c) apply the LMH national objective to an eligible activity carried out for the purpose of providing or improving permanent residential buildings that, upon completion, will be occupied by LMI households.

A buyout program that merely pays homeowners to leave their existing homes does not guarantee that those homeowners will occupy a new residential building. Therefore, acquisition-only buyout programs cannot satisfy the LMH national objective criteria.

To meet a national objective that benefits a LMI person, buyout programs may be structured in one of the following ways:

1. The buyout activity combines the acquisition of properties with another direct benefit—LMI housing activity, such as down payment assistance—that results in occupancy and otherwise meets the applicable LMH national objective criteria;

2. The activity meets the low- and moderate-income area (LMA) benefit criteria and documents that the acquired properties will have a use that benefits all the residents in a particular area that is primarily residential, where at least 51 percent of the residents are LMI persons. Grantees covered by the “exception criteria” as described in section III.B.10.a. of the Universal Notice may apply it to these activities. To satisfy LMA criteria, grantees must define the service area based on the end use of the buyout properties; or

3. The program meets the criteria for the low- and moderate-income limited clientele (LMC) national objective by restricting buyout program eligibility exclusively to LMI persons and benefiting LMI sellers by acquiring their properties for more than current fair market value (in accordance with the valuation requirements in section III.D.5.i.(i)(6)).

III.D.5.j. *Safe housing incentives.* The limitation on eligible activities in

section 42 U.S.C. 5305(a) is waived and HUD is establishing the following alternative requirement to establish safe housing incentives as an eligible activity. A “safe housing incentive” is defined as any incentive provided to encourage households to relocate to suitable housing in a lower risk area or in an area promoted by the community’s comprehensive recovery plan. Displaced persons must receive any relocation assistance to which they are entitled under other legal authorities, such as the URA, section 104(d) of the HCDA, the respective implementing regulations, or the requirements described in the Universal Notice. The grantee may offer safe housing incentives in addition to the relocation assistance that is legally required. Grantees will want to consider how these efforts to incentivize households to relocate outside disaster prone areas tie-back to their strategies to minimize displacement across all their disaster recovery activities as required in section III.A.2.b.

Grantees must maintain documentation, at least at a programmatic level, describing how the grantee determined the amount of assistance for the incentive was necessary and reasonable, how the incentive meets a national objective, and that the incentives are in accordance with the grantee’s approved Action Plan and published program design(s). A grantee may require the safe housing incentive to be used for a particular purpose by the household receiving the assistance. However, this waiver does not permit a compensation program meaning that funds may not be provided to a beneficiary to compensate the beneficiary for an estimated or actual amount of loss from the declared disaster. Grantees are prohibited from offering housing incentives to a homeowner as an incentive to induce the homeowner to sell a second home, consistent with the prohibition and definition of second home in section III.D.5.l.

III.D.5.j.(i). *National objectives for safe housing incentives.* The following alternative requirement establishes the new LMI national objective criteria for low- and moderate-income safe housing incentive (LMHI) which applies when safe housing incentive activities benefit LMI households. HUD has determined that providing CDBG–DR grantees with an additional method to demonstrate how safe housing incentive activities benefit LMI households will ensure that grantees and HUD can account for and assess the benefit that CDBG–DR assistance for these activities has on LMI households.

The LMHI national objective may be used when a grantee uses CDBG–DR funds to carry out a safe housing incentive activity that benefits one or more LMI persons. To meet a LMHI national objective, the incentive must be structured in one of the following ways:

1. Be tied to the voluntary acquisition of housing (including buyouts) owned by a qualifying LMI household and made to induce a move outside of the affected floodplain or disaster risk reduction area to a lower-risk area or structure; or
2. Be for the purpose of providing or improving residential buildings that, upon completion, will be occupied by a qualifying LMI household and will be in a lower risk area; or

3. Be for the purpose of providing rent, security deposits, and utility deposits for a qualifying LMI tenant-occupant household, including those displaced, to live in a lower risk area.

Alternatively, safe housing incentives may also meet the urgent need national objective when incentive activities are designed to meet the criteria outlined in section III.B.2. of the Universal Notice.

III.D.5.k. *Redevelopment of acquired properties.* Although properties acquired through a buyout program cannot be redeveloped, grantees may redevelop other acquired properties. For non-buyout acquisitions, HUD has not previously permitted the grantee to base acquisition cost on pre-disaster fair market value. The acquisition cost must comply with applicable cost principles and with the acquisition requirements at 49 CFR part 24, subpart B, as revised by the Universal Notice waivers and alternative requirements. In addition to the purchase price, grantees may opt to provide optional relocation assistance, as allowable under Section 104 and 105 of the HCDA (42 U.S.C. 5304 and 42 U.S.C. 5305) and 24 CFR 570.606(d), and as expanded in section III.B.15.b., to the owner of a property that will be redeveloped if: i.) the property is purchased by the grantee or subrecipient through voluntary acquisition; and ii.) the owner's need for additional assistance is documented. Any optional relocation assistance must provide equal relocation assistance within each class of displaced persons, including but not limited to providing reasonable accommodation exceptions to persons with disabilities. See 24 CFR 570.606(d) for more information on optional relocation assistance. In addition, tenants displaced by these voluntary acquisitions may be eligible for URA relocation assistance. In carrying out acquisition activities, grantees must ensure they are in compliance with the long-term

redevelopment plans of the community in which the acquisition and redevelopment is to occur. Grantees are also reminded that the acquisition of second homes at post-disaster fair market value is not prohibited, as long as the home is being redeveloped through an eligible activity and will meet a national objective.

III.D.5.l. *Alternative requirement for housing rehabilitation and buyout—assistance for second homes.* HUD is instituting an alternative requirement to the rehabilitation provisions at 42 U.S.C. 5305(a)(4) as follows: properties that served as second homes at the time of the disaster, or following the disaster, are not eligible for rehabilitation assistance or safe housing incentives. This prohibition does not apply to acquisitions that meet the definition of a buyout (when that buyout is at post-disaster fair market value), however, as indicated in section III.D.5.j. above, no safe housing incentives can be provided for second homes. A second home is defined for purposes of the Universal Notice as a home that is not the primary residence of the owner, a tenant, or any occupant at the time of the disaster or at the time of application for CDBG–DR assistance. Grantees can verify a primary residence using a variety of documentation including, but not limited to, voter registration cards, tax returns, homestead exemptions, driver's licenses, and rental agreements. Additionally, acquisition or buyouts of second homes at post-disaster fair market value is not prohibited, as described in section III.D.5.k.

III.D.6. *Infrastructure activities and standards.* As grantees consider different eligible infrastructure activities including public facilities, States and local governments are encouraged to adopt the recent edition or editions of IBC for public facility construction, particularly when using the CDBG–DR funds as the non-Federal match in FEMA PA projects.

HUD requires grantees to adhere to the applicable standards and requirements in this section, sections III.B.10.f. and III.D.6.e., which apply only to those eligible activities described in those paragraphs.

All newly constructed infrastructure that is assisted with CDBG–DR funds must be designed and constructed to withstand extreme weather events and the impacts of a changing climate. To satisfy this requirement, the grantee must identify and implement resilience performance measures as described in section III.D.3.

For purposes of this requirement, an infrastructure activity includes any activity or group of activities (including

acquisition or site or other improvements), whether carried out on public or private land, that assists the development of the physical assets that are designed to provide or support services to the general public in the following sectors: surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production and generation, including from renewable, nuclear, and hydro sources; electricity transmission; broadband; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; schools, hospitals, and housing shelters; and other sectors as may be determined by the Federal Permitting Improvement Steering Council (Permitting Council). For purposes of this requirement, an activity that falls within this definition is an infrastructure activity regardless of whether it is carried out under sections 105(a)(2), 105(a)(4), 105(a)(14), or another section of the HCDA (42 U.S.C. 5305(a)(2), 5305(a)(4), 5305(a)(14)), or pursuant to a waiver or alternative requirement established by HUD. Required policies and procedures related to infrastructure activities are found in section III.A.4. of the Universal Notice.

III.D.6.a. *Privately owned shelters.* Section 105(a)(2) of the HCDA allows CDBG funds to be used for acquiring, constructing, reconstructing, rehabilitating, or installing public improvements or facilities. Typically, eligible facilities are limited to those that are: (i) publicly owned or traditionally provided by the government, or (ii) owned by a non-profit organization, and (iii) open to the general public. However, restricting ownership to these categories can limit disaster survivors' access to shelters, especially when public shelters are at capacity. To address this challenge and increase the supply of emergency shelters, the Department finds good cause to waive the ownership requirements outlined in Section 105(a)(2) of the HCDA and 24 CFR 570.200(b). This waiver allows assistance to be provided to qualified privately owned facilities used as shelters. Under this waiver and alternative requirement, grantees must fund facilities that would be consistent with the purpose of title I of the HCDA and are prohibited from assisting casinos, sports arenas, or concert venues.

III.D.6.b. *Assistance to buildings for the general conduct of government when using CDBG–DR funds as the non-Federal match.* The prohibition on

assisting buildings for the general conduct of government at 42 U.S.C. 5305(a)(2) and associated regulations at 24 CFR 570.207(a) are waived for non-Federal match. This waiver allows grantees to use CDBG-DR funds as the non-Federal match on any other Federal program providing funds for the construction, reconstruction, and rehabilitation of public improvements or facilities for the general conduct of government. This waiver is subject to the following alternative requirements: grantees are prohibited from using CDBG-DR funds for buildings that do not provide services all year around and for buildings that are used exclusively as emergency operations centers.

III.D.6.c. FAST-41 project requirements. The Permitting Council administers Title 41 of the Fixing America's Surface Transportation Act, referred to as "FAST-41," which establishes a new governance structure, set of procedures, and funding authorities to improve and make transparent the Federal review and permitting process for FAST-41 covered infrastructure projects on the Federal Infrastructure Permitting Dashboard. A FAST-41 covered project must first be in one of the following sectors: (1) Renewable energy production, (2) Conventional energy production, (3) Electricity transmission, (4) Surface transportation, (5) Aviation, (6) Ports and waterways, (7) Water resource projects, (8) Broadband, (9) Pipelines, (10) Manufacturing, (11) Mining, (12) Carbon capture, (13) Semiconductors, (14) Artificial intelligence and machine learning, (15) High-performance computing and advanced computer hardware and software, (16) Quantum information science and technology, (17) Data storage and data management, (18) Cybersecurity, and/or (19) any additional infrastructure sectors established by Permitting Council.

In addition, a FAST-41 project must meet one of the following four criteria, as amended: (1) Objective Criteria: A project must be subject to the NEPA; be likely to require a total investment of more than \$200,000,000; and not qualify for an abbreviated authorization or environmental review process under any applicable law. (2) Discretionary Criteria: A project must be subject to NEPA; and the project is of a size and complexity that make it, in the opinion of the Permitting Council, likely to benefit from enhanced oversight and coordination, including (but not limited to) a project likely to require authorization from or environmental review involving more than two Federal agencies or the preparation of an environmental impact statement (EIS)

under NEPA. (3) Tribal Sponsored Criteria: A project must be subject to NEPA; sponsored by an Indian Tribe, an Alaska Native Corporation, a Native Hawaiian, the Department of Hawaiian Homelands, or the Office of Hawaiian Affairs; and located on land owned or under jurisdiction of the entity that sponsors the activity. (4) Carbon Capture Sector: A project that includes any facility, technology, or system that captures, utilizes, or sequesters carbon dioxide emissions, including projects for direct air capture, and carbon dioxide pipelines; is covered by a programmatic plan or environmental review developed for the primary purpose of facilitating development of carbon dioxide pipelines; and is not subject to NEPA requirements.

Any project with the potential for FAST-41 eligibility will require the grantee to notify HUD and coordinate efforts to submit a FAST-41 Initiation Notice (FIN) to the Permitting Council Executive Director and the appropriate facilitating agencies. Within 14 calendar days of the FIN receipt, the Permitting Council Executive Director will determine the eligibility and if the FAST-41 process will be required for the project.

III.D.6.d. CDBG-DR funds as non-Federal match. As provided by the HCDA, CDBG-DR funds may be used to satisfy a match requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-DR activity (e.g., programs or activities administered by FEMA, USACE, United States Department of Agriculture (USDA), and the Federal Highway Administration (FHWA)). By law, (codified in the HCDA as a note to section 105(a)) only \$250,000 or less of CDBG-DR funds may be used for the non-Federal cost-share of any project funded by USACE. Appropriations acts prohibit the use of CDBG-DR funds for any activity reimbursable by, or for which funds are also made available by FEMA or USACE.

In response to a disaster, FEMA may implement, and grantees may elect to follow, alternative procedures for FEMA's PA Program, as authorized pursuant to Section 428 of the Stafford Act (42 U.S.C. 5189(f)). Like other projects, grantees may use CDBG-DR funds as a matching requirement, share, or contribution for Section 428 PA Projects. For all activities funding the non-Federal match, grantees must document that CDBG-DR funds have been used for the actual costs incurred for the assisted project and for costs that are eligible, meet a national objective,

and meet other applicable CDBG-DR requirements.

III.D.6.d.(i). Alternative requirement when using CDBG-DR funds as the non-Federal match in a FEMA-funded project (building codes and standards). Currently, CDBG-DR grantees using FEMA and CDBG-DR funds on the same activity have encountered challenges in certain circumstances in reconciling CDBG-DR building standards with those established by FEMA. FEMA funded projects generally commence well in advance of the availability of CDBG-DR funds and when CDBG-DR funds are used as match for a FEMA project that is underway, the alignment of HUD's building standards may not be feasible. For these reasons, the Secretary finds good cause to establish an alternative requirement to allow grantees to use FEMA-approved building codes instead of the requirements in section III.D.5.b.(i), when CDBG-DR funds are used as the non-Federal match for FEMA assistance.

III.D.6.e. Flood control structure requirements. Grantees that use CDBG-DR funds to assist flood control structures (i.e., dams and levees) are prohibited from using CDBG-DR funds to enlarge a dam or levee beyond the original footprint of the structure that existed before the disaster event, without obtaining pre-approval from HUD and any Federal agencies that HUD determines are necessary based on their involvement or potential involvement with the levee or dam. In addition, a grantee must comply with the requirements outlined above in section III.D.6.c. if the project meets one of the following four criteria for FAST-41 projects, as amended. Grantees that use CDBG-DR funds for levees and dams are required to: (1) register and maintain entries regarding such structures with the USACE National Levee Database or National Inventory of Dams; (2) ensure that the structure is admitted in the USACE's PL 84-99 Rehabilitation Program (Levee Rehabilitation and Inspection Program); (3) ensure the structure is accredited under the FEMA National Flood Insurance Program (NFIP); (4) enter the exact location of the structure and the area served and protected by the structure into the DRGR system; and (5) maintain file documentation demonstrating that the grantee has conducted a risk assessment before funding the flood control structure and documentation that the investment includes risk reduction measures.

III.D.6.f. LMI benefit for infrastructure activities. CDBG-DR funds represent a significant opportunity for grantees to carry out strategic, high-impact, and

innovative infrastructure activities to recover from the applicable disaster, mitigate disaster risks, and reduce future losses. Infrastructure activities assist in the development of physical assets that are designed to provide or support services to the general public. These infrastructure activities often offer unique benefits for the general public and underserved communities following a disaster due to the activities' scale and intersection with other key recovery and mitigation outcomes. For example, an infrastructure activity located alongside an underserved community that repairs damaged roadways connected to the community may facilitate the redevelopment of housing and expedite economic recovery by making the underserved community accessible and more attractive to local businesses.

The far-reaching nature of infrastructure activities' service areas presents challenges for meeting the low- and moderate-income area benefit (LMA) national objective criteria at 24 CFR 570.208(a)(1) and 24 CFR 570.483(b)(1). Large infrastructure activities with a broad service area may benefit a large population of LMI persons, but because the area that benefits is so large the LMI population may be less than 51 percent. When this is the case, a grantee may not pursue the implementation of those innovative infrastructure activities that would otherwise have positive, compounding effects on underserved communities and LMI persons in the MID areas because the activity would not meet the standard LMA national objective criteria. Since grantees' infrastructure needs and investments may represent a significant portion of their total CDBG-DR allocations, grantees may not be able to meet the 70 percent overall benefit requirement if their infrastructure activities can only meet the urgent need national objective.

Based on these reasons, HUD is waiving 24 CFR 570.484 and 24 CFR 570.200(a)(3) only to the extent necessary to add this alternative requirement: CDBG-DR grantees funding infrastructure projects may count funds expended for infrastructure activities towards benefitting LMI persons and meeting the overall benefit requirement by multiplying the total cost (including CDBG-DR and non-CDBG-DR costs) of the infrastructure activity by the percent of LMI persons in the service area, except that the amount counted shall not exceed the amount of CDBG-DR funds provided.

As an example, if the total cost of an infrastructure activity is \$1,000,000, and the percent of LMI persons in the

activity's service area is 40 percent, then \$400,000 would count towards benefitting LMI persons when calculating a grantee's overall benefit (assuming this projects is only funded with CDBG-DR). Generally, grantees should not pursue this alternative requirement if doing so comes at the expense of pursuing an infrastructure project that can meet the original LMA national objective criteria and thus be counted towards the overall benefit requirement.

III.D.6.g. Assistance to private utilities. A CDBG-DR grantee may assist utilities as part of a disaster-related eligible activity under section 105(a) of the HCDA of 1974 (42 U.S.C. 5305(a)). While it is possible that not every CDBG-DR assisted utility will serve predominantly LMI populations, HUD recognizes that LMI populations would benefit especially from the increased resilience and recovery of private utilities. HUD also recognizes that privately-owned, for-profit utilities have a means of obtaining private investment or otherwise recapturing costs from ratepayers. Accordingly, HUD is adding alternative requirements that include basic safeguards that HUD has determined are necessary to ensure that costs comply with the certification to give maximum feasible priority to activities that benefit LMI persons and that costs are necessary and reasonable and do not duplicate other financial assistance.

HUD is imposing the following alternative requirements: A grantee may assist private for-profit, non-profit, or publicly owned utilities as part of disaster-related activities that are eligible under section 105(a) of the HCDA, or otherwise made eligible through a waiver or alternative requirement, provided that the grantee complies with the following:

(1) The funded activity must comply with applicable CDBG-DR requirements, including the requirements that the assisted activity will meet a national objective, the activity will address an unmet recovery need or a risk identified in the grantee's mitigation needs assessment, and if the assistance is provided to a for-profit entity for an economic development project under section 105(a)(17), the grantee must first comply with any applicable underwriting requirements.

(2) Each grantee must carry out the grant consistent with the grantee's certification that: "With respect to activities expected to be assisted with CDBG-DR funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-

income families." To fortify compliance with the existing certification, if the grantee carries out activities that assist privately-owned, for-profit utilities, the grantee must prioritize assistance to for-profit utilities that will benefit areas where at least 51 percent of the residents are LMI persons and demonstrate how assisting the private, for-profit utility will benefit those areas.

(3) The grantee must determine that the costs of the activity to assist a utility are necessary and reasonable and that they do not duplicate other financial assistance. To fortify these requirements and achieve a targeted use of funds and to safeguard against the potential over-subsidization when assistance is used to carry out activities that benefit private, for-profit utilities, the grantee must document that the level of assistance provided to a private, for-profit utility addresses only the actual identified needs of the utility.

(4) The grantee must establish policies and procedures to ensure that the CDBG-DR funds that assist private, for-profit utilities reflect the actual identified financing needs of the assisted businesses by establishing a mix of financing terms (loan, forgivable loan, and/or grant) for each assisted private, for-profit utility, based on the business's financial capacity, in order to ensure that assistance is based on actual identified need.

III.D.7. Economic revitalization and Section 3 activities and standards. CDBG-DR funds may be used for CDBG-DR eligible activities related to economic revitalization. The attraction, retention, and return of businesses and jobs to a disaster-impacted area is critical to long-term recovery. Accordingly, for CDBG-DR purposes, economic revitalization may include any CDBG-DR eligible activity that demonstrably restores and improves the local economy through job creation and retention or by expanding access to goods and services. The most common CDBG-DR eligible activities to support economic revitalization are outlined in 24 CFR 570.203 and 570.204 and sections 105(a)(14), (15), and (17) of the HCDA (42 U.S.C. 5305(a)(14), (15), and (17)).

III.D.7.a. Economic revitalization assistance. Climate-related natural hazards, extreme events, and natural disasters disproportionately affect LMI persons who belong to underserved communities because they are less able to prepare for, respond to, and recover from the impacts of extreme events and natural hazards, or are members of communities that have experienced significant disinvestment and historic discrimination. Therefore, HUD is

imposing the following alternative requirement: When funding activities outlined in 24 CFR 570.203 and 570.204 and sections 105(a)(14), (15), and (17) of the HCDA (42 U.S.C. 5305(a)(14), (15), and (17)), HUD is instituting an alternative requirement in addition to the other requirements in these provisions to require grantees to prioritize assistance to disaster-impacted businesses that serve underserved communities and spur economic opportunity for underserved communities that were economically distressed before the disaster. Grantees undertaking an economic revitalization activity must maintain supporting documentation to demonstrate how the grantee prioritized underserved communities. In section I.C.1.c., HUD describes the minimum standard for underserved communities. Grantees may further define areas that are considered “underserved communities” either in the Action Plan or program-specific policies and procedures.

III.D.7.b. *National objective documentation for activities that support economic revitalization.* 24 CFR 570.208(a)(4)(i) and (ii), 24 CFR 570.483(b)(4)(i) and (ii), 24 CFR 570.506(b)(5) and (6), and 24 CFR 1003.208(d) are waived to allow grantees to meet the LMI jobs national objective criteria by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a two-person family. This method offers an optional alternative to the standard CDBG–DR requirement—in which grantees must review the annual wages or salary of a job in comparison to the person’s total household income and size (i.e., the number of persons). This optional method streamlines the documentation process by allowing the collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

III.D.7.c. *Public benefit for activities that support economic revitalization.* When applicable, the public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for the aggregate of all economic development activities. Economic development activities support economic revitalization. Currently, public benefit standards limit the amount of assistance per job retained or created, or the amount of assistance per LMI person to whom goods or services are provided by the activity. These

dollar thresholds can impede recovery by limiting the amount of assistance the grantee may provide to a critical activity.

HUD waives the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 570.209(b)(1), (2), (3)(i), (4), and 24 CFR 1003.302(c) for all economic development activities. Paragraph (g) of 24 CFR 570.482 and paragraph (c) and (d) under 570.209 are also waived to the extent these provisions are related to public benefit. However, grantees that choose to take advantage of this optional waiver in lieu of complying with public benefit standards under the existing regulatory requirements shall be subject to the following condition: grantees shall collect and maintain documentation in the project file on the creation and retention of total jobs; the number of jobs within appropriate salary ranges, as determined by the grantee; the average amount of assistance provided per job, by activity or program; and the types of jobs. Additionally, grantees shall report the total number of jobs created and retained and the applicable national objective in the DRGR system.

III.D.7.d. *Section 3 worker eligibility and documentation requirements.* Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) applies to CDBG–DR activities that are Section 3 projects, as defined at 24 CFR 75.3(a)(2). The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.²⁵ All direct recipients of CDBG–DR funding must report Section 3 information through the DRGR system.

III.D.7.e. *Business relocation assistance.* Current requirements prevent program participants from providing assistance to a business to relocate from one labor market area to another if the relocation is likely to result in a significant loss of jobs in the labor market from which the business moved. This prohibition can be a critical barrier to reestablishing and rebuilding a displaced employment base

after a major disaster. Therefore, 42 U.S.C. 5305(h), 24 CFR 570.210, 24 CFR 570.482(h), and 24 CFR 1003.209, are waived to allow a grantee to provide assistance to any business that was operating in the disaster-declared labor market area before the incident date of the applicable disaster and has since moved, in whole or in part, from the affected area to another State or to another labor market area within the same State to continue business.

III.D.7.f. *Underwriting.* Notwithstanding section 105(e)(1) of the HCDA (U.S.C. 5305(e)(1)), no CDBG–DR funds may be provided to a for-profit entity for an economic development project under section 105(a)(17) of the HCDA (U.S.C. 5305(a)(17)) unless such project has been evaluated and selected in accordance with guidelines developed by HUD pursuant to section 105(e)(2) of the HCDA (U.S.C. 5305(e)(2)) for evaluating and selecting economic development projects. Grantees and their subrecipients are required to comply with the underwriting guidelines in Appendix A of 24 CFR part 570²⁶ if they are using grant funds to provide assistance to a for-profit entity for an economic development project under section 105(a)(17) of the HCDA (U.S.C. 5305(a)(17)).

III.D.7.g. *Limitation on use of funds for eminent domain.* CDBG–DR funds may not be used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use, or a waiver has been provided. For purposes of this paragraph, public use does not include economic development that primarily benefits private entities or CDBG–DR funded buyouts. The following is a public use for the purposes of eminent domain: any use of funds for (1) mass transit, railroad, airport, seaport, or highway projects; (2) utility projects that benefit or serve the general public, including energy related, communication-related, water related, and wastewater-related infrastructure; (3) other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government; and (4) projects for the removal of an immediate threat to public health and safety, including the removal of a brownfield as defined in the Small Business Liability

²⁵ View HUD’s guidance published in CPD Notice 2021–09, “Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992, final rule requirements for CDBG, CDBG–CV, CDBG–DR, CDBG–MIT, NSP, Section 108, and RHP projects,” as amended here <https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-09cpdn.pdf>.

²⁶ View the underwriting guidelines are found at Appendix A of 24 CFR part 570 here: [https://www.ecfr.gov/current/title-24/part-570/appendix-Appendix A to Part 570](https://www.ecfr.gov/current/title-24/part-570/appendix-Appendix%20A%20to%20Part%20570).

Relief and Brownfields Revitalization Act (Pub. L. 107–118). HUD has also determined that the development of housing for LMI persons is a public use for the purposes of eminent domain.

III.E. Ineligible Activities in CDBG–DR

Any activity that is not authorized under Section 105(a) of the HCDA (24 U.S.C. 5305(a)) is ineligible to be assisted with CDBG–DR funds, unless explicitly allowed by waiver and alternative requirement in the Universal Notice. Additionally, the uses described below are explicitly prohibited:

1. CDBG–DR funds cannot be used as compensation to beneficiaries (see section III.E.1.).

2. CDBG–DR funds cannot be used to force homeowners to pay off their remaining mortgage (see section III.E.2.).

III.E.1. Prohibition on compensation. Grantees may not use CDBG–DR funds to provide compensation to beneficiaries meaning that funds may not be provided to a beneficiary based on the estimated amount of loss from the declared disaster. However, grantees may reimburse disaster-impacted beneficiaries based on the pre-application costs incurred by the beneficiary for completing an activity that is eligible for reimbursement. Reimbursement of beneficiaries for eligible activity costs are subject to the requirements established in section III.B.14.a.

III.E.2. Prohibition on forced mortgage payoff. A forced mortgage payoff occurs when homeowners with an outstanding mortgage balance are required, under the terms of their loan agreement, to repay the balance of the mortgage loan before using assistance to rehabilitate or reconstruct their homes. CDBG–DR funds, however, shall not be used for a forced mortgage payoff. The ineligibility of a forced mortgage payoff with CDBG–DR funds does not affect HUD's longstanding guidance that when other non-CDBG disaster assistance is taken by lenders for a forced mortgage payoff, those funds are not considered to be available to the homeowner and do not constitute a DOB for the purpose of housing rehabilitation or reconstruction.

III.F. Performance Reviews

Under 42 U.S.C. 5304(e), the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the grantee has carried out its activities in a timely manner (*i.e.*, meeting its expenditure deadline), whether the grantee's activities and certifications are carried out in accordance with the requirements and the primary objectives of the HCDA and

other applicable laws, and whether the grantee has the continuing capacity to carry out those activities in a timely manner.

III.F.1. Timely distribution and expenditure of funds. HUD waives the provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution and expenditure of funds and establishes an alternative requirement providing that each grantee must expend 100 percent of its allocation within six years of the date HUD signs the grant agreement. HUD may extend the period of performance administratively, if good cause for such an extension is provided by the grantee and approved by HUD.²⁷ When the period of performance has ended, HUD will close out the grant and any remaining funds not expended by the grantee on appropriate programmatic purposes will be recaptured by HUD.

III.F.2. Review of continuing capacity. Upon a determination by HUD that the grantee has not carried out its CDBG–DR activities and certifications in accordance with the requirements in the Universal Notice, HUD will undertake a further review to determine if the grantee has the continuing capacity to carry out its activities in a timely manner. In making this determination, HUD will consider the nature and extent of the recipient's performance deficiencies, the actions taken by the recipient to address the deficiencies, and the success or likely success of such actions. HUD may then apply the following corrective and remedial actions as appropriate:

III.F.2.a. Corrective and remedial actions. To effectively administer the CDBG–DR program in a manner that facilitates recovery, particularly the alternative requirements permitting States to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) to the extent necessary to establish the following alternative requirement: HUD may undertake corrective and remedial actions for States in accordance with the authorities for CDBG Entitlement grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or 24 CFR part 570, subpart I. In response to a deficiency, HUD may issue a warning letter followed by a recommended corrective action that may include a management plan which assigns responsibility for further

administration of the grant to specific entities or persons. Failure to comply with a corrective action may result in the termination, reduction, or limitation of payments to grantees receiving CDBG–DR funds.

III.F.2.b. Additional criteria and specific conditions to mitigate risk. To ensure effective grantee implementation of the financial controls, procurement processes, and other procedures that are the subject of the certification by the Secretary, HUD has and may continue to establish specific criteria and conditions for each grant award as provided for at 2 CFR 200.206 and 200.208, respectively, to mitigate the risk of the grant. The Secretary shall specify any such criteria and the resulting conditions in the grant conditions governing the award. These criteria may include, but need not be limited to, a consideration of the internal control framework established by the grantee to ensure compliant implementation of its financial controls, procurement processes and payment of funds to eligible entities, as well as the grantee's risk management strategy for information technology systems established to implement CDBG–DR funded programs. Additionally, the Secretary may amend the grant conditions to mitigate risk of a grant award at any point at which the Secretary determines a condition to be required to protect the Federal financial interest or to advance recovery.

III.G. Grantee Reporting Requirements in the Disaster Recovery Grant Reporting (DRGR) System

The DRGR System is used to support HUDs oversight of grantees throughout the lifecycle of the grant through grantee submission of the public action plan, DRGR Action Plan, grantee reporting requirements, and drawing grant funds.

III.G.1. Submitting the DRGR Action Plan. The DRGR Action Plan is populated after the submission of both the optional Admin Action Plan and the required Action Plan (the submission process will be described in the applicable AAN). Both the Admin Action Plan and Action Plan are defined in section I.A. The DRGR Action Plan is the process a grantee undergoes to set up its detailed projects and activities within the DRGR system for HUD to track progress and compliance throughout the grant lifecycle and to facilitate the draw of CDBG–DR funds.

III.G.2. Grantee reporting requirements in DRGR. HUD waives the requirements for submission of a performance report pursuant to 42 U.S.C. 12708(a), 24 CFR 91.520, and annual status and evaluation reports

²⁷ View HUD's Policy Bulletin provides additional guidance for grantees that request an extension to the period of performance here: <https://www.hud.gov/sites/dfiles/CPD/documents/Policy-Bulletin-Periods-of-Performance-2023-09-14-Final.pdf>.

that are due each fiscal year under 24 CFR 1003.506(a). Alternatively, HUD establishes an alternative requirement that grantees enter information in the DRGR system on a quarterly basis, which is referred to as a performance report within the DRGR system (commonly referred to as the quarterly performance report (QPR)). Performance reports must be submitted on a quarterly basis until all funds have been expended and the grantee has reported on accomplishments and submitted all required materials for closeout. Once a grant is closed, grantees will shift to annual reporting as described in section III.B.12.e.(3).

III.G.2.a. *Maintain grantee records within DRGR.* The information in the DRGR system must contain sufficient detail to permit HUD's review of grantee performance and to enable remote review of grantee data to allow HUD to assess compliance and risk. Grantees must use the DRGR system to:

i. Enter projects into the DRGR Action Plan at a level of detail sufficient to allow HUD to determine grantee compliance: (1) appropriate activity type, (2) national objective, and (3) responsible entity;

ii. Document grantee's oversight of its disaster recovery projects through project level reporting (e.g., summary information on grantees' monitoring visits and reports, audits, technical assistance);

iii. For direct benefit activities only, enter summary data on completed applications for assistance and the number of beneficiaries assisted for each activity each quarter in total and for the following subcategories: (1) persons with disabilities, (2) age, (3) familial status, (4) LEP persons, (5) LMI persons, (6) race, and (7) ethnicity; and

iv. If applicable, track program income receipts, disbursements, revolving loan funds, and leveraged funds.

III.G.2.b. *Timeline for submitting grantee's initial performance report.* The grantee's first performance report is due 30 calendar days after the first full calendar quarter after HUD signs the grant agreement.

III.G.2.c. *Quarterly submission of performance report in DRGR.* Grantees must submit a performance report through the DRGR system no later than 30 calendar days following the end of each calendar quarter. To submit a performance report, the DRGR Action Plan must be in "Reviewed and Approved" status in the DRGR system. Therefore, a grantee must submit any amendments (substantial or nonsubstantial) to the DRGR Action Plan at least 45 calendar days prior to

the performance report deadline (i.e., QPR deadline). For all activities, the address of each CDBG-DR assisted property must be recorded in the performance report. Once the grantee submits the performance report into DRGR, they should email their assigned HUD CPD staff member to confirm submission. HUD will review the submitted performance report with the HUD Performance Report Review Guide.

III.G.2.c.(i). *Reviewed and approved performance report.* Once the assigned HUD CPD staff member approves the performance report, the grantee must publish a version of the performance report that omits PII on the grantee's official disaster recovery website within three calendar days of HUD's approval.

III.G.2.c.(ii). *Rejected performance report.* If the grantee's assigned HUD CPD staff member identifies errors or gaps through the HUD Performance Report Review Guide, HUD may reject the performance review and indicate the areas that need to be corrected. The grantee must make the revisions within 30 calendar days and resubmit the performance review in DRGR. If the assigned HUD CPD staff member finds the updated performance review to be satisfactory, the grantee must publish a version of the performance review that omits PII reported in the performance review, as approved by HUD, within three calendar days of HUD approval. If a satisfactory performance report is not submitted in 30 calendar days, HUD may block access to CDBG-DR funds until a satisfactory performance report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the jurisdiction did not submit a satisfactory performance report.

III.G.3. *Using DRGR to draw grant funds.* After the grantee's DRGR Action Plan is approved, the grantee can create and approve vouchers, also called drawdowns in DRGR at the activity level. DRGR is directly linked to the Line of Credit Control System (LOCCS), a Federal web-based system administered by the U.S. Treasury that allows grantees to request and receive funds obligated by HUD under a grant agreement as permitted by 2 CFR part 200, subpart E.

IV. Assistance Listing Numbers

The Assistance Listing Numbers (formerly known as the Catalog of Federal Domestic Assistance (CFDA) numbers) for the disaster recovery grants under the Universal Notice are as follows: 14.218; 14.228.

V. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available online on HUD's CDBG-DR website at https://www.hud.gov/program_offices/comm_planning/cdbg-dr and for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC, 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Adrianne R. Todman,

Deputy Secretary Performing the Duties of the Secretary of HUD.

Appendix A. Certifications Waiver and Alternative Requirement for Admin Action Plan Submission

Each grantee choosing to submit an Admin Action Plan must complete the certifications listed within this appendix and submit it with the Admin Action Plan.

Sections 104(b)(4), (c), and (m) of the HCDA (42 U.S.C. 5304(b)(4), (c), and (m)), sections 106(d)(2)(C) and (D) of the HCDA (42 U.S.C. 5306(d)(2)(C) and (D)), and section 106 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12706), and regulations at 24 CFR 91.225 and 91.325 are waived and replaced with the alternative requirement in section I.B.5.

Additionally, HUD is waiving section 104(a)-(c) and (d)(1) of the HCDA (42 U.S.C. 5304), section 106(c)(1) and (d) of the HCDA (42 U.S.C. 5306), section 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended ("the Uniform Act") (42 U.S.C. 4630), section 305 of the Uniform Act (42 U.S.C. 4655), and regulations at 24 CFR 91.225(a)(2), (6), and (7), 91.225(b)(7), 91.325(a)(2), (6), and (7), 49 CFR 24.4(a), and 24 CFR 42.325 only to the extent necessary to allow grantees to receive a portion of their allocation for program administrative costs before submitting other statutorily required certifications. Each grantee receiving an allocation under an AAN must make the following certifications with its Admin Action Plan:

a. Compliance with Anti-discrimination Laws—The grantee certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations.

b. Affirmatively Further Fair Housing: The grantee certifies that it will affirmatively further fair housing.

c. Anti-Lobbying: The grantee certifies its compliance with the restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

d. Authority of Grantee: The grantee certifies that the Admin Action Plan for disaster recovery is authorized under State and local law (as applicable) and that the grantee, and any entity or entities designated by the grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG–DR funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations as modified by waivers and alternative requirements.

e. Consistency with the Action Plan: The grantee certifies that activities to be undertaken with CDBG–DR funds are consistent with its Admin Action Plan.

f. Citizen Participation: The grantee certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in waivers and alternative requirements). Also, each local government receiving assistance from a State grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in waivers and alternative requirements).

g. Use of Funds: The grantee certifies that it is complying with each of the following criteria:

(1) Purpose of the Funds. Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the most impacted and distressed areas for which the President declared a major disaster pursuant to the Stafford Act (42 U.S.C. 5121 *et seq.*).

(2) Maximum Feasibility Priority. With respect to activities expected to be assisted with CDBG–DR funds, the Admin Action Plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.

(3) Overall benefit. The aggregate use of CDBG–DR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent (or another percentage permitted by HUD in a waiver) of the grant amount is expended for activities that benefit such persons.

(4) Special Assessment. The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG–DR grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to

such public improvements, unless: (a) the grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (a).

h. Excessive Force: The grantee certifies that it has adopted and is enforcing the following policies, and, in addition, State grantees must certify that they will require local governments that receive their grant funds to certify that they have adopted and are enforcing:

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

(2) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

i. Grant Timeliness: The grantee certifies that it (and any subrecipient or administering entity) currently has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner and that the grantee has reviewed the requirements applicable to the use of grant funds.

j. Environmental Requirements: The grantee certifies that it will comply with environmental requirements at 24 CFR part 55 (as applicable) and 24 CFR part 58.

k. Compliance with Laws: The grantee certifies that it will comply with the provisions of title I of the HCDA and with other applicable laws.

Appendix B. Certifications Waiver and Alternative Requirement for Action Plan Submission.

Sections 104(b)(4), (c), and (m) of the HCDA (42 U.S.C. 5304(b)(4), (c) and (m)), sections 106(d)(2)(C) and (D) of the HCDA (42 U.S.C. 5306(d)(2)(C) and (D)), and section 106 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12706), and regulations at 24 CFR 91.225 and 91.325 are waived and replaced with the following alternative. Each grantee receiving an allocation under an AAN must make the following certifications with its action plan:

a. Compliance with Anti-discrimination Laws—The grantee certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations.

b. Affirmatively Further Fair Housing—The grantee certifies it will affirmatively further fair housing.

c. Uniform Relocation Act and Residential Anti-displacement and Relocation Plan—The grantee certifies that it:

(1) will comply with the acquisition and relocation requirements of the Uniform Act,

and implementing regulations at 49 CFR part 24, as such requirements may be modified by waivers or alternative requirements;

(2) has in effect and is following a RARAP in connection with any activity assisted with CDBG–DR grant funds that fulfills the requirements of Section 104(d), 24 CFR part 42, and 24 CFR part 570, as amended by waivers and alternative requirements.

d. Anti-Lobbying—The grantee certifies its compliance with the restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

e. Authority of Grantee—The grantee certifies that the Action Plan for disaster recovery is authorized under State and local law (as applicable) and that the grantee, and any entity or entities designated by the grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG–DR funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations as modified by waivers and alternative requirements.

f. Consistency with the Action Plan—The grantee certifies that activities to be undertaken with CDBG–DR funds are consistent with its action plan.

g. Section 3—The grantee certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 75.

h. Citizen Participation—The grantee certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in waivers and alternative requirements). Also, each local government receiving assistance from a State grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in waivers and alternative requirements).

i. Consultation with Local Governments (STATE ONLY)—State grantee certifies that it has consulted with all disaster-affected local governments (including any CDBG entitlement grantees), Indian Tribes, and any local public housing authorities in determining the use of funds, including the method of distribution of funding, or activities carried out directly by the State.

j. Use of Funds—The grantee certifies that it is complying with each of the following criteria:

(1) Purpose of the funding. Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the most impacted and distressed areas for which the President declared a major disaster pursuant to the Stafford Act (42 U.S.C. 5121 *et seq.*).

(2) Maximum Feasibility Priority. With respect to activities expected to be assisted with CDBG–DR funds, the Action Plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.

(3) Overall benefit. The aggregate use of CDBG–DR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent

(or another percentage permitted by HUD in a waiver) of the grant amount is expended for activities that benefit such persons.

(4) **Special Assessment.** The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG–DR grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (a) disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (a).

k. **Excessive Force**—The grantee certifies that it has adopted and is enforcing the following policies, and, in addition, State grantees must certify that they will require local governments that receive their grant funds to certify that they have adopted and are enforcing:

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

(2) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

l. **Grant Timeliness**—The grantee certifies that it (and any subrecipient or administering entity) currently has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner and that the grantee has reviewed the requirements applicable to the use of grant funds.

m. **Lead-Based Paint**—The grantee certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, J, K, and R.

n. **Environmental Requirements**—The grantee certifies that it will comply with environmental requirements at 24 CFR part 55 (as applicable) and 24 CFR part 58.

o. **Compliance with Laws**—The grantee certifies that it will comply with the provisions of title I of the HCDA and with other applicable laws.

p. **Order of Assistance**—The grantee certifies that it will comply with the statutory order of assistance listed in Appendix C paragraph 9 and will verify if FEMA or USACE funds are available for an activity, or the costs are reimbursable by FEMA or USACE before awarding CDBG–DR assistance for the costs of carrying out the same activity.

Appendix C. Duplication of Benefits (DOB)

Appendix C Outline

1. *Introduction.*
2. *The Stafford Act.*
3. *CDBG–DR Appropriations Acts and Federal Register Notices.*

4. *Basic DOB calculation framework.*
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 - 4.b. *Identify total assistance.*
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 - 4.e. *Reassess unmet need when necessary.*
5. *Necessary and reasonable requirements.*
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 - 8.a. *Short-term subsidized loans for pre-award costs incurred by grantees or subrecipients that are later reimbursed with CDBG–DR.*
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9. *Order of assistance.*
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13. *Collecting a duplication.*
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Appendix C. Duplication of Benefits (DOB)

1. **Introduction.** CDBG–DR grants are one of multiple Federal sources which assist disaster recovery. These sources of Federal assistance often can be used for the same purposes by grantees and disaster survivors. For this reason, the Stafford Act (42 U.S.C. 5121–5207) and CDBG–DR appropriations acts require HUD and its grantees to coordinate with other Federal agencies that provide disaster assistance to prevent the DOB. The Stafford Act's prohibition on DOB aims to ensure that Federal assistance serves only to “supplement insurance and other forms of disaster assistance” (42 U.S.C. 5170).

CDBG–DR grantees must prevent DOB when carrying out eligible activities. A duplication occurs when a person, household, business, or other entity receives disaster assistance from multiple sources for the same recovery purpose, and the total assistance received for that purpose is more than the total need. The amount of the DOB is the amount received in excess of the total need for the same purpose. When the total need for eligible activities is more than total assistance for the same purpose, the difference between these amounts is an “unmet need.” Grantees must limit the awarding of CDBG–DR assistance to unmet needs for eligible activities to prevent a DOB. Because the Universal Notice permits reimbursement, as described in section III.B.14., unmet needs can include amounts needed for reimbursement.

2. **The Stafford Act.** The Stafford Act is the primary legal authority establishing the framework for the Federal government to provide disaster and emergency assistance.

Section 312 of the Stafford Act directs Federal agencies that provide disaster assistance to assure that people, businesses, or other entities do not receive financial assistance that duplicates any part of their disaster loss covered by insurance or another source (42 U.S.C. 5155(a)). Section 312 also

makes recipients of Federal disaster assistance liable for repayment of the amount of Federal disaster assistance that duplicates benefits available for the same purpose from another source (42 U.S.C. 5155(c)).

The Stafford Act also provides that when assistance covers only a part of the recipient's disaster needs, additional assistance to cover needs not met by other sources will not cause a DOB (42 U.S.C. 5155(b)(3)). Therefore, CDBG–DR assistance may only pay for eligible activities to address unmet needs. This section advises grantees on the calculation of unmet needs through a DOB analysis.

3. **CDBG–DR Appropriations Acts and Federal Register Notices.** CDBG–DR funds are made available for “necessary expenses” by appropriations acts that contain statutory requirements on the use of the grant funds. Grantees are subject to the requirements of the appropriations acts, the applicable AAN, and the Universal Notice.

4. **Basic DOB calculation framework.** The Stafford Act requires a fact specific inquiry into assistance received by each applicant. The Universal Notice refers to the subject of a DOB review as an “applicant” or “CDBG–DR applicant” and uses the term “applicant” to include individuals, businesses, households, or other entities that apply to the grantee or a subrecipient for CDBG–DR assistance, as well as entities that use CDBG–DR assistance for an activity without submitting an application (e.g., the department or agency of the grantee administering the grant, other State or local departments or agencies, or local governments).

A grantee is prohibited from making a blanket determination that CDBG–DR assistance under one of its programs or activities does not duplicate another category or source of assistance. The grantee must conduct an individualized review (i.e., a DOB analysis) for each applicant to determine that the amount of assistance will not cause a DOB by exceeding the unmet needs of that applicant. A review specific to each applicant is necessary because assistance available to each applicant varies widely based on individual insurance coverage, eligibility for various sources of assistance, and other factors.

This section establishes the primary considerations that must be part of a DOB analysis when providing CDBG–DR assistance, and a framework for analyzing need and avoiding DOB when calculating awards. CDBG–DR grantees have discretion to develop policies and procedures that tailor their DOB analyses to their own programs and activities so long as the grantee's policies and procedures are consistent with the requirements of the Universal Notice. If the grantee modifies its DOB procedures after the Secretary certifies that the grantee's DOB procedures are adequate, the grantee's modified procedures must meet the standards identified here in Appendix C. and section II.A.1.e. of the Universal Notice.

4.a. **Assess applicant's total need.** A grantee must determine an applicant's total need. A grantee's DOB analysis must reflect the applicant's current need (i.e., total need) at the time the grantee is conducting the DOB

analysis and calculating the amount of CDBG-DR assistance the applicant is eligible to receive. However, if the grantee's Action Plan permits CDBG-DR assistance to reimburse costs of CDBG-DR eligible activities undertaken by the applicant before submitting an application, the total need also includes these costs. Generally, total need is calculated without regard to the grantee's program-specific caps on the amount of assistance.

For rehabilitation, reconstruction, or new construction activities, the need can be reasonably documented using construction cost estimates.

For recovery programs of the grantee that do not entail physical rebuilding, such as special economic development activities to provide an affected business with working capital, the total need will be determined by the requirements or parameters of the program or activity. For special economic development activities, total need should be guided by standard underwriting guidelines (when required by section III.D.7.f.). CDBG-DR grantees and subrecipients must comply with the underwriting guidelines in Appendix A of 24 CFR part 570 when assisting a for-profit entity as part of a special economic development project.

The grantee's assessment of total need must consider in-kind donations of materials or services that are known to the grantee at the time it conducts an applicant's DOB analysis and makes the CDBG-DR award. In-kind donations are non-cash contributions, such as donations of professional services, use of construction equipment, or contributions of building materials. In-kind donations are not "financial assistance" that creates a DOB under the Stafford Act, but they can reduce the applicant's total need by reducing projected CDBG-DR activity costs. When applicable, grantees must determine the value of any in-kind donations that would reduce the CDBG-DR activity costs and adjust the applicant's total need accordingly.

4.b. Identify total assistance. To calculate DOB, grantees are required to identify "total assistance." For the Universal Notice, total assistance includes all reasonably identifiable financial assistance available to an applicant.

Total assistance includes resources such as cash awards, insurance proceeds, grants, and subsidized loans received by or available to each CDBG-DR applicant, including awards under local, State, or Federal programs, and from private or nonprofit charity organizations. At a minimum, the grantee's efforts to identify total assistance must include a review to determine whether the applicant received FEMA, SBA, insurance, and any other major forms of assistance (e.g., State disaster assistance programs) generally available to applicants.

Total assistance does not include personal assets such as money in a checking or savings account (excluding insurance proceeds or disaster assistance deposited into the applicant's account), retirement accounts, credit cards and lines of credit, in-kind donations (although these non-cash contributions can reduce the total need when known to the grantee), and private loans.

For the Universal Notice, a private loan is a loan that is not provided by or guaranteed by a governmental entity, and that requires the CDBG-DR applicant (the borrower) to repay the full amount of the loan (principal and interest) under typical commercial lending terms, e.g., the loan is not forgivable. For DOB analyses, private loans are not financial assistance and need not be considered in the DOB calculation, regardless of whether the borrower is a person or entity.

By contrast, subsidized loans are considered financial assistance unless an exception applies (see paragraph 8.a. or 8.b.).

Total assistance includes available assistance. Assistance is available if an applicant: (1) would have received it by acting in a reasonable manner, or in other words, by taking the same practical steps toward funding recovery as would disaster survivors faced with the same situation but not eligible to receive CDBG-DR assistance; (2) has received the assistance and has legal control over it, or (3) anticipates receiving assistance that has been awarded and accepted, but has not received it yet. For example, if a local government seeks CDBG-DR assistance to fund part of a project that also has been awarded FEMA Hazard Mitigation Grant Program (HMGP) assistance, the entire HMGP award must be included in the calculation of total assistance even if FEMA obligates the first award increment for the project, but subsequent increments remain unfunded until certain project milestones are met.

Applicants for CDBG-DR assistance are expected to seek insurance or other assistance to which they are legally entitled under existing policies and contracts, and to behave reasonably when negotiating payments to which they may be entitled. For example, it may be reasonable for an applicant to elect to receive an immediate lump sum insurance settlement based on the estimated cost of rehabilitation instead of waiting for a longer period of time for the insurance company to calculate reimbursement based on actual replacement costs, even if the reimbursement based on actual costs would exceed the lump sum insurance settlement.

HUD generally considers assistance to be available if it is awarded to the applicant but is administered by another party instead of being directly deposited with the applicant. For example, if an entity administering homeowner rehabilitation assistance pays a contractor directly to complete the rehabilitation, the assistance is still considered available to the applicant.

By contrast, funds that are not available to an applicant must be excluded from the DOB analysis when identifying total assistance. For example, insurance or rehabilitation assistance received by a previous owner of a disaster damaged housing unit is not available to a current owner that acquired the unit by sale or transfer (including a current owner that inherited the unit as a result of the death of the previous owner) unless the current owner is a co-recipient of that assistance.

Funds are not available to an applicant if the applicant does not have legal control of the funds when they are received. For

example, if a homeowner's mortgage requires insurance proceeds to be applied to reduce the unpaid mortgage principal, then the lender/mortgage holder (not the homeowner) has legal control over those funds. The homeowner is legally obligated to use insurance proceeds for the purpose of reducing the unpaid mortgage principal and does not have a choice in using them for any other purpose, such as to rehabilitate the house. Under these circumstances, insurance proceeds do not reduce CDBG-DR rehabilitation assistance eligibility.

Alternatively, if a lender requires use of insurance for rehabilitation, or a disaster-affected homeowner chooses to apply insurance proceeds received for damage to the building to reduce an unpaid mortgage principal, these insurance proceeds are considered available assistance to the applicant and may reduce the amount of CDBG-DR funds the grantee can provide for rehabilitation.

4.c. Exclude non-duplicative amounts. Once a grantee has determined the total need and the total assistance, the grantee then determines if it must exclude non-duplicative amounts of financial assistance (known as "exclusions") from the applicant's total assistance to calculate the DOB amount. Grantees must exclude amounts that are: (1) provided for a different purpose than the CDBG-DR assistance; or (2) provided for the same purpose as the CDBG-DR assistance, but for a different, allowable use (cost). The "purpose" of the assistance is the purpose for which the funds were provided by the entity that offered the financial assistance. Below, each of these categories is explained in greater detail.

4.c.(i). Funds for a different purpose. Any assistance provided for a different purpose than the CDBG-DR assistance (i.e., the CDBG-DR eligible activity) or a general, non-specific purpose (e.g., "disaster relief/recovery") must be excluded from the total assistance when calculating the DOB amount.

Insurance proceeds for damage or destruction of a building are funds for the same purpose as CDBG-DR assistance to rehabilitate or reconstruct that building. On the other hand, grantees may exclude, as non-duplicative, insurance proceeds provided for a different purpose (e.g., insurance proceeds for loss of contents and personal property, or insurance proceeds for loss of buildings (such as a detached garage) that the grantee has determined it will not assist with CDBG-DR funds). However, a grantee may treat all insurance proceeds as duplicative assistance if it is impractical to identify the portion of insurance proceeds that are for a different purpose than the CDBG-DR assistance.

Similarly, CDBG-DR assistance paid to a homeowner as a housing incentive for the purpose of inducing the homeowner to sell the home to the grantee (e.g., in conjunction with a buyout) are for a different purpose than funds provided for interim housing (e.g., temporary assistance for rental housing during a period when a household is unable to reside in its home). In such a case, interim housing assistance may be excluded from the final DOB calculation as non-duplicative of funds paid for the housing incentive.

4.c.(ii). *Funds for the same purpose, different allowable use.* Assistance provided for the same purpose as the CDBG-DR assistance (*i.e.*, the CDBG-DR eligible activity) must be excluded when calculating the DOB amount if the applicant can document that the actual specific use of the assistance was allowable and for a different use (cost) than the CDBG-DR assistance. For example, an applicant uses financial assistance provided for housing rehabilitation to replace the roof and the CDBG-DR assistance is used to rehabilitate the house's interior. The financial assistance to replace the roof can be excluded from the DOB analyses as funds for a "different allowable use" even though the CDBG-DR assistance is provided for the same purpose (rehabilitation).

When excluding this type of non-duplicative assistance, grantees must identify and document the purpose of the assistance for which the funds were provided and how the funds were used by the applicant. Grantees are advised to consult with HUD to determine what documentation is appropriate in this circumstance. As a starting point, grantees should consider whether the source of the assistance requires beneficiaries to maintain documentation of how the assistance was used.

Whether the use of the non-CDBG-DR assistance is an allowable use depends on the rules imposed by the source that provided the assistance. For example, assume that a CDBG-DR grantee is administering a homeowner rehabilitation program and an applicant to the program can document that he/she previously received and used FEMA funds for interim housing costs (*i.e.*, rent). If the grantee can document that FEMA permitted the applicant to use its assistance for the general purpose of meeting any housing need, the CDBG-DR grantee can exclude the FEMA assistance used for interim housing (*e.g.*, a different allowable use) as non-duplicative of the CDBG-DR assistance for rehabilitation.

If, on the other hand, the grantee has documentation that FEMA limited the use of FEMA funds to housing rehabilitation, then the full amount of the FEMA assistance must be considered for the specific purpose of housing rehabilitation and cannot be excluded if the applicant used those funds for interim housing. If interim housing is not an allowable use, the amount of the FEMA housing rehabilitation assistance used for interim housing is considered a DOB. If the grantee thinks the actual use of the FEMA assistance may be allowable, the CDBG-DR grantee should contact FEMA for clarification.

Assistance provided for the purpose of housing rehabilitation are funds for the same purpose as CDBG-DR rehabilitation assistance. However, the grantee can exclude assistance used for different costs of the rehabilitation, which are a different allowable use (rehabilitation costs not assisted with CDBG-DR).

Assistance provided for temporary or minor rehabilitation are funds for the same purpose as CDBG-DR rehabilitation assistance but may or may not constitute a DOB. If the assistance is used for minor or

temporary rehabilitation to enable the applicant to live in their home instead of moving to temporary housing until rehabilitation can be completed, the grantee can undertake the remaining work necessary to complete rehabilitation. Further, the grantee's assessment of total need at the time of application may include the costs of replacing temporary materials with permanent construction and of completing mold remediation by removing drywall installed with other assistance. These types of costs to modify partially completed rehabilitation that the grantee determines are necessary to comply with the requirements of CDBG-DR assistance do not duplicate other assistance used for the partial rehabilitation.

Grantees are encouraged to contact HUD for further guidance in cases when it is unclear whether non-CDBG-DR assistance for the same general purpose can be excluded from the DOB calculation because it was used for a different allowable use.

4.d. *Identify DOB amount and calculate the CDBG-DR award.* The total DOB amount (*i.e.*, the duplicative assistance) is calculated by subtracting the exclusions from the applicant's total assistance. Therefore, to calculate the maximum CDBG-DR award amount, the grantee must: (1) identify total need; (2) identify total assistance; (3) subtract exclusions from total assistance to determine the DOB amount; and (4) subtract the DOB amount from the applicant's total need to determine the maximum CDBG-DR award amount, which is normally equivalent to the applicant's unmet need.

Note, there are several considerations that may change the maximum CDBG-DR award amount.

First, the grantee is required to impose an award cap that limits the amount of assistance an applicant is eligible to receive, this may reduce the potential CDBG-DR assistance available to the applicant.

Second, the grantee may increase the amount of an award if the applicant agrees to repay duplicative assistance it receives in the future (unless prohibited by a statutory order of assistance, as in the requirement to use FEMA or USACE assistance before CDBG-DR assistance discussed in section III.D. and here in Appendix C paragraph 9). Section 312(b) of the Stafford Act permits a grantee to provide CDBG-DR assistance to an applicant who is or may be entitled to receive assistance that would be duplicative if: (1) the applicant has not received the other assistance at the time the CDBG-DR grantee makes its award; and (2) the applicant agrees to repay the CDBG-DR grantee for any duplicative assistance once it is received. The agreement to repay from future funds may enable a faster recovery in cases when other sources of assistance are delayed (*e.g.*, due to insurance litigation). HUD requires all grantees to enter into agreements with applicants before the applicant receives CDBG-DR assistance.

Third, the applicant's CDBG-DR award may increase if a reassessment shows that the applicant has additional unmet need.

4.e. *Reassess unmet need when necessary.* Long-term disaster recovery is a process, and applicants' recovery needs can change over time. An applicant's total need is calculated

based on need estimates at a point in time and often represents the applicant's need at the time the DOB analysis is conducted by the grantee. As a result, a subsequent change in an applicant's circumstances can affect the applicant's total need and lead to additional unmet need or needs that were not met by CDBG-DR and other sources of assistance. Oftentimes, additional unmet need does not become apparent until after CDBG-DR assistance has been provided. Examples may include: a subsequent disaster that causes further damage to a partially rehabilitated home or business; an increase in the cost of construction materials; vandalism; contractor fraud; or theft of materials. Unmet need may also change if other resources become available to pay for costs of the activity (such as FEMA or USACE) and reduce the need for CDBG-DR assistance.

To the extent that the applicant's total need was not fully met or was exacerbated by factors beyond the control of the applicant, the grantee may provide additional CDBG-DR funds to meet the increased unmet need.

Grantees must be able to identify and document additional unmet needs, for example, by completing a professional inspection to verify the revised estimate of costs to rehabilitate or reconstruct damaged property.

5. *Necessary and reasonable requirements.* The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in subpart E of 2 CFR part 200 (the Cost Principles) applicable to all CDBG-DR grantees and their subrecipients require that costs are necessary and reasonable. The Cost Principles are made applicable to States by 24 CFR 570.489(p) and to local governments through 24 CFR 570.502. State grantees are also subject to 24 CFR 570.489(d), which requires that States shall have fiscal and administrative requirements to ensure that grant funds are used "for reasonable and necessary costs of operating programs."

Under the Cost Principles, a cost assigned to a grant "is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost" (2 CFR 200.404).

Grantees must consider factors described at 2 CFR 200.404(a) through (e) when determining which types and amounts of cost items are necessary and reasonable. Based on these factors, HUD generally presumes that if a cost has been paid by another source, charging it to the Federal award violates the necessary and reasonable standard unless grant requirements permit reimbursement.

6. *Special considerations.* The potential for DOB arises most frequently under homeowner rehabilitation programs but is not limited solely to that type of activity. The following examples do not form an exhaustive list of all CDBG-DR funded programs or activities. They are included to illustrate instances when duplicative assistance can occur when assisting other recovery activities:

a. Assistance to businesses. Many grantees carry out economic revitalization programs that provide working capital assistance to

businesses. Generally, working capital assistance is calculated after assessing a business's ability to use its current assets to pay its current liabilities. The grantee's DOB analysis must consider total assistance, which includes all sources of financial assistance available to the applicant to pay a portion of liabilities that will become due. For example, a downtown business alliance might award business recovery grants from its funds to cover some of the same liabilities. Even if the downtown business alliance does not call its assistance "working capital" assistance, the amount the business received from the downtown business alliance to pay the same costs as the CDBG-DR funds is a DOB. Therefore, a grantee's basis for calculating CDBG-DR economic development assistance and the purposes for which the applicant can use the assistance should be clearly identified so that grantees can prevent a DOB. As discussed above, assets such as cash and cash equivalents (excluding deposits of insurance proceeds or other disaster assistance), inventories, short-term investments and securities, accounts receivable, and other assets of the business are not financial assistance, although those assets may be relevant to underwriting.

b. *Assistance for infrastructure.* State grantees may assist State or local government entities by providing funding to restore infrastructure (public facilities and improvements) after a disaster. CDBG-DR funds used directly by State and local governments for public facilities and improvements, or other purposes are also subject to the DOB requirements of the Stafford Act. For example, a wastewater treatment facility owned by a local government may need to be rehabilitated. In this instance, total assistance, for a DOB analysis, would not only include any other Federal assistance available to rehabilitate the facility, but it must also include any local funds that are available for this activity. And if local funds were previously designated or planned for the activity, but are no longer available, the grantee should document that the local government recipient does not have funds set aside for the activity in any capital improvement plan (or similar document showing planned use of funds).

c. *Payments made under the Uniform Act.* A displaced person (as defined under 49 CFR 24.2(a)) is eligible for rental assistance payments under the Uniform Act. Relocation payments made under the URA, as well as under CDBG's optional relocation assistance provisions of 24 CFR 570.606(d), are subject to DOB requirements in the Universal Notice, as well as DOB requirements under the URA that prohibit payments for the same "purpose and effect" as another payment to a displaced person (49 CFR 24.3). To comply with CDBG-DR DOB requirements, before issuance of rental assistance payments required by the URA, grantees must complete a DOB analysis. For example, a CDBG-DR grantee must check FEMA assistance data to determine that FEMA did not provide rental assistance payments during the same time period (under the Uniform Act or as part of a FEMA Individual Assistance Award). Please note that while CDBG-DR funds cannot duplicate other assistance for the

same purpose, advisory services and the provision of notices required under the Uniform Act are not subject to this analysis because they are not financial assistance to the person, and therefore must be provided in accordance with the Uniform Act.

7. *Subsidized Loans.* For the Universal Notice, subsidized loans (including forgivable loans) are loans other than private loans. Subsidized loans are assistance that must be included in the DOB analysis, unless an exception applies. Paragraph 8 discusses these exceptions and related requirements for the treatment of subsidized loans in a DOB analysis. The full amount of a subsidized loan available to the applicant for the same purpose as CDBG-DR assistance is assistance that must be included in the DOB calculation unless one of the exceptions in paragraph 8 applies. A subsidized loan is available when it is accepted, meaning that the borrower has signed a note or other loan document that allows the lender to advance loan proceeds. Both SBA and FEMA provide subsidized loans for disaster recovery. Note that the statutory order of assistance provision pertaining to assistance from FEMA and USACE applies to grants and subsidized loans made by these agencies. Subsidized loans may also be available from other sources.

Subsidized loans are financial assistance and therefore can duplicate financial assistance provided from another source unless an exception in paragraph 8 applies.

8. *Exceptions when subsidized loans are not a duplication.* When an exception described in 8.a. or 8.b. applies, documentation required by those paragraphs must be maintained by the grantee.²⁸ Without this documentation, any approved but undisbursed portion of a subsidized loan must be included in the grantee's calculation of the total assistance amount unless another exception applies.

8.a. *Short-term subsidized loans for pre-award costs incurred by grantees or subrecipients that are later reimbursed with CDBG-DR.* CDBG-DR funds may be used to reimburse pre-award costs of the grantee or subrecipient for eligible activities on or after the date of the disaster. If the grantee or subrecipient obtained a subsidized short-term loan (e.g., bridge loans) to pay for eligible costs before CDBG-DR funds became available (e.g., a low-interest loan from a local tax increment financing fund), the reimbursement of the costs paid by the loan does not create a duplication.

8.b. *Declined or cancelled subsidized loans.* The amount of a subsidized loan that is declined or cancelled is not a DOB. To exclude declined or cancelled loan amounts from the DOB calculation, the grantee must document that all or a portion of the subsidized loan is cancelled or declined.

(1) *Declined SBA Loans:* Declined loan amounts are loan amounts that were approved or offered by a lender in response to a loan application, but were turned down

by the applicant, meaning the applicant never signed loan documents to receive the loan proceeds.

CDBG-DR grantees shall not treat declined subsidized loans, including declined SBA loans, as a DOB (but are not prohibited from considering declined subsidized loans for other reasons, such as underwriting). A grantee is only required to document declined loans if information available to the grantee (e.g., the data the grantee receives from FEMA, SBA, or other sources) indicates that the applicant received an offer for subsidized loan assistance, and the grantee is unable to determine from that available information that the applicant declined the loan. If the grantee is aware that the applicant received an offer of loan assistance and cannot ascertain from available data that the applicant declined the loan, the grantee must obtain a written certification from the applicant that the applicant did not accept the subsidized loan by signing loan documents and did not receive the loan.

(2) *Cancelled Loans:* Cancelled loans are loans (or portions of loans) that were initially accepted, but for a variety of reasons, all or a portion of the loan amount was not disbursed and is no longer available to the applicant.

The cancelled loan amount is the amount that is no longer available. The loan cancellation may be due to default of the borrower, agreement by both parties to cancel the undisbursed portion of the loan, or expiration of the term for which the loan was available for disbursement. The following documentation is sufficient to demonstrate that any undisbursed portion of an accepted subsidized loan is cancelled and no longer available: (a) a written communication from the lender confirming that the loan has been cancelled and undisbursed amounts are no longer available to the applicant; or (b) a legally binding agreement between the CDBG-DR grantee (or local government, Indian Tribe, or subrecipient administering the CDBG-DR assistance) and the applicant that indicates that the period of availability of the loan has passed and the applicant agrees not to take actions to reinstate the loan or draw any additional undisbursed loan amounts. For cancelled SBA loans, the grantee must notify the SBA that the applicant has agreed to not take any actions to reinstate the cancelled loan or draw any additional undisbursed loan amounts.

9. *Order of assistance.* CDBG-DR appropriations acts generally include a statutory order of assistance for Federal agencies. Although the language may vary among appropriations, the statutory order of assistance typically provides that CDBG-DR funds may not be used for activities reimbursable by or for which funds are made available by FEMA or USACE. This means that grantees must verify whether FEMA or USACE funds are available for an activity (i.e., the application period is open) or the costs are reimbursable by FEMA or USACE (i.e., the grantee may receive FEMA or USACE assistance to reimburse the costs of the activity) before awarding CDBG-DR assistance for costs of carrying out the same activity. If FEMA or USACE are accepting applications for the activity, the applicant

²⁸ View HUD's closeout instructions for CDBG Programs, as may be amended, for additional guidance related to recordkeeping requirements published in CPD-22-14 here: <https://www.hud.gov/sites/dfiles/OCHCO/documents/2022-14cpdn.pdf>.

must seek assistance from those sources before receiving CDBG–DR assistance. If the applicant's costs for the activity will be reimbursed by FEMA or USACE, the grantee cannot provide the CDBG–DR assistance for those costs. In the event that FEMA or USACE assistance is awarded after CDBG–DR to pay the same costs, it is the CDBG–DR grantee's responsibility to recapture CDBG–DR assistance that duplicates assistance from FEMA or USACE.

Under the Stafford Act, a Federal agency that provides duplicative assistance must collect that assistance. For CDBG–DR grants, the grantee is required to collect duplicative assistance it provides. A grantee that does not collect duplicative CDBG–DR assistance that it provides may resolve this noncompliance by reimbursing its program account with non-Federal funds in the amount of the duplication and reprogramming the use of the funds in accordance with applicable requirements to avoid other corrective or remedial actions.

FEMA regulations at 44 CFR 206.191 set forth a delivery sequence that establishes which source of assistance is duplicative for certain programs. CDBG–DR assistance is not listed in FEMA's sequence, but as a practical matter, CDBG–DR assistance duplicates other sources received before CDBG–DR assistance for the same purpose and portion of need. As such, any CDBG–DR assistance that duplicates another source must be collected by the grantee. The mandatory agreement to repay (discussed in paragraph 12 below) can be used to prevent duplication by assistance that is available, but not yet received. If the duplicative assistance is received after CDBG–DR, the agreement will give the grantee the ability to collect the DOB.

10. *Multiple disasters.* When multiple disasters occur in the same location, and the applicant has not recovered from the first disaster at the time of a second disaster, the assistance provided in response to the second disaster may duplicate assistance for the same purpose and need as assistance provided after the first disaster. HUD recognizes that in this scenario, DOB calculations can be complicated. Damage from a second disaster, for example, may destroy work funded and completed in response to the first disaster. The second disaster may also damage or destroy receipts and other documentation of how applicants expended assistance provided after the first disaster.

Therefore, HUD is adopting the following policy that is applicable to circumstances when two disasters occur in the same area, and the applicant has not fully recovered from the first disaster before the second disaster occurs:

Applicants are not required to maintain documentation related to the use of public disaster assistance (Federal, State, and local) beyond the period required by the agency that provided the assistance. If documentation cannot be provided, the grantee may accept a self-certification regarding how the applicant used the other agency's assistance, provided that the applicant is advised of the criminal and civil penalties that apply in cases of false claims and fraud, and the grantee determines that

the applicant's total need is consistent with data the grantee has about the nature of damage caused by the disasters (e.g., flood inundation levels). For example, a second disaster strikes three years after an agency provided assistance in response to the first disaster, and that agency required applicants to maintain documentation for two years, the grantee may accept a self-certification regarding how the applicant used the other agency's assistance. Additionally, if a second disaster strikes and destroys an applicant's paperwork, the grantee may make a determination to accept a self-certification regarding how the applicant used the other assistance.

11. *DOB recordkeeping.* The grantee must document compliance with DOB requirements. Policies and procedures for DOB must be specific for each program funded by the CDBG–DR grantee and should be commensurate with risk. Grantees should be especially careful to sufficiently document the DOB analysis for activities they are carrying out directly. Insufficient documentation on DOB can lead to findings, which can be difficult to resolve if records are missing, inadequate, or inaccurate to demonstrate compliance with DOB requirements.

When documenting its DOB analysis, grantees cannot rely on self-certification from the applicant alone for proof of other sources of funds for the same purpose (unless authorized by the Universal Notice, see paragraph 10 above). Any self-certification by an applicant must be based on supporting evidence that will be kept available for inspection by HUD and oversight agency such as HUD Office of Inspector General (HUD OIG). For example, if an applicant self-certifies that other sources of funds were received and expended for a different purpose than the CDBG–DR funds, grantees must substantiate this assertion with an additional source of information (e.g., physical inspections, credit card statements, work estimates, contractor invoices, flood inundation records, or receipts). For these reasons, HUD recommends that as soon as possible after a disaster, grantees advise the public and potential applicants to retain all receipts that document expenditures for recovery needs. Grantees should consult their assigned HUD CPD staff member with questions about the sufficiency of documentation.

12. *Agreement to repay.* The Stafford Act requires grantees to ensure that applicants agree to repay all duplicative assistance to the agency providing that Federal assistance. As described in this section, each applicant must also enter into an agreement with the CDBG–DR grantee to repay any assistance later received for the same purpose for which the CDBG–DR funds were provided. This agreement can be in the form of a subrogation agreement or similar document and must be signed by every applicant before the grantee disburses any CDBG–DR assistance to the applicant.

In its policies and procedures, the grantee must establish a method to monitor each applicant's compliance with the agreement for a reasonable period after project completion (i.e., a time period commensurate

with risk). Additionally, section II.A.1. of the Universal Notice requires a grantee's agreement to also include the following language: "Warning: Any person who knowingly makes a false claim or statement to HUD or causes another to do so may be subject to civil or criminal penalties under 18 U.S.C. 2, 287, 1001 and 31 U.S.C. 3729."

13. *Collecting a DOB.* If a potential DOB is discovered after CDBG–DR assistance has been provided, the grantee must reassess the applicant's need at that time (see 4.e. above). If additional need is not demonstrated, CDBG–DR funds shall be recaptured to the extent they are in excess of the remaining need and duplicate other assistance received by the applicant for the same purpose. However, this determination may depend on what sources of assistance were last received by the applicant.

If a grantee fails to recapture funds from an applicant, HUD may impose corrective actions pursuant to 24 CFR 570.495, 24 CFR 570.910, and **Federal Register** notices, as applicable. However, as described above in paragraph 9, a grantee that does not collect duplicative CDBG–DR assistance that it provides may resolve this noncompliance by reimbursing its program account with non-Federal funds in the amount of the duplication and reprogramming the use of the funds in accordance with applicable requirements to avoid other corrective or remedial actions.

HUD reminds grantees that the Stafford Act states that "A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source." A grantee's failure to collect a DOB does not remove an applicant's potential liability to the United States.

13.a. *Not in the best interest of the Federal government to collect.* Section 312(c) of the Stafford Act states that "the agency which provided the duplicative assistance shall collect it from the recipient . . . when the head of such agency considers it to be in the best interest of the Federal government" 42 U.S.C. 5155(c). There are extraordinary situations where the Secretary may determine that collecting a DOB is not in the best interest of the Federal government. For grants subject to the Universal Notice, HUD is establishing these specific circumstances as situations when collection is not necessary. HUD's secretary has determined that it is not in the best interest of the Federal government to collect a DOB in the following circumstances:

- (1). The duplicative assistance was received by low- and moderate-income beneficiaries that, after the receipt of the CDBG–DR assistance, are:
 - i. Deceased;
 - ii. Subject to a foreclosure action on a property rehabilitated, constructed, or reconstructed with CDBG–DR funds; or
 - iii. A debtor in a bankruptcy proceeding or who recently exited a bankruptcy proceeding (or similar proceeding for insolvent debtors under State law, such as an assignment for the benefit of creditors).

Additionally, the grantee may refer to any relevant guidance or the debt collection

procedures in place for the State or local government. HUD is available to provide guidance to grantees in establishing or revising the grantee's DOB policies and procedures.

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Part V

Consumer Product Safety Commission

16 CFR Part 1110

Certificates of Compliance; Final Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1110

[CPSC Docket No. 2013–0017]

Certificates of Compliance

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: In consultation with U.S. Customs and Border Protection (CBP), the U.S. Consumer Product Safety Commission (Commission or CPSC) issues this final rule (the Final Rule) to revise the agency's regulation for Certificates of Compliance (certificates). The Final Rule aligns CPSC's current certificates rule with other CPSC rules on testing and certification, and implements, for importation of products and substances regulated by CPSC, electronic filing of certificates (eFiling) with CBP.

DATES: For all CPSC regulated consumer products and substances subject to the Final Rule and required to be certified, except for products and substances imported into a foreign trade zone (FTZ) and subsequently entered for consumption or warehousing, the Final Rule is effective on July 8, 2026. For CPSC regulated products and substances entered from an FTZ for consumption or warehousing, the Final Rule is effective on January 8, 2027.

FOR FURTHER INFORMATION CONTACT: Kat Rickerson, eFiling Program Specialist, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone 240–429–4257; email: eFilingsupport@cpsc.gov.

SUPPLEMENTARY INFORMATION: The Commission is issuing a final rule to revise the requirements for certificates of compliance (certificates) (the Final Rule) in 16 CFR part 1110 (part 1110 or the 1110 rule). The Final Rule applies to importers, domestic manufacturers, and private labelers who are required to issue certificates for consumer products and substances¹ regulated by CPSC that are imported for consumption or warehousing into the United States or

are distributed in commerce in the United States. The Commission promulgated the existing part 1110 for certificates in 2008. The existing rule tracks the statutory requirements for certificates in section 14 of the Consumer Product Safety Act (CPSA), designates importers as the certifier for imported products and manufacturers as the certifier for domestically manufactured products, and allows for “electronic” certificates to satisfy the requirement that a certificate “accompany” the product or shipment of products, meaning a URL to access the certificate or a PDF file. 73 FR 68328 (Nov. 18, 2008); 15 U.S.C. 2063(a), (g).

In 2013, the Commission issued a notice of proposed rulemaking (NPR) to revise part 1110 to align with rules for testing children's products under 16 CFR part 1107 (part 1107 or the 1107 rule) and component part testing under 16 CFR part 1109 (part 1109 or the 1109 rule). 78 FR 28080 (May 13, 2013) (2013 NPR). Consistent with section 222 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), which requires the Commission develop a Risk Assessment Methodology (RAM) to identify imported products likely to include consumer products in violation of section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission, for imported consumer products, the 2013 NPR also proposed to require eFiling of certificates with CBP at the time of filing the CBP entry, or the time of filing the entry and entry summary, if both are filed together.² 15 U.S.C. 2063(g)(4).

Currently, CPSC collects certificates only after staff identifies a shipment for examination; certificate data are not generally collected and therefore cannot be used effectively to target shipments for examination. The purpose of eFiling is to allow CPSC to use data from a certificate to assess the health and safety risk of consumer products when they

are being imported into the United States, and to better focus CPSC's resources for examinations and holds at the ports on products that are more likely to be non-complaint, while reducing inspection delays for compliant products. The RAM processes data, including entry data and soon certificate data as well, using algorithms to increase or decrease RAM risk scores for each product shipment. Risk scores assist port staff in their assessment of incoming shipments and in interdicting non-compliant consumer products. Using certificate data for more precise targeting will maximize examination efficiency for stakeholders and staff; help CPSC to keep hazardous, violative products out of consumer's hands; and reduce burden on industry by reducing inspection delays for compliant products.

Since 2013, the Commission has undertaken a series of projects to advance implementation of an eFiling requirement, including conducting an eFiling Alpha Pilot, a Certificate Study, and an eFiling Beta Pilot. In December 2020, the Commission approved a multi-year plan to implement an eFiling program at CPSC.³ Moreover, since 2013, CBP has completed development and implementation of the Automated Commercial Environment (ACE), which is the system through which the U.S. government has implemented the “single window,” the primary system for processing trade-related import and export data required by government agencies. The transition away from paper-based procedures results in faster, more streamlined processes for both government and industry. Specifically, CBP developed the Partner Government Agency (PGA) Message Set as a way for U.S. government agencies to electronically collect additional import-related data. The eFiling Alpha and Beta Pilots were conducted in conjunction with CBP and tested use of CPSC's PGA Message Sets.

On December 8, 2023, the Commission published a supplemental notice of proposed rulemaking (SNPR) proposing to revise part 1110 to, among other things: revise terminology to incorporate concepts that had been introduced in the 1107 and 1109 rules but not yet included in part 1110; broaden the definition of “importer” in part 1110 to address commenters’

¹ Section 14(a) of the CPSA requires that manufacturers, including importers, and private labelers issue certificates for all consumer products subject to a consumer product safety rule under the CPSA, or a similar rule, ban, standard, or regulation under any other law enforced by the Commission, that are imported for consumption or warehousing or distributed in commerce. 15 U.S.C. 2052(a)(11)–(12); 15 U.S.C. 2063(a)(1). In this Final Rule, all consumer products and substances subject to a CPSC rule, ban, standard, or regulation required to be certified under section 14(a) of the CPSA are referred to as “consumer products” or “products.”

² CBP regulations define “entry” as the documentation or data required to secure the release of imported merchandise from CBP custody, or the act of filing that documentation. See 19 CFR 141.0a(a). CBP regulations define an “entry summary” as any other documentation or data necessary for CBP to assess duties, collect statistics on imported merchandise, and determine whether other requirements of law or regulation have been met. See 19 CFR 141.0a(b). An entry can be made as either a 2-Step or 1-Step process. As a 2-Step process, an entry is filed initially and an entry summary is filed within 10 days of entry filing. As a 1-Step process, an entry summary is filed which serves as both the entry and entry summary filing. See e.g., 19 CFR 141.68(b). Consequently, using the term “entry” encompasses both processes, irrespective of whether the entry/CBP Form 3461 is filed for a 2-Step or a 1-Step entry process where the entry summary/CBP Form 7501 serves as the entry.

³ The 2020 staff briefing package to implement an eFiling program at CPSC is available at: <https://www.cpsc.gov/s3fs-public/CPSC-Plan-to-Create-an-eFiling-Program-for-Imported-Consumer-Products.pdf>. The record of commission action is available at: <https://www.cpsc.gov/s3fs-public/RCA-CPSC-Plan-to-Create-an-eFiling-Program-for-Imported-Consumer-Products.pdf>.

concerns about the product certifier having control over and knowledge of the goods; allow private labelers to test and certify products; and implement eFiling for imported consumer products regulated by CPSC. 88 FR 85760 (SNPR).

The Commission received 47 comments on the SNPR, addressed in section IV of this preamble, and is now finalizing the rule to revise part 1110, with clarifications and modifications in response to commenters' concerns.^{4 5} The Final Rule specifies the entities that must issue certificates for finished products, including domestically manufactured and imported products, in accordance with section 14(a) of the CPSA, as amended, 15 U.S.C. 2063(a); specifies certificate content, form, and availability requirements in section 14 of the CPSA; requires importers to eFile certificate data with CBP for imported finished products that must be certified; and clarifies which provisions of part 1110 apply to voluntary component part certificates.

I. Statutory Authority

Section 102 of the Consumer Product Safety Improvement Act (CPSIA) amended section 14(a) of the CPSA to expand requirements for certificates of compliance. 15 U.S.C. 2063(a). As amended, section 14(a) of the CPSA requires that manufacturers and private labelers issue certificates for all consumer products subject to a consumer product safety rule under the CPSA, or a similar rule, ban, standard, or regulation under any other law enforced by the Commission, that are imported for consumption or warehousing or distributed in commerce. 15 U.S.C. 2052(a)(11)–(12); 15 U.S.C. 2063(a)(1). The CPSA defines the term “manufacturer” as “any person who manufactures or imports a consumer product.” 15 U.S.C. 2052(a)(11). Thus, certificates must be issued by a manufacturer, importer, or private labeler. When a product has more than one manufacturer, including

an importer, or private labeler, the Commission may by rule designate one or more of such entities as the certifier and exempt the others. 15 U.S.C. 2063(a)(4).

Certificates for children's products (Children's Product Certificates or CPCs) must be based on testing performed by a third party conformity assessment body whose accreditation to perform such testing has been accepted by the Commission. 15 U.S.C. 2063(a)(2); 16 CFR part 1107. Certificates for non-children's products (General Certificates of Conformity or GCCs) must be based on a test of each product or a reasonable testing program. 15 U.S.C. 2063(a)(1)(A). Section 14(a)(1)(B) of the CPSA requires that certificates specify each rule, ban, standard, or regulation applicable to the product. 15 U.S.C. 2063(a)(1)(B).

Section 14(g) of the CPSA contains additional requirements for the form, content, and availability of certificates. 15 U.S.C. 2063(g). Section 14(g)(1) requires that each certificate must identify the manufacturer (including importer) or private labeler issuing the certificate, as well as any third party conformity assessment body on whose testing the certificate depends. 15 U.S.C. 2063(g)(1). At a minimum, certificates must include the date and place of manufacture; the date and place where the product was tested; each party's name, full mailing address, and telephone number; and contact information for the individual responsible for maintaining records of test results. *Id.* Section 14(g)(2) requires that every certificate be legible and that all contents be in English; contents can additionally be in another language. 15 U.S.C. 2063(g)(2).

Certificates must accompany the applicable product or shipment of products covered by the certificate, and a copy of the certificate must be furnished to each distributor or retailer of the product. Upon request, the manufacturer (including importer) or private labeler issuing the certificate must provide a copy of the certificate to the Commission. 15 U.S.C. 2063(g)(3). Finally, section 14(g)(4) of the CPSA states that in consultation with the Commissioner of Customs, CPSC may, by rule, provide for the electronic filing of certificates up to 24 hours before arrival of an imported product. Upon request, the manufacturer (including importer) or private labeler issuing the certificate must provide a copy of such certificate to the Commission and to CBP. 15 U.S.C. 2063(g)(4).

In addition to the statutory authority to require certificates for regulated products, as outlined in sections 14(a) and (g) of the CPSA, the Commission

has general authority to implement testing and certification requirements pursuant to section 3 of the CPSIA, which provides that “the Commission may issue regulations, as necessary, to implement this Act and the amendments made by this Act.” Notes to 15 U.S.C. 2051 (citing Pub. L. 110–314, 3, Aug. 14, 2008, 122 Stat. 3017).

II. Background on Certificates and eFiling

Section II of the SNPR provided a detailed background on the existing 1110 rule, the 2013 NPR to revise the 1110 rule, CPSC's risk assessment and targeting efforts for imported consumer products, and CPSC's eFiling-related projects since the 2013 NPR. 88 FR 85760, 85761–63. In this section of the preamble, we summarize the same information and additionally describe the 2023 SNPR.

A. The 1110 Rule

As stated in section I of this preamble, the CPSIA expanded section 14 of the CPSA to require testing and certification of consumer products subject to a consumer product safety rule, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission. 15 U.S.C. 2063(a)(1). The existing 1110 rule tracks the statutory requirements in section 14, allows for certificates in paper, electronic (URL), and PDF formats, and states that this initial rule is “streamlined, at least in its initial phase.” 73 FR 68328 (Nov. 18, 2008). The existing rule was not expected to be permanent. As the Commission explained when adopting the rule, “with time CPSIA's expanded certification requirements will become more routine, and [CPSC] then would consider whether this rule needs to be revised based on actual experience.” 73 FR 68328. The existing 1110 rule does not implement the authority in section 14(g)(4) of the CPSA to require eFiling of certificates for imported products. 15 U.S.C. 2063(g)(4).

B. The 2013 Notice of Proposed Rulemaking

In 2011, as required by section 222 of the CPSIA, CPSC launched a pilot targeting system to test the effectiveness of CPSC's RAM. The purpose of the RAM is to support identification and interception of shipments containing potentially hazardous products. The pilot RAM system used a rules-based approach and aggregate-scoring models to highlight potential risks, patterns, and targets. 15 U.S.C. 2066 Note. By 2012, staff had worked to refine the RAM and had begun to grapple with the rise of internet-based companies selling

⁴ On December 18, 2024, the Commission voted (3–0–2) to publish the Final Rule, with all five Commissioners voting to approve the rule; and a majority voting to approve the rule with an amendment extending the general implementation date from 12 months to 18 months. All Commissioners issued a statement in connection with their vote. The Record of Commission Action and Commissioner statements are available at: <https://www.cpsc.gov/s3fs-public/RCA-Final-Rule-to-Implement-eFiling-for-Certificates-of-Compliance.pdf?VersionId=JN7iuAdHGzooHBnXpuU7xZB4aX4Dkda>.

⁵ The information in this Final Rule is also based on Staff's November 15, 2024 Memorandum: Draft Final Rule to Revise 16 CFR part 1110 for Certificates of Compliance and to Implement eFiling of Certificates for Regulated, Imported Consumer Products (Staff's Final Rule Memo).

consumer products (eCommerce) and direct-to-consumer shipments, which made CPSC's interdiction of non-compliant products more challenging. To address those concerns, and to be able to use certificate data for targeting and enforcement of CPSC's rules at the ports, CPSC proposed in the 2013 NPR to implement eFiling of certificates with CBP for regulated, imported products, pursuant to section 14(g)(4) of the CPSA. The 2013 NPR also sought to revise part 1110 to integrate the rule into the testing and certification regime contemplated in then-new parts 1107 and 1109.⁶ CPSC received over 500 comments from more than 70 commenters on the 2013 NPR.

C. CPSC's Risk Assessment and Targeting Efforts for Imported Consumer Products

In 2017, CPSC transitioned to the RAM 2.0 system, which assesses more data within CPSC's jurisdiction than the pilot RAM and uses analytic and performance reports to aid staff in modifying and fine-tuning risk assessment and targeting rules to select shipments for examination. CPSC's RAM currently receives an electronic feed of import entry data collected by CBP.⁷ The RAM is optimized to ingest CBP's data and uses algorithms to identify potentially noncompliant consumer product shipments for CPSC's inspection. However, the data ingested by the RAM are collected by CBP for its enforcement and tariff purposes, which do not always align with CPSC's risk assessment purposes. Moreover, CPSC's current import enforcement methodology is labor-intensive and lacks an efficient means of using product-specific data to identify potentially non-compliant products.

Currently, CPSC collects certificates only after staff identifies a shipment for examination; certificate data are not generally collected and therefore cannot be used to target shipments for examination. CPSC port staff identifies shipments for examination, requesting

that CBP place a shipment on hold and transport the goods to an examination station for CPSC inspection. An examination hold creates a delay that costs CPSC and businesses time and money; thus, importers and CPSC have a common interest in reducing examinations of compliant products and focusing instead on examinations of products that are likely to be violative. Using certificate data for more precise targeting will maximize examination efficiency for stakeholders and staff; keep hazardous, violative products out of consumer's hands; and reduce burden by not delaying compliant products and not holding up shipments at the port while waiting to receive a certificate.

Using certificate data can also improve CPSC's ability to target low-value shipments accorded a duty exemption under 19 U.S.C. 1321(a)(2)(C), which are commonly referred to as *de minimis* shipments. CPSC's port staff are currently unable to pinpoint with a high degree of certainty potentially non-compliant and hazardous products in such low-value shipments. *De minimis* shipments may currently be entered under either the "release from manifest" process,⁸ or the ACE Entry Type 86 Test (ET86). Of these, only the latter is capable of transmitting the PGA Message Set⁹ data required to effect release of CPSC regulated merchandise.¹⁰ The Final Rule requires *de minimis* shipments containing finished products regulated by CPSC to file CPSC's PGA Message Set via an entry type capable of transmitting this message set, which is currently limited to ET86. Accordingly, importers may now use ET86 for *de minimis*

shipments to append the required CPSC PGA Message Set. Once the Final Rule is effective, CPSC's RAM can receive CBP's entry data and CPSC's PGA Message Set containing certificate data elements for risk scoring. Using product-specific certificate information will provide CPSC with greater insights into all imported products, including *de minimis* shipments. Millions of *de minimis* shipments enter the United States daily; although not all of these shipments contain CPSC regulated finished products, the ability to use algorithms to assess certificate data and identify higher-risk shipments, even those of low value that occur frequently, would enhance CPSC's ability to focus limited resources to identify and interdict higher risk shipments.

Additionally, CBP does not collect entry data for products imported into the United States via international mail; thus, these shipments cannot relay the PGA Message Set required for products regulated by CPSC. However, CPSC staff inspect mail shipments; lack of product-related data can lead to CPSC inspections of compliant products that delay their release. Although CBP is unable to process any certificate data collected for international mail shipments via ACE,¹¹ the Final Rule requires a modified eFiling requirement for international mail. Importers using international mail to import consumer products regulated by CPSC must enter certificate data into the Product Registry before arrival of the shipment in the United States, so that staff can analyze this data and work with CBP to target mail shipments for examination.

D. CPSC eFiling Related Projects Since the 2013 NPR

Since publication of the 2013 NPR, CPSC has implemented RAM 2.0 and CBP has implemented ACE and developed the PGA Message Set. In 2016 and 2017, CPSC conducted an eFiling Alpha Pilot, in coordination with CBP, involving eight volunteer participants who successfully eFiled a limited set of targeting/enforcement data for regulated products. Also in 2017, CPSC conducted a Certificate Study to assess CPSC's ability to use certificates and the information on them for risk assessment and targeting of regulated, imported consumer products. In December 2020, the Commission

⁶ The 1107 rule sets forth requirements for children's product testing and certification, including when and how products must be tested and certified, and recordkeeping requirements. The 1109 rule sets forth conditions and requirements for component part testing and certification for both children's and non-children's products. Both rules introduced new concepts and terminology related to certificates that are not present in the existing part 1110 rule published in 2008.

⁷ Currently, CPSC's RAM system is limited to data collected and provided by CBP and does not contain CPSC-specific information that would help enhance risk assessment. eFiling certificate data for imported consumer products will allow the RAM to use this data to further improve CPSC's ability to target noncompliant consumer products for examination at the ports.

⁸ Merchandise for which a duty exemption is claimed under 19 U.S.C. 1321(a)(2)(C) may be entered by presenting the bill of lading or a manifest listing each bill of lading. This type of informal entry is termed the "release from manifest" process. Generally, such shipments are released from CBP custody based on the information provided on the manifest or bill of lading. 89 FR 2630, 2631–2632 (Jan. 16, 2024).

⁹ CBP created the PGA Message Set to collect from importers additional agency-related import data for partner government agencies and to allow importers to transmit the data elements to ACE at time of entry or entry summary. CPSC created two PGA Message Sets: the Full Message Set and Reference Message Set. When using a Full Message Set, importers will provide all certificate data in the form of data elements. When using a Reference Message Set, importers will provide a reference ID to certificate data entered into CPSC's Product Registry. The Product Registry is a certificate database created and maintained by CPSC. Importers can enter or upload certificate data for regulated consumer products that can be referenced in a short PGA Message Set each time the product is imported without having to re-enter the same certificate data elements.

¹⁰ Shipments that have PGA data reporting requirements, or require the payment of any duties, fees, or taxes may not use the "release from manifest" process. 89 FR 2630, 2632.

¹¹ ACE is CBP's system through which the U.S. government has implemented the "single window," the primary system for processing all trade-related import and export data required by government agencies. The "single window" transitions away from paper-based procedures to provide government and industry faster, more streamlined processes.

approved a multi-year plan to implement an eFiling program at CPSC.¹² Following this eFiling plan, CPSC began an eFiling Beta Pilot in the fall of 2023 with 37 participants.¹³ Section II of the SNPR contains a detailed description of each of these initiatives. 88 FR 85760, 85762–63. Most recently, on June 4, 2024, CPSC announced an expansion of the Beta Pilot to include up to an additional 2,000 participants, to further test the eFiling IT infrastructure and to allow more importers to prepare for full implementation of an eFiling requirement.¹⁴

To minimize burden on industry, CPSC developed an eFiling System through the Alpha and Beta Pilots that allows importers to enter certificate data through two means: Full PGA Message Set or Reference PGA Message Set using the Product Registry.¹⁵ When using the Full PGA Message Set, the importer submits all certificate data elements via ACE. When using the Reference PGA Message Set, the importer enters all certificate data elements into CPSC's Product Registry prior to filing entry with CBP, and then submits a unique reference identifier (ID) via ACE as part of their entry filing.¹⁶ The CBP and Trade Automated Interface Requirement (CATAIR), which details the technical requirements to file each of CPSC's PGA Message Sets in ACE, is available in the eFiling document library maintained on CPSC's website at <https://www.cpsc.gov/eFiling-Document-Library>.

The Product Registry allows importers, or their designees, to enter the certificate data elements via a user interface, batch upload, and/or Application Programming Interface (API) upload. The user interface is a step-by-step process in which the importer submits one certificate at a time. The

batch upload feature allows importers to submit multiple certificates using a Comma-Separated Value (CSV) template. The API upload feature allows importers to build an API connection via the Product Registry and their data systems to directly enter certificates.

Additionally, the Product Registry provides multiple features to optimize the importer's interaction. Each importer has a Business Account in the Product Registry through which individual users representing the importer can view all certificates submitted into the Product Registry associated with the importer. An importer can also provide other third parties, such as a broker or testing laboratory, with different levels of permission to submit certificate data into the Product Registry on their behalf. The most recent user guide for the Product Registry is attached as Tab A to Staff's Final Rule Memo and is also available in the eFiling document library maintained on CPSC's website at <https://www.cpsc.gov/eFiling-Document-Library>. Updates to the Product Registry user guide and other eFiling-related guidance documents will continue to be placed in this document library.

E. Supplemental Notice of Proposed Rulemaking

On December 8, 2023, CPSC published an SNPR that modified the 2013 NPR based on comments on the 2013 NPR, lessons learned, and participant feedback from the Alpha Pilot and the Certificate Study, as well as feedback during preparation of the Beta Pilot. 88 FR 85760. The SNPR proposed to revise the 1110 rule to clarify certificate requirements for all regulated products. Among other changes, the SNPR added 13 new definitions to incorporate concepts used in the 1107 and 1109 rules and to clarify the requirements of part 1110; broadened the definition of “importer” in part 1110 to include any entity CBP allows to be an importer under the Tariff Act; addressed which party is responsible for certifying imported and domestically manufactured products; clarified the certificate format; provided additional detail to the required data elements; required that each certificate describe a single product; specified that the 1110 rule applies to *de minimis* shipments, international mail shipments, and to products entered for consumption or warehousing from an FTZ; clarified the legal responsibility for certificate information; and expanded the record retention period for GCCs to five years.

III. Overview of the Final Rule

The Commission is finalizing the rule largely as proposed in the SNPR. For clarity, the Final Rule contains minor grammar and syntax revisions that do not change the substance of the rule. Based on the comments, one of the biggest changes to the Final Rule is the effective date, extended from the proposed 120 days after publication in the **Federal Register**, to 18 months for all imported and domestically manufactured products (other than those imported into an FTZ and subsequently entered for consumption or warehousing, for which the effective date will be 24 months after publication). Additionally, throughout the Final Rule, we use the term “finished product certificate” or “finished product certifier” to clarify that the requirement to certify regulated products attaches to finished products and not to component parts, and the obligation to certify regulated finished products rests with a finished product certifier, as set forth in the rule. Using these terms consistently throughout the regulation text addresses several comments received on the SNPR demonstrating confusion regarding which party has the obligation to certify and which products must be accompanied by a certificate. The Final Rule also modifies the definition of “importer” to address commenters' concerns, and to ensure that a party eligible to make entry for imported, regulated consumer products is legally responsible for CPSC's certificate requirements. Finally, the Final Rule clarifies the party that is legally responsible for information on a finished product certificate and the requirements for component part certificates.

In this section of the preamble, we briefly describe the primary modifications and clarifications made in the Final Rule based on comments received on the SNPR and experience and feedback on the eFiling Beta Pilot. Section V of this preamble contains a more detailed explanation of the requirements in the Final Rule.

A. Effective Date

As explained in section VI of this preamble, the effective date is extended from the proposed 120 days. For all consumer products regulated by CPSC subject to the Final Rule and required to be certified, except for products imported into an FTZ and subsequently entered for consumption or

¹² The 2020 staff briefing package to implement an eFiling program at CPSC is available at: <https://cpsc.gov/s3fs-public/CPSC-Plan-to-Create-an-eFiling-Program-for-Imported-Consumer-Products.pdf?BYXOLX2gJmF4NaAN1LCMmqiXRI SuaRk>. The record of commission action is available at: <https://www.cpsc.gov/s3fs-public/RCA-CPSC-Plan-to-Create-an-eFiling-Program-for-Imported-Consumer-Products.pdf>.

¹³ 87 FR 35513 (June 10, 2022).

¹⁴ 89 FR 47922 (June 4, 2024).

¹⁵ The eFiling system collectively refers to the PGA Message Set and Product Registry and process of filing certificate data. Finished product certifiers (meaning importers, manufacturers, or private labelers) are responsible for the certificate data submitted, but brokers or other designated parties can upload data and certify products on behalf of a finished product certifier. See 16 CFR part 1109 and § 1110.15 of this Final Rule.

¹⁶ Other trade parties, such as brokers and laboratories, may enter certificate data into the Product Registry on behalf of a finished product certifier, if given permission to do so in the Product Registry.

warehousing,¹⁷ the Final Rule is effective 18 months after publication of the Final Rule in the **Federal Register**. The 18-month effective date applies to regulated consumer products subject to the Final Rule that are imported, as well as to those that are domestically manufactured. For CPSC regulated products imported into an FTZ and subsequently entered for consumption or warehousing, the Final Rule is effective 24 months after publication of the Final Rule in the **Federal Register**.

B. Definitions (§ 1110.3)

Definitions in the Final Rule contain the following changes from the SNPR:

Component part certificate—Clarifies that component part certificates are voluntary.

Consignee—Clarifies that this definition is only for the purposes of this rule and simplifies the definition to mean a party who takes custody or delivery of imported finished products for which CPSC certificate data are required. The definition informs that a consignee may be held legally responsible by CPSC for the required certificate data as set forth in § 1110.15. Although a consignee will not necessarily be eligible to enter certificate data into ACE, CPSC may hold the consignee legally responsible for CPSC's certificate data as the importer.

eFile—Modifies the defined term from “eFiled certificate” to “eFile” because the term “eFiled certificate” is not used in the rule, but the term “eFile” or “eFiled” is used nine times throughout the regulation. The definition of “eFile” is consistent with the SNPR definition of “eFiled certificate.”

Finished product—Removes the phrase “replacement parts” and clarifies the three requirements that define a “finished product”: (1) the product is imported for consumption or warehousing, or distributed in commerce; (2) the product is subject to a consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any other law enforced by the Commission; and (3) the product is packaged, sold, or held for sale to, or use by, consumers.

Finished product certifier—For clarity, adds the statutory requirement that a finished product certifier must be a manufacturer, importer, or private labeler.

Importer—Clarifies that for purposes of this rule, the importer is the Importer of Record (IOR) eligible to make entry

for imported finished products under the Tariff Act of 1930, as amended (19 U.S.C. 1484(a)(2)(B)), who may be an owner, purchaser, or authorized customs broker. This modification is consistent with the 2013 NPR and comments stating that the SNPR proposal to broaden the importer definition was too broad and created confusion about which party is required to certify imported products. Pursuant to CBP's statute, entry documentation must be transmitted by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under 19 U.S.C. 1641. The IOR must be a party eligible to file such entry documentation. 19 U.S.C. 1484(a)(2)(B). A valid license under 19 U.S.C. 1641 means a customs broker licensed to conduct customs business. 19 U.S.C. 1641(a). Accordingly, the Final Rule places responsibility to issue a finished product certificate for imported products on the IOR, and the definition tracks the parties eligible to be an IOR in the Tariff Act, as amended.

However, to address additional comments stating that an IOR authorized to make entry for a shipment, such as a broker, may not have sufficient knowledge of the consumer products to be held responsible for testing and certification, the definition of “importer” in the Final Rule provides that an authorized broker may identify the owner, purchaser, or consignee of the finished products who authorized the customs broker to make entry, as the party responsible for compliance with CPSC certificate requirements, as part of the certificate data filed in CPSC's PGA Message Set. Accordingly, a broker may identify the party responsible for certification by filing CPSC's required PGA Message Set in ACE, and the Message Set should identify the finished product certifier as part of the certificate data required in § 1110.11(a)(3) of this Final Rule. This owner, purchaser, or consignee that authorized a broker to file entry is the party that CPSC would expect to have sufficient knowledge of the products being imported and understand that such finished products must now comply with U.S. laws and regulations, including compliance with CPSC's testing and certification requirements.¹⁸

Additionally, the Final Rule clarifies that for finished products imported by

mail, or for which a *de minimis* duty exemption under 19 U.S.C. 1321(a)(2)(C) is claimed, the importer for purposes of CPSC's certificate requirements is a party eligible to make entry for the finished products pursuant to CBP statutes and regulations, who may be an owner, purchaser, consignee, or authorized customs broker.¹⁹ Because a consumer could fall within the definition of a purchaser or consignee, the definition of “importer” continues to state, as proposed, that for purposes of this rule, CPSC will not typically consider a consumer purchasing or receiving products for personal use or enjoyment to be the importer responsible for certification.

Manufacturer—For clarity, restates the statutory definition of “manufacturer” in the regulatory text.

Owner or purchaser—Clarifies that this definition is only for the purposes of this rule and simplifies the definition to mean a party who has a financial interest in imported finished products for which CPSC certificate data are required, including the actual owner of the merchandise. The definition informs that an owner or purchaser of the imported finished products may be held legally responsible by CPSC for the required certificate data as set forth in § 1110.15. This definition does not signify which party is eligible to enter certificate data into ACE but informs the owner or purchaser that CPSC may hold them legally responsible for CPSC's certificate data as the importer.

Private labeler—For clarity, restates the statutory definition of “private labeler” in the regulatory text.

Product Registry—Places the responsibility to submit data into the Product Registry on the finished product certifier, meaning the importer that is required to issue the finished product certificate, as specified in § 1110.7(a), and who is also required to eFile the certificate data as set forth in § 1110.13(a)(1).²⁰

C. Certificate Content (§ 1110.11)

Requirements for certificate content in the Final Rule contain the following changes from the SNPR proposal:

Individual maintaining records § 1110.11(a)(4)—Moves the bulleted list summarizing required testing and certification records to the recordkeeping requirement in § 1110.17, because the data element in

¹⁹ *Id.*

²⁰ Pursuant to § 1110.15, a finished product certifier can rely on other parties to maintain records, test, certify products, or enter data into the Product Registry, but remains legally responsible for the validity, accuracy, completeness, and availability of finished product certificates.

¹⁷ Entry type 06 is used to enter for consumption consumer products withdrawn from an FTZ for entry for consumption.

¹⁸ We note that the party that CPSC holds legally responsible for certificate data does not signify that this party is responsible for submitting such data into ACE, given that this party is not necessarily an IOR or other party eligible to make entry under CBP statutes and regulations.

§ 1110.11(a)(4) requires a name and contact information for the recordkeeper; thus, the list of potential records is more appropriately defined in the Final Rule's recordkeeping requirement.

Attestations § 1110.11(a)(7)—Clarifies that although all certificates require an attestation, the written attestation only applies to certificates provided in hard copy or electronic formats, because eFiled certificates already address the attestation requirement through the Product Registry (Reference Message Set) and a data element in the Full Message Set.

Duplicative testing not required § 1110.11(d)—Clarifies that the rule's provision on duplicative testing is intended to prevent test laboratories from conducting the same third party test multiple times on the same sample when the same test is required by overlapping rules.

D. Legal Responsibility of Finished Product Certifiers (§ 1110.15)

This provision modifies the heading proposed in the SNPR, changing the description from “Legal responsibility for certificate information” to “Legal

responsibility of finished product certifiers.” This modification better reflects the content of § 1110.15, which is broader than just the information on a certificate and includes requirements for finished product certifiers when they rely on other parties to maintain records, or to submit data into the Product Registry, test, or certify.

E. Recordkeeping Requirements (§ 1110.17)

The Final Rule simplifies the presentation of the recordkeeping requirements for all finished product certificates by stating that required records must be maintained for five years from the date of creation, as proposed, and moves the bulleted recordkeeping requirements previously contained in § 1110.11(a)(4) to this section of the rule.

F. Disclaimer Message Sets

The SNPR proposed to require Disclaimer Message Sets in § 1110.13(a)(1) by referencing CPSC's PGA Message Set requirements in CPSC's CATAIR. As explained in section IV.F of this preamble, as a matter of policy and to reduce burden,

CPSC will not require importers to file a Disclaimer Message Set with CBP for products that do not require a certificate. Accordingly, a Disclaimer Message Set is not required when: (1) the imported product is not within CPSC's jurisdiction; (2) the imported product is within CPSC's jurisdiction, but no rule, ban, standard, or regulation requiring a certificate applies; (3) the imported product is a component of a consumer product that is not packaged, sold, or held for sale to, or for use by, consumers, but rather the part will be used in further assembly or manufacturing in the United States; or (4) the imported product is subject to an enforcement discretion and no certificate is required. Commission staff have updated the CPSC's CATAIR accordingly.

IV. Response to Comments

This section of the preamble summarizes and responds to the 47 comments received on the SNPR by topic. Table 1 contains a key to the acronyms used to describe each commenter.

TABLE 1—COMMENTER KEY²¹

84	Comverex, LLC (Comverex)	108 ...	National Foreign Trade Council and U.S. Chamber of Commerce (NFTC & USCC)
85	Tractor Supply Company (TSC)	109 ...	The Boppy Company, LLC (Boppy)
86	Tractor Supply Company (TSC)	110 ...	Newell Brands Inc. (Newell)
87	Tractor Supply Company (TSC)	111 ...	American Apparel & Footwear Association (AAFA)
88	Comverex, LLC (Comverex)	112 ...	PeopleForBikes Coalition (PeopleForBikes)
89	Comverex, LLC (Comverex)	113 ...	The National Association of Manufacturers (NAM)
90	Galaxy Fireworks, Inc. (Galaxy)	114 ...	Retail Industry Leaders Association (RILA)
91	Comverex, LLC (Comverex)	115 ...	Law Offices of Steven W Hansen (Hansen)
92	Bureau Veritas (BV)	116 ...	Lighter Association (LA)
93	Alta Cycling Group, LLC (Alta)	117 ...	Comverex, LLC (Comverex)
94	American Fireworks Standards Laboratory (AFSL)	118 ...	Writing Instrument Manufacturer's Association (WIMA)
95	National Fireworks Association (NFA)	119 ...	Promotional Products Association International (PPAI)
96	National Association of Foreign-Trade Zones (NAFTZ)	121 ...	National Association of Foreign-Trade Zones (NAFTZ)
97	Toy Association (TA)	122 ...	National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA)
98	Informational Technology Industry Council (ITI)	123 ...	IKEA
99	Juvenile Products Manufacturers Association (JPMA)	124 ...	IKEA
100 ...	Outdoor Power Equipment Institute, Inc. (OPEI)	125 ...	Informational Technology Industry Council (ITI)
101 ...	American Pyrotechnics Association (APA)	126 ...	Retail Industry Leaders Association (RILA)
102, ..	Ingram Enterprises, Inc. DBA Fireworks	127 ...	National Association of Foreign-Trade Zones (NAFTZ)
120 ...	Over America and Affiliated Companies (FOA) (Comment 120 identical)		
103 ...	Consumer Technology Association (CTA)	128 ...	National Association of Foreign-Trade Zones (NAFTZ)
104 ...	UL Solutions (ULS)	129 ...	National Fireworks Association (NFA)
105 ...	American Promotional Events, Inc. d/b/a TNT Fireworks (APE)	130 ...	IKEA
106 ...	Window Covering Manufacturers Association (WCMA)	131 ...	Express Association of America (EAA)
107 ...	Winco Fireworks International LLC (WFI)		

A. Procedural Comments

Comment 1: Several commenters (Galaxy (90), JPMA (99), NAM (113),

RILA (114), and NCBFAA (122)) argue that the SNPR was proposed prematurely, because CPSC assertedly

did not benefit from outcomes and feedback from Beta Pilot participants;

²¹ The commenter key is based on the document ID that was assigned to the comment upon submission to the **Federal Register** docket of the

SNPR. Several commenters submitted comments in separate submissions and were assigned multiple IDs. Acronyms and abbreviations for easier

reference of each commenter are in parentheses. Comments on the SNPR begin with comment number 84.

these commenters noted general concern about the impact of eFiling.

Response 1: When drafting the SNPR, CPSC benefited from the outcomes and feedback from comments to the 2013 NPR, the Alpha Pilot conducted in 2016, the Certificate Study conducted in 2017, preparation and development for the Beta Pilot in 2023, and the initial months of the Beta Pilot. Furthermore, CPSC is drawing upon outcomes and feedback from the Beta Pilot participants in the Final Rule, specifically with respect to consideration of the effective date of the Final Rule and finalizing the eFiling burden analysis in sections VII and VIII of this preamble. Finally, while the Beta Pilot tests the mechanics of eFiling and practical considerations, it does not impact the Final Rule's basic requirement to eFile certificates.

Comment 2: Hansen (115) states that the bicycle industry has not received sufficient information about the eFiling proposal, and that the SNPR was sudden, considering the 10-year lapse between the NPR and the SNPR. Hansen complains that no company from the bicycle industry is participating in the Beta Pilot and that it will take many months to set up testing laboratories around the world and hire people to manage the new data requirements.

Response 2: Because more than 10 years have passed since the NPR was published in 2013, the Commission issued the SNPR to provide additional opportunity for notice and comment and to describe proposed requirements for the revisions to part 1110 based on the Commission's efforts since 2013 to advance eFiling. The SNPR recounts such efforts, including the Alpha Pilot in 2016 and a Certificate Study in 2017. 88 FR 85760, 85762–62. The Commission voted in December 2020 to approve staff's recommended four-phased approach to create an eFiling program at CPSC²² and began recruiting for the Beta Pilot on June 10, 2022 (87 FR 35513). CPSC conducted the Beta Pilot with 37 participants from October 2023 to June 2024. Most recently, CPSC announced expansion of the Beta Pilot test on June 4, 2024 (89 FR 47922). CPSC has also conducted extensive outreach via public events, such as a workshop held on October 13, 2022 (87 FR 48162 (Aug. 8, 2022)), and communication with a variety of trade organizations.²³ CPSC provided

industry with a wealth of information about the Beta Pilot and eFiling and provided numerous notices and opportunities for bicycle importers to participate; bicycle importers can still participate in the expanded Beta Pilot. Lastly, the Final Rule requires eFiling of certificates that bicycle importers are already responsible for creating and maintaining; the Final Rule does not add new testing-related data requirements for certificates and does not require the bicycle industry to set up additional testing laboratories or change their testing processes.

B. Effective Date

Comment 3: Many commenters (TSC (87), BV (92), Alta (93), TA (97), ITI (98), JPMA (99), OPEI (100), WCMA (106), NFTC & USCC (108), Newell (110), AAFA (111), NAM (113), RILA (114, 126), Hansen (115), LA (116), Comverex (117), NAFTAZ (127), EAA (131), and IKEA (123, 130)) argue that an effective date of 120 days after publication of the Final Rule, as proposed, is inadequate and recommend a longer implementation period, ranging from six to 24 months. The NCBFAA (122) expresses concern about slow participation by importers and potential system bugs in development.²⁴ The TA (97) specifically recommends a staggered phase-in period once the effective date has elapsed. Commenters argue that an extended implementation period would allow industry to implement the new changes, including organizing resources, hiring data personnel, integrating internal technological systems, onboarding to the eFiling system, reviewing existing compliance programs, developing internal procedures, and completing additional legal agreements between parties to assign certification responsibilities.

The AAFA (111) states that an interim manual entry process, which CPSC did not propose, is not feasible for most importers, because it would require

to Implement eFiling (Final Rule SBP), contains a list of staff outreach and engagement efforts since 2013 regarding CPSC's eFiling initiative. This list demonstrates at least 121 staff engagements on eFiling in the last 3 years.

²⁴ During the Beta Pilot, between October 16, 2023 and June 30, 2024, the eFiling support team provided real-time support using the Beta Pilot Support Mailbox. The support team responded to 287 Tier 1 (basic troubleshooting, policy, and process) incidents and 153 Tier 2 (advanced technical issues) incidents with an average resolution time of 21 hours. CPSC expects to have a fully staffed service desk to assist with the expanded Beta Pilot. Additionally, during the Beta Pilot CPSC reviewed and assessed participant feedback, analyzed their needs to adjust the eFiling program, and implemented changes where needed. CPSC will continue to incorporate participant feedback throughout the eFiling voluntary stage.

significant staff time. Commenters recommend that CPSC host additional workshops and training. IKEA (123, 130) claims that to secure a stable and resilient supply chain, message sets need to be ready at least three months prior to import, suppliers require four months to update their systems, each new product requires at least 6 months to mitigate any deviations from eFiling requirements, and one month to correct errors in the data flow. IKEA (130) asserts that eFiling requires many months of preparation with suppliers, vendors, and brokers, recommending a 24-month effective date and a phased approach to implementation. NAFTAZ (127) and EAA (131) recommend an effective date of at least one year or longer.

Response 3: Based on CPSC's experience with Beta Pilot, the Commission agrees with the commenters that additional time is warranted for importers and their trade partners to prepare for full implementation of eFiling. Accordingly, the Final Rule provides an effective date of 18 months after publication of the Final Rule, as described in section VI of the preamble, to implement eFiling for all entry types except products entered for consumption or warehousing from an FTZ, which will have a 24-month effective date. This timeline is based on comments received on the SNPR and feedback from Beta Pilot participants and their trade partners. CPSC will also consider hosting additional workshops and trainings before and during implementation of the eFiling requirement and will update guidance materials as needed on CPSC's eFiling document library, available at <https://cpsc.gov/eFiling-Documents-Library>. Finally, to allow importers and the Commission time to test and plan for full implementation of eFiling, the Commission is expanding the Beta Pilot test to include up to 2,000 additional participants, as described in a June 4, 2024, **Federal Register** notice. 89 FR 47922. Importers can apply to participate in the expanded Beta Pilot as stated in this notice. *Id.*

Comment 4: WCMA (106) alleges that the 120-day implementation period in the SNPR conflicts with the American National Standards Institute (ANSI)/WCMA 2022 custom window covering safety standard (effective June 1, 2024) and the approaching conclusion of the Reese's Law discretionary enforcement period (on March 19, 2024). WCMA (106) states that the window covering industry will have to adapt to new compliance requirements, while being unfamiliar with the eFiling system.

²² Record of Commission Action available at: <https://www.cpsc.gov/s3fs-public/RCA-CPSC-Plan-to-Create-an-eFiling-Program-for-Imported-Consumer-Products.pdf>.

²³ Section XI of the October 30, 2024: Staff Briefing Memorandum: Draft Final Rule to Revise 16 CFR part 1110 for Certificates of Compliance and

Response 4: The Commission published 16 CFR part 1263 on September 21, 2023 (88 FR 65274; 88 FR 65296) to implement Reese's Law, 15 U.S.C. 2056e, which required the Commission to issue a rule providing performance and labeling requirements for consumer products that contain button cell or coin batteries, to eliminate or adequately reduce the risk of injury associated with children 6 years old and younger ingesting these batteries. 15 U.S.C. 2056e(a)(1). Some motorized window coverings contain button cell or coin batteries.

The effective date of this Final Rule, as revised, will occur about one and a half years after the effective date of Reese's Law requirements for consumer products containing button or coin cell batteries. As of September 2024, testing and certification of consumer products containing button cell or coin batteries has been in effect for six months. Accordingly, the 18-month effective date of the Final Rule will provide window covering manufacturers and importers with sufficient time to comply with testing, certification, and eFiling requirements.

Comment 5: Comverex (84) expresses concern about the proposed 120-day effective date, believing that test data that is typically valid for 365 days would need to be reconducted in 245 days (365 days – 120 days = 245 days) to allow test laboratories to automate test data submission into the Product Registry. Comverex states that a 120-day effective date would require testing to be obtained up to 245 days in advance of publication of the Final Rule, potentially requiring importers to reconduct testing or to coordinate obtaining the necessary data from previously issued test reports.

Response 5: Certificate data entered into the Product Registry are the responsibility of the importer, who can allow a testing laboratory to submit test data into the Product Registry on their behalf. The decision to rely on a testing laboratory for data entry is at the discretion of the importer. The premise of Comverex's concern, that test data must be entered at the time of testing, is incorrect; in fact, importers or their trade partners can enter test data into the Product Registry at any time before importation of the product, including testing conducted before the effective date of the Final Rule. Based on comments and the experience of Beta Pilot participants, the Final Rule now has a 18-month effective date, which also obviates Comverex's concern. Note that if an importer participates in the expanded Beta Pilot, the importer can begin submitting certificate data into the

Product Registry before the effective date of the Final Rule.

C. Section 1110.3 Definitions

Comment 6: Several commenters (Alta (93), TA (97), Newell (110), PeopleForBikes (112), and Hansen (115)) oppose expanding the definition of a "finished product" in § 1110.3 to include replacement parts. These commenters argue that replacement parts are effectively covered by certification for the full finished product and are not tracked independently, so it would be burdensome to create and track certificates for replacement parts. Furthermore, a change to any replacement part would be considered a "material change" and trigger retesting under an existing regulation. Lastly, commenters state that component parts are imported in bulk and the importer has no way of knowing whether the parts are intended for domestic assembly, repair shops, or retail customers. Commenters state that this differs from parts sold with the intent that they may be assembled to create some larger item or ensemble, like doll accessories for toys.

Additionally, PeopleForBikes (112) and Hansen (115) write that CPSC's example that a handlebar sold as a replacement part requires a certificate is incorrect, because 16 CFR part 1512 (part 1512) is a complete product standard and the handlebar must meet the requirements in part 1512 after assembly into complete bicycles. PeopleForBikes (112) notes that in response to comment 63 on the 2013 NPR, CPSC indicated that parts of a bicycle could be tested and certified. The commenter states that CPSC provided as an example replacement handbrakes, which the commenter asserts cannot be tested individually, but are covered under 16 CFR 1512.5. Hansen (115) states that importers will not know whether a part, such as handlebars, will be used on a child's bike or not, and requests documentation that CPSC has previously stated that replacement bicycle parts must be tested to part 1512.

JPMA (99) and NAM (113) claim the proposed rule does not clearly define "component parts" and "component part certificates." These commenters state that CPSC should clarify that certification is only required for component or replacement parts if they are sold as fully independent, finished, packaged consumer products subject to a specific applicable regulation. The OPEI (100) seeks clarity as to whether replacement shields for power mowers (as defined in 16 CFR part 1205.3) require separate testing and certificates

if sold to consumers as replacement parts.

Response 6: In the Final Rule, CPSC amends the definition of "finished product" and adds guidance in sections V.B and V.C of this preamble to clarify when a part of a consumer product is considered a finished product. As defined in 16 CFR part 1109 and this revised part 1110, a "component part" is not, by definition, a finished product that requires certification. A component of a consumer product only requires testing and certification if the part itself is: (1) packaged, sold, or held for sale to, or use by, consumers (in which case it is a finished product); (2) regulated by the Commission, meaning the part is specifically regulated and not regulated as a subsection of a final product standard; and (3) imported for consumption or warehousing or distributed into commerce. To be a finished product, components must be sold independently, packaged for a consumer, or intended for use by a consumer.

CPSC incorrectly stated in the SNPR that bicycle handbrakes sold separately would require a certificate. The commenter is correct that 16 CFR part 1512, as applied to non-children's products, is a finished product standard and the individual components are tested as part of the finished product. Imported replacement parts for bicycles, power mowers, or any non-children's product covered by a finished product regulation are not subject to the eFiling requirement unless a regulation applies to the part, as sold. However, a part of a children's product that is sold separately to consumers may be subject to third party testing for CPSC rules such as lead content, lead in paint, or small parts. Lastly, per 16 CFR part 1109, a certifier can use component part testing and certification to certify a finished product, where applicable.

Comment 7: Several commenters (JPMA (99), NFTC & USCC (108), AAFA (111), NAM (113), and RILA (114)) disagree with the proposed expanded definition of "importer" and urge using "importer of record (IOR)," as proposed in the 2013 NPR. Commenters claim that the industry is already familiar with the definition of IOR and the expanded definition will add complexity and ambiguity to who is responsible for eFiling certificate data. Commenters argue that multiple entities may be held responsible, or that retailers may be improperly authorized to certify products. JPMA (99) and NAM (113) assert that the definition of "importer" cannot be changed, because it is already legislatively defined, and the SNPR is contrary to the plain language of the

CPSA that specifies manufacturers as the required certifier.

Response 7: The 2013 NPR proposed to define “importer” as the “importer of record as defined under the Tariff Act of 1930 (19 U.S.C. 1484(a)(2)(B))” 78 FR 28080, 28107. The 2023 SNPR proposed to broaden the definition to include the importer of record, consignee, or owner, purchaser, or party that has a financial interest in the product or substance being offered for import and effectively caused the product or substance to be imported into the United States. 88 FR 85760, 85789. For the Final Rule, the Commission agrees with the commenters that identifying a specific party responsible for certifying imported, finished products helps to clarify the party responsible for complying with CPSC’s certificate requirements and ensures that certificate data is eFiled at entry. Accordingly, the Final Rule clarifies that, as proposed in the 2013 NPR and consistent with the SNPR and the comments received, for purposes of this rule, the “importer” means the importer of record (IOR) eligible to make entry for imported finished products under the Tariff Act of 1930, as amended (19 U.S.C. 1484(a)(2)(B)), who may be an owner, purchaser, or authorized customs broker.

The Final Rule also addresses the concerns of commenters stating that an IOR authorized to make entry for a shipment, such as a broker, may not have sufficient knowledge of the consumer products to be held responsible for testing and certification. Accordingly, the definition of “importer” in the Final Rule provides that an authorized broker may identify the owner, purchaser, or consignee of the finished products who authorized the customs broker to make entry, as the party responsible for compliance with CPSC certificate requirements. A broker would identify such party by eFiling certificate data using CPSC’s PGA Message Set, which will identify the finished product certifier responsible for product certification, as required in § 1110.11(a)(3).

If identified as the finished product certifier in the PGA Message Set data, the owner, purchaser, or consignee that authorized the broker to file entry is the party that CPSC would expect to have sufficient knowledge of the finished products being imported and understand that such products must now comply with U.S. laws and regulations, including compliance with CPSC’s testing and certification requirements. We note that the party that CPSC holds legally responsible for certificate data does not mean that this

party is responsible for submitting such data into ACE, because this party may not be the IOR for the shipment or be another party eligible to make entry under CBP statutes and regulations.

Thus, the Final Rule definition of “importer” is consistent with the parties identified in the NPR and the SNPR and addresses commenters concerns by requiring the IOR to comply with CPSC’s certificate requirements, but allowing an IOR who is an authorized broker to identify the owner, purchaser, or consignee of the finished products who authorized the customs broker to make entry, as the party responsible for compliance with CPSC certificate requirements. However, for finished products regulated by CPSC that are required to be accompanied by a certificate, if an authorized customs broker fails to submit a PGA Message Set containing CPSC’s certificate data elements to identify the owner, purchaser, or consignee responsible for product certification,²⁵ CPSC can hold such a broker legally responsible for certificate data as set forth in § 1110.15.²⁶ Practically speaking, a broker will receive from the owner, purchaser, or consignee authorizing entry, either the Unique ID for the Reference PGA Message Set, linking certificate data in the Product Registry with the shipment, or all certificate data elements for submitting the Full PGA Message Set at entry.

The Final Rule also clarifies, for purposes of this rule, the importer who is legally responsible for CPSC’s certificate data for finished products that must be accompanied by a certificate that are imported by mail, or for which a *de minimis* duty exemption under 19 U.S.C. 1321(a)(2)(C) is claimed. These shipments do not have an IOR. The “importer” definition in the Final Rule specifies that for finished products imported by mail, or for which a *de minimis* duty exemption under 19 U.S.C. 1321(a)(2)(C) is claimed, the importer for purposes of CPSC’s certificate requirement is a party eligible to make entry for the merchandise pursuant to CBP statutes and regulations, who may be an owner, purchaser, consignee, or authorized customs broker. The Final Rule defines “owner or purchaser” and “consignee”

²⁵ Section 1110.11(a)(3) of the Final Rule requires that the certificate identify the finished product certifier that is certifying compliance of the finished product(s), as set forth in § 1110.7, including the party’s name, street address, city, state or province, country or administrative region, electronic mail (email) address, and telephone number.

²⁶ A licensed customs broker is required to exercise responsible supervision and control over the customs business that it conducts. 19 U.S.C. 1641(b)(4).

consistent with the SNPR but simplified. An authorized broker may identify the owner, purchaser, or consignee that authorized entry as the finished product certifier in a PGA Message Set for a *de minimis* shipment as well. Because a consumer could fall within the definition of a purchaser or consignee, the definition of “importer” continues to state, as proposed, that for purposes of this rule, CPSC will not typically consider a consumer purchasing or receiving products for personal use or enjoyment to be the importer responsible for certification.

The assertion by JPMA (99) and NAM (113) that the plain language of the CPSA specifies a manufacturer as the required certifier is incorrect and comes 16 years after the CPSC first required importers to certify imported consumer products in the existing 1110 rule, effective November 18, 2008. 73 FR 68328. Section 3(a)(11) of CPSA defines a manufacturer as “any person who manufactures or imports a consumer product.” The CPSA does not define “importer,” and, pursuant to the implementing authority in section 3 of the CPSIA, CPSC has the authority to define “importer” for the purposes of this rule, and to effectuate the statutory authority to require electronic filing of certificates in section 14(g)(4) of the CPSA. Moreover, CPSC has the authority to designate the certifier pursuant to section 14(a)(4) of the CPSA, which states that when a product has more than one manufacturer or private labeler, the Commission may by rule designate one or more of such entities as the certifier and exempt the others. 15 U.S.C. 2063(a)(4).

Accordingly, the Commission’s 1107 and 1109 rules both rely on the requirement for importers to certify imported consumer products, and these rules have been effective since 2013 and 2011, respectively. 76 FR 69482 (November 8, 2011) (finalizing part 1107); 76 FR 69546 (November 8, 2011) (finalizing part 1109). To address importer concerns, for more than 13 years part 1109 has allowed importers, or any finished product certifier, to rely on another party’s testing or certification, such as a manufacturer’s, to issue their own finished product certificate, provided the finished product certifier meets the requirements in part 1109.

Comment 8: The NFTC and USCC (108) are concerned that the proposed definition of “importer” would result in a “diffusion of responsibility” across all parties in the transaction of the shipment, resulting in confusion. These commenters propose that the IOR must eFile the certificate, but another

specified entity could prepare the certificate, which could either be (1) an entity that by mutual agreement is responsible for preparing the certificate, or (2) in the absence of agreement, a hierarchy of entities within the proposed definition of “importer.” Commenters state that in this case, if the IOR does not have the requisite knowledge to prepare the certificate, another specified entity with direct knowledge of the facts underlying the certificate could be responsible for its preparation.

The NCBFAA (122) questions why the definition of “importer” specifically highlights customs brokers, because they are already subsumed in the definition of IOR. They argue that this adds confusion, because the customs broker will rarely assume legal responsibility for certification. The NCBFAA (122) urges CPSC to make it clear that a customs broker or other non-beneficial owner will never be the responsible importer by default merely due to their role in the import process, and to distinguish those roles.

Response 8: As described in response to comment 7 and in section V.B of this preamble, the Final Rule revises the definition of “importer” proposed in the SNPR, agreeing in part with the commenters. The NFTC and USCC (108) request that CPSC identify the IOR as the importer but allow for another specified party to be responsible in case the IOR does not have the requisite knowledge to prepare the certificate. As stated in response to comment 7, the Final Rule specifies that the IOR is the importer responsible for certification of a finished product. However, if the IOR is an authorized customs broker, the broker may identify the owner, purchaser, or consignee that authorized entry, as the party responsible for CPSC’s certificate requirements, as part of the eFiled certificate data. If the required certificate data is not eFiled, CPSC can hold the broker legally responsible as set forth in § 1110.15.

The revised definition limits confusion by specifying the IOR as the importer, while also addressing broker concerns about not having sufficient detailed knowledge about the consumer products being imported to issue a certificate, by allowing the broker to specify the owner, purchaser, or consignee that authorized the broker to make entry. Use of the Product Registry will aid brokers in obtaining the requisite certificate information for eFiling. Practically speaking, a broker can identify the finished product certifier responsible for certification either by ensuring complete certificate data is filed in a Full Message Set,

including the required “certifying entity” in § 1110.11(a)(3), or when stating the “certifier ID” for the Reference Message Set.

Comment 9: The TA (97) claims that the proposed importer definition does not adequately fulfill CPSC’s stated intention to include products that are “imported as a mail shipment.”

Response 9: As proposed in the SNPR, § 1110.13(a)(1) of the Final Rule requires that mail shipments containing finished products that are required to be accompanied by a certificate submit the finished product certificate data elements required in § 1110.11 into CPSC’s Product Registry before arrival of the shipment in the United States. Mail shipments do not have an IOR. Accordingly, in response to the TA (97), CPSC adds a clarifying sentence to the definition of “importer” stating that for the purposes of this rule, the importer for purposes of CPSC’s certificate requirements is a party eligible to make entry for the finished products pursuant to CBP statutes and regulations, who may be an owner, purchaser, consignee, or authorized customs broker.

Comment 10: The PPAI (119) disagrees with the proposed “importer” definition and claims that the proposed new definition will render distributors primarily responsible for certification, instead of the suppliers as it is today. The PPAI (119) states that the proposed rule would require distributors to retest the same product for individual orders, causing problems for companies with multiple “operating as” or “dba” designations, and uncertainty when a customs broker is involved.

Response 10: The Final Rule does not disrupt CPSC’s current testing and certification requirements. As is currently the case, importers are the finished product certifiers that must certify imported finished products. However, since 2011, importers have been able to rely on a supplier’s testing or certification to issue their own finished product certificates, as allowed by 16 CFR part 1109. The Product Registry aids in this process by allowing an importer to give a supplier permission to upload certificate data into the Product Registry, and to certify such data, on their behalf. However, as set forth in § 1110.15, the importer, who is the defined finished product certifier in § 1110.7, remains legally responsible for the information in a finished product certificate, including its validity, accuracy, completeness, and availability.

D. Section 1110.5 Products Required To Be Certified

Comment 11: ULS (104) supports CPSC’s focus on products required to be certified and the content of the certificates to be eFiled. Specifically, ULS (104) agrees with the proposed language for § 1110.5 and CPSC’s efforts to make this process as efficient as possible for users by listing the applicable rules in the eFiling system.

Response 11: CPSC retains the proposed § 1110.5 in the Final Rule.

Comment 12: JPMA (99) agrees with the proposed § 1110.5 clarification that certificates are only required for finished products. However, JPMA (99) also writes that proposed § 1110.5 requires greater definition to reflect that the manufacturing of finished products may involve multiple productions of identical products or variations unique to different customers that rely upon baseline certificates.

Response 12: Finished product certifiers may rely on applicable component part test reports, certification of component parts of consumer products, or finished product testing or certification procured or issued by another party, per 16 CFR part 1109. However, the finished product certifier must still issue its own certificate, either based on their own testing, or by relying on the underlying test reports and certificates from other parties, such as a manufacturer. As described in response to comment 11, the Product Registry aids in this process by allowing an importer to give their trade partners the ability to upload and certify data on their behalf.

E. Section 1110.7 Who Must Certify Products

Comment 13: Two commenters (AAFA (111) and RILA (114)) prefer the language in § 1110.7 of the existing 1110 rule, which requires importers and domestic manufacturers to issue certificates for imported and domestically manufactured products, respectively. The commenters argue that these entities are better suited for compliance than a private labeler, because importers and domestic manufacturers are most knowledgeable of the product design and manufacturing process, including sourcing of materials, rather than the private labeler, even if the private labeler has influence on the product. Commenters further claim that CPSC provided no indication that the existing certification process is not effectively protecting consumers and that the proposed change would improve safety. RILA (114) raises concerns regarding the

statement in the SNPR that “CPSC can enforce the certificate requirement against an importer or a private labeler, even if neither firm is the entity submitting the required certificate data” (88 FR 85790), because the current allocation of responsibility amongst domestic manufacturers and importers appropriately ensures the products are certified prior to entering commerce.

Three commenters (TA (97), JPMA (99), and NAM (113)) do not support the requirement that each importer is responsible for submitting certificate information for imported products. Instead, these commenters assert that responsibility should fall on the product manufacturer or private labeler, unless unavailable, in which case the importer of record would be reasonably expected to certify. The TA (97) asserts that CPSC is not recognizing the real-world supply chain, where multiple importers may source from the same independent manufacturer, who would ultimately be responsible for product compliance. JPMA (99) cites the CPSA that “every manufacturer [. . .] shall issue a certificate.” JPMA (99) and NAM (113) further request that the rule clearly state that downstream customers of manufacturers and private labelers may rely on such certificates without having to independently file duplicative certificates. JPMA (99) believes that certification should be permitted from a corporate representative.

Response 13: Pursuant to section 3(a)(11) of the CPSA, the term “manufacturer” means “any person who manufactures or imports a consumer product.” To address commenter confusion, the Final Rule restates this statutory definition in § 1110.3. Based on this definition, importers have been responsible for certifying imported products since promulgation of the original part 1110 rule in 2008. 73 FR 68328, 68331 (Nov. 18, 2008). CPSC understands that manufacturers supply products to different importers. Accordingly, since 2011, under 16 CFR part 1109, importers have been able to rely upon testing and certification conducted by another party, including a manufacturer or private labeler, to issue their own product certificates. 76 FR 69546, 69580 (Nov. 8, 2011). Therefore, as explained in section V.D of this preamble, CPSC maintains the existing requirements, and as re-proposed in the SNPR, that the importer be responsible for certifying imported products. Importers are in the best position to certify imported consumer products because importers know when a consumer product is imported into the United States and must comply with U.S. laws and regulations, and

importers are responsible for ensuring that imported products comply with all applicable requirements. We note that CPSC generally holds responsible for certification the party responsible for importation, and not an individual representing a certifying party.

For imported privately labeled products, a private labeler can certify a product if the private labeler falls within the definition of “importer,” as defined in § 1110.3. For privately labeled domestically manufactured products, the private labeler either must certify the products, or ensure that the manufacturer has certified the products. Based on commenters’ apparent confusion regarding when a product is privately labeled, § 1110.3 of the Final Rule restates the statutory definition of “private labeler,” to reiterate that a privately labeled product has no manufacturer information on the product or packaging. In that case, neither consumers nor CPSC know whether any other party, besides the private labeler, is responsible for manufacturing or distributing the product. CPSC appropriately places testing and certifying requirements on the private labeler in this scenario. However, when a manufacturer’s name is on the product or packaging, the product is not privately labeled, and the manufacturer is responsible for certifying.

Lastly, we reiterate that pursuant to 16 CFR part 1109, any party responsible for testing and certification can rely on component part test reports, finished product test reports, certification of component parts of consumer products, or finished product certifications that are procured or issued by another party, such as a manufacturer or private labeler. However, the finished product certifier, such as an importer, must still issue their own certificate. As described in response to comment 11, for importers, the Product Registry aids in this process by allowing an importer to give their trade partners the ability to upload and certify data on their behalf. However, the importer remains legally responsible for the certificate as stated in § 1110.15.

F. Section 1110.9 Certificate Language and Format

Comment 14: JPMA (99) agrees with § 1110.9 of the existing rule, which provides that certificates may be in hard copy or electronic form and must be provided in English, but may also be provided in any other language. JPMA (99) disagrees with proposed format requirements for electronic certificates in § 1110.9(c), stating that a unique identifier that can be accessed online

via an URL or other electronic means be identified prominently because the product packaging is already often cluttered.

Response 14: Section 1110.9(c) regarding electronic certificates only applies to domestically manufactured products, not to imported products where eFiling is required. The SNPR did not propose to require that the unique identifier be provided only on consumer packaging. Rather, the SNPR proposed that a unique identifier be identified prominently on the finished product, shipping carton, or invoice. The requirement for a unique identifier that is available via a URL or other electronic means is not a new concept; this option has been in the existing part 1110 since 2008. The Commission maintains § 1110.9(c) of the SNPR in the Final Rule, because the proposal provides three options for certifiers, stating that “an electronic certificate meets the [availability] requirements of § 1110.13(b) and (c) if it is identified prominently on the finished product, shipping carton, or invoice by a unique identifier. . . .” Hard copy certificates, such as PDF and paper certificates, remain an option for domestically manufactured products pursuant to § 1110.9(b).

Comment 15: JPMA (99) requests that CPSC affirmatively allow for password protection in § 1110.9 to maintain the confidentiality of proprietary competitively sensitive information.

Response 15: The SNPR proposed to allow for password protection of certificates in § 1110.9(c), which primarily applies to electronic certificates for domestically manufactured products. CPSC maintains this allowance in the Final Rule, stating “[i]f the electronic certificate is password protected, the password must be provided at the same time as the certificate when requested by CPSC or CBP.”

G. Section 1110.11 Certificate Content

Comment 16: JPMA (99) argues that the unique ID and description required in the SNPR should be permissible and not mandatory, because eFiling should be optional.

Response 16: The Final Rule requires eFiling for imported products that are regulated by CPSC. This is necessary to achieve the objectives of eFiling, including enabling more effective targeting of violative imported products. The Final Rule also maintains the proposal in § 1110.11(a)(1) for the unique ID and product description for all certificates, for domestic and imported products, so that CPSC can better track certificates and match them

to consumer products, including certificates received in person, through email, through the Product Registry, and through the RAM (Full PGA Message Set).

Comment 17: The AAFA (111) states that the product descriptions on customs documents, which are for clarity of Harmonized Tariff Schedule (HTS) codes, may not match the descriptions on certificates.

Response 17: CPSC recognizes that the product descriptions on customs documents and certificates may not match. HTS codes can be very broad and capture many different products under one code. For this reason, the SNPR proposed that certificates contain “a sufficient description to match the finished product to the certificate.” This requirement, as finalized in this rule, allows staff to determine whether the attached certificate describes the product being examined.

Comment 18: The WCMA (106) writes that custom cordless window coverings historically have not been subject to CPSC rules that require testing and certification, and therefore have not been assigned unique identification codes. To comply with this SNPR and the Reese’s Law Direct Final Rule (88 FR 65274 (Sept. 21, 2023)), WCMA states, the window covering industry will need to invest significant resources in upgrading software systems and manufacturing processes to permanently affix or imprint a new unique product identifier.

Response 18: Window covering requirements in 16 CFR part 1120 do not require testing and certification, however, window coverings that contain a button cell or coin battery are required to meet 16 CFR part 1263, which requires testing and certification of the battery compartment. Nothing in the SNPR or this Final Rule requires a product identifier that distinguishes between products that contain a button battery and those that do not, or that products permanently affix or imprint such a product identifier on the product. Existing model numbers that are placed on the certificate and found somewhere on the product, shipping carton, or invoice, that assist CPSC to match certificates with a product, are sufficient. Note that eFiled certificates for imported window coverings will already be matched to the shipment using CPSC’s PGA Message Set. Only electronic certificates for domestically manufactured products need to meet § 1110.9(c).

Comment 19: Several commenters (Boppy (109), Newell (110), LA (116), WIMA (118)) disagree with the requirement of providing the

manufacturer’s name, street address, and contact information, because this information is highly confidential and public disclosure could severely impact business operations. Boppy (109) is further concerned whether eFiled certificates will be placed in a publicly searchable database or available through a Freedom of Information Act (FOIA) request. A commenter states that in the event CPSC requires the name of the foreign manufacturer, then the Commission could always request that the information be provided with a CPSC section 6(a) submission.

Several commenters (AFSL (94), NFA (95), APA (101), FOA (102), APE (105)) argue that the manufacturer email address and phone number should not be provided, because in the fireworks industry, this information is protected by a “middleman” to prevent customers from purchasing directly from the source. By requiring this information, importers risk losing their current relationship.

The AAFA (111) states that the expansion to the full mailing address is unnecessary and duplicative, because the customs documentation already contains the country of origin and foreign manufacturer information on entry documents and the certificate has contact information.

Two commenters (TSC (85 and RILA (114)) argue against including the manufacturer email address and phone number, because those contacts could be unreliable, including potential language barriers, and the contact may change frequently. RILA (114) recommends CPSC first contact the IOR or the Product Registry Business Account Administrator before contacting the manufacturer.

Response 19: As explained in section V.F of this preamble, CPSC maintains the requirement for certifiers to provide the manufacturer’s name, street address, email address, and phone number, because this is consistent with section 14(g)(1) of the CPSA, which requires that each certificate contain “each party’s name, full mailing address, [and] telephone number.” We also note that section 16(c)(1) of the CPSA (15 U.S.C. 2065(c)(1)), requires that when requested by a “duly designated” CPSC employee, every importer, retailer, or distributor of a consumer product must identify the manufacturer of that product by name, address, or such other identifying information as the officer or employee may request, to the extent that such information is known or can be readily determined by the importer, retailer, or distributor. In this case, the Commission is requesting the

manufacturer’s name, address, and contact information by rule.

Accordingly, the Final Rule requires certifiers to provide the manufacturer name, full mailing address, phone number, and email to CPSC on the certificate. CPSC should not have to request the information via a section 6(a) submission,²⁷ because these data elements are statutorily required and necessary for CPSC’s risk assessment and targeting. CPSC cannot conduct effective risk assessments at the ports without all relevant data points. The country of origin and foreign manufacturer information on entry documents is not sufficient, because CPSC has a different definition for “manufacturer” than CBP. CBP’s required “Manufacturer Identification Code” or “MID” is a code, not a name, and is not necessarily linked to the name of the foreign manufacturer. For example, a MID can identify a foreign supplier. *Compare* 15 U.S.C. 2052(a)(11) (CPSC’s definition of “manufacturer”) with 19 CFR part 102 (explaining how to construct a MID code for entry documents).

The certificate data provided is secured by CPSC and neither the Product Registry nor RAM are publicly searchable databases. The Product Registry has industry-standard security features like encryption and token authorization, as further explained in the response to comment 49. When a FOIA request is filed, importers, domestic manufacturers, and private labelers who are required to issue certificates are first given the opportunity to assert confidentiality before such information is released. Manufacturer information on a certificate would not be released pursuant to a FOIA request as long as the certifier makes out that the information is confidential under section 6(a) of the CPSA.

Certificates must be furnished to retailers and distributors in accordance with section 14(g)(3) of the CPSA (15 U.S.C. 2063(g)(3)). Section 1110.13(b) of the SNPR, which is maintained in the Final Rule, simply restates this statutory requirement. However, the Final Rule does not dictate how a finished product certifier must furnish a certificate to retailers and distributors. Certifiers, retailers, and distributors may decide, based on business relationships and needs, how to proceed. For example, CPSC is aware that some certifiers redact manufacturer information from certificates before providing them to retailers and distributors. As long as

²⁷ See 15 U.S.C. 2055(a) (describing procedures for potential disclosure of confidential information).

certificates provided to CPSC are complete and contain all required information, CPSC takes no position at this time on whether manufacturer information must be provided to third parties, unless safety or the testing and certification regime is compromised in some way.

Contact information for test data in § 1110.11(a)(4) may be a generic email address and telephone number, as long as it is actively monitored by a knowledgeable person and the certifying firm is responsive within 24 hours of CPSC's initial contact. Furthermore, staff will primarily contact the finished product certifier (who should be the Business Account Administrator in the Product Registry) first, but may need to contact the manufacturer if the certifier is non-responsive or if staff uncover a greater product issue with the manufacturer. Manufacturers often supply consumer products to more than one importer, retailer, or distributor.

Comment 20: The ASFL (94) states that the "initial date of manufacture" in § 1110.11(a)(5) is unattainable and recommends that the manufacturing date listed on the receipt or similar document should be the date provided.

Response 20: The "initial date of manufacture" means the month and year, at a minimum, for products manufactured over a series of days. Testing is typically conducted for a batch or production lot of products; therefore, the certifier should know which production lot the testing covers when the certifier creates a certificate based off that testing. Accordingly, for the Final Rule, CPSC maintains the requirement in § 1110.11(a)(5) for the "initial date of manufacture" when describing production lots.

Comment 21: The AAFA (111) and RILA (114) recommend eliminating, in § 1110.11(b), the optional data field of a URL or other electronic means to access supporting records, such as test records, because the Product Registry will have all the necessary information to confirm the certificate and many test reports contain out-of-scope and confidential business information. Commenters state that CPSC should instead communicate directly with the importer.

Response 21: Part 1110 applies to certificates for all consumer products, including those that are domestically manufactured. However, only certificates for imported consumer products must be eFiled. Moreover, the information specified in § 1110.11(b) is optional for all certificates. CPSC staff advises that regardless of whether the certificate is hard copy, electronic, or eFiled, having immediate access to test data is more efficient for the agency

than having to contact the importer, manufacturer, or broker with additional questions or to request test documentation. Because this information is optional on a certificate, CPSC maintains the test report URL field in the Final Rule.

Comment 22: JPMA (99) supports maintaining the requirement in § 1109.11(a)(6) to provide the date when the finished product was tested for compliance.

Response 22: CPSC agrees and maintains this requirement in the Final Rule.

Comment 23: The AAFA (111) and JPMA (99) agree that generic contact information proposed in the SNPR should be acceptable.

Response 23: CPSC agrees and maintains this concept as proposed in § 1110.11(a)(4) of the Final Rule.

Comment 24: The AAFA (111) asks CPSC to provide clarity as to how eFiling would work in the case of multiple production lots, produced in different months, where the product is being imported at different times with no material change.

Response 24: One certificate can cover multiple production lots subject to the same test results, as long as there is no material change, as defined in guidance found on CPSC's website. Therefore, one certificate can cover many identical products manufactured over an extended period. For that reason, CPSC clarified in the SNPR that the certificate must contain the month and year of the *start date* of the series of manufacturing.

Comment 25: PPAI (119) asks for clarity regarding the duplicative testing statement in proposed § 1110.11(d). PPAI asks how this requirement applies to separate rules, standards, bans, or regulations and generating certificates for different orders involving identical products.

Response 25: The Final Rule maintains the proposal in § 1110.11(d) regarding duplicative testing, but clarifies that the rule for "duplicative testing" means that the same third party test does not need to be conducted more than once on each sample, when the same test is required by another applicable rule. CPSC included § 1110.11(d) in the NPR and the SNPR because some test laboratories were charging manufacturers to conduct the same test twice, when the test was required by two separate rules applicable to a children's product. To reduce burden, CPSC clarifies in § 1110.11(d) that this type of duplicative testing is unnecessary; one test to the same requirement in overlapping regulations is sufficient. Thus, certifiers are not required to conduct duplicative

testing for any rule that refers to, or incorporates fully, another applicable consumer product safety rule or similar rule, ban, standard, or regulation under any other law enforced by the Commission.

The potential for duplicate testing applies primarily to children's products, where CPSC has long-standing requirements, such as lead, phthalate, and small part requirements, but has also established rules for specific products that also may require a chemical or small parts test, such as the rule applicable to toys in 16 CFR part 1250. For example, if a toy is already tested to section 4.6 of the ASTM International (ASTM) F963 Toy Standard for small objects, codified in 16 CFR part 1250, duplicative testing for small parts does not need to be conducted again to meet 16 CFR part 1501. A certificate should list both citations for part 1250 and part 1501, although only one test must be conducted.

The duplicate test clarification in § 1110.11(d) has no bearing on certificates for different orders for the same product. Each product certificate must list all applicable rules, but the same certificate may be used for repeated shipments of the same product, so long as there is no material change to the product. A material change is a change that could affect compliance, such as a different manufacturing facility or source of raw materials. Most certifiers test continually manufactured products at least once a year. CPSC purposely developed the Product Registry to allow a single certificate to be used more than once, every time the same product is imported. Thus, when a product has been tested and certified, and has not undergone a material change, importers eFiling the certificate data can reference the same certificate in the PGA Reference Message Set for the same product, regardless of the shipment's recipient or purchaser.

Comment 26: The TA (97) and JPMA (99) disagree with the requirement for certifiers to specify each applicable section of ASTM F963, which they allege is beyond what is required by the CPSA and 16 CFR part 1110 and further complicates the data set for manufacturers. The TA (97) also states that the "sectional applicability" is specifically directed to toys subject to ASTM F963, but not to any other rule.

IKEA (123) supports identifying individual sections of ASTM F963, because this requirement improves controls on U.S.-bound shipments. However, IKEA (123) requests that the year of adoption be included in the citation code that incorporates an ASTM

standard by reference (e.g. ASTM F963–17 or ASTM F963–23), because if revisions occur to the standard, then it would be impossible to determine if the linked test report is issued for the right standard.

Response 26: Through the Product Registry and CPSC's CATAIR and guidance documents, the Final Rule maintains the requirement for finished product certifiers to list on a certificate the citation for each individual section of ASTM F963 to which a toy is tested and certified. This is not a change to the existing procedure; CPSC has long required that certificates identify which sections of ASTM F963 apply to each toy on a certificate, because staff need to know what has been tested to determine product compliance. Certifiers are, and have always been, responsible for knowing which tests for compliance apply to their products and for listing them on their test reports and on their certificates. ASTM F963, as incorporated into part 1250, is broader than other voluntary standards incorporated into CPSC rules, in that the standard and mandatory rule apply to many different types of toys with different associated hazards. Other CPSC regulations generally apply to one product type with characteristic hazards, such as the rules for full-size cribs or strollers. CPSC has addressed the fact that ASTM F963 contains requirements for many types of toys since 2008 when the CPSIA mandated F963 as the mandatory toy standard. Citing only ASTM F963 on a certificate does not provide sufficient information to CPSC about the product or its compliance with the rule, because toys are tested to individual subsections of ASTM F963 and not to the entire standard.

Moreover, toys are required to be third party tested by an International Organization for Standardization (ISO)-accredited laboratory whose accreditation has been accepted by CPSC. These testing laboratories do not conduct every test in ASTM F963 on every toy; manufacturers and testing laboratories must know which tests in ASTM F963 apply to each toy, and such tests are listed on the test reports. Thus, the Final Rule is consistent with current CPSC practice and will allow CPSC to more easily enforce the existing requirement to list all applicable ASTM provisions.

Importantly, the benefits of eFiling for CPSC would be diminished without knowing which tests within ASTM F963 apply to each toy. CPSC will be able to target and assess risk based on the regulatory citations. Also, test laboratories are CPSC-accepted based on

the particular provision of ASTM F963 to which they are ISO-accredited, and not generally for all tests within ASTM F963. Therefore, the certificate must identify the relevant ASTM subsection in order for the RAM to audit that citation against CPSC's testing laboratory credentialing information.

Regarding periodic updates to the ASTM standard, CPSC requires compliance with a revised ASTM standard upon the effective date of a rule incorporating the standard, for all products manufactured after the effective date (or as otherwise stated in a rule), unless the revision's effective date occurs by statute. *See, e.g.* 15 U.S.C. 2056b(g). Other regulations will also change over time and incorporate new versions of a voluntary standard as such standards are revised. Any product manufactured after the effective date of a revised rule incorporating a voluntary standard must comply with the updated rule. Therefore, CPSC would expect that a certificate with a product manufacture date on or after the effective date of a rule to comply with the revised mandatory standard, which can be confirmed by reviewing the test date and/or the associated test report. For administrative efficiency and burden reduction, however, CPSC is not mandating addition of the year to the ASTM citations at this time, and will rely on the data points on a certificate for targeting.

Comment 27: Two commenters (TA (97) and JPMA (99)) claim that exemptions and exclusions do not need to be cited on a certificate of compliance, because they are assumed if a citation is not listed on the certificate. Thus, CPSC should not require the citations of exemptions or exclusions. IKEA (124) claims that this requirement of citing exemptions and exclusions increases reporting burdens.

Response 27: The Final Rule retains the proposal that certificates include citations for testing exemptions or exclusions. Section 14(a)(1)(B) of the CPSA states that the certificate "shall specify each rule, ban, standard, or regulation applicable to the product." Accordingly, certificates must list each rule to which the product is subject. For each rule listed on the certificate, the certifier should list the firm or testing laboratory that conducted such test. However, some rules contain testing exceptions for certain products or product characteristics, and no testing is required. Thus, for completeness and to avoid unnecessary investigations of shipments that are in fact compliant due to an exemption or exclusion, the certificate should either provide the name of the testing laboratory that

conducted testing, or state why the product was not tested. All possible testing exemptions and exclusions are codified in a statute or within the applicable regulation. This provision aids CPSC in targeting and enforcing test requirements. CPSC's eFiling Document Library contains a detailed list of CPSC's rules and all associated codes for testing exclusions within each rule that CPSC expects to appear, as applicable, on a certificate.

Comment 28: RILA (114) recommends that CPSC create a list of products subject to exemptions, which importers could reference when determining if they need to create a certificate. IKEA (123, 130) and RILA (126) additionally request that CPSC address the certificate requirements, which they term "reporting logic,"²⁸ on all products in its jurisdiction and publish a clear and publicly available list of flagged HTS codes. IKEA (123) additionally provided several products for which they request clarification of the certificate requirements, and also recommend that CPSC establish a working group with industry to establish clear guidance for eFiling reporting logic. IKEA (130) also recommends that CPSC provide immediate notice of all HTS Codes that CPSC will flag in CBP's Automated Broker Interface (ABI) as part of the eFiling initiative to provide time for industry to design their eFiling systems. IKEA (130) recommends that CPSC finalize the CATAIR guidance on or before finalizing a rule and provide a 6-month implementation period for any subsequent changes to this guidance. ITI (125) states that CPSC has not addressed how eFiling will work with respect to the business relationships involved for products containing button cell or coin batteries.

Response 28: Before the SNPR published, CPSC created and posted on its website a list of HTS codes, citations, testing exclusions, and CPSC's CATAIR guidance.²⁹ CPSC will continue to update citations and testing exclusions when promulgating new regulations or adding or changing HTS codes based on updates from the United States International Trade Commission (ITC). Certifiers who believe the lists are missing any HTS code, citation, or testing exclusions should inform CPSC. CPSC will flag HTS codes once the eFiling requirement becomes effective. CPSC's CATAIR contains a "Change

²⁸ IKEA (130) defines "reporting logic" as "the methodology for resolving reporting uncertainties, often related to products for which CPSC exercises enforcement, but permits exemptions or exclusions from regulation."

²⁹ Available at: <https://cpsc.gov/eFiling-Documents-Library>.

Log” to identify updates and will include an “effective date” in the Change Log. Stakeholders can submit questions or comments on specific products or testing and certification to CPSC’s eFiling support email inbox: eFilingSupport@cpsc.gov.

Comment 29: Several commenters (BV (92), TA (97), AAFA (111), RILA (114, 126), and EAA (131)) state that the requirement to utilize CBP’s Disclaimer Message Set for non-regulated products within CPSC’s jurisdiction and for products that are regulated, but do not require certification results in “proving a negative.” Commenters claim that this adds workload to industry, because industry does not track when a product does not need a certificate. AAFA (111) claims that this requirement reverses CPSC’s 2016 enforcement discretion for adult wearing apparel. NCBFAA (122) disagrees with the requirement of Intended Use Codes for Disclaimer Message Sets, because this differs from other PGAs and brokers would need to track down these codes for shipments not subject to CPSC, which would be time-consuming and costly. EAA (131) states that the disclaim process would negative impact operators that clear *de minimis* shipments off the manifest and add unnecessary costs in the supply chain.

Response 29: As explained in section V.F of this preamble, as a matter of policy and to reduce burden, CPSC will not require a Disclaimer Message Set for products that do not require a certificate. This includes cases where (1) the product is not within CPSC’s jurisdiction; (2) the product or substance is within CPSC’s jurisdiction, but no rule, ban, standard, or regulation requiring a certificate applies; (3) the product is a component of a consumer product or substance that is not intended for sale to consumers, but rather for further assembly or manufacturing in the United States; and (4) the product is subject to enforcement discretion and no certificate is required. While importers do not need to submit a Disclaimer Message Set in these situations, they are encouraged to do so because the additional information provided to CPSC will inform the staff as to why a certificate does not accompany the product. Likewise, Intended Use Codes are also optional, but encouraged. Additional guidance on Disclaimer Message Sets and Intended Use Codes is available at <https://cpsc.gov/eFiling-Documents-Library>.

Comment 30: The CTA (103) and the ITI (98) urge CPSC to exclude products covered by 16 CFR part 1263 (Reese’s Law) from the proposed eFiling requirements. They state that the

requirement to file a Disclaimer Message Set, coupled with CPSC’s new regulations for button cell and coin batteries, would place an unnecessary burden on manufacturers, importers, and CBP. The CTA (103) and ITI (98) express concern that the number of electronic products that do not contain button cell or coin batteries, such as desktop and laptop computers, printers, watches, wireless headphones, calculators, games, and lights, would be captured by broad HTS codes and then require a Disclaimer Message Set. The CTA (103) states that this will result in unnecessary shipment holds and delays, increasing costs for consumers, which would work against the country’s efforts to fight inflation. The ITI (98) states that any HTS code changes requested by CPSC should have a 12-months’ advance notice.

Comverex (117), however, does not support an exclusion and argues that while the number of associated Disclaimer Message Sets for products with button cell and coin batteries could be large, the Citation Code and Intended Use Code data set is small. Comverex states that, in particular, Reese’s Law would include some filers that have no product requiring certificates to disclaim. Comverex asserts that regardless of the software platform, importers can readily identify all products that contain these batteries, which they must now do by law, and as a result identify all products that do not. Comverex believes that for retailers, the ability to know may be a challenge; however, they can utilize their lab testing partners to identify products that contain button cell batteries, and by default which products do not, and update their internal product data accordingly. Comverex states that for large retailers, APIs could be readily developed to eliminate corresponding data entry.

Response 30: As stated in response to comment 29, as a matter of policy and to reduce burden, the Final Rule does not require filing Disclaimer Message Sets not only for products outside of CPSC’s jurisdiction, but also for products within CPSC’s jurisdiction but not regulated, alleviating CTA (103) and ITI (98) concerns. Regarding products containing button cell or coin batteries subject to 16 CFR part 1263, at CPSC’s request, the ITC created additional HTS codes to address these products. Though not required, CPSC encourages importers to file a Disclaimer Message Set when appropriate, to better inform CPSC as to why the product is not accompanied by certificate data.

Comment 31: BV (92) recommends adding a “disclaimer code” to the

Product Registry, which will allow for the same information flow for all products, while reporting the needed details.

Response 31: The Final Rule does not require a Disclaimer Message Set. Accordingly, CPSC does not intend to build a “disclaimer code” feature in the Product Registry. At this time, the Product Registry is intended to store certificate data for regulated products, and not to store data associated with products that do not require a certificate.

Comment 32: Many commenters (RILA (114), AFSL (94), AAFA (111), TSC (86), NFA (95), APA (101), FOA (102), APE (105), and WFI (107)) state that the additional manual certification in the Product Registry is a redundant requirement and an unnecessary burden when using API or a CSV template to upload data in bulk. Commenters contend that manual certification requires an individual to go back into the Product Registry and manually certify each certificate with no additional consumer protection.

RILA (114) recommends three alternatives to manual certification in the Product Registry: (1) requiring users to attest that the certificate data is true and correct upon initial access of the Product Registry; (2) requiring users to attest to the certificate data upon each instance of accessing the Product Registry; or (3) requiring importers to periodically (annually or biannually) attest to the certificate data upon login. The AFSL (94) similarly recommends requiring users to review and accept terms each time the company logs into the Product Registry.

Comverex (88) recommends that the attestation requirement be satisfied when a user’s software enters certificate data into the Product Registry via an API, because their platform already confirms attestation by their clients regarding the data accuracy requirements of proposed § 1110.11(a)(10).

Finally, several commenters (AFSL (94), TA (97), JPMA (99)) state that additional manual certification is legally unnecessary, because § 1110.15 clearly states the legal responsibility of the certifier and § 1110.11 already requires identification of the certifier and attestation to the truth and accuracy of the information provided. Commenters argue that the Commission is amply protected and has more than adequate ability to enforce against a company with the authorities of 15 U.S.C. 2068(a)(13), 19 U.S.C. 1592, and 18 U.S.C. 1001. Lastly, the AFSL (94) writes that the Commission has not supported the need for additional

manual certification by identifying an entity that purposely misstated information on a certificate and CPSC acknowledged multiple existing possible enforcement actions.

Response 32: We agree with the commenters. As explained in section V.F of this preamble, CPSC will automate attestations for bulk certificate upload into the Product Registry via API or the CSV template and will not require individual attestation of certificates. Such attestation options will reduce the burden for industry, while also confirming for CPSC that importers are knowledgeable about the certificate information filed. Bulk attestation options will only apply to users with certification permissions. If certificate data is entered into the Product Registry by a user without certification permissions, such as by a third-party user, then a Business Account Administrator will have to manually certify the certificates, although groups of certificates can be certified at one time. Additionally, consistent with the SNPR, § 1110.15 of the Final Rule clarifies the legal responsibility for finished product certifiers, stating that finished product certifiers can rely on the testing or certification of other parties pursuant to part 1109, but remain legally responsible for the information on a finished product certificate, including its validity, accuracy, completeness, and availability.

Comment 33: The PPAI (119) asks which entity is to attest to each certificate.

Response 33: The attestation required in § 1110.11(a)(7) must be made by the entity responsible for product certification identified in § 1110.7, the defined “finished product certifier.” In the Product Registry, the finished product certifier is owner of the Business Account, meaning the importer, that must certify/attest that the information in the certificate is true and accurate. Trade partners entering data on behalf of an importer must also attest to the veracity of the information. Even when an importer allows another party to enter data, or to certify products in the Product Registry, the importer remains accountable for the information on a certificate.

H. Section 1110.13 Certificate Availability

Comment 34: Several commenters (Alta (93), JPMA (99), Boppy (109), Newell (110), and NAM (113)) oppose changes to § 1110.13 regarding the availability of certificates, arguing that the current “upon request” system is sufficient and that CPSC did not show

that it is insufficient to justify the eFiling system. JPMA (99) argues that the current system reflects the legislative intent of Congress in enacting the CPSA. NAM (113) further argues that the “upon request” requirement in the CPSA is distinct from a “eFiling” requirement for certificates.

Response 34: As explained in detail in the 2013 NPR, the SNPR, and in section V.G of this preamble, sections 14(g)(3) and 14(g)(4) of the CPSA provide CPSC the authority to require eFiling of certificates for imported consumer products. Certificates that are collected on an ad hoc basis, either as a hard-copy or a PDF copy via email or uploaded via the ACE Document Image System (DIS), are not in a data-usable format that can be processed into CPSC’s RAM and risk scored. To implement section 14(g)(4) of the CPSA, § 1110.13 of the Final Rule requires the eFiling of all certificates for regulated, imported finished products, including CPCs and GCCs, at the time of filing entry or entry summary, if both entry and entry summary are filed together. CPSC intends to use certificate data to risk score shipments and enforce its statutes and regulations. An eFiled certificate would meet the “accompany” requirement in section 14(g)(3) of the CPSA and the requirement in § 1110.13(a).

Comment 35: The AAFA (111) disagrees with the SNPR’s proposal that each certificate must describe a single product, because in the apparel and footwear industry, one unique identifier is used for a single style that may have many variations that do not affect the overall certification. AAFA argues that no regulatory goal is served by requiring that each certificate describe a single product.

Response 35: CPSC proposed in the SNPR that each certificate describe a single product to improve CPSC’s enforcement efforts. If a potential violation were found, then CPSC could take action against that one product. If multiple products appear on one certificate, this may disrupt importation of compliant products that appear on the same certificate as a potentially non-compliant product.

However, regarding apparel and footwear, CPSC clarified in response to comment 53 in the SNPR that multiple models of apparel and footwear that were composite tested together are considered one product for certificate purposes. Therefore, apparel model variations that do not affect certification can appear on one certificate as long as there is no material change, which is defined in 16 CFR 1107.2 as “any change in the product’s design, manufacturing process, or sourcing of

component parts that a manufacturer exercising due care knows, or should know, could affect the product’s ability to comply with the applicable rules, bans, standards, or regulations.”

Comment 36: Two commenters (TA (97) and PPAI (119)) argue that CPSC is doubling the certificate burden by supposedly requiring certificate data to be entered in the Product Registry in one format while requiring certificates be provided to CPSC and furnished to distributors and retailers in another format such as PDF. This would require importers to maintain two parallel sets of effectively identical certificate data. And if manufacturers certify, instead of importers (as proposed by the TA (97)), then manufacturers would have to maintain a third set of certificate data containing the reference identifier to be submitted via ACE.

Response 36: Importers using the Product Registry can download certificates in a PDF format, which can then be furnished to retailers and distributors. Users can also download certificate data in a CSV file, where each row of the spreadsheet is a certificate, which can be furnished to retailers and distributors. This functionality of the Product Registry will eliminate any alleged need for importers to maintain parallel sets of data. Moreover, while manufacturers can enter certificate data into the Product Registry and certify on behalf of an importer, the importer is legally responsible for the certificate data for products they import and must follow the requirements in part 1109, meaning they should exercise due care in reliance on a manufacturer’s testing and certification, as required in part 1109.

Comment 37: The PPAI (119) states the SNPR will create a troublesome administrative burden for firms, by increasing the number of certificates, housing the certificates in internal systems, and integrating the certificates with companies’ existing shipping software. Requirements of the SNPR will be especially challenging when “kitting” or “bundling” multiple products into one product, such as a gift basket, because each product in the “kitted” box would require a unique certificate. Comverex (89) states concerns about the potential for dozens of applicable test reports from various CPSC-accredited labs for “kitted” children’s products and requests confirmation from CPSC that the Product Registry, and the corresponding API, will support this type of data volume.

Response 37: Like the SNPR, the Final Rule does not add any new certification requirements to products that

previously did not require a certificate. Therefore, the number of certificates an importer must issue and associated records remain the same. And, as it is today, importers may provide one certificate for “kitted” or “bundled” products, covering all individual products, or provide multiple certificates for the product, where each certificate covers an individual product in the “kit” or “bundle.” Furthermore, CPSC is not dictating that importers integrate certificates with existing shipping software. CPSC is providing the Product Registry to make management of certificates and certificate data more efficient for any importer. Certificate data entered into the Product Registry can contain multiple citations and testing laboratories. Therefore, CPSC designed the Product Registry to accommodate the volume of data for “kitted” and “bundled” products.

Comment 38: RILA (114) asks for clarity regarding “up to 24 hours before arrival” and recommends that CPSC clarify that certificate information can be transmitted in a timeframe prior to arrival consistent with CBP’s regulations and as late as 24 hours prior to arrival.

Response 38: CPSC interprets “up to 24 hours before arrival” to mean as late as 24 hours prior to arrival, in agreement with the commenter. This means that the PGA Message Set must be filed with the entry or entry summary, if both are filed together, as late as 24 hours prior to arrival.

Comment 39: RILA (114) and AAFA (111) recommend a 48-hour response time to provide additional documentation to align with existing programs using PGA Message Sets. Furthermore, RILA (114) and AAFA (111) question what additional information a paper or electronic certificate could provide, because all the information should be provided via eFiling.

Response 39: CPSC retains a 24-hour response time for additional documentation. The Commission interprets the word “immediately” consistent with other CPSC rules, to mean “within 24 hours.” 78 FR 28080; 28089; 88 FR 85760, 85782. Therefore, CPSC disagrees with extending the response time to 48 hours. Because eFiled certificates replace paper certificates for imported products, CPSC would typically only request supporting documents, such as test reports, from an importer to verify the data on an eFiled certificate. However, CPSC could ask for either a paper certificate or test reports to validate the information on the certificate, or when the required certificate is not eFiled. CPSC and CBP

retain the right to request a certificate, but agree that if a certificate is eFiled, the need for an additional certificate is unlikely.

I. Section 1110.15 Legal Responsibility for Certificate Information

Comment 40: JPMA (99) supports the proposed § 1110.15 that another entity may maintain an electronic certificate platform on behalf of the certifier.

Response 40: The Final Rule retains this provision.

J. Section 1110.17 Recordkeeping Requirements

Comment 41: The JPMA (99) writes that the proposed § 1110.17 maintains the recordkeeping requirement from the 2013 NPR. CPCs already have a five-year record retention period.

Response 41: Pursuant to 16 CFR part 1107, CPCs and supporting records already have a five-year record retention period. The Final Rule retains the proposal that GCC’s and supporting records also be maintained for five years. We note that for imported products, a five-year record retention period is consistent with CBP’s recordkeeping requirement.

K. Special Use Case: De Minimis and International Mail Shipments

Comment 42: Two commenters (TA (97) and NAM (113)) request that CPSC revise the scope of the proposed rule to explicitly exclude any noncommercial consumer import of products into the United States, whether or not for personal use or enjoyment, and expressly state a lowered *de minimis* level. By not doing so, they assert that any gift sent as a mail shipment from outside the United States would require a certificate, imposing a burden on a consumer sending the product. Furthermore, the commenters claim that CPSC would have no way of determining non-conformance to the eFiling requirement for international mail shipments that may arrive before CPSC could review them, resulting in an increased burden to the United States Postal Service (USPS) and penalizing those entities who do comply. Furthermore, the NCBFAA (122) states that importers of *de minimis* shipments are unlikely to be able to manage the Product Registry process and will rely on the Full Message Set, which they assert will be a costly and unrealistic undertaking for low-valued shipments. NCBFAA encourages CPSC to work with the trade industry to overcome these challenges.

Response 42: The CPSC does not provide a *de minimis* exemption for certificates. eFiling requirements apply

to regulated finished products, regardless of value. Importers of regulated finished products requiring a certificate that are eligible for the *de minimis* duty exemption under 19 U.S.C. 1321(a)(2)(C) must use ET 86 to file CPSC’s Message Set at entry. However, the Final Rule does not require eFiling of a certificate for noncommercial products sent from one consumer overseas to another consumer in the United States, such as a gift. CPSC agrees that the consumer sending the shipment will not have the ability to obtain the certificate. Brokers or carriers facilitating these shipments may, but are not required to, file a Disclaimer Message Set, based on the guidance provided by CPSC, to inform CPSC that the shipment does not require a certificate. For non-gift shipments sent via international mail, the sender will need to file a certificate into the Product Registry before the shipment arrives in the United States. Lastly, CPSC is committed to working with the trade industry, including those who primarily import *de minimis* shipments. CPSC continues to develop improvements to the Product Registry to make entering data for mail shipments more efficient.

Comment 43: PeopleForBikes (112) supports the expanded definition of “importer” that clarifies that, in the case of a direct-to-consumer shipment, the importer is responsible for certification and not the end consumer. The commenter states that too many low-quality and inadequately tested products, such as lithium-ion batteries, are currently being imported into the United States under the *de minimis* exemption, creating unreasonable and unacceptable safety risks for consumers.

Response 43: CPSC agrees with the commenter but notes that lithium-ion batteries used in micromobility products are not subject to a CPSC mandatory safety rule at this time. However, the definition of “importer” in the Final Rule will impose the eFiling requirement for CPSC regulated finished products on the importer, as defined in the rule, even for *de minimis* shipments. For *de minimis* shipments, the importer for purposes of CPSC’s certificate requirements is a party eligible to make entry for the finished products pursuant to CBP statutes and regulations, who may be an owner, purchaser, consignee, or authorized customs broker. Also, because a consumer could fall within the definition of purchaser or consignee, the definition of “importer” continues to state that for the purposes of this rule, CPSC will not typically consider an end consumer purchasing or receiving products for personal use or enjoyment

to be the importer responsible for certification.

L. Special Use Case: Foreign Trade Zones (FTZs)

Comment 44: Three commenters (RILA (114), NAFTAZ (96, 121, 127), and IKEA (123, 130)) state importers who import products via an FTZ will need additional time to build out infrastructure and troubleshoot issues prior to implementation. RILA (114) states that the FTZs' "first in first out" (FIFO) method can only attach the latest certificate that is associated with an article/supplier combination and not the specific certificate at an actual inventory layer level. The NAFTAZ (96, 121, 127) and IKEA (123) state that the FIFO method (including the FTZ Inventory and Recordkeeping System) uses a Unique Identifier (UIN) for virtual inventory and has no relationship to the compliance data being reported. RILA (114) claims that CPSC conflates the use of FIFO as accounting methodology and virtual inventory practice. The commenters claim that FTZ importers will require significant changes to their current software to comply with the SNPR.

IKEA (123) further states that the requirement to file certificates at entry summary is not compatible with FTZ procedures, because those goods would have already been shipped to stores and possibly sold, negating CPSC's ability to place the goods on hold. IKEA (123) adds that the eFiling requirement undermines Congress's intent of FTZs and many global companies may be forced to stop using FTZs for CPSC regulated products, resulting in millions of dollars of costs and increased prices for consumers. IKEA states that CPSC is preventing companies from storing non-compliant goods inside an FTZ in order to bring them into compliance. IKEA (123) encourages CPSC to work with the CBP Border Interagency Executive Council (BIEC) to build a single window concept inclusive of FTZs and provide a transition period of 24 months to implement eFiling for FTZ products.

The NAFTAZ (96 & 121) proposes three alternatives for goods imported via an FTZ: (1) CPSC accepts the data elements associated with the latest certificate of the UIN associated with the weekly entry summary Customs Form 7501; (2) specifically for manufacturing/production in FTZs, allow the importer to register the certificate with a location for exam at the time of manufacture and use a Disclaimer Message Set on entry type 06; (3) delay eFiling requirement for FTZs until CBP has the capability to accept the certificate on the FTZ admission (CBP Form E214), which is

the only opportunity to match a certificate with the physical items.

Response 44: The Final Rule retains the proposal in the SNPR that FTZ importers must provide the actual certificate for the shipment but provides a 24-month effective date for entries for consumption or warehousing from an FTZ. Section 14(g)(3) of the CPSA states that "every certificate required under this section shall accompany the applicable product or shipment of products covered by the same certificate." Therefore, FTZ importers should already be tracking the actual certificate of the product and providing those certificates upon request to CPSC. For eFiling to fulfill its purpose, CPSC requires the actual certificate data so that the agency can effectively use such data for targeting in CPSC's RAM.

IKEA (123) is incorrect that the certificate must be filed with entry summary. The Final Rule requires eFiling certificates for imported consumer products with CBP at the time of filing the CBP entry, or the time of filing the entry and entry summary, if both are filed together. Moreover, nothing in the Final Rule prevents a company from admitting non-compliant goods into an FTZ for the purpose of bringing those goods into compliance. Finished product certificates are only required when entering goods for consumption or warehousing into United States customs territory from an FTZ. Moreover, regarding IKEA's observation that products entered from an FTZ might already be sold, all entered merchandise that is released from CBP custody is released conditionally, meaning that CBP has 30 days in which to demand redelivery if an applicable requirement, including a PGA Message Set requirement, has not been satisfied.

Of the three options for FTZ imports suggested by the NAFTAZ (96 & 121), the third option appears to present the best solution. The first option is not compliant with section 14(g)(3) of the CPSA, which requires the actual certificate to accompany the shipment. The second option does not allow for effective risk assessment and targeting. CPSC's RAM needs the data input from the certificate for risk assessment of the entry. A Disclaimer Message Set for entry type 06 would inform CPSC that a certificate was entered in the Product Registry, but CPSC would not be able to match a certificate to the entry and could not use the data for automated risk assessment.

The third option suggested by the NAFTAZ, to delay eFiling for FTZ imports until CBP has the capability to accept certificates for FTZ admissions,

may present a solution, because eFiling of certificates on the CBP Form 214 at the time of admission, which is before entry, meets the requirement of section 14(g)(4), "the electronic filing of certificates [. . .] up to 24 hours before arrival of an imported product." Accordingly, the Final Rule provides a 24-month effective date for consumer products imported into an FTZ and subsequently entered for consumption or warehousing. CPSC understands that the primary delay for eFiling associated with entries from an FTZ is related to software solutions. Based on CPSC's experience with eFiling for all other entry types, technical solutions involving software are feasible. Accordingly, this longer effective date provides a significant amount of time for CPSC, CBP, and industry to identify technical solutions and develop the necessary software to bring entries from an FTZ into compliance with the Final Rule, as further explained in section VI of this preamble.

M. Technical, Information Security, Enforcement

Comment 45: JPMA (99) claims that CPSC is creating its own unique "ACE-independent" system different from an integrated system with CBP and asserts that an "eFiled certificate" should align with an electronic certificate that is submitted via ACE. JPMA (99) argues that the Commission should not substitute its requirements for those of the Commissioner of Customs and nullify the requirement that certificates be available "upon request" by CPSC and CBP.

Response 45: CPSC is not creating a unique "ACE-independent" system. CBP developed the PGA Message Set specifically to implement the "single window" for collecting all trade-related data required by partner government agencies. At least 13 other PGAs have already worked with CBP to implement their own Message Sets and CPSC continues to work with CBP to implement eFiling.³⁰ CPSC has been developing its Message Set alongside CBP, during the Alpha Pilot, Beta Pilot, the expanded Beta Pilot, and in preparation for this Final Rule.

CPSC also is not substituting its PGA requirements for those of the Commissioner of Customs. CPSC consulted CBP at every stage of rulemaking, as required by section 14, and conducted pilots in collaboration with CBP. The Product Registry is an optional database for managing

³⁰ See, e.g., CBP's website listing 13 other agency CATAIRs and discussing CPSC's Beta Pilot, available at: <https://www.cbp.gov/trade/ace/catair>.

certificate data that supplements the PGA Message Set. Stakeholders asked for a Product Registry in 2013 after publication of the NPR. CPSC has spent the last 11 years working with CBP and industry to develop an eFiling solution consistent with CBP systems and procedures and less burdensome for the trade.

Comment 46: Galaxy (90) asks whether their company will be required to acquire new software to send the GCC information to their broker.

Response 46: The Final Rule does not require businesses to change software. Some businesses will choose to use the Product Registry to enter certificate data, and then provide a certificate reference number to their broker upon importation of regulated consumer products, while larger companies with more complicated import procedures will likely choose to update their software to automate data transfer. Accordingly, each importer should decide with their broker whether to use the Full Message Set or the Reference Message Set when filing certificate data with an entry, and whether providing this information would be more efficient with new software to send certificate information to their broker.

Comment 47: Hansen (115) states that most testing of bicycles takes place in Asia and asks whether foreign testing laboratories will be given access to the Product Registry or ACE to upload data.

Response 47: The Product Registry is based on Business Accounts created by the importer, who may invite any third party (including foreign testing laboratories) to enter certificate data into the Product Registry on their behalf. Therefore, testing laboratories can have access to upload data into the Product Registry if invited by an importer. Testing laboratories will not enter data into ACE on behalf of importers.

Comment 48: ITI (125) remarks that the import-centric registration methodology in the Product Registry will create a “logistics nightmare” for U.S. companies that use information and communications technology (ICT) equipment and finds the functioning of the tool unclear. ITI (125) asks whether a broker that is importing another manufacturer’s laptop for business use or independent sale would be able to freely search the Product Registry or would have to be granted viewing rights.

Response 48: The Product Registry functions on Business Accounts created by the importer, who could invite other users from trade parties, such as brokers, to collaborate. The Product Registry is not publicly searchable; an importer would need to grant

permission to other users to view a data collection. The importer is responsible for providing certificate identifiers to a broker for Reference Message Sets associated with every imported shipment. CPSC’s website contains a Product Registry Guide, along with other important background materials on eFiling, at <https://www.cpsc.gov/eFiling-Documents-Library>.

Comment 49: The TA (97) asserts that CPSC should ensure that the Product Registry and all data systems used in support of the rule maintain an appropriate level of data security. The TA states that only a few entities have accessed the Product Registry and these programs do not reflect the complex scenarios that will occur when the program is fully rolled out. The TA (97) also states that CPSC did not adequately respond in the SNPR regarding the security of the Product Registry, when CPSC wrote that it does not prohibit “password protection for certificates furnished to retailers and distributors.”

Response 49: The Product Registry uses a range of data security techniques and best practices to protect user and business information. Some notable security features include:

- All eFiled certificate data is encrypted at rest (encrypted storage) and in flight (Secure Sockets Layer and other secure protocols).
- Authentication to the Product Registry is handled by a web access management platform that requires verified ownership of a valid email address, which includes standard intruder detection and account recovery protocols.

• The Product Registry utilizes a token-based authorization scheme and access controls for accounts and roles. These determine level-of-access permissions for application components and for individual data requests.

• Data is segregated by Business Account and by Product Collections. Only users authorized by the Business Account Administrators can access the collection-specific data.

Comment 50: The TA (97) notes that CPSC does not address in the SNPR how the risk score is compiled, maintained, and notified, and requests more information on the framework to allow for review, understanding, and comment. The AFSL (94) writes that confidentiality about the factors that the CPSC uses to target shipments for examination is counterproductive. The ASFL argues that if CPSC publicizes and demonstrates that consistent compliance with certification and other requirements yields fewer examinations and detentions, this will better meet the Commission’s mission of a more

compliant marketplace. Similarly, RILA (114) and NCBFAA (122) recommend CPSC develop a trusted trader program, such as the CBP/CPSC Importer Self-Assessment Product Safety Pilot (ISA-PS) program, so trusted partners are not unduly targeted and could be exempted from eFiling, and so that CPSC resources can be directed to higher risk shipments.

Response 50: The RAM risk scores shipments using a logarithmic model based on data received from sources including the entry document and, once fully implemented, from the PGA Message Set. CPSC does not share how the risk score is calculated or the risk score itself. This information is for official use only, because it is directly related to CPSC’s targeting and enforcement. CPSC disagrees that confidential treatment of this information is counterproductive, because its publication could allow nefarious actors to avoid compliance with CPSC regulations.

Importers should consistently file accurate certificate data to avoid unnecessary examination holds for compliant products. With use of the certificate data, CPSC can improve its targeting models to more effectively target shipments with potentially significant violations. CPSC will be able to review the certificate data prior to shipment arrival, instead of needing to place a shipment on hold to examine it for an administrative violation. Certificate data will be one aspect of risk scoring. Staff anticipate that importers who consistently provide compliant certificate data will see a reduction in their risk scores, which may result in fewer holds for exams, fewer warehouse charges, and a greater facilitation of trade. At the moment, CPSC is not developing a trusted-trader program, because compliant importers may experience benefits, such as lower risk scores, from filing compliant certificate data.

Comment 51: The AFSL (94) states that the conclusion of the Certificate Study aligns with AFSL’s own research, conclusions, development of voluntary standards, and testing. The AFSL (94) strongly supports the eFiling program and the CPSC’s RAM program and strongly encourages CPSC to focus its enforcement activities more specifically and aggressively on those companies with a history of non-compliance or on those companies without an established history of providing a certificate within 24 hours of a CPSC request. ASFL argues that established and proven testing and certification programs should be considered as a “mitigating factor” in a company’s RAM risk profile.

Response 51: CPSC will use results from the Certificate Study and Beta Pilot to improve its risk scoring in the RAM and to more effectively target non-compliant importers. Certificate data will be one aspect of risk scoring. Staff anticipate that companies and organizations with established and proven testing and certification programs will benefit from lowered risk scores by consistently providing compliant certificate data.

Comment 52: The AAFA (114) and RILA (126) request that CPSC clarify whether eFiled certificate data will be a condition of admissibility or whether errors will cause shipment delays. The commenters state that if eFiling errors will cause delay, this could dramatically disrupt the free movement of trade and increase burden on importers.

Response 52: The lack of a required eFiled certificate, or the presence of a false or misleading certificate, will affect a shipment's risk score, resulting in a higher likelihood of the shipment being held for an exam. CPSC has the authority to refuse admission of products that are not accompanied by a certificate or are accompanied by a false or misleading certificate. 15 U.S.C. 2066(a)(2). As a matter of enforcement discretion, at least in the initial stages of eFiling, CPSC in general does not intend to request that CBP deny entry of products into the United States solely based on a failure to provide eFiled certificate data; however, CPSC fully intends to enforce eFiling requirements by taking enforcement action, such as requesting that CBP initiate seizure of noncompliant products.

N. Costs, Burdens, the Regulatory Flexibility Act (RFA) and Paperwork Reduction Act (PRA)

Comment 53: Commenters TA (97), JPMA (99), Boppy (109), and NAM (113) express concerns about the cost of technology needed to implement the Final Rule, including costs to update technology, programing to the PGA Message Sets, and setting up API connections.

Response 53: Commenters are concerned about costs, but they do not offer estimates of what the technological costs would be. CPSC built the Product Registry to reduce costs for importers, who are not required to update software to eFile certificates. The SNPR estimated that a portion of mainly larger firms may opt to use API integration with the Product Registry for their data systems and the Initial Regulatory Flexibility Act Analysis (IRFA) provided an estimate of building such a system as \$9,750 plus \$2,880 in annual maintenance. CPSC also queried

software developers, who plan to develop an API integration with the Product Registry, which would be covered through broker fees. Larger importers may still choose to build and maintain an API integration to interface with the Product Registry. This is, however, not a requirement, as the Product Registry enables users to upload a single certificate at a time and multiple certificates via a bulk upload. Additionally, the Final Regulatory Flexibility Analysis (FRFA) in section VII of this preamble presents an analysis of startup costs—the initial labor and technology investments small firms need to make to prepare for eFiling—that estimates an average cost per firm of \$1,086 or an equivalent burden of 20 hours, which CPSC deems as non-significant for the typical small firm. The Commission solicited comments on the number of firms that may choose to invest in new technology due to the SNPR and estimates of the size of those investments, but responses offered no specific data. As such, CPSC retains its estimates of technology investments per firm.

Comment 54: Commenters Alta (93), AFSL (94), Boppy (109), and PPAI (119) allege increased costs associated with additional staff. Boppy (109) states an additional \$150,000 in costs for technology, staff training, fees, and manually filing certificates, but offers no itemization of these costs.

Response 54: Without a breakdown of the costs, CPSC cannot offer a more specific response. However, CPSC estimates that importers will bear the burden for the staff hours comprising certificate creation, disclosure, and recordkeeping, which are already required by statute and regulation. Importers would also bear the burden of staff time for entering and transmitting certificate data to their brokers. CPSC estimates that the average eFiling-related activity, including entering every type of message set and the bulk upload of certificates to the Product Registry, will take 0.37 minutes (22 seconds) per filing, on average. CPSC estimates that importers will conduct 57.5 million total filings annually.³¹

We concur that the overall burden to importers can be considered significant if presented in the aggregate, for two main reasons: first, the large number of filings; and second, the potentially elevated one-time start up investments in technology, organizational changes, and staff training. However, individual

³¹ This number of filings is broken down as follows: 2.3 million Product Registry filings, 1.7 million Full Message Sets, 46.5 million Reference Message Sets, and 7.0 million Disclaimer Message Sets.

importers will only bear the burden for the certificates they file. On average, an importer will conduct 217 certificate filings per year, which will take about 1.34 hours to enter and transfer ($217 \times 22 \text{ seconds} / 3,600 \text{ seconds} = 1.34 \text{ hours}$).³² At an hourly rate of \$33.12 for office and admin wages, this represents a cost of \$44.29 per year per importer in staff hourly burden. Additional startup investments are not an annual cost, but an investment that will last for many years. After annualizing this one-time investment, CPSC expects the average firm to incur out of pocket cost that represents a non-significant share of the annual revenue of a typical firm.

Comment 55: Commenters Alta (93), JPMA (99), Boppy (109), and PPAI (119) state that the burden of additional staff, technology, and broker charges would impact small importers. JPMA (99) states that the number of responses in the IRFA would be many times greater, while Alta (93) states that increased cost from using customs brokers would cause undue financial hardship for small firms.

Response 55: Since 2008, testing and certification of products regulated by CPSC has been required under section 14 of the CPSA. The CPSA does not exclude small businesses from certification requirements. New requirements in the Final Rule include extended recordkeeping for GCCs and eFiling certificates for imported, regulated products, which CPSC estimated in the 2023 SNPR, and has updated in section VII of this Final Rule preamble. The Commission's SNPR analysis provided an estimate of the number of responses that result from a detailed list of data-driven assumptions. Without additional information from the commenters showing the inaccuracy of the assumptions used, CPSC cannot produce a different estimate of the number of responses.

The FRFA in section VII of this preamble shows that the impact on small firms may not be as large as indicated by the commenter; instead, the cost impact is not significant because it is well below one percent of the revenue of a typical small firm and represents a fraction of one percent of the average value of shipments imported that require eFiled certificates.

Comment 56: The Commission requested in the SNPR that firms comment on filing fees that importers may bear from eFiling certificates with CBP using the Full or Reference PGA Message Set. JPMA (99), Boppy (109),

³² The values presented are rounded, so the results on each side of the equation may not exactly match.

and NAM (113) express concern that eFiling certificates would require additional filing fees. Only JPMA (99) provides estimates of filing fees, asserting that a small manufacturer would have to pay \$75,000 in filing fees, but did not indicate the number of message sets that the small business would file annually. JPMA (99) also wrote that CPSC did not adequately model the cost of using third-party service providers or customs brokers to comply with the rule.

Response 56: CPSC does not expect to charge filing fees for use of the Product Registry. Brokers typically charge a fee per entry or per entry line that is filed, and each entry line may contain one or more product certificates. Staff contacted less than 10 brokers involved in the Beta Pilot and inquired about fees that brokers would charge for eFiling. Most brokers charge a maximum fee per entry which reduces the filing fees per certificate for firms that file multiple certificates per entry. We assume that most firms would choose to file as many product certificates as possible per entry, and this action will significantly lower the cost per individual product certificate filed. CPSC estimates that the average fee per filing under these conditions will be \$0.77.

CPSC does not know how many message sets the small manufacturer mentioned by JPMA (99) would file to reach the estimated filing fees, but on average, the filing volume of most small importers would comprise a relatively small number of Full and Reference Message Sets in total. CPSC's analysis assumes that small importers would file 10 percent of the responses (*i.e.* message set filings) the average importer files. Additionally, CPSC expects that the impact of filing fees as a percentage of the overall value of the shipment will be very small. Thus, CPSC expects that filing fees will not create a significant burden on the average small importer.

Comment 57: Commenters TA (97) and Boppy (109) state that CPSC underestimates the burden of startup staff training required to implement the rule. For example, TA (97) urges that CPSC reassess the estimated cost burden for implementation of the eFiling Product Registry, to include an accurate representative set of values that properly reflects the cost to implement eFiling to manufacturers, retailers, distributors and other entities who fall within the scope of part 1110.

Response 57: CPSC conducted a Beta Pilot between October 2023 and June 2024. Staff observed startup hours for participation in the eFiling Beta Pilot and the initial organization required to eFile. Staff observed a median startup

time of about 60 staff hours per importer. While observing variability in startup times across participants, CPSC expects that as more importers and third-party service providers become adept in the eFiling process, the startup hours for remaining importers will decrease over time. CPSC expects a similar experience for firms that did not participate in the pilot but are required to eFile. CPSC notes the startup burden is a one-time investment that would allow importers to conduct eFiling operations for many years. To produce a more accurate accounting of costs, CPSC annualizes the startup burden over the useful life of the investments. Additionally, the Final Rule has an effective date of 18 months for most imported products (and 24 months for products entered for consumption or warehousing from an FTZ), a period over which the burden will be effectively spread. CPSC also expects that improvements derived from process learning will reduce the cost per firm over this period.

Comment 58: Two commenters, Alta (93) and NAM (113), suggest that CPSC underestimates the eFiling burden for each importation. NAM (113) states that a 20-second burden per Reference Message Set and a 1-minute burden per Full Message Set is not realistic given the large number of certifications for every product.

Response 58: Staff revised eFiling burden estimates, in part based on information from Beta Pilot participants. The revised estimate is 15.3 seconds per Reference Message Set and 4.75 minutes per Full Reference Message Set. Reference Message Sets are simplified messages (primarily composed of a Unique ID) that link products being imported to certificate data already uploaded into CPSC's Product Registry. The eFiling estimate is based on the time it takes to enter and transmit a Reference Message Set, applying a learning curve to data provided by Beta Pilot participants. This learning curve enables staff to assess the impact of learning efficiencies in processing times. Sections . and VIII of this preamble contain additional detail on the revised eFiling burden analysis for the Final Rule. Staff's analysis applies a similar learning curve to Full Message Sets, which results in a higher processing time of 4.75 minutes per message (increased from one minute in the SNPR), which is consistent with NAM's (113) assessment.

Comment 59: Hansen (115) states that CPSC underestimated the burden of putting certificate data into the Product Registry using a CSV spreadsheet, citing

an example of bike distributors that carry tens of thousands of bicycle parts.

Response 59: As stated in response to comment 6, the bicycle standard is a finished product standard that does not regulate individual parts of bikes sold separately. However, other CPSC regulations, such as limits on lead content, lead in paint, and small parts, could apply to children's bikes and parts of children's bikes sold separately. Certificates can be entered in bulk into the Product Registry via a CSV spreadsheet. During the Beta Pilot, importers demonstrated that they could enter numerous certificates into the Product Registry using the CSV spreadsheet, resulting in uploads of a fraction of a second per certificate. Staff conservatively estimate that it takes 8.7 seconds per certificate to upload multi-certificate data into the Product Registry.

Comment 60: JPMA (99) states that no statistically validated record exists to justify the burden assumptions for filing Message Sets. The commenter states that the assumptions are not realistic. JPMA (99) also writes that one small-business member advised that they would accrue an extra \$30,000 for document preparation and \$40,000 for document prep full headcount at factory.

Response 60: The Commission's economic analysis is based on available information and states the basis for each assumption. Most recordkeeping in this information collection is mandated by sections 14(a) and 16(b) of the CPSA and within CPSC's regulations in part 1107, 1109, and the existing part 1110 rule. Typically, non-children's product regulations contain a three-year recordkeeping requirement; children's products require a 5-year record retention period pursuant to part 1107. The Final Rule increases record retention to five years for general use products, as proposed. Both the SNPR and the Final Rule address the additional two years of recordkeeping, as well as record keeping for additional data items. Note that for eFiled certificates, CBP already has a 5-year record retention requirement for import documentation.

Comment 61: Alta (93) states that the manual nature of submitting data entry into ACE could lead to human errors and delays. The commenter alleges that repeated filings of certificates via ACE would be complex, expensive, and labor-intensive for a business such as theirs with a small staff. The commenter also states that expensive automation and time-consuming processes would cause undue hardship to small businesses such as theirs.

Response 61: The Final Rule does not require repeated filing of the same certificate data into ACE. CPSC built the Product Registry at the request of importers to reduce repetitive data entry. Thus, importers have the option of loading certificate data into CPSC's Product Registry once before filing an entry, either manually or through batch uploads, and then filing a short PGA Reference Message Set that links to the certificate data in the Product Registry each time the product is imported thereafter. Using a Reference Message Set allows importers to reference the same certificate data multiple times, each time the product is imported. CPSC estimates that over 96 percent of importers will use the Product Registry and Reference Message Sets.

Accordingly, using the Product Registry will simplify import filings, reduce costs, and reduce filing errors. In practice, most importers file entries and PGA Message Sets through a customs broker, who would only need to be supplied with the Unique ID for the Reference Message Set that links the imported product with certificate data in the Product Registry. Use of the Product Registry is free of charge. Importers may also use a Full Message Set that does require entering all certificate data for each regulated, imported consumer product. Importers that want to gain eFiling experience before the effective date of the Final Rule can participate in the expanded Beta Pilot, as discussed in section II of this preamble.

Comment 621: JPMA (99) states that that no "one size fits all" solution should be proposed and that CPSC should create a less burdensome integrated system with CBP.

Response 62: CPSC did not propose, nor is it testing, a one-size-fits-all approach. Importers have two options for eFiling certificates, a Full Message Set or a Reference PGA Message Set and use of the Product Registry. As described in the SNPR and in this Final Rule, CPSC has worked on eFiling solutions with CBP and with industry for over ten years. CPSC undertook creation of the Product Registry at the request of importers who specifically asked for an IT solution that would reduce burden, the need for duplicate data entry, and errors. The IT solutions for CPSC are now ready to be implemented. CPSC's solutions are integrated with CBP systems, and CBP has participated in the Alpha and Beta Pilots, and has been specifically consulted regarding the NPR, SNPR, and the Final Rule.

Comment 63: RILA (126) asserts that the burden estimate in the June 4, 2024,

Federal Register notice (June 4 notice) regarding the expanded Beta Pilot test (89 FR 47922) does not account for the full time to support gathering and submitting data elements and only reflects the burden of gathering and submitting data for a limited quantity of products and their corresponding filings. RILA states that their members' approximations of the burden hours per importer are nearly double or more of the Commission's estimates, depending on the overall size of the retailer and volume and variety of imported goods. RILA references two members that participated in the Beta Pilot; one estimated an annual burden of approximately 500 hours and another estimated an annual burden of 15,700 hours.

Response 63: One purpose of the eFiling Beta Pilot was to gain experience with the burden that importers may incur. CPSC gained useful information from the limited quantity of products and filings made during the Beta Pilot. Staff advise that the burden of gathering and submitting data elements during the Beta Pilot only reflects the burden for a limited quantity of products and corresponding filings; most participants did not choose to eFile certificates for all of their imported, regulated products. Additionally, staff observed significant variation in the burden expressed by Beta Pilot participants and in the number of certificates that participants filed.

For the Final Rule, CPSC provides revised burden estimates in sections VII and VIII of this preamble, in part using information learned from the Beta Pilot. This revised analysis demonstrates that the burden of the Final Rule is not large on a per importer basis. However, even if the burden of the Final Rule was much greater than the inputs used in the revised analysis, burden estimates per firm would still be non-significant.

O. Legal Comments

Comment 64: Boppy (109) alleges that the SNPR is unconstitutional, asserting that the manner in which the rule is being promulgated violates the U.S. Constitution's Separation of Powers and Appointments Clause because the CPSC Commissioners' for-cause removal protections are unconstitutional. Boppy states that the Supreme Court has recognized only two limited exceptions to the President's otherwise "unrestricted" removal power: (1) an exception for inferior officers with limited duties and no policymaking or administrative authority, *Seila Law v. CFPB*, 140 S. Ct. 2183, 2199–2200 (2020), and (2) an exception for principal officers who do not exercise

executive power, *id.* 2198–99 (discussing *Humphrey's Executor v. United States*, 295 U.S. 602 (1935)). Boppy argues that neither the inferior-officer exception nor the "*Humphrey's Executor* exception" applies because CPSC's Commissioners are principal (not inferior) officers who exercise substantial, "quintessentially executive power [that was] not considered in *Humphrey's Executor*." *Seila Law*, 140 S. Ct. at 2200.

Response 64: Federal Courts of Appeals have recently rejected the same Constitutional arguments made by Boppy. See *Consumers' Rsch. v. CPSC*, 91 F.4th 342 (5th Cir. 2024), petition for cert. filed, (*Consumers' Rsch. v. Consumer Prod. Safety Comm'n*, No. 23–1323 (petition for cert. denied Oct. 21, 2024)), and *Leachco, Inc. v. CPSC*, 103 F.4th 748 (10th Cir. 2024), petition for cert. filed, (*Leachco, Inc. v. CPSC*, No. 22–7060 (petition for cert. filed on Aug. 9, 2024)). Consistent with those decisions and the Supreme Court's holding in *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), we reject Boppy's constitutional arguments.

Comment 65: The Toy Association (97) states that requiring each importer of a product, instead of the manufacturer, to submit a separate certificate, would be redundant and potentially a Technical Barrier to Trade (TBT) as defined by the World Trade Organization (WTO). The JPMA (99) argues that the eFiling requirement in the SNPR is arbitrary and needlessly burdensome, which may also be a TBT.

Response 65: The Final Rule does not constitute a technical barrier to trade. The purpose of section 14 of the CPSCA, and part 1110, is to protect the health and safety of U.S. consumers from noncompliant consumer products. Article 2.2 of the TBT Agreement states that technical regulations "shall be no more trade-restrictive than necessary for the achievement of a legitimate objective, including . . . the protection of human health and safety." Additionally, the preamble to the TBT Agreement recognizes that "no country should be prevented from taking measures necessary . . . for the protection of human, animal or plant life or health."

CPSC's requirements are within the scope of the health and safety provisions of the TBT Agreement. The Toy Association and JPMA appear to ignore CPSC's long-standing and statutorily required testing and certification regime. Since 2008, testing and certification requirements apply to all products subject to a CPSC rule, ban, standard, or regulation, regardless of the place of manufacture, if those products

are imported for consumption or warehousing or distributed in U.S. commerce. The purpose of section 14 of the CPSA, and part 1110, is to protect the health and safety of U.S. consumers from noncompliant consumer products.

Commenters also ignore the lengths to which CPSC has gone since 2008 to streamline requirements for testing and certification. For example, manufacturers and importers may rely on any other party's testing or certification pursuant to 16 CFR part 1109. That rule has been in place for more than 10 years and allows importers that want to rely on a manufacturer's testing and/or certification, the ability to do so. Moreover, as described in section II of this preamble, CPSC has spent the last 10 years working with the industry on two pilots, a study, building an eFiling program, and developing the Product Registry, to address importers' concerns about burden and cost. Sections VII and VIII of this preamble and the experience of Beta Pilot participants demonstrate that the Product Registry is easy to use and reduces burden. In fact, CPSC developed the Product Registry in response to industry's 2013 request to reduce burden, data entry errors, and potential duplication of effort, for all importers of regulated products.

It bears repeating that the eFiling requirement does not create new testing or certification requirements for importers. Since 2207, importers have been required to provide certificates and the test reports on which they are based to CPSC and CBP upon request. CPSC is now requesting this information at the time of entry, as specifically provided in section 14(g)(4) of the CPSA. This requirement modernizes the certificate requirement in a manner that does not create undue burden to importers or create a barrier to trade, and instead assists compliant importers. CPSC's economic analysis demonstrates that for compliant importers, the PGA Message Set requirement will not have a significant impact on small (or large) importers, and thus the requirement should not create an obstacle to trade.

Finally, as a matter of enforcement discretion, at least in the initial stages of eFiling, CPSC in general does not intend to request that CBP deny entry of products into the United States solely based on a failure to provide eFiled certificate data. However, CPSC will continue to enforce certificate requirements, for example by refusing admission under section 17(a)(2) of the CPSA, 15 U.S.C. 2066(a)(2), or requesting CBP to initiate seizure of noncompliant products. Further, CPSC intends to increase or decrease risk

scores based on eFiled data, which should reduce holds and examinations of compliant products and better focus resources on non-compliant products.

Comment 66: JPMA (99) asserts that Congress did not plainly set forth a requirement that certificates be available by eFiling and that the language in section 14(g)(3) of the CPSA is a distinct requirement. Therefore, providing a certificate "upon request" even in an electronic format should be maintained as an option.

Response 66: We disagree. Section 14(g)(4) of the CPSA provides CPSC specific authority to require eFiling for imported consumer products. Interdicting noncompliant products before they are distributed in U.S. commerce is an important safety mission of the Commission. Accordingly, as set forth in response to comment 34, to allow the Commission to focus limited resources on imported products that are not in compliance with CPSC regulations, the Final Rule retains the SNPR's eFiling requirement for all regulated, imported consumer products. The Final Rule retains the "upon request" certificate option for products manufactured in the United States, and for imported products, to the extent certificate data is not filed at entry, as required, or is potentially false or misleading.

P. Out of Scope Comments

Comment 67: Hansen (115) opines that the SNPR did not adequately address the 2013 comments filed by the Bicycle Product Suppliers Association (BPSA; now PeopleforBikes). Hansen discussed the bicycle regulation in 16 CFR part 1512 and particularly electric bicycles.

Response 67: The Final Rule is not about the substantive safety requirements for bicycles. Note, however, that CPSC issued an advance notice of proposed rulemaking in 2024 related to eBikes, 89 FR 18861 (Mar. 15, 2024), and staff anticipate sending the Commission a proposed rule related to lithium-ion batteries used in micromobility products, including eBikes, in the coming months.

The remaining comments primarily discuss technical features of the eFiling Product Registry. The procedural aspects of data entry and the user interface of the Product Registry are not addressed in the regulation text of this Final Rule. Accordingly, if not already addressed above, CPSC will endeavor to address technical questions in the guidance materials on our website. Additionally, any firm using the Product Registry can report software issues, ask questions, or send

suggestions to: eFilingSupport@cpsc.gov.

V. Description and Explanation of the Final Rule

Below we describe and explain the basis for the Final Rule's requirements. Because of the number of changes to part 1110, the Commission proposes to strike and replace the existing 1110 rule in its entirety, as described below.

A. Purpose and Scope (§ 1110.1)

The Commission finalizes the purpose and scope in the Final Rule as proposed in the SNPR, which states that the rule specifies certificate content, form, and availability, and requires eFiling certificates for imported finished products that are required to be certified. The Commission did not receive any adverse comment on the SNPR's proposal.

B. Definitions (§ 1110.3)

The 2013 NPR added to part 1110 13 new definitions to introduce concepts and terms used in the 1107 and 1109 rules and to clarify the requirements of part 1110. 78 FR 28080, 28081–82. The SNPR maintained the additional terms proposed in the 2013 NPR, added several more terms, and revised several definitions. Newly defined terms included: "eFiled certificate," to differentiate an electronic certificate, primarily used for domestically manufactured products, from a certificate for an imported product that is entered via ACE in a PGA Message Set, and "Product Registry," to describe the CPSC-maintained repository for certificate data for imported products. The SNPR revised several definitions to better describe the types of merchandise under CPSC's jurisdiction, which includes not only consumer products, but also hazardous substances.

The SNPR also proposed to broaden the definition of "importer" as that term is used in part 1110, beyond the IOR, to allow a party familiar with the products with a beneficial ownership in the goods to be the importer responsible for testing and certification. Thus, the SNPR proposed that the definition of "importer" include any entity that could make entry for consumer products, and qualify as the importer under the Tariff Act (19 U.S.C. 1484(a)(2)(B)). Proposed § 1110.3 also defined additional terms to develop the revised definition of "importer" in the SNPR, such as "importer of record," "consignee," and "owner or purchaser."

Based on the comments, the Final Rule adds two statutory definitions for "manufacturer" and "private labeler" and clarifies several other definitions

proposed in the SNPR. For example, the Final Rule modifies the definition of ACE in a manner consistent with the SNPR, but better aligns with CBP's characterization of their authorized electronic data interchange system and any successor systems.

Commenters also continued to demonstrate confusion about the difference between a component part and a finished product, and when a part of consumer product is a finished product that must be accompanied by a finished product certificate. By definition, a "component part" is not a "finished product." Component part certificates are allowed by 16 CFR part 1109 but are voluntary. Component part testing or certification can be relied upon to issue a finished product certificate, but only finished product certificates must accompany finished products and be eFiled pursuant to § 1110.13(a)(1). Component part certificates are not required and should not be eFiled. Accordingly, to add clarity to the definition of "component part certificate," the Final Rule adds to the definition that a component part certificate is voluntary, and, to further reduce confusion, the Final Rule moves all requirements for component part certificates into § 1110.19 at the end of the rule.

Relatedly, based on commenters' concerns, the Final Rule also clarifies the definition of a "finished product" by removing the phrase "replacement parts," as the phrase appears to have a different and broader meaning to industry than CPSC intended for this rule. The Final Rule now explains the three criteria required for a product to be considered a "finished product" that must be accompanied by a finished product certificate—namely, that the product must be: (1) subject to a CPSC-enforced rule, ban, standard, or regulation; (2) imported for consumption or warehousing, or distributed in commerce; and (3) packaged, sold, or held for sale to, or for use by, consumers. To address comments regarding the role of a "finished product certifier," the Final Rule adds to the definition the three parties in section 14 of the CPSA that can be a finished product certifier. These are the manufacturer and private labeler, as defined in the CPSA, and the importer, as defined in this rule. See 15 U.S.C. 2052(a)(11) and (a)(12).

The Final Rule also modifies the definition of "importer" in response to comments 7 through 10 in section IV of this preamble and simplifies related definitions of "owner or purchaser" and "consignee." The definitions for "importer," "owner or purchaser," and

"consignee" in the Final Rule are intended to harmonize with the Tariff Act and CBP's implementing regulations that govern importation procedures but are solely for purposes of this Final Rule. These definitions do not change CBP requirements for parties eligible to make entry and are specifically limited to implementation of CPSC's eFiling requirement and the party CPSC will hold legally responsible for issuing a finished product certificate for imported, CPSC regulated finished products. Moreover, these definitions may not reflect the full scope of the relevant terms under the CPSA or other statutes implemented by CPSC.

The Final Rule clarifies that, as proposed in the 2013 NPR and consistent with the SNPR comments, for purposes of this rule, the "importer" means the IOR eligible to make entry for imported finished products under the Tariff Act of 1930, as amended (19 U.S.C. 1484(a)(2)(B)), who may be an owner, purchaser, or authorized customs broker. The Final Rule addresses the concerns of commenters stating that an IOR authorized to make entry for a shipment, such as a broker, may not have sufficient knowledge of the consumer products to be held responsible for testing and certification. Accordingly, the definition also provides that an authorized broker may identify the owner, purchaser, or consignee of the finished products who authorized the customs broker to make entry, as the party responsible for compliance with CPSC certificate requirements. A broker would identify such party by eFiling certificate data using CPSC's PGA Message Set, which identifies the finished product certifier responsible for product certification, as required in § 1110.11(a)(3).

If identified as the finished product certifier in the PGA Message Set data, the owner, purchaser, or consignee that authorized the broker to file entry is the party that CPSC would expect to have sufficient knowledge of the finished products being imported and to understand that such products must now comply with U.S. laws and regulations, including compliance with CPSC's testing and certification requirements.³³ A broker identifying an owner, purchaser, or consignee as the party responsible for certification should receive from that party, either the Unique ID for the Reference PGA Message Set, linking certificate data in

the Product Registry with the shipment, or all certificate data elements for submitting the Full PGA Message Set at entry. If an authorized customs broker fails to submit a PGA Message Set containing CPSC's certificate data elements to identify the owner, purchaser, or consignee responsible for product certification, CPSC can hold such a broker legally responsible for certificate data as set forth in § 1110.15.

The Final Rule also clarifies, for purposes of this rule, the importer who is legally responsible for CPSC's certificate data for finished products that must be accompanied by a certificate that are imported by mail, or for which a *de minimis* duty exemption under 19 U.S.C. 1321(a)(2)(C) is claimed. These shipments do not have an IOR. The "importer" definition in the Final Rule specifies the importer for purposes of CPSC's certificate requirement for these shipments is a party eligible to make entry for the merchandise pursuant to CBP statutes and regulations, who may be an owner, purchaser, consignee, or authorized customs broker. An authorized broker may also identify the owner, purchaser, or consignee that authorized entry as the finished product certifier in a PGA Message Set for a *de minimis* shipment filed using ET 86.

The Final Rule defines "owner or purchaser" and "consignee" in a way consistent with the SNPR, but simplified. The Final Rule definitions now clarify that these definitions are only for the purposes of this rule and explain who CPSC may hold responsible for certificate data, particularly for *de minimis* and mail shipments that lack the required certificate data. For this rule, a "consignee" means a party who takes custody or delivery of CPSC regulated finished products for which CPSC certificate data is required. For this rule, an "owner or purchaser" means a party who has a financial interest in the finished products for which CPSC certificate data is required, to include the actual owner of the merchandise. Because a consumer could fall within the definitions of purchaser or consignee, the definition of "importer" continues to state, as proposed, that for the purposes of this rule, CPSC will not typically consider an end consumer purchasing or receiving products for personal use or enjoyment to be the importer responsible for certification..

The Final Rule changes a defined term from "eFiled certificate" to "eFile" because the term "eFiled certificate" is not used in the rule, but the term "eFile" or "eFiled" is used nine times throughout the regulation. The

³³ We note that the party that CPSC holds legally responsible for certificate data does not mean that this party is responsible for submitting such data into ACE, because this party may not be the IOR for the shipment or be another party eligible to make entry under CBP statutes and regulations.

definition of “eFile” is consistent with the SNPR definition of “eFiled certificate,” and means to electronically file the required data elements on a finished product certificate, as described in § 1110.11, into ACE, in the format required in § 1110.13(a)(1). Minor edits were also made to the definition of “electronic certificate.” An “electronic certificate” is not an eFiled certificate. An electronic certificate contains the same certificate information as an eFiled certificate, but is primarily used to provide an electronic certificate to CPSC for domestically manufactured products, in the format described in § 1110.9(c).

Finally, the Final Rule clarifies the definition of “Product Registry” by stating that the finished product certifier that is required to issue the finished product certificate, as specified in § 1110.7(a), and who is also required to eFile the certificate data as set forth in § 1110.13(a)(1), enters finished product certificate data into the Product Registry. Note that pursuant to § 1110.15, a finished product certifier can rely on other parties to maintain records, test, or certify products, or enter data into the Product Registry, but remains legally responsible for the validity, accuracy, completeness, and availability of finished product certificates.

C. Finished Products Required To Be Certified (§ 1110.5)

The Commission finalizes § 1110.5 as proposed, except for two minor clarifications. First, § 1110.5 clarifies that finished products also include “substances,” which are regulated under the Federal Hazardous Substances Act (FHSA). Second, the title of this section revises “Products” to “Finished products,” and changes the phrase “GCC or CPC, as applicable” to “finished product certificate” (which encompasses GCCs and CPCs), to more clearly convey that only finished products are required to be certified. Accordingly, § 1110.5 explains that a certificate is required only when: (1) the product is a finished product or substance; (2) the product or substance is subject to a consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any other law enforced by the Commission; and (3) the product or substance is imported for consumption or warehousing, or is distributed into commerce.

D. Who Must Certify Finished Products (§ 1110.7)

The SNPR required that, unless a specific rule states otherwise, only

importers, as defined in the rule, must issue a certificate for imported products. However, a private labeler could assume responsibility for certifying an imported product under the SNPR, if the private labeler falls within the definition of an importer in § 1110.3.

For domestically manufactured finished products, the SNPR maintained the 2013 NPR proposal that, unless otherwise required in a specific rule, the manufacturer must issue the certificate, except for consumer products or substances that are privately labeled. When a product is privately labeled, a manufacturer name does not appear on the product. Accordingly, for such products, placing responsibility on the private labeler is both pragmatic and appropriate. However, the SNPR proposed to allow private labelers to continue to rely on a manufacturer’s testing or certification if they choose to do so. Importantly, if a manufacturer’s name appears on a product, the product is not privately labeled under the definition in section 3 of the CPSA, 15 U.S.C. 2052(a)(12), and the manufacturer would be required to test and certify the product.

The SNPR moved the requirement regarding the availability of certificates for imports and domestic products, found in § 1110.7(c) of the existing rule, to § 1110.13.

The Commission finalizes § 1110.7 as proposed in the SNPR with a clarification specifying that the required certifier is the “finished product certifier.” The terms “finished product certifier” and “finished product certificate” are used throughout the regulation to explain certificate responsibilities and content requirements. The Final Rule is consistent with section 14(g)(1) of CPSA, which requires that the manufacturer (defined as any person who manufactures or imports a consumer product) or private labeler must test and certify products. For domestically manufactured products that are privately labeled, the private labeler must certify or ensure that a manufacturer certifies the product. Also, pursuant to the 1109 rule, a private labeler can rely on a manufacturer’s testing or certification to issue their own finished product certificate. Section 3(a)(12)(B) of the CPSA defines a privately labeled product as a product with no manufacturer information on the product or packaging. Therefore, CPSC is unable to identify any other party to hold responsible for a noncompliant product. For clarity, the Final Rule adds the statutory definitions of “manufacturer” and “private labeler”

in 15 U.S.C. 2052(a)(11)–(12) to the list of defined terms in § 1110.3.

E. Certificate Language and Format (§ 1110.9)

The Final Rule maintains § 1110.9 as proposed in the SNPR, with the addition of “finished product certificate” in place of “certificate,” to clarify that the requirements apply to finished products. Section IV.E of this preamble contains comments and CPSC’s responses regarding § 1110.9. We describe each section of § 1110.9.

The SNPR § 1110.9(a) proposed that an eFiled certificate must be in English, which is consistent with the statutory requirement and is necessary for CBP and CPSC IT systems. Proposed § 1110.9(a) provided that a hard copy or electronic certificate must be in English, but may also contain the same content in any other language. The Commission finalizes § 1110.9(a) without substantive change.

Proposed § 1110.9(b) clarified the formats for eFiled and for hard copy and electronic certificates. The SNPR proposed that an eFiled certificate must meet the requirements in proposed § 1110.13(a), and that certificates furnished to retailers, distributors, or to CPSC pursuant to § 1110.13(b) and (c) may be provided in hard copy or electronically. The Commission finalizes § 1110.9(b) without substantive change.

Proposed § 1110.9(c) described the format for the electronic certificates described in § 1110.13(b) and (c), which are used to furnish a certificate to retailers or distributors, or to CBP or CPSC upon request. The SNPR proposed to allow password protection of certificate information, so long as the password is provided to CPSC or CBP at the same time as a certificate. This provision applies to domestic manufacturers and to other certifiers when providing a password protected electronic certificate to CPSC or CBP; the password must be provided to the relevant agency at the same time. The Commission finalizes § 1110.9(c) without substantive change.

F. Certificate Content (§ 1110.11)

The 2023 SNPR proposed to require the seven statutory certificate data elements in the existing rule, and to include only one of the three additional requirements proposed in the 2013 NPR—attestation. However, the SNPR provided additional detail on the required data elements. Below we describe each data element proposed in § 1110.11(a) of the SNPR. Except for a clarifying change to the attestation requirement, and addition of the terms

“finished product certificate” and “finished product certifier” in place of “certificate” and “certifier,” the Final Rule retains the requirements as proposed in the SNPR.

Product Identification

(§ 1110.11(a)(1)): The Final Rule retains the SNPR proposal to identify the finished product covered by the certificate, including at least one unique ID from a list of seven options, and a sufficient product description so that CPSC can match the finished product to the certificate. Finished product certificates may contain optional additional IDs to assist with product identification. The SNPR clarified that “identification” means a unique ID is necessary for eFiling, so that certificates can be better tracked in the Product Registry and RAM. The SNPR explained that CPSC expects it would be easier for importers to provide a unique ID that already exists for the product, instead of having certifiers manage an additional identifier assigned by CPSC.

The Final Rule also retains the SNPR proposal to expand the term “description” as it relates to products to mean a “sufficient description to match the finished product to the certificate.” Currently, the product description in a certificate is sometimes insufficient to enable CPSC staff to determine whether the certificate describes the product being examined.

List of Applicable Rules

(§ 1110.11(a)(2)): Although CPSC received adverse comments regarding listing applicable subsections of the ASTM Toy Standard, codified in 16 CFR part 1250, CPSC is maintaining this requirement as proposed, as further explained in response to comment 26, to align with sections 14(a)(1) and 14(g) of the CPSA. The underlying requirement to list applicable rules is statutory; certificates must provide a list of all applicable rules to which the product is being certified. The eFiling system makes this requirement easier for certifiers because CPSC provides a standardized list of all rules, each assigned a code. When eFiling certificate data, the certifier will only need to select from these codes, either in the Full Message Set or in the Product Registry. Additionally, certifiers of domestically manufactured products, and those certifying using a Full Message Set, have access to the list of all rule citations and testing exclusions, which is updated and stored on CPSC’s website, available at: <https://www.cpsc.gov/eFiling-Document-Library>.

Identification of Certifier

(§ 1110.11(a)(3)): The Final Rule retains the SNPR proposal to identify the party

certifying compliance of the finished product(s), including the party’s name, street address, city, state or province, country or administrative region, electronic mail (email) address, and telephone number. Adding a more specific street address interprets the statutory requirement for a “full mailing address,” and will assist staff in distinguishing facilities or locating certifiers for site visits. If a certifying party’s physical location does not have a street address, then a location identification typical of the country of origin, or a Global Positioning System (GPS) coordinate, is also permissible. The Final Rule also retains the SNPR proposal to include an email address, which will improve communication between CPSC and the certifying party, particularly across time zones. Note that for imported finished products, the finished product certifier should be the Business Account Administrator if using the Product Registry to eFile certificate data.

Contact for Records (1110.11(a)(4)):

The Final Rule retains the SNPR’s proposal to provide the identity and contact information for the individual maintaining records of test results. As with the certifier’s contact information, the Final Rule includes more detail regarding the concept of a “full mailing address,” which includes “street address, city, state or province, country or administrative region, electronic mail (email) address, and telephone number.” For clarity, and because this data element requires a name and contact information, the Final Rule moves the bulleted list of recordkeeping requirements in sections of the CFR that apply to GCCs and CPCs to the recordkeeping requirement in § 1110.17 of the Final Rule.

The Final Rule maintains the SNPR clarification that the individual maintaining records may be a position title, provided that this position is always staffed and responsive to CPSC’s requests. Allowing a position title instead of an individual is in response to public comments concerned that the individual maintaining the records of test results may leave the company or otherwise be unavailable, and that a position title would provide continuity.

Manufacture Date and Place

(1110.11(a)(5)): The Final Rule retains the SNPR proposal to provide the date when the finished product(s) were manufactured, produced, or assembled, as further explained in response to comment 19. The first date of a batch run is the date of manufacturing. The Final Rule also retains the statutory requirement to provide the place where the finished product(s) were

manufactured. Section 14(g)(1) of the CPSA requires that each certificate contains “each party’s name, full mailing address, [and] telephone number.” Therefore, the Final Rule aligns with the statute and with the other data elements requiring contact information, which includes a name, street address, city, state or province, country or administrative region, email address, and telephone number. For this data element, the contact information must state where the finished product(s) were manufactured, produced, or assembled. The Final Rule requires this manufacturer detail, for eFiling in particular, because staff have experienced situations where it is difficult to distinguish between multiple firms with similar addresses and contact the correct manufacturer. If a location does not have a street address, a location identification typical of the country of origin or a GPS coordinate is permissible.

Test Date and Place (1110.11(a)(6)):

The Final Rule retains the SNPR proposal, which is also in the existing rule, to provide the date when the finished product(s) were tested for compliance. The SNPR amended this requirement to clarify that the required date is the most recent date of testing. The Final Rule retains this change, which aids CPSC in assessing the validity and integrity of a certificate, and promotes consistency across certificates for CPSC and certifiers, particularly where laboratory testing is done over several days.

The Final Rule also maintains the SNPR proposal, which is in the existing rule, to provide the place where the finished product(s) were tested for compliance. As proposed, the Final Rule standardizes the contact information required, including the name of each third-party conformity assessment body or other party on whose testing the certificate depends, and the street address (or locally comparable location identification), city, state or province, country or administrative region, email address, and telephone number. The Final Rule also requires an email address, as proposed, so staff have another means of contacting the testing laboratory.

Attestation (§ 1110.11(a)(7)): The SNPR proposed to include an attestation by the certifier that the certificate information is true and accurate and that the certified product complies with all rules, bans, standards, or regulations applicable to the product under the CPSA or any other Act enforced by the Commission. The Final Rule retains the attestation requirement for certificates provided to CPSC or CBP in hard copy

or in electronic format, as provided in § 1110.9(c), and clarifies that the finished product certifier is responsible for the attestation. For imported products that require an eFiled certificate, the Final Rule requires an attestation, but clarifies that the eFiling requirements for both the Full Message Set and the Reference Message Set already include an attestation. The Full Message Set contains a check box data element for the attestation. Importers using the Product Registry must periodically attest to the veracity of the data, depending on the user's permissions. For eFiled certificates, even if the importer allows another entity to enter certificate data into the Product Registry on their behalf, or to certify products on their behalf, the importer/finished product certifier remains responsible for the information provided to CPSC, as stated in § 1110.15 of the Final Rule. Thus, the Product Registry includes built-in, simplified attestation requirements.

Electronic access to records (§ 1110.11(b)): The Final Rule retains the SNPR proposal in § 1110.11(b) for a certificate to optionally include a URL or other electronic means, along with the identification of the custodian of records, to allow for electronic access of supporting records, such as test records. If certifiers provide this information, staff can more easily confirm the veracity of the certificate.

Statutory or regulatory testing exclusions (§ 1110.11(c)): Although CPSC received adverse comments regarding the inclusion of testing exclusions on certificates, claiming that exclusions are self-effective, as explained in response to comments 27 and 28 the Final Rule requires identification of testing exclusions that are codified in a statute or regulation. CPSC's algorithm will expect either a certificate citing a CPSC-accepted testing laboratory for each rule, or reliance on a testing exclusion. Accordingly, as proposed, § 1110.11(c) of the Final Rule requires finished product certifiers to list all claimed testing exclusions, instead of providing the date and place where the finished product was tested for compliance.

The requirement to list testing exclusions on a finished product certificate does not apply to Commission enforcement discretion for adult wearing apparel or for refrigerator doors. This requirement only applies to consumer products that are subject to testing and certification, where a statute or regulation allows for a testing exclusion for certain products subject to a rule. The Product Registry lists all available exclusions for each rule,

streamlining and standardizing how to record these exclusions on a certificate. These exclusions are also updated and maintained on CPSC's website for use in a Full PGA Message Set and for domestically manufactured products and CPSC will continue to maintain the list of CPSC rules (citations) and any associated testing exclusions. CPSC is currently updating and finalizing this list for use in the expanded Beta Pilot and this Final Rule. Some finished product certifiers already list testing exclusions on a certificate and CPSC's website provides guidance on how to do so; the Final Rule standardizes this requirement for all finished product certifiers. Note that no certificate is required if a product is not subject to a safety rule or similar rule, ban, standard, or regulation, or if the product is subject to enforcement discretion (such as adult wearing apparel relying on 16 CFR 1610.1(d) and household refrigerators subject to 16 CFR part 1750).

For the Final Rule, CPSC also clarifies that, as a matter of policy and to reduce burden, importers are not required to file a Disclaimer Message Set for: (1) products that are not within CPSC's jurisdiction, (2) non-regulated products within CPSC's jurisdiction; or (3) products that are regulated but do not require certification. Although the Commission has authority to require a Disclaimer Message Set for all consumer products within CPSC's jurisdiction, based on the comments, and to reduce burden for products that do not have a certificate requirement at the time of import, CPSC will not require a Disclaimer Message Set. CPSC updated the CATAIR guideline to reflect this change. However, CPSC encourages importers to file Disclaimer Message Sets, where appropriate, meaning when a certificate may be expected, because this additional information will inform CPSC staff as to why a certificate does not accompany the shipment, reducing the possibility of a hold at the port for further inspection.

Duplicative testing not required (§ 1110.11(d)): To reduce burden for certifiers, the Final Rule retains the SNPR proposal in § 1110.11(d) regarding duplicative testing, but provides more clarity regarding when this provision applies, based on a comment. The Final Rule clarifies that finished product certifiers are not required to conduct the same third party test more than once on each sample when a rule references, or incorporates fully, another applicable consumer product safety rule or similar rule, ban, standard, or regulation under any other law enforced by the Commission, that contains the same requirement. This provision is

applicable primarily to children's products that are more likely to have overlapping requirements, such as those for lead content or small parts that apply specifically to children's products but also may be required within a product level safety rule, such as the toy rule or rules for bassinets, strollers, or other durable infant or toddler products.

G. Certificate Availability (§ 1110.13)

Although CPSC received adverse comments regarding the availability of certificates, arguing that the current "upon request" system is sufficient, section 14(g)(4) of the CPSA specifically provides the Commission with the authority to, by rule, require eFiling of certificates for imported consumer products. Moreover, the Commission has been explaining and demonstrating the benefits of eFiling since at least 2012, in the Alpha Pilot, Beta Pilot, in establishing the eFiling program in 2020, and in the SNPR and this Final Rule.

Section 14(g)(3) of the CPSA establishes several requirements regarding the availability of certificates, which must: "accompany the applicable product or shipment of products covered by the same certificate;" "be furnished to each distributor or retailer of the product;" and be furnished to the Commission upon request. By codifying the eFiling requirement, an eFiled certificate meets the "accompany" and "upon request" requirements of section 14(g)(3).

As explained in response to comments 34, 45, and 65, the Final Rule retains § 1110.13(a) as proposed in the SNPR. Now that IT solutions are developed, available, and being tested, the Final Rule points to a CPSC-specific CATAIR and Product Registry that contain the IT solutions for eFiling. For example, the Final Rule does not retain a separate "accompany" requirement for imported finished products that are delivered directly to a consumer in the United States, but rather provides for collecting these certificates through eFiling. However, finished product certifiers must still provide a finished product certificate when asked by CPSC or CBP, especially in cases where a required certificate has not been eFiled or contains false or misleading information.

The final § 1110.13(a) explains that a finished product certificate must accompany each finished product or finished product shipment required to be certified pursuant to § 1110.5. Additionally, § 1110.13(a) requires that each certificate describe a single product. One product per certificate allows the RAM to conduct risk analysis

on unique products in a shipment, which allows better targeting of potentially violative products and avoids delaying delivery of shipments that do not warrant examination.³⁴

Final § 1110.13(a)(1) states the requirements for finished products manufactured outside the United States that are offered for importation into the United States for consumption or warehousing, including products offered for consumption or warehousing from a Foreign Trade Zone, or products eligible for the *de minimis* duty exemption under 19 U.S.C.

1321(a)(2)(C). As proposed, finished product certificate data elements required in § 1110.11 must be eFiled at the time of filing the CBP entry, or entry summary, if both are filed together, into ACE as provided in CPSC's CATAIR and any revisions of the CATAIR. CPSC's most recent CATAIR is provided in Tab B of the Staff Final Rule Briefing Memo.

Section 1110.13(a)(1) of the Final Rule contains minor clarifications related to international mail shipments, stating that for products imported by mail, the finished product certifier must enter the required finished product certificate data elements into CPSC's Product Registry before the shipment arrives in the United States.

Section 1110(a)(2), stating requirements for domestically manufactured products that are required to be certified pursuant to § 1110.5, is finalized as proposed. The finished product certifier for these products must issue the required certificate on or before the finished product is distributed in commerce, and they must make the finished product certificate available for inspection immediately, meaning with 24 hours of CPSC's request.

Final § 1110.13(b) maintains the statutory requirement to "furnish" a required finished product certificate to each distributor or retailer, and final § 1110.13(c) maintains the statutory requirement to make certificates available for inspection immediately upon request by CPSC or CBP. To be clear regarding the expectation, the term "immediately" means within 24 hours, as explained in the NPR and the SNPR.

H. Legal Responsibility of Finished Product Certifiers (§ 1110.15)

CPSC did not receive adverse comments on this section of the SNPR; however, the Final Rule provides further explanation, consistent with the

SNPR and with the 1109 rule, regarding how a finished product certifier may rely on other parties to maintain data, test or certify component parts or finished products, or enter data into the Product Registry. The Final Rule continues to state, as proposed, that a finished product certifier remains legally responsible for the information in a finished product certificate, including its validity, accuracy, completeness, and availability. The Final Rule is intended to accommodate diverse relationships between finished product certifiers and their trade partners to better facilitate trade. However, the Final Rule places accountability for certifications and submitted data on the finished product certifiers, who are ultimately responsible for ensuring that imported products comply with applicable U.S. law, including CPSC's required testing and certification. Finished product certifiers, meaning importers for imported products, will have the ability in the Product Registry to manage permissions for trade partners to enter data and/or to certify products, including managing the roles of specific individuals who enter data or certify products on the finished product certifier's behalf. Finished product certifiers should exercise due diligence if they allow another entity to submit data into the Product Registry or to certify on their behalf.

I. Recordkeeping Requirements (§ 1110.17)

CPSC did not receive adverse comments on proposed § 1110.17 in the SNPR. However, the Final Rule modifies § 1110.17 by moving into this section the bulleted list of potential certificate-related records previously in § 1110.11(a)(4). The listed records are the same as those stated in the SNPR, but they are formatted differently and with additional explanation. The Final Rule states that finished product certificates, which include CPCs and GCCs, and related records, must be maintained for five years, as proposed.

J. Component Part Certificates (§ 1110.19)

The Final Rule is consistent with the SNPR proposal; however, based on continued confusion regarding component part certificates, the Final Rule adds the purpose of the 1109 rule, explaining that component part certificates are voluntary, but may be relied upon by a finished product certifier to issue a finished product certificate. The Final Rule further explains that component part certificates must not be eFiled into ACE.

The Final Rule continues to set forth the content, form, and availability requirements for component part certificates.

VI. Effective Dates

The Administrative Procedures Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of the Final Rule. 5 U.S.C. 553(d). In the SNPR, the Commission proposed that a Final Rule revising 16 CFR part 1110 become effective 120 days after publication in the **Federal Register**, to provide importers time to onboard with CPSC's Product Registry and upgrade software to send PGA Message Sets to their broker for eFiling. Based on the public comments and Beta Pilot participant feedback, CPSC will finalize a longer effective date of 18 months after a Final Rule publishes in the **Federal Register**, except for consumer products and substances that are imported into an FTZ and subsequently entered for consumption or warehousing. For products and substances entered for consumption or warehousing from an FTZ, the Final Rule is effective 24 months after publication of the Final Rule in the **Federal Register**.

A. 18-Month Effective Date—Domestic and eFiled Certificates

The Final Rule provides an 18-month effective date for regulated, domestic products and substances that are required to be certified. Domestic certificates should not be eFiled. However, the Final Rule includes three primary changes for domestic certificates:

- § 1110.7—Unless otherwise stated in a specific rule, the manufacturer is the finished product certifier that must issue a certificate. However, for privately labeled products, the private labeler is the finished product certifier that must issue a certificate, unless the manufacturer issues the certificate.

- § 1110.11(a)(7)—Include an attestation of compliance.

- § 1110.11(c)—Unless otherwise provided by the Commission, if a finished product certifier is claiming a statutory or regulatory testing exclusion for an applicable rule, then in addition to listing all applicable rules, and in lieu of providing the date and place of testing, the certificate must list the applicable testing exclusion.

If a product is privately labeled, the Final Rule shifts the responsibility of certification onto the private labeler, who becomes the finished product certifier that must certify the product or ensure that the manufacturer certifies the product. A privately labeled product

³⁴ See, for example, § 1107.23, which explains a "material change" to a children's product. Products that are not the same in all material respects cannot be on the same certificate.

is one that is branded and does not contain the name of a manufacturer. Currently, CPSC's website advises that firms list testing exclusions on certificates; the Final Rule will require certificates to list such exclusions. Thus, when a rule applies, but a certifier does not test to the rule because a testing exclusion within a rule or statute applies, the Final Rule requires that such testing exclusion be listed on the certificate instead of the name of the testing laboratory. CPSC's website contains a list of all testing exclusions to include on a certificate, where applicable.³⁵ This additional information will require certifiers to review the requirement, assess their products, and align their certificates accordingly. Because domestic manufacturers and private labelers must reassess their business relationships and responsibilities, and certificates will now be required to identify testing exclusions, the Final Rule's effective date for domestically manufactured products is 18 months after publication in the **Federal Register**.

With regard to eFiled products, CPSC surveyed Beta Pilot participants to gauge their preparation time for eFiling.³⁶ On average, Beta Pilot participants took five weeks to prepare for the Beta Pilot and create their Business Account in the Product Registry. This preparation included attending meetings, reviewing and understanding CPSC's guidance documents, communicating internally and externally with trade partners, and organizing certificate data in an electronic format. Furthermore, Beta Pilot participants stated that their customs brokers needed to concurrently update their software to enable transmission of the PGA Message Set into ACE via the Automated Broker Interface. Several brokers who assisted importers in the Beta Pilot estimated that this update (either in-house or from a software developer) takes three to 12 months, with an average of nine months. Based on this feedback, as well as public comments, the Final Rule is effective for all imported, products regulated by CPSC 18 months after publication of the Final Rule in the **Federal Register** for all entry types, except for products entered for consumption or warehousing from an FTZ.

B. 24-Month Effective Date—Products Entered for Consumption or Warehousing From an FTZ

For regulated products imported into an FTZ and subsequently entered for consumption or warehousing, the Final Rule is effective 24 months after publication of a Final Rule in the **Federal Register**. Based on discussions with the National Association of Foreign Trade Zones (NAFTZ) and other importers, updating processes and software to meet this Final Rule will be particularly challenging for importers using FTZs. Importers can use FTZs in various ways before entering consumer products into customs territory for consumption or warehousing. For example, importers can use an FTZ to: hold products prior to making entry into the United States; assemble components of products from various manufacturing sites into finished products; bring products into compliance with CPSC rules; manufacture components or finished products; or test and certify finished products. Although products and materials admitted into an FTZ are accounted for on CBP Form 214, when products are imported into the United States, CBP allows for entry to occur on a weekly basis, including estimation of the number of products removed from an FTZ for entry for consumption. If this estimate is exceeded, entry must be made for the excess quantity prior to its removal from an FTZ into customs territory.

CBP's current FTZ import procedure does not allow accurate CPSC PGA Message Sets to be attached to CBP entries. Commenters (Comment 44), including the NAFTZ, state that FTZ importers require additional time before eFiling implementation to build the necessary infrastructure to accommodate accurate CPSC PGA Message Sets and to troubleshoot issues. Commenters explain that the First-In-First-Out inventory accounting method applicable to fungible merchandise within an FTZ uses a Unique Identifier (UIN) for inventory control and recordkeeping which has no relationship to the compliance data CPSC requests. Commenters explain that currently, FTZ imports can only attach the latest certificate associated with an article/supplier combination and cannot attach a specific certificate at the inventory level that CPSC's Message Set requires. Commenters state that FTZ importers will require significant changes to their current software to comply with an eFiling requirement. Moreover, commenters allege that FTZ procedures are incompatible with a requirement to file

certificates at entry summary, because goods imported from an FTZ may have already been shipped to stores and possibly sold, negating CPSC's ability to place such goods on hold for examination.

Commenters encourage CPSC to work with the CBP Border Interagency Executive Council (BIEC) to build a single window concept inclusive of FTZs and provide a transition period of at least 24 months. CPSC staff further informs that CBP processes for FTZ imports would also need to be updated to accommodate an eFiling requirement, but 24 months is likely necessary for full implementation of eFiling for FTZ-imported products and substances.

CPSC intends to work with the trade and with CBP in the coming months, to initiate conversations on software solution(s) that would best allow compliance with CPSC's Message Set. Once a software solution is identified, meeting the eFiling requirement will involve software development, testing, implementation, and troubleshooting. Based on CPSC's experience with developing and testing IT solutions for the Beta Pilot, for products entered for consumption or warehousing from an FTZ, the effective date is 24 months after publication of the Final Rule in the **Federal Register**.

VII. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to prepare a regulatory flexibility analysis unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. In the SNPR, the Commission certified that the proposed rule would not have a significant impact on a substantial number of small businesses. 88 FR 85760, 85783. The Commission received additional information during the SNPR comment period and the eFiling Beta Pilot regarding: (1) initial startup burden for eFiling; (2) filing fees; (3) Disclaimer Message Sets (disclaims); and (4) *de minimis* entry filings. Based on these comments, the Commission has prepared a final regulatory flexibility analysis (FRFA) that includes an analysis of this additional information. The conclusion of this FRFA is that the cost of the Final Rule is likely less than one percent of the revenue for a small firm, and therefore does not impose significant costs to a substantial number of firms.

³⁵ Currently available at: <https://www.cpsc.gov/s3fs-public/BetaPilotCitationandTestingExclusionCodesv3.xlsx>.

³⁶ Tab C of Staff's Final Rule Memo contains the Beta Pilot participant survey responses.

A. Need for Agency Action and Objectives of the Rule

Sections I and II of the preamble describe the need for agency action and objectives of the Final Rule.

B. Issues Raised by Comments and Resulting Changes

Several SNPR commenters provided additional information regarding costs to importers and eFilers, including

technology and staff-related costs from initial startup activities for eFiling, filing fees, disclaims, and *de minimis* entries. See Comments 53–63 in section IV.N of this preamble.

C. Small Entities to Which the Rule Will Apply

The Final Rule applies to all importers and domestic manufacturers³⁷ required to issue certificates for products or substances

subject to a CPSC rule, ban, standard, or regulation, that are imported for consumption or warehousing into the United States or are distributed in commerce.³⁸ The Initial Regulatory Flexibility Analysis (IRFA) estimated the number of small businesses impacted by the rule. 88 FR 85760, 85783. This FRFA uses these same estimates, which are displayed in Table 2.

TABLE 2—ESTIMATED NUMBER OF SMALL BUSINESSES IMPACTED BY THE RULE

Small business	Non-children products	Children products	Total
Manufacturers	7,771	18,852	26,623
Importers	35,290	211,148	246,438
Number of Small Business	43,061	230,000	273,061

Table 3 presents an estimate of the number of certificates produced annually by small firms impacted by the

Final Rule. These estimates assume small firms produce 10 percent of the

number of certificates the average firm in their industry produces:

TABLE 3—ESTIMATED NUMBER OF CERTIFICATES PRODUCED ANNUALLY BY SMALL FIRMS IMPACTED BY THE RULE

Certificates created by small business	GCCs	CPCs	Total
Manufacturers	34,438	11,590	46,028
Importers	85,002	129,804	214,806
Total	119,440	141,393	260,834

D. Compliance, Reporting, and Recordkeeping Requirements of the Rule

1. Potential Impact on Small Firms

This FRFA assesses the economic costs that will be incurred by small U.S. firms impacted by the Final Rule. Typically, CPSC considers costs that exceed one percent of gross revenue to be an economically significant cost impact. This FRFA estimates the cost impact of the Final Rule on small firms arising from both extended recordkeeping of GCCs (*i.e.*, the burden associated with the increasing the recordkeeping period for GCCs from three to five years) and eFiling (which includes (i) the hourly burden and (ii) the out-of-pocket costs from electronically filing certificate data for regulated, imported consumer products).

Small firms face an hourly burden related to uploading or submitting information via;

- The CPSC Product Registry,
- Full Message Sets to CBP through a broker,

- Reference Message Sets (of certificates uploaded into the Product Registry) with simplified filings with CBP, and

- Disclaimer Message Sets (for products or substances that do not require a certificate).

In addition to the hourly burden, small importers will face out of pocket expenses that include: Startup costs, and Filing fees to eFile certificates.

(a) Extended Recordkeeping of GCCs

The Final Rule requires firms to maintain records of all certificates for five years. CPC's records are already required to be kept for a period of five years pursuant to part 1107. Currently, however, for non-children's products, firms are either required within specific rules to maintain records for three years or follow the guidance in the existing part 1110 to maintain records for three years. Thus, firms supplying non-children products will have to hold certificates and supporting documentation, such as test reports, for

two additional years after the Final Rule becomes effective.

To estimate this additional burden, the FRFA takes the difference of the total burden under the current requirements (*i.e.*, baseline) and total burden with the Final Rule requirements. To estimate the number of non-children's product certificates that additionally require recordkeeping with the Final Rule, the FRFA conservatively uses the number of active certificates and multiplies by five (years). The FRFA estimates the number of certificates requiring recordkeeping in the baseline by multiplying the total number of certificates issued annually by the current recordkeeping period of three (years). The hourly burden of additional recordkeeping is the difference between active certificates and baseline certificates (*i.e.*, the increase in the number of active certificates) multiplied by the estimated 3 seconds it takes to ensure that records of active certificates are kept in a safe virtual storage location and the provision of routine maintenance of

³⁷ The rule also applies to private labelers who may be contingent or substitute recordkeepers or filers. However, in order to avoid double counting of impacts, staff developed the analysis for domestic manufacturers and importers only.

³⁸ Part 1107 governs the creation and recordkeeping requirements for CPCs. Among other requirements, part 1107 requires that importers and domestic manufacturers of children's products issue a CPC affirming that the firm has met third

party testing requirements: <https://www.ecfr.gov/current/title-16/chapter-II/subchapter-B/part-1107>.

records. The estimated total cost is equal to the number of burden hours multiplied by the hourly compensation of office and administrative support occupations ³⁹ of \$35.56.⁴⁰

Table 4 presents staff's estimate of the additional routine annual recordkeeping burden of the Final Rule to domestic manufacturers and importers. The total cost of maintaining GCC records for two

additional years is \$7,079; of this total \$2,041 is a burden to manufacturers and \$5,038 a burden to importers.

TABLE 4—ESTIMATED COST OF ROUTINE ANNUAL RECORDKEEPING OF GCCs BY SMALL FIRMS

Cost of routine GCC recordkeeping for small firms	Prior to the rule	With the rule	Net change
Active Certificates:			
Manufacturers	103,314	172,191	68,876
Importers	255,007	425,011	170,004
Burden Hours:			
Manufacturers	86.1	143.5	57.4
Importers	212.5	354.2	141.7
Cost of the Burden:			
Manufacturers	\$3,062	\$5,103	\$2,041
Importers	\$7,557	\$12,594	\$5,038
Total Change in Cost for Routine GCC Recordkeeping	\$10,618	\$17,697	\$7,079

(b) eFiling of Certificates

Small firms required to eFile finished product certificates, either a GCC or CPC, are likely to face an hourly burden due to eFiling activities. Importers will have two methods of filing certificate data with CBP: a Full Message Set, or a Reference Message Set. While the Final Rule does not require the use of the Product Registry, CPSC expects that most small importers will use the Product Registry to enter and maintain certificate data. The use of Reference Message Sets along with the Product Registry will likely reduce the time for storing, transmitting, and eFiling certificates. Full Message Sets are more burdensome than Reference Message Sets because they require repeated data entry, maintained by the importer or broker, rather than relying on CPSC's IT solution, the Product Registry, and a shortened Reference Message Set.

To achieve compliance with the Final Rule's eFiling requirements, small

importers of products requiring either a GCC or CPC may also incur out-of-pocket costs from several activities including startup costs (consisting of the one-time cost of updating technology and training staff for eFiling) and filing fees. The following sections present estimates for the hourly burden and out-of-pocket cost for eFiling.

(i) eFiling Hourly Burden

The burden of eFiling is only a burden on importers. Domestic manufacturers are unaffected by eFiling.⁴¹ Within the category of eFiling, this FRFA considered the hourly costs of entering records in the:

- CPSC Product Registry,
- Full Message Sets,
- Reference Message Sets, and
- Disclaimer Message Sets.

Most importers will upload product certificate records for products regulated by CPSC into the Product Registry; 96.4 percent of eFilings by importers will likely use Reference Message Sets to

submit certificate data already stored in the Product Registry based on data from the eFiling Beta Pilot. The FRFA uses this share for small importers. The FRFA assumes the remaining 3.6 percent of eFiled certificates to use a Full Message Set, which requires users to enter all data fields on a certificate every time a product is imported.

Aside from Reference and Full Message Sets, some importers will file Disclaimer Message Sets for products or substances that do not require a certificate. Disclaimer Message Sets are not required but can be filed for finished products or substances under CPSC's jurisdiction that would otherwise require a certificate, but do not require one under the circumstances. Based on data from the Beta Pilot, the FRFA estimates that Disclaimer Message Sets will account for 14.4 percent of the total number of Reference and Full Message Sets.

³⁹ Bureau of Labor Statistics, "Employer Costs for Employee Compensation", Table 4. Employer Costs for Employee Compensation for private industry workers by occupational and industry group, June 2024, "Total Compensation" for "Office and administrative support occupations" under "Goods-producing industries", <https://www.bls.gov/news.release/eecec.t04.htm>.

⁴⁰ The cost per firm is \$0.16. Three seconds per active certificate represent \$0.02963 (3/3600 × \$35.56), where \$35.56 is the hourly compensation (includes benefits plus wage) of office and

administrative support occupation in good producing industries as of June 2024. The estimated number of active GCCs is 597,202 and the net increase in the number of responses due to the move from 3 to 5 years is 238,881. There are a total of 43,061 small firms producing GCCs, so the net increase in the average number of active certificate records is 5.5. The annual cost per firm is then roughly \$0.16.

⁴¹ Except for providing domestic manufacturers with the ability to upload certificate data into the Product Registry, eFiling should not affect

manufacturers. If each domestic manufacturer uploaded all the certificates it generated during the year, the total hourly burden would reach 111 hours. At a total compensation of \$35.56 per hour for Office and Administrative Support Occupations in Good-producing industries as of June 2024, the cost of the annual burden to all domestic manufacturers would be \$3,955; roughly \$0.15 per manufacturer.

The Beta Pilot participants provided estimates for this FRFA regarding the time it would take importers to submit each type of Message Set. This FRFA assumes that eFilers would become more efficient over time as eFiling becomes widespread and learning takes place. Accordingly, this FRFA uses a learning curve⁴² that helps assess the impact of learning efficiencies in the processing time of Message Sets. Using this approach, the FRFA estimates that it would take participants an average of 15.3 seconds⁴³ to file a Reference Message Set; half that amount of time, or 7.6 seconds,⁴⁴ to file a Disclaimer Message Set; and 4.75 minutes⁴⁵ to file a Full Message Set. Additionally, each

certificate filed in the Product Registry as part of a multi-certificate data upload would take an average of 8.7 seconds.

This FRFA assumes, conservatively, that all importer certificates will be filed once in the Product Registry. Based on import surveillance data, this FRFA estimates that 20 Reference Message Sets will be filed annually per certificate.⁴⁶ Then, using the number of Reference Message Sets per certificate, this FRFA estimates that 0.7⁴⁷ Full Message Sets and 3⁴⁸ Disclaimer Message Sets will be filed annually per certificate.

The annual creation of certificates is industry dependent. Firms in some industries produce a low number of new

annual certificates per year, usually due to lower levels of innovation or product turnover, while other industries produce a larger number of annual certificates. Therefore, the cost per firm in some industries may be larger than in others. For instance, high certificate turnover industries of small importers include Vinyl Plastic Film (43 annual certificates), Furniture (25 annual certificates), Special Packaging or PPA (23 annual certificates), and Clothing and Apparel (13 annual certificates)

Table 5 presents staff's estimate of the number of annual GCC and CPC filings by importers, under the assumptions discussed earlier.

TABLE 5—ESTIMATED ANNUAL eFILINGS BY SMALL IMPORTERS IMPACTED BY THE RULE

Filings by importers	GCCs	CPCs	Total
Initial Filing in Product Registry	85,002	129,804	214,806
Transmission of Full Message Set to Broker	62,630	95,640	158,271
Transmission of Reference Message Set	1,700,044	2,596,076	4,296,120
Transmission of Disclaims	254,471	388,593	643,063
<i>All Filings</i>	2,102,147	3,210,113	5,312,260

Note: Totals made not sum due to rounding.

Aggregating the processing times per type of certificate filing with the number of annual filings per certificate, the

annual burden of the Final Rule per certificate would be 9.1 minutes.⁴⁹

Table 6 shows the hourly burden on small importers.

TABLE 6—ESTIMATED HOURLY BURDEN ON SMALL IMPORTERS IMPACTED BY THE eFILING PROVISION OF THE RULE

eFiling hourly burden on small importers	GCCs	CPCs	Total
Initial Filing in Product Registry	205	314	519
Transmission of Full Message Set to Broker	4,963	7,579	12,543
Transmission of Reference Message Set	7,220	11,026	18,247

⁴² Staff used the responses of Beta Pilot survey participants regarding the number of minutes it took them to enter or upload certificate data, along with the number of certificates each participant uploaded to estimate the average time per certificate at different volumes of certificate intake. Specifically, staff found that participants who entered or uploaded less than 100 certificates (an average of 39.7 certificates per participant), spend an average of 3.52 minutes filling out and submitting each Reference Message Set; while participants who entered/uploaded more than 100 certificates (an average of 409 certificates per participant), spend an average of 0.2 minutes per Reference Message Set. Staff used these observations to fit a learning curve with a slope of -0.6147 that implies a 34.7 percent time improvement for every doubling in the number of certificates processed. To be conservative, staff used a learning curve slope that is half the size of the slope estimated from the data (-1.229).

⁴³ Staff obtained 15 seconds as the weighted average of 18.6 seconds for importers of children's products (who have less opportunities for learning as they file a lower number of certificates per year but generate a higher number of filings as a group—59.2 percent); and 12.2 seconds for importers of nonchildren products (who have more learning opportunities by filing a higher number of certificates per year but generate a lower number of total filings as a group—40.8 percent). The

hypothetical time it would have taken to file the first certificate through a Reference Message Set was estimated as the highest average time observed from the Beta Pilot survey, or 4.64 minutes per certificate.

⁴⁴ Staff considered half the time of a Reference Set is reasonable given that a Disclaimer Message Set does not require inputting any certificate data or unique ID.

⁴⁵ Staff assumes that the learning curve slope (-0.6147) obtained for Reference Message Sets would also apply to Full Message Sets. Therefore, staff applied a similar learning curve to the estimated time for the first certificate filed through a Full Message Set using the average number of Full Message Set generated by each importer. Staff estimated the time it would have taken to file the first certificate as the average time to enter and transfer a single product certificate data to the broker for the submission of a Full Message Set, as provided by Beta Pilot survey respondents. This average from the survey was 12 minutes.

⁴⁶ For importers of children's products, CPCs are filed with CBP on average 20 times per year. Note that large suppliers subject to part 1107 may have to certify and thus eFile many more products annually. Additionally, importers must eFile GCCs with CBP with each import; on average 20 times per year per GCC. Like with children's products, staff expects larger importers to file more frequently,

while smaller importers may only file a few times a year.

⁴⁷ Beta Pilot data suggests that the number of Reference Message Sets would represent 96.4 percent of the total number of filings, excluding disclaims. Therefore, each certificate would be filed as a Full Message Set the remaining 3.6 percent of times, or 0.7 times per year ($[20/96.4] \times 3.6\%$).

⁴⁸ Based on data from the Beta Pilot, the number of Disclaimer Message Sets is roughly 14.4 percent of the total number of Full and Reference Message Sets. Because a total of 20.7 filings of Full and Reference Message Sets would be submitted per certificate, then an average of 3 disclaims would be created annually per existing certificate, where $3 = 20.7 \times 14.4\%$.

⁴⁹ An annual average of 20 Reference Message Set filings per certificate with each filing taking 15.3 seconds results in 305.8 seconds per certificate. Additionally, one filing per year of certificate data in the Product Registry takes 8.7 seconds. Then, an annual average of 0.7 (or 0.7368 to be more accurate) Full Message Sets per certificate with each taking 4.8 minutes (or 4.7549) results in an additional 210.21 seconds per year. Finally, an annual total of 3 disclaims per certificate at 7.6 seconds each total 22.89 seconds. Therefore, the Rule creates an annual time burden per certificate of 547.6 seconds, or 9.1 minutes.

TABLE 6—ESTIMATED HOURLY BURDEN ON SMALL IMPORTERS IMPACTED BY THE eFILING PROVISION OF THE RULE—Continued

eFiling hourly burden on small importers	GCCs	CPCs	Total
Transmission of Disclaims	540	825	1,366
<i>All Filings</i>	12,930	19,744	32,674

Note: Totals made not sum due to rounding.

Given the hourly burden and the \$35.56 hourly compensation rate for each hour of burden, the average annual cost of eFiling per small importer at high turnover industries will be

between \$70 and \$232, while in low turnover industries the hourly burden will be as low as \$1.⁵⁰ Given these small amounts, it is unlikely for the cost of the hourly burden of eFiling to exceed 1%

of revenue for the typical small firm.⁵¹ Tables 7 shows the estimated annual cost of such burden on small importers.

TABLE 7—ESTIMATED ANNUAL COST OF THE BURDEN OF eFILING ON SMALL IMPORTERS

Cost of eFiling hourly burden on importers	GCCs	CPCs	Total
Initial Filing in Product Registry	\$7,305	\$11,155	\$18,460
Transmission of Full Message Set to Broker	176,495	269,520	446,015
Transmission of Reference Message Set	256,761	392,090	648,851
Transmission of Disclaims	19,217	29,345	48,562
<i>All Filings</i>	459,778	702,110	1,161,888

Staff expect small importers to incur a total cost of \$1.16 million, which approximates \$4.71 per small importer. The estimated average hourly burden of eFiling for small importers of children's and non-children's products would be \$3.33 and \$13.03. These amounts are unlikely to exceed one percentage of the annual revenue of a typical small importer.

(ii) eFiling Out-of-Pocket Costs

Startup Costs: eFiling may require some firms to invest in a combination of new technologies,⁵² as well as training and/or hiring staff to conduct eFiling activities. Large firms may be able to build these new technologies themselves. Third-party service providers may develop tools that large or small firms may use.⁵³ Firms are also likely to train staff on the use of these new technologies and the updated processes that support eFiling of certificates, including participating in meetings with their brokers, reading guidance documents, and communicating and distributing information.

A survey conducted among Beta Pilot participants indicated that firms invested roughly the equivalent of 60 staff hours in preparation for their participation in the Beta Pilot, including getting trained, understanding and communicating the guidance, gathering product information, and coordinating with their brokers. However, most firms that participated in the Beta pilot are of significant size, which likely implies the startup times for the average firm may not be as large. Also, the potential introduction of third-party tools or third-party support to perform these duties will likely reduce the number of hours required for setting up the logistics of the average firm to conduct eFiling activities. Accordingly, the FRFA assumes that the average firm will invest the equivalent of only one-third of the value of startup activities, or the monetized equivalent of 20 hours,⁵⁴ in all startup activities. Many firms could likely hire third parties that benefit from economies of scale, instead of devoting as many staff hours to startup tasks; or will use a combination of third-party vendors and staff to set up eFiling.

This FRFA converts the 20 hours of startup time into an average cost per firm of \$1,086 using an average compensation rate for managerial and administrative occupations.⁵⁵ This startup cost per firm does not exceed one percent of revenue of the typical small firm in each of the industries impacted by this Final Rule, as discussed later in this section.

Filing Fees: Many importers use import brokers to facilitate customs filings and reporting with the U.S. government. Brokers typically charge a fee per entry or per entry line that is filed, and each entry line may contain one or more product certificates. During the eFiling Beta Pilot in 2024, brokers had made or were making technological investments needed for eFiling, and the fees that brokers would charge for eFiling would cover these investments. This FRFA includes these broker fees as a cost for importers. While it is uncertain what changes, and the magnitude of changes, firms would choose to make to their technology, brokers will likely seek to recover their investments through fees. Use of the Product Registry will reduce the

⁵⁰ Staff expects small importers in industries such as Architectural Glazing Materials, Bicycle Helmets, and Bunk Beds to produce less than one certificate per year, on average.

⁵¹ This FRFA assumes that most small firms file only 10 percent the average number of certificates filed by the average firm within their NAICS code.

⁵² For instance, larger importers and manufacturers may choose to invest in technology to enable batch uploads of data into the Product Registry or to submit certificate data to their

brokers. Most small importers are unlikely to have the incentives to develop in-house tools, but they may purchase third-party software or services. The Final Rule, however, does not require any specific investments from large or small importers.

⁵³ CPSC does not expect small businesses to invest in technology due to the creation of CPSC's Product Registry. A small business only needs a laptop with a hard drive for storing records and an internet connection to enter certificates into the Product Registry.

⁵⁴ This corresponds to a learning factor of 3, one sixth the size of the learning factor used to estimate processing times for Reference Message Sets.

⁵⁵ As of June 2024, the hourly rate for management, professional, and related occupations at good producing industries was \$73.02, while the hourly rate for office and administrative support occupations was \$35.56. Staff assumes that the hours invested in startup activities are one half managerial and one-half support staff, which produces an average hourly rate of \$54.29.

complexity of Message Sets by allowing importers to supply only a Unique ID for each product certificate, which may result in less complex entries and reduced brokers fees.

The fees that brokers charge vary with the complexity of the Message Set and with the number of Message Sets filed. Most brokers charge a maximum fee per entry, which reduces the filing fees per certificate for firms that file multiple certificates per entry. This FRFA assumes that the majority of importers will choose to file as many product certificates as possible per entry, and this action will significantly lower the cost per individual product certificate filed. The estimated average fee per filing under these conditions is \$0.77.⁵⁶

As discussed, the eFiling burden depends on the number of filings, the number of annual certificates generated

by each small importer, and the frequency of product imports. This FRFA assumes that each certificate will generate a total of 23.7 annual filings,⁵⁷ out of which 20.7 require broker fees⁵⁸ for a total of \$15.97 per certificate. Accounting for the number of certificates filed annually per NAICS code, the range of fees for an average small importer would fluctuate between \$2 and \$686 depending on the industry. This range is unlikely to exceed one percent of revenue for most small importers.

2. Overall Cost to Small Importers

CPSC estimates the cost to small importers⁵⁹ of CPSC regulated products by summing the costs and sub costs from:

- recordkeeping,
- eFiling of certificates,

- filing hourly burden,
- eFiling out-of-pocket cost,
- startup costs, and
- filing fees.

Table 8 shows the cost from the additional recordkeeping and eFiling requirements on small importers. Small importers, a total of 35,290 small firms, will have to maintain records of GCCs and their supporting information for two additional years, which generates an additional annual cost of \$5,038.⁶⁰ Additionally, these 35,290 small importers⁶¹ will eFile GCCs at a burden of 12,930 hours, which is a cost of \$459,778, and another 211,148 small importers will eFile CPCs with CBP at a total additional burden⁶² of 19,744 hours, which is a cost of \$702,110. In total, this is 32,674 hours per year and a total estimated cost of \$1.16 million for eFiling's hourly burden.

TABLE 8—TOTAL ESTIMATED INITIAL COST OF THE RULE TO SMALL IMPORTERS

[First-year costs]

Annual cost of the final rule to importers	GCCs	CPCs	All
Additional Recordkeeping Hourly Burden	\$5,038	\$0	\$5,038
eFiling Hourly Burden	459,778	702,110	1,161,888
Total Startup Costs	38,317,945	229,264,000	267,581,945
Annual Filing Fees	1,357,259	2,072,622	3,429,881
eFiling Out of Pocket Cost	39,675,204	231,336,622	271,011,826
Impact of eFiling on Importers	40,134,982	232,038,732	272,173,714
Total Cost of the Rule to Importers	40,140,020	232,038,732	272,178,752

In addition to the hourly burden, small importers of CPSC regulated products will also bear monetary costs that include total startup costs of \$267.58 million and eFiling fees of \$3.43 million for a total out-of-pocket cost burden of \$271.01 million. The total overall cost of the Final Rule on small importers reaches \$272.18 million

in the first year of the Final Rule of which \$232.04 are linked to children's product certificates and \$40.14 are linked to non-children product certificates.

Table 9 presents the corresponding annualized costs of the Final Rule to small importers. As opposed to Table 8 that shows the total startup cost, Table

9 presents the annualized startup cost to small importers over a time span of 30 years at a 2 percent discount rate.⁶³ The total annualized cost to small importers is \$16.54 million; \$3.53 million for small importers of general use products and \$13.01 million for small importers of children's products.

TABLE 9—ESTIMATED ANNUALIZED COST OF THE RULE TO SMALL IMPORTERS

Annual cost of the final rule to importers	GCCs	CPCs	All
Additional Recordkeeping Hourly Burden	\$5,038	\$0	\$5,038
eFiling Hourly Burden	459,778	702,110	1,161,888
Annualized Startup Costs	1,710,893	10,236,620	11,947,513
Annual Filing Fees	1,357,259	2,072,622	3,429,881

⁵⁶ Average fees per certificate are estimated assuming a maximum fee per entry of \$25, which is based on information provided by Beta Pilot participants. Staff then assumes that the average importer receives an average number of shipments per year, and estimated the number of certificates per entry dividing the average number of GCCs and CPCs per year by the average number of shipments. Finally, the average fees per GCCs and CPCs are estimated dividing \$25 per entry by the average number of certificates included with each entry; these averages then are weighted by the total number of GCCs and CPCs to obtain an overall weighted average per certificate of \$0.77.

⁵⁷ This number of filings includes 20 Reference Message Sets, 0.7 Full Message Sets, and 3

Disclaimer Message Sets per average certificate. Most brokers are not expected to charge a fee for Disclaimer Message Sets.

⁵⁸ Brokers will charge fees for 20.7 filings per certificate. This number results from adding up the expected number of Reference Message Sets per certificate (20) with the number of Full Message Sets (0.7).

⁵⁹ The cost to small domestic manufacturers is non-significant, only a few cents per firm, and indicated earlier, so it is not included in this section.

⁶⁰ If domestic manufacturers were included here, this figure would increase by \$2,041 to \$7,079.

⁶¹ Staff estimates the number of small businesses during the PRA Analysis by multiplying the estimated proportion of small businesses for a given NAICS industry by the number of estimated firms for that industry. For an explanation of how staff estimated the number of firms see section VIII of this preamble.

⁶² Additional Burden is defined as the difference between existing burden from statute and other applicable rules and that of the Final Rule.

⁶³ This is rate of discount or default social rate of time preference set by Office of Management and Budget (OMB) Guidance for all effects from the present through 30 years into the future in Circular A-4 (Regulatory Analysis) of November 2023.

TABLE 9—ESTIMATED ANNUALIZED COST OF THE RULE TO SMALL IMPORTERS—Continued

Annual cost of the final rule to importers	GCCs	CPCs	All
eFiling Out of Pocket Cost	3,068,152	12,309,242	15,377,394
Impact of eFiling on Importers	3,527,930	13,011,352	16,539,282
Total Cost of the Rule to Importers	3,532,968	13,011,352	16,544,320

Table 10 presents the average costs of the Final Rule per small importer. Small importers will incur an average cost of \$1,104 per firm (\$272.18 million/246,438 small importers) in first-year

costs in connection with the Final Rule's new requirements. The cost per small importer of non-children's products will be on average \$1,137, while the cost per small importer of

children's products will be \$1,099. The difference between these two estimates is mainly driven by a larger number of certificates created by small importers of non-children's products.

TABLE 10—ESTIMATED AVERAGE COST OF THE RULE PER SMALL IMPORTER

Average cost per small importer	GCCs	CPCs	Total
Average Additional Recordkeeping Hourly Burden	\$0.14	\$0.00	\$0.02
Average eFiling Hourly Burden	13.03	3.33	4.71
Average Annualized Startup Costs	1,085.80	1,085.80	1,085.80
Average Annual Filing Fees	38.46	9.82	13.92
Average eFiling Out of Pocket Cost	1,124.26	1,095.62	1,099.72
Average Impact of eFiling per Importer	1,137.29	1,098.94	1,104.43
Average Cost of the Rule per Small Importer	1,137.43	1,098.94	1,104.45

3. eFiling Impact as a Percent of Filed Certificate Value

The Final Rule requires importers to eFile certificates with CBP at entry, at which point the import value of the

shipment is tabulated. This FRFA compares the burden of the eFiling requirements to the average sales value per certificate filed⁶⁴ for imported products subject to the Final Rule's eFiling requirement. This approach

provides a pragmatic assessment of the Final Rule's impact on small firms. Table 11 shows the burden cost per certificate filed and its relative cost impact as a percentage of expected revenue per certificate.

TABLE 11—ESTIMATED ANNUAL IMPACT OF THE RULE ON SMALL IMPORTERS AS A PERCENTAGE OF REVENUE

Cost as share of estimated revenue per certificate	GCCs	CPCs	All
Total Cost of the Rule to Importers	\$40,140,020	\$232,038,732	\$272,178,752
Total Number of eFilings	2,102,147	3,210,113	5,312,260
Average Cost Per eFiling	19.09	72.28	51.24
Estimated Revenue per Certificate Filed	12,050	12,050	12,050
Cost as a % of Estimated Revenue per Certificate	0.1585%	0.5999%	0.4252%

Table 11 shows that small importers of general use products will bear an estimated burden of \$19.09 per eFiling and a total initial cost of \$40.14 million during the first year of implementation of the Final Rule. Small importers of children's products will bear an estimated \$72.28 burden per eFiling for a total initial cost of \$232.04 million.⁶⁵ During the first year of implementation of the Final Rule, the average burden of the Final Rule across importers of all products regulated by CPSC is \$51.24, which represents 0.43 percent of the average revenue per certificate filed. If these initial cost estimates are annualized over a 30-year lifespan at a

2 percent discount rate, small importers will bear an annualized cost of \$3.11 per certificate filing (\$1.68 per GCC filing and \$4.05 per CPC filing). These equate to \$16.54 million in annualized cost to small importers: \$3.53 million to small importers of general use products and \$13.01 million to small importers of children products. The estimated impact per eFiling for both importers of general use products and importers of children's products is well under one percent of the estimated revenue from selling the imported products associated with each eFiling.

4. Net Impact on Small Businesses

CPSC uses the threshold of one percent of revenue to estimate whether a given rule will have a significant impact on the small businesses the rule covers.

Table 12 shows the average revenue for firms smaller than the largest 50 firms in a given NAICS code.⁶⁶ This segment is characteristic of smaller firms. The Final Rule impact does not exceed the threshold of one percent of the average revenue of this subset of small firms because the overall cost impact of the Final Rule is minimal. Several NAICS industries have an

⁶⁴ Staff obtained the shipment value per certificate filed from CPSC's division of import surveillance (EXIS). Staff added a 60% markup to estimate the sales value of the imported products.

⁶⁵ Note that small importers of children's products as a group include a larger number of firms and eFilings than importers of non-children's products.

⁶⁶ ECN Core Statistics Economic Census (2017): Establishment and Firm Size Statistics for the U.S. <https://www2.census.gov/programs-surveys/economic-census/data/2017/sector00/>.

average revenue of slightly under \$1 million for firms smaller than the top 50. However, the one percent threshold (in this case, roughly \$10,000) is greater than both the cost of the Final Rule of

\$1,137 per small importers of nonchildren's products, and \$1,099 per small importers of children's products. In the SNPR the Commission requested comments on the average

annual revenues of small businesses within the impacted industries and alternative industry classifications for SBA purposes, but did not receive any comments.

TABLE 12—AVERAGE REVENUE FOR FIRMS SMALLER THAN THE TOP 50 BY NAICS INDUSTRY

Product	2017				Average revenue for firms smaller than top 50 (\$ thousands)				
	% Small	NAICS 1	NAICS 2	NAICS 3	NAICS 1	NAICS 2	NAICS 3	Min NAICS revenue	1% of revenue
Matchbooks	97	339999	325998	.....	\$920	\$8,491	.....	\$920	\$9
Bicycle Helmets	83	339113	339920	.....	4,305	1,979	.....	1,979	20
CB Band Base Station Antennas	75	334220	.....	.....	5,351	.....	.....	5,351	54
Walk Behind Power Mowers	95	333112	.....	.....	1,288	.....	.....	1,288	13
Swimming Pool Slides	85	.....	.....	.....	.....	.....	.....	.....	.....
Cellulose Insulation	37	322219	322299	.....	3,445	4,127	.....	3,445	34
Cigarette and Multipurpose Lighters	97	339999	325998	.....	920	8,491	.....	920	9
Garage Door Openers	97	332321	332710	335999	5,069	1,806	4,220	1,806	18
Furniture (paint & entrapment), Furniture (bunk beds)	85	337110	337121	337122	1,115	2,481	771	771	8
Furniture (bunk beds)	85	337124	.....	.....	979	.....	.....	979	10
Paints and Coatings	90	325211	325510	.....	18,334	5,321	.....	5,321	53
ATVs	95	336999	.....	.....	1,410	.....	.....	1,410	14
Pools and Spas (VGB Act)	85	.....	.....	.....	.....	.....	.....	.....	.....
Fireworks Devices	90	325998	.....	.....	8,491	.....	.....	8,491	85
Bicycles	95	336991	.....	.....	958	.....	.....	958	10
Carpets and Rugs	95	314110	.....	.....	1,800	.....	.....	1,800	18
Mattresses	95	337910	.....	.....	3,400	.....	.....	3,400	34
Refrigerators	95	333415	335220	.....	9,159	.....	.....	9,159	92
Candles w/Metal Core Wicks	66	325612	.....	.....	3,266	.....	.....	3,266	33
Refuse Bins	62	326199	.....	.....	12,445	.....	.....	12,445	124

5. Impact on Importers of De Minimis Shipments

Merchandise imported by one person on one day that is accorded a duty exemption under 19 U.S.C. 1321(a)(2)(C), for which the aggregate fair retail value in the country of shipment does not exceed \$800, is commonly known as a *de minimis* shipment. Such merchandise may be entered under the “release from manifest” process or via the ACE Entry Type 86 Test (89 FR 2630 (Jan 16.

2024)). Merchandise subject to PGA requirements, such as CPSC’s PGA Message Set or certification requirement for regulated consumer products, is ineligible for entry under the “release from manifest” process. Accordingly, the Final Rule requires that importers file a type 86 entry for *de minimis* shipments to submit CPSC’s PGA Message Set. Staff estimate that a significant number of small importers would need to file type 86 entry for *de minimis* shipments containing a product subject to a CPSC rule, ban, standard, or

regulation. These small businesses ship thousands of units of products through *de minimis* entries. Staff considered current entry type 86 shipments in HTS codes that could fall within CPSC’s jurisdiction, although CPSC has no way to determine whether these shipments contain consumer products or whether such products are regulated by CPSC. As shown in Figure 1, the median value of a *de minimis* shipment is about \$30; after applying a direct-to-consumer markup, staff estimates the sales value is \$48.⁶⁷

⁶⁷ The sales value *i.e.* revenue, of the shipment is the value of the shipment that CPSC estimates based on trade data plus a direct-to-consumer markup of 60%. See <https://www.shopify.com/retail/product-pricing-for-wholesale-and-retail>.

CPSC’s estimate relies on *de minimis* shipments that filed an ET 86 entry, which does not include shipments that did not file an entry or international mail shipments. However, CPSC’s estimate covers all *de minimis* shipments by extrapolating from the

data based on the ratios of products under CPSC jurisdiction for *de minimis* shipments entered under Entry Type 86.

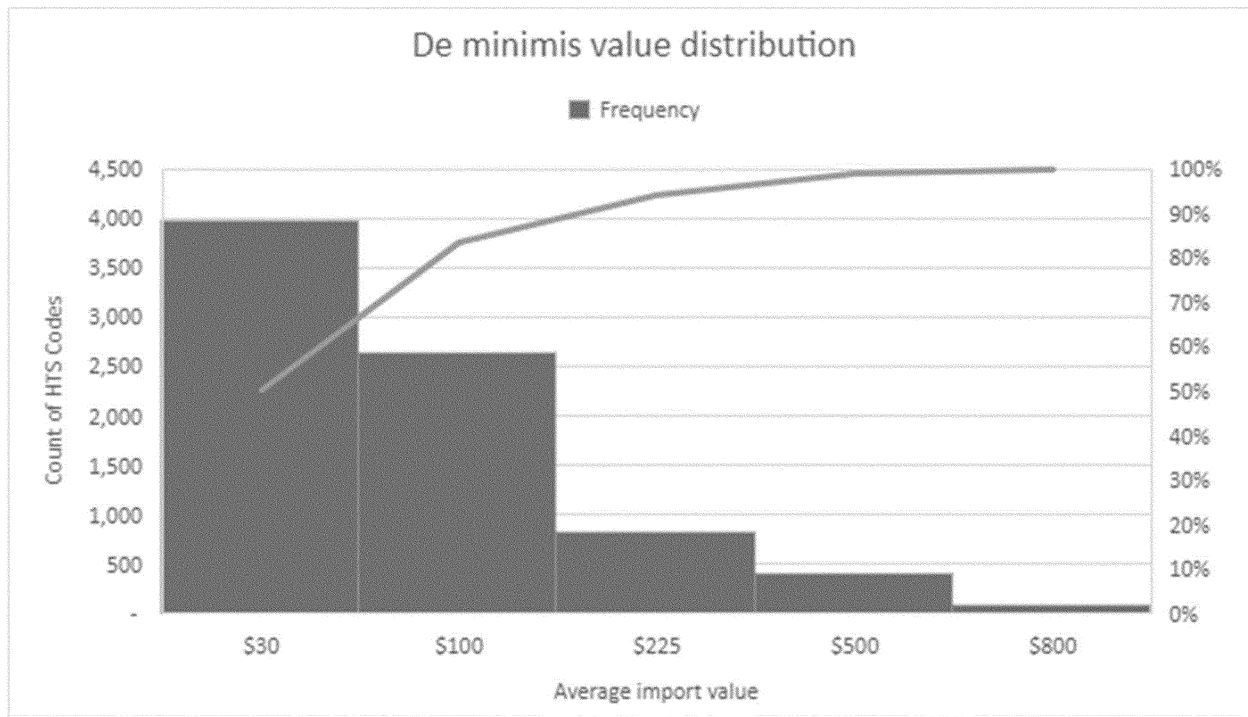


Figure 1

Under current shipping conditions, importers of parties eligible to file a type 86 entry would likely eFile a single certificate per entry; this would increase the filing fees per certificate to the point that it might represent a significant portion (greater than one percent) of the value of each shipment.

CBP reports that they process approximately 4 million *de minimis* shipments a day.⁶⁸ In 2022, CBP reported 685.1 million total *de minimis* shipments, which are also called section 321 shipments.⁶⁹ Until this Final Rule is in effect, importers of regulated consumer products claiming a *de minimis* exemption are not required to submit CPSC's PGA Message Set using entry type 86. Accordingly, CPSC currently does not know how many *de minimis* shipments per day contain finished products within CPSC's jurisdiction, nor how many of those finished products are subject to a rule, ban, standard, or regulation enforced by CPSC.

The RFA requires consideration of the impact of the Final Rule on U.S. small businesses. Importers can be either foreign⁷⁰ or domestic firms and firms of varying sizes. CBP does not classify importers by size. Accordingly, without

additional data on *de minimis* and mail shipments, and who uses this mode of importation, CPSC does not have sufficient information to estimate the number of small U.S. firms that would be impacted by the Final Rule requirements. To the extent that *de minimis* entries are primarily caused by foreign companies, for example, such costs would not be included in the FRFA impact assessment.

Moreover, as a result of the Final Rule, some firms may choose to cease using entry type 86 if this importation route becomes more costly, and may choose to bundle shipments using another entry type, such as an 01 entry for consumption or warehousing. However, CPSC does not have enough information to determine what percentage of the impacted firms would be able to structure their import transactions in a manner to avoid a substantial increase in fees. Additionally, CPSC does not know whether some of these firms may have other sources of revenue offsetting the type 86 entry filing requirement or whether some of these firms are actually subsidiaries of larger firms. Accordingly, CPSC is currently unable to estimate the impact of the Final Rule on small U.S. importers of *de minimis* shipments.

E. Alternatives for Reducing the Adverse Impact on Small Businesses

CPSC considered three alternatives to the Final Rule:

- (1) Make eFiling of certificates voluntary, instead of mandatory;
- (2) Require PDF submissions of certificates rather than eFiling of certificates; and
- (3) Extend the effective date of the Final Rule to 36 months for all products, regardless of their origin.

Alternative 1 to the Final Rule would allow, rather than require, certificate data for imported products to be eFiled at entry. If the Commission adopted this alternative, the certificate would still have to be available for examination upon request, as it is now. Allowing, instead of requiring, certificates to be eFiled at entry could reduce the burden on small businesses, but it would not meaningfully enhance the Commission's ability to target shipments for examination by using the additional certificate data elements collected via eFiling, nor to enforce and verify the accuracy of certificates. This alternative would largely maintain the status quo, because it is likely that only a few firms would choose to eFile certificates; therefore, unlike mandatory eFiling, this alternative would not reduce costly delays at the ports.

Alternative 2 to the Rule would require PDF submissions of certificates. For imported products, the importer could upload a PDF to CBP's Document

⁶⁸ <https://www.cbp.gov/frontline/buyer-beware-bad-actors-exploit-de-minimis-shipments>.

⁶⁹ <https://www.cbp.gov/newsroom/stats/trade>.

⁷⁰ For example, if a consumer received a direct shipment from a foreign company, no U.S. small business may be involved in the transaction.

Image System. Similar to Alternative 1, this alternative would not enhance the Commission's ability to target shipments for examination by using the additional certificate data elements collected via eFiling. Not only are PDF files not useful for targeting, but CBP is also unlikely to allow the collection and maintenance of a large volume of PDFs in ACE, because PDF files require a relatively large amount of storage space.

Alternative 3 would delay implementation of the Final Rule by changing the effective date from 18 months for all consumer products subject to a CPSC rule, ban, standard, or regulation not entered from an FTZ and 24 months for products and substances entered for consumption or warehousing from an FTZ, to 36 months for all CPSC regulated products regardless of their origin. This would allow small firms importing from non-FTZ areas 24 additional months to implement any new technology and organizational changes needed for eFiling, train staff, communicate with partners, and perform quality controls, among other activities. Alternative 3 did not receive any substantive comments from small firms importing from non-FTZs indicating a need for such an extension. The Commission has already extended the 120-day effective date to 18 months, providing small firms with an ample amount of time for preparation and implementation activities.

VIII. Paperwork Reduction Act

The Final Rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the PRA. 44 U.S.C. 3501–3521. The PRA requires an agency to publish the following information:

- a title for the collection of information;
- a summary of the collection of information;
- a brief description of the need for the information and the proposed use of the information;
- a description of the likely respondents and proposed frequency of response to the collection of information;
- an estimate of the burden that will result from the collection of information; and
- notice that comments may be submitted to OMB.

44 U.S.C. 3507(a)(1)(D).

The Final Rule creates a new collection of information for certificates for non-children's products and expands the existing collection for Third Party Testing of Children's Products, OMB Control No. 3041–0159. The Children's Product OMB control number would expand to include eFiling certificates for imported children's products that are subject to a CPSC rule requiring certification. We update and summarize that information here.

In accordance with OMB's requirement, the Commission provides the following information:

Title: (1) Certification of Non-Children's Products; (2) Amendment to Third Party Testing of Children's Products, approved previously under OMB Control Number 3041–0159.

Summary, Need, and Use of Information: Sections I and II of this preamble contain this information.

Respondents and Frequency: For products manufactured outside of the United States, respondents include importers of consumer products subject to a CPSC-enforced regulation. For products manufactured within the United States, respondents include manufacturers and private labelers of consumer products subject to a CPSC-enforced regulation.

Estimated Burden: CPSC has estimated the respondent burden in hours and the estimated labor costs to respondents.

Estimate of Respondent Burden: Below we categorize and estimate the burden created by both the statute and the Final Rule for children's and non-children's regulated products as follows:

Certificates: The burden associated with the creation of certificates (GCCs and CPCs). This can be considered a general recordkeeping burden.

Disclosure: The burden derived from disclosing certificate information and from furnishing the certificates to these third parties (distributors and retailers).

Recordkeeping: The burden associated with the initial storage and routine maintenance of records, including records of the certificates and any supporting and testing documentation, for a period of five years.

eFiling: The initial burden from electronically filing the certificates, using either the CPSC-maintained Product Registry or the systems provided by the brokers that support importers' activities, as well as the

routine burden on importers submitting associated Full or Reference PGA Message Sets.

A. Hourly Burden for GCCs

CPSC estimates that there may be 49,364 non-children's products firms subject to the Final Rule. On average, these firms are expected to create 27 certificates per year, for a total of 1,333,982 certificates.⁷¹ CPSC assumes each certificate will require 5 minutes of labor per certificate, which equates to 111,165 hours spent on their creation.

These same firms must keep the records supporting the certificates for a period of five years. CPSC assumes recordkeeping will take, on average, 1 minute for record creation and initial storage and an additional 15 seconds for the routine annual maintenance of the certificate record. This annual burden comes to 27,791 hours (1.25 minutes/60 × 1,333,982 certificates).

The firms must also disclose each certificate to retailers and distributors of the product upon request; thus, staff estimates an additional 0.25 hours (15 minutes) burden for third-party disclosure. This sums to 333,495 hours (15 minutes/60 × 1,333,982 certificates).

CPSC estimates the number of responses for eFiling as 23,491,168. The average filing takes roughly 22 seconds across filing modes. This adds to an estimated eFiling burden of 144,487 hours (22 seconds/3,600 × 23,491,168).⁷²

The aggregate burden of the Final Rule for suppliers of non-children's products is 616,939 hours and has a total cost of \$26,102,580. This estimate includes the burden imposed by statute, which non-children's products suppliers would bear in absence of the Final Rule. The net burden from the Final Rule—excluding the statutory burden—is 146,710 hours⁷³ and the net cost is \$5,217,007. Table 13 shows that importers of general use products requiring a GCC bear most of both the statutory burden and the additional burden from the eFiling requirement.

CPSC expects that 82 percent of the firms supplying non-children's products subject to the Final Rule will be importers with the remaining 18 percent as manufacturers. As shown in Table 13, staff estimate the statutory burden borne by importers is 480,905 hours (78%) and the expected burden to manufacturers as 136,034 hours (22%). The net annual burden of the Final Rule of 146,710 hours can be broken into a

⁷¹ Totals shown may not exactly match the product of component parts due to rounding.

⁷² The estimates from the equation may not match the total number of hours due to rounding.

⁷³ This includes the entire eFiling burden of 144,487 hours and 2,223 hours of additional hours of recordkeeping due to the increase in the recordkeeping period of GCCs from 3 to 5 years.

burden of 146,070 hours borne by importers (99.6%) and 640 hours borne by manufacturers (0.4%).

TABLE 13—TOTAL BURDEN ON NON-CHILDREN PRODUCTS COVERED BY PART 1110

Total burden	Respondents	Frequency of response	Responses	Response time	Burden hours	Cost per burden hour ⁷⁴	Total cost of burden
Total							
Certificates	49,364	27.0	1,333,982	0.0833	111,165	\$73.02	\$8,117,279
Disclosure	49,364	27.0	1,333,982	0.2500	333,495	35.56	11,859,097
Recordkeeping	49,364	27.0	1,333,982	0.0208	27,791	35.56	988,258
eFiling	40,665	577.7	23,491,168	0.0062	144,487	35.56	5,137,946
Total	49,364	557.0	27,493,113	0.0224	616,939	42.31	26,102,580
Additional Burden from the Rule							
Total	49,364	475.9	23,491,168	0.006245	146,710	35.56	5,217,007
Manufacturers							
Certificates	8,699	44.2	384,095	0.0833	32,008	73.02	2,337,219
Disclosure	8,699	44.2	384,095	0.2500	96,024	35.56	3,414,607
Recordkeeping	8,699	44.2	384,095	0.0208	8,002	35.56	284,551
eFiling	0	0.0	0	0.0000	0	0.00	0
Total	8,699	132.5	1,152,286	0.1181	136,034	44.37	6,036,377
Additional Burden to Manufacturers							
Total	8,699	0.0	0	0.0000	640	35.56	22,764
Importers							
Certificates	40,665	23.4	949,886	0.0833	79,157	73.02	5,780,059
Disclosure	40,665	23.4	949,886	0.2500	237,472	35.56	8,444,491
Recordkeeping	40,665	23.4	949,886	0.0208	19,789	35.56	703,708
eFiling	40,665	577.7	23,491,168	0.0062	144,487	35.56	5,137,946
Total	40,665	647.8	26,340,828	0.0183	480,905	41.73	20,066,203
Additional Burden to Importers							
Total	40,665	577.7	23,491,168	0.0062	146,070	35.56	5,194,243

Note: Totals made not sum due to rounding.

B. Hourly Burden for eFiling CPCs

Section 14 of the CPSA requires third-party testing of children's products that are subject to an applicable children's product safety rule to ensure compliance with such rules. Based on this testing, manufacturers, including importers, are required to certify compliance of their products to the applicable standards. The burden associated with certificate production, recordkeeping, and disclosure is already

subject to an OMB control number, 3041–0159, for children's product testing, as set forth in 16 CFR parts 1107 and 1109. The Final Rule adds a certificate eFiling requirement for importers of finished children's products and estimates the reporting burden for this requirement.

Table 14 presents CPSC's estimate that there are 224,000 small importers supplying children's products. Commission staff estimates an average of 152 certificate filings per firm based

on assumptions supported on data from the Division of Import Surveillance and the Beta Pilot, which means that 34,055,116 shipments related to imported children's products would be annually required to eFile certificates, with an estimated eFiling burden of 209,462 hours.⁷⁵ This number only includes burden imposed by the Final Rule, so the net burden from the Final Rule is also 209,462 hours, and the cost of this additional burden from the Final Rule is \$7,448,474.

⁷⁴ To estimate the cost of the hourly burden, CPSC staff used the hourly compensation (benefits plus wage) of management, professional, and related occupations in goods-producing industries for the production of certificates (\$73.02), and the hourly compensation of office and administrative support occupations in good-producing industries for the disclosure, recordkeeping, and eFiling of certificates (\$35.56). These hourly compensation estimates were obtained from the report on "Employer Cost for Employee Compensation"

prepared by the U.S. Bureau of Labor Statistics as of June 2024. <https://www.bls.gov/news.release/eccec.t04.htm>.

⁷⁵ The average filing takes roughly 22 seconds across filing modes. This adds to an estimated eFiling burden of 209,462 hours (22 seconds/3,600 × 34,055,116). The result from this equation may not exactly match the total due to rounding.

⁷⁶ To estimate the cost of the hourly burden of eFiling, staff used the hourly compensation (benefits plus wage) of office and administrative

support occupations in good producing industries (\$35.56). This hourly compensation estimate was obtained from the report on "Employer Cost for Employee Compensation" prepared by the U.S. Bureau of Labor Statistics as of June 2024. <https://www.bls.gov/news.release/eccec.t04.htm>.

TABLE 14—eFILING CHILDREN'S PRODUCT CERTIFICATES (CPC)

Total burden	Respondents	Frequency of response	Responses	Response time	Burden hours	Cost per burden hour ⁷⁶	Total cost of burden
eFiling	224,000	152.0	34,055,116	0.0062	209,462	\$35.56	\$7,448,474
Additional Burden from the Rule							
Total	224,000	152.0	34,055,116	0.0062	209,462	35.56	7,448,474

C. Burden Estimate Breakdowns by Imported and Domestically Manufactured Products

Table 16 provides a summary of this analysis for domestically manufactured products.

Table 15 provides a summary of the analysis for imported products, and

TABLE 15—IMPORT DATA ANALYSIS BY PRODUCT

Product	Total		CPC		GCC	
	Total respondents	Total responses	Percent of Resp as CPC	CPC responses	Percent of Resp as GCC	GCC responses
Architectural Glazing Materials	792	11,717	0	0	100	11,717
Artificial Emberizing Materials	16	5	0	0	100	5
ATVs	41	37,795	25	9,449	75	28,346
Baby Changing Products	4,027	523,490	100	523,490	0	0
Bassinets and Cradles	76	2,299	100	2,299	0	0
Bedside Sleepers	230	75,979	100	75,979	0	0
Bicycle Helmets	624	16,300	50	8,150	50	8,150
Bicycles	194	125,796	50	62,898	50	62,898
Bunk Beds—Furniture	2,076	89,801	75	67,351	25	22,450
Button Batteries	57	523	0	0	100	523
Candles with metal-cored wicks	2,616	27,843	0	0	100	27,843
Carpets and Rugs	186	261,374	25	65,344	75	196,031
Carriages and Strollers	243	9,030	100	9,030	0	0
CB Antennas	538	12,594	0	0	100	12,594
Cellulose Insulation	5,764	46,511	0	0	100	46,511
Children's folding chairs and stools	1,273	67,489	100	67,489	0	0
Children's Sleepwear	112	66,855	100	66,855	0	0
Cigarette & Multipurpose Lighters	69	3,908	0	0	100	3,908
Clacker Balls	4,863	10,243	100	10,243	0	0
Clothing Storage Units	2,992	316,923	0	0	100	316,923
Consumer Patching Compounds	864	13,101	0	0	100	13,101
Crib mattresses	154	8,294	100	8,294	0	0
Cribs	81	14,206	100	14,206	0	0
Dive Sticks and Other Similar Articles	2,003	4,853	100	4,853	0	0
Drywall	68	35,134	0	0	100	35,134
Electrically Operated Toys or Articles	1,012	15,794	100	15,794	0	0
Fireworks	132	47,076	0	0	100	47,076
Frame Child Carriers	0	0	100	0	0	0
Furniture	1,092	5,402,165	0	0	100	5,402,165
Garage Door Openers	3,451	10,533	0	0	100	10,533
Gates and enclosures	87	7,018	100	7,018	0	0
Hand-Held Infant Carriers	0	0	100	0	0	0
High chairs	172	14,990	100	14,990	0	0
Imitation Firearms	992	3,853	0	0	100	3,853
Infant Bath Seats	73	507	100	507	0	0
Infant Bath Tubs	1,594	5,929	100	5,929	0	0
Infant Bouncer Seats	82	5,224	100	5,224	0	0
Infant Sleep Products	739	80,644	100	80,644	0	0
Infant Swings	95	1,388	100	1,388	0	0
Infant Walkers	33	3,183	100	3,183	0	0
Lawn Darts	2,353	4,704	0	0	100	4,704
Liquid Nicotine Packaging	536	2,242	0	0	100	2,242
Magnets	908	34,846	0	0	100	34,846
Matchbooks	71	241	0	0	100	241
Mattresses	329	167,504	50	83,752	50	83,752
Pacifiers	146	4,166	100	4,166	0	0
Paints	812	154,543	0	0	100	154,543
Play Yards	71	3,400	100	3,400	0	0
Pool and Spa drain covers	2,636	33,397	0	0	100	33,397
Portable Bedrails	7,605	29,814	100	29,814	0	0
Portable fuel containers	386	5,974	0	0	100	5,974
Portable gas containers	386	5,974	0	0	100	5,974
Portable hook-on chairs	564	5,328	0	0	100	5,328
Power Mowers	111	18,865	0	0	100	18,865
Rattles	592	7,939	100	7,939	0	0
Refrigerator doors	140	74,190	0	0	100	74,190
Refuse Bins	2,407	2,717	0	0	100	2,717

TABLE 15—IMPORT DATA ANALYSIS BY PRODUCT—Continued

Product	Total		CPC		GCC	
	Total respondents	Total responses	Percent of Resp as CPC	CPC responses	Percent of Resp as GCC	GCC responses
Sling Carriers	0	0	100	0	0	0
Soft Infant and Toddler Carriers	0	0	100	0	0	0
Special Packaging (PPPA)	310	1,410,691	0	0	100	1,410,691
Stationary activity centers	37	3,093	100	3,093	0	0
Swimming Pool Slides	886	4,184	0	0	100	4,184
Toddler Beds	76	1,839	100	1,839	0	0
Toys	1,926	1,349,066	100	1,349,066	0	0
Vinyl Plastic Film	729	33,719	50	16,859	50	16,859
Wearing Apparel	220	16,290,891	50	8,145,446	50	8,145,446

TABLE 16—DOMESTIC MANUFACTURER DATA BY PRODUCT CATEGORY

CFR	Product categories	NAICS	NAICS_description	Respondents
16 CFR part 1201	Architectural Glazing Materials	327211	Flat Glass Manufacturing	19
16 CFR part 1201	Architectural Glazing Materials	321911	Wood Window and Door Manufacturing	48
16 CFR part 1201	Architectural Glazing Materials	326199	All Other Plastics Product Manufacturing: Doors and door frames, plastics, manufacturing.	139
16 CFR part 1201	Architectural Glazing Materials	327215	Glass Product Manufacturing Made of Purchased Glass	50
16 CFR part 1201	Architectural Glazing Materials	332321	Metal Window and Door Manufacturing	45
16 CFR part 1305	Artificial Emberizing Materials	327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing: Asbestos products (except brake shoes and clutches) manufacturing.	7
16 CFR part 1420	ATVs	336999	All other transportation equipment manufacturing: All-terrain vehicles (ATVs), wheeled or tracked, manufacturing.	5
16 CFR part 1203	Bicycle Helmets	339920	Sporting and athletic goods manufacturing	38
16 CFR part 1512	Bicycles	336991	Motorcycle, bicycle, and parts manufacturing: Bicycles and parts manufacturing.	125
16 CFR part 1500.17(a)(13)	Candles w/Metal Core Wicks	339999	All other miscellaneous manufacturing: candle manufacturing	1,000
16 CFR parts 1630 and 1631	Carpets and Rugs	314110	Carpet and rug mills	185
16 CFR parts 1630 and 1631	Carpets and Rugs	314999	All other miscellaneous textile product mills	219
16 CFR part 1204	CB Band Base Station Antennas ..	334220	Radio and television broadcasting and wireless communications equipment manufacturing.	10
16 CFR part 1209	Cellulose Insulation	321219	Reconstituted Wood Product Manufacturing	65
16 CFR part 1210 and 1212	Cigarette Lighters	339999	All other miscellaneous manufacturing: Cigarette lighters (except precious metal) manufacturing.	29
16 CFR part 1261	Clothing Storage Units	337122	Nonupholstered Wood Household Furniture Manufacturing	2,012
16 CFR part 1261	Clothing Storage Units	337127	Institutional Furniture Manufacturing	581
16 CFR part 1507; 16 CFR 1500.17(3) and 1500.17(8).	Fireworks Devices	325998	All other miscellaneous chemical product and preparation manufacturing: Fireworks manufacturing.	-
16 CFR parts 1213	Furniture (bunk beds)	337122	Nonupholstered Wood Household Furniture Manufacturing	50
16 CFR part 1303	Furniture (paint & entrapment)	337122	Nonupholstered Wood Household Furniture Manufacturing	201
16 CFR part 1303	Furniture (paint & entrapment)	337127	Institutional Furniture Manufacturing	29
16 CFR part 1303	Furniture (paint & entrapment)	337121	Upholstered Household Furniture Manufacturing	73
16 CFR part 1303	Furniture (paint & entrapment)	337211	Wood Office Furniture Manufacturing	15
16 CFR part 1303	Furniture (paint & entrapment)	337212	Custom Architectural Woodwork and Millwork Manufacturing	52
16 CFR part 1303	Furniture (paint & entrapment)	337214	Office Furniture (except Wood) Manufacturing	5
16 CFR part 1211	Garage Door Openers	335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing: Garage door openers manufacturing.	9
16 CFR part 1306	Lawn Darts	339920	Sporting and Athletic Goods Manufacturing	10
15 U.S.C. 1472a	Liquid Nicotine Packaging	325411	Medicinal and Botanical Manufacturing: Nicotine and derivatives (i.e., basic chemicals) manufacturing.	278
16 CFR part 1262	Magnets	327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing—Magnets, permanent, ceramic or ferrite, manufacturing.	7
16 CFR part 1262	Magnets	332999	All Other Miscellaneous Fabricated Metal Product Manufacturing—Magnets, permanent, metallic, manufacturing.	18
16 CFR part 1202	Matchbooks	325998	All other miscellaneous chemical product and preparation manufacturing: Matches and matchbook manufacturing.	6
16 CFR parts 1632 and 1633	Mattresses, Pads, and Sets	337910	Mattress manufacturing	314
16 CFR parts 1632 and 1633	Mattresses, Pads, and Sets	337121	Upholstered Household Furniture Manufacturing	686
16 CFR part 1303	Paints and Coatings	325510	Paint and coating manufacturing	100
16 CFR part 1304	Patching Compounds	327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing: Asbestos products (except brake shoes and clutches) manufacturing.	10
16 CFR part 1460	Portable gas containers	326199	All Other Plastics Product Manufacturing	10
16 CFR part 1700	PPPA	324110	Petroleum Refineries: Solvents made in petroleum refineries	16
16 CFR part 1700	PPPA	325180	Other Basic Inorganic Chemical Manufacturing—Fuel propellants, solid inorganic, not specified elsewhere by process, manufacturing; Caustic soda (i.e., sodium hydroxide) manufacturing, Potassium hydroxide (i.e., caustic potash) manufacturing.	94
16 CFR part 1700	PPPA	325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing: Turpentine.	13
16 CFR part 1700	PPPA	325199	All Other Basic Organic Chemical Manufacturing: Fuel propellants, solid organic, not specified elsewhere by process, manufacturing.	156
16 CFR part 1700	PPPA	325411	Medicinal and Botanical Manufacturing: Dietary supplements, uncompounded, manufacturing.	115

TABLE 16—DOMESTIC MANUFACTURER DATA BY PRODUCT CATEGORY—Continued

CFR	Product categories	NAICS	NAICS_description	Respondents
16 CFR part 1700	PPPA	325412	Pharmaceutical Preparation Manufacturing	262
16 CFR part 1700	PPPA	325612	Polish and Other Sanitation Good Manufacturing	107
16 CFR part 1700	PPPA	325620	Toilet Preparation Manufacturing: Mouthwashes (except medicinal) manufacturing; Permanent wave neutralizers.	236
16 CFR part 1301	Refuse Bins	332439	Other Metal Container Manufacturing: Light gauge metal garbage cans manufacturing.	20
16 CFR part 1207	Swimming Pool Slides	339920	Sporting and athletic goods manufacturing	24
16 CFR part 1205	Walk Behind Power Mowers	333112	Lawn and garden tractor and home lawn and garden equipment manufacturing.	29
16 CFR part 1611	Vinyl Plastic Film	326113	Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing—Vinyl and vinyl copolymer film and unlaminated sheet (except packaging) manufacturing.	50
16 CFR part 1611	Clothing And Apparel	315110	Hosiery and sock mills	1
16 CFR part 1611	Clothing And Apparel	315190	Other apparel knitting mills	2
16 CFR part 1611	Clothing And Apparel	315210	Cut and sew apparel contractors	72
16 CFR part 1611	Clothing And Apparel	315220	Men's and boys' cut and sew apparel manufacturing	13
16 CFR part 1611	Clothing And Apparel	315240	Women's, girls', and infants' cut and sew apparel manufacturing	34
16 CFR part 1611	Clothing And Apparel	315280	Other cut and sew apparel manufacturing	11
16 CFR part 1611	Clothing And Apparel	315990	Apparel accessories and other apparel manufacturing	17
16 CFR part 1210 and 1212	Multipurpose Lighters	339999	All other miscellaneous manufacturing: Cigarette lighters (except precious metal) manufacturing.	29

D. Additional Recordkeeping Costs

Public comments stated there were additional eFiling costs not considered in the SNPR. In response to these comments, agency staff analyzed survey responses and data from the eFiling Beta Pilot participants and queried import brokers to assess additional potential out-of-pocket expenses imposed by the Final Rule. As a result of this assessment, staff conducted an analysis of three additional annual cost burden categories: (1) startup costs to account for the burden of organizational meetings, staff training, and setting up accounts and a data storage system to house the certificate data; (2) fees charged by brokers to file message sets with CBP; and (3) *de minimis* filings. However, for the reasons stated in section VII.D.5 of this preamble, CPSC has insufficient information for a substantive burden analysis involving *de minimis* filings impacted by the Final Rule. Therefore, the following subsections discuss startup costs and filing fees.

1. Startup Burden Cost

eFiling of certificates may require some importers to invest in a combination of new technologies and training or hiring staff to conduct eFiling activities. These new technologies may be built in-house by larger firms. Also, third-party service providers may develop tools and services that large or small importers could use.⁷⁷ Firms are also likely to train their staff on the use of these new technologies and the updated processes that support the eFiling of certificates, including participating in meetings with their brokers, reading guidance documents, and communicating and distributing information.

Firms that participated in the Beta Pilot indicated an average of 60 hours of startup time⁷⁸ for training, understanding and communicating eFiling guidance, gathering product information, and coordinating with brokers. However, most firms that participated in the Beta Pilot are of significant size, which implies the

startup times for the average importer likely are not as large. Also, the potential introduction of third-party tools or third-party support to perform these duties will likely reduce the number of hours required for setting up the logistics of the average importer to conduct eFiling activities. Consequently, CPSC assumes that the average firm would invest the equivalent of only one-third the time, or 20 hours,⁷⁹ in all startup activities. More than 264 thousand importers will be involved in eFiling, so ample room exists for learning and cost improvements.

The 20 hours of startup time converts to an average cost per firm of \$1,086 using the average wage rate of management and administrative occupations.⁸⁰ Annualizing the average startup cost per firm at a 2% discount rate over 30 years, the estimated annualized cost equivalent per firm is \$48.48. Table 17 presents a summary of estimated startup costs.

TABLE 17—EFILING STARTUP COSTS

Additional costs of response	Importers	Frequency of response	Responses	Cost per response	Total additional costs
GCC Startup Burden	40,665	1	40,665	\$48.48	\$1,971,475

⁷⁷ Technology investments may decrease the overall costs associated with managing certificate data, records, or entering products into the Product Registry or into a broker's database. Importers are not required to invest in this technology but larger firms with more resources at their disposal may do so, provided a positive return exists on such an investment. To minimize costs, most firms would likely take advantage of existing broker technologies and not make unnecessary changes to their system unless there was a business case to do so.

Furthermore, testing facilities offer suppliers tools to manage and eFile certificate data. Online tools, such as Interlink by Intertek, can be used by firms of any size to capture, track, and file GCCs and CPSC.

⁷⁸ We use startup timeframes to estimate startup costs. In reality, many firms will likely hire third parties to benefit from the economies of scale, instead of devoting as many staff hours to startup tasks. This will reduce burden.

⁷⁹ This corresponds to a learning factor of 3, one sixth the size of the learning factor used to estimate processing times for Reference Message Sets.

⁸⁰ As of June 2024, the hourly rate for management, professional, and related occupations at good producing industries was \$73.02, while the hourly rate for office and administrative support occupations was \$35.56. CPSC assumes that the hours invested in startup activities are one-half managerial and one-half support staff at an average hourly rate of \$54.29.

TABLE 17—EFILING STARTUP COSTS—Continued

Additional costs of response	Importers	Frequency of response	Responses	Cost per response	Total additional costs
CPC Startup Burden	224,000	1	224,000	48.48	10,859,718
Total	264,665	1	264,665	48.48	12,831,194

Note: Totals made not sum due to rounding.

2. Filing Fees

Many importers use import brokers to facilitate customs filings and reporting with the government. Brokers typically charge a fee per entry or per entry line that is filed, and each entry line may contain one or more product certificates. The fees that brokers charge vary with the complexity of the Message Set and with the number of Message Sets filed. Most brokers charge a maximum fee per entry which reduces the filing fees per certificate for firms that file multiple

certificates per entry. CPSC assumes that a majority of firms would choose to file as many product certificates as possible per entry, and this action will significantly lower the cost per individual product certificate filed. CPSC estimates the average fee per filing under these conditions to be \$0.77.⁸¹ Importers are only expected to pay a filing fee for Reference Message Sets and Full Message Sets.

Table 18 presents an estimate of filing fees. CPSC estimates importers of non-

children's products will file 19,697,612 annual message sets (Full and Reference Message Sets) for a fee. At the average filing fee per certificate of \$0.77, the expected fees for all GCCs are \$15,167,162 in total. CPSC also estimate that importers of children's products will file 28,555,603, annual message sets for a fee, and expect filing fees for CPCs to total \$21,987,815 annually. The estimated annual total filing fees paid by all filers is \$37,154,976. These totals exclude *de minimis* filings.

TABLE 18—ESTIMATED ANNUAL FILING FEES

Additional cost	Importers	Filings with a fee	Responses	Cost per response	Total filing fees
GCC Filing Fees	40,665	484	19,697,612	\$0.77	\$15,167,162
CPC Filings Fees	224,000	127	28,555,603	0.77	21,987,815
All Importer Filings	264,665	182	48,253,216	0.77	37,154,976

E. Cost to the Federal Government

The estimated annual cost of the information collection requirements to the federal government in Fiscal Year 2026 (October 1, 2025, through September 30, 2026) is approximately \$1.2 million in 2024 dollars, which includes 2,080 staff hours to manage the eFiling program and \$1 million in contracting costs. This estimate for Fiscal Year 2026 is based in part on the annual salary for a mid-level salaried GS-13-5 employee in the Washington, DC metropolitan area (effective as of January 2024) which is \$64.28 per hour.⁸² This represents 67.7 percent of total compensation (U.S. Bureau of Labor Statistics, "Employer Costs for Employee Compensation," March 2024, Table 2, percentage of wages and salaries for all civilian management, professional, and related employees.⁸³ Adding an additional 32.3 percent for benefits brings the average annual compensation for a mid-level salaried GS-13-5 employee to \$94.94 per hour (\$64.28 ÷ 0.677). Assuming that

approximately 2,080 hours will be required annually, this results in an annual labor cost of \$197,477.10 (\$94.98 per hour × 2,080 hours = \$197,477) plus an annual contracting cost of \$1,000,000 in IT development for an annual cost to the government of \$1.2 million in Fiscal Year 2026. Contracting costs are expected to decrease substantially thereafter. Because eFiling will be fully functional and firms will be experienced with it, contractor support should only be required for ongoing operations and maintenance.

F. OMB Submission

CPSC has submitted the information collection requirements of this Final Rule to OMB for review in accordance with PRA requirements. 44 U.S.C. 3507(d).

IX. Environmental Considerations

The Commission's regulations address whether the agency is required to prepare an environmental assessment or an environmental impact statement.

CPCs to obtain an overall weighted average per certificate of \$0.77.

⁸² \$64.28 comes from rounding \$64.275 = 133,692 a year/2,080 hours per year. See <https://>

Under these regulations, certain categories of CPSC actions normally have "little or no potential for affecting the human environment," and therefore, do not require an environmental assessment or an environmental impact statement. 16 CFR 1021.5(c). Rules regarding product certification fall within this categorical exclusion. 16 CFR 1021.5(c)(2).

X. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), addresses the preemptive effect of CPSC's consumer product safety standards. Part 1110, however, is a procedural rule, not a consumer product safety standard. Therefore, the preemption provision of section 26(a) of the CPSA does not apply to this Final Rule.

XI. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and

⁸¹ This figure assumes an average fee per entry of \$25. Average fees per GCCs and CPCs are estimated dividing \$25 per entry by the average number of certificates included with each entry; these averages then are weighted by the total number of GCCs and

www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2024/DCB.pdf.

⁸³ <https://www.bls.gov/news.release/ecec.t02.htm>

certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.”

Pursuant to the CRA, OIRA has determined that this Final Rule qualifies as a “major rule,” as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1110

Administrative practice and procedure, Business and industry, Certificate, Certification, Children, Component part certificate, Consumer protection, Electronic filing, Imports, Labeling, Product testing and certification, Reporting and recordkeeping requirements, Record retention, Regulated products.

■ For the reasons stated in the preamble, the Commission revises 16 CFR part 1110 to read as follows:

PART 1110—CERTIFICATES OF COMPLIANCE

Sec.

- 1110.1 Purpose and scope.
- 1110.3 Definitions.
- 1110.5 Finished products required to be certified.
- 1110.7 Who must certify finished products.
- 1110.9 Certificate language and format.
- 1110.11 Certificate content.
- 1110.13 Certificate availability.
- 1110.15 Legal responsibility of finished product certifiers.
- 1110.17 Recordkeeping requirements.
- 1110.19 Component part certificates.

Authority: 15 U.S.C. 2063, Secs. 3 and 102 of Pub. L. 110–314, 122 Stat. 3016, 3017 (2008), Pub. L. 112–28 (2011).

§ 1110.1 Purpose and scope.

This part specifies the entities that must issue certificates for finished products in accordance with section 14(a) of the Consumer Product Safety Act (CPSA), as amended, 15 U.S.C. 2063(a); specifies certificate content, form, and availability requirements that must be met to satisfy the requirements of section 14 of the CPSA; requires importers to file certificates electronically (eFile) with U.S. Customs and Border Protection (CBP) for imported finished products that are required to be certified; and clarifies which provisions of this part apply to component part certificates. This part does not address the type or frequency of testing necessary to support a certificate.

§ 1110.3 Definitions.

(a) The definitions of section 3 of the CPSA, 15 U.S.C. 2052, and additional definitions in the Consumer Product Safety Improvement Act of 2008 (CPSIA), Pub. L. 110–314, apply to this part.

(b) Additionally, the following definitions apply for purposes of this part:

Automated Commercial Environment (ACE) means an electronic data interchange system authorized by CBP for the transmission of data and documents used to track, control, and process commercial imports, including entry and entry summary data, and includes any successor CBP authorized electronic data interchange system.

CBP or Customs means U.S. Customs and Border Protection.

Certificate or certificate of compliance means a certification that the finished products or component parts within the scope of the certificate comply with the consumer product safety rules under the CPSA, or similar rules, bans, standards, or regulations under any other law enforced by the Commission, as set forth on the certificate. “Certificate” and “certificate of compliance” generally refer to all four types of certificates, as defined in this section: General Certificates of Conformity (GCC), Children’s Product Certificates (CPC), finished product certificates, and component part certificates.

Certifier means the party who issues a certificate of compliance.

Children’s Product Certificate (CPC) means a certificate of compliance for a finished product issued pursuant to section 14(a)(2) of the CPSA, 15 U.S.C. 2063, and part 1107 of this chapter.

Commission or CPSC means the United States Consumer Product Safety Commission.

Component part means a component part of a consumer product or other product or substance regulated by the Commission, as defined in § 1109.4(b) of this chapter, that is intended to be used in the manufacture or assembly of a finished product, and is not intended for sale to, or use by, consumers as a finished product.

Component part certificate means a voluntary certificate of compliance for a component part, as defined in this section.

Consignee, for purposes of this part, means a party who takes custody or delivery of imported finished products for which CPSC certificate data are required, and may be held legally responsible by CPSC for the required finished product certificate data as set forth in § 1110.15.

eFile means to electronically file the required data elements on a finished product certificate, as described in § 1110.11, into ACE, in the format required in § 1110.13(a)(1).

Electronic certificate means the set of required data elements on a finished product certificate, described in § 1110.11, that are available in, and accessible by, electronic means, in the format described in § 1110.9(c).

Finished product means a consumer product or other product or substance, or a part of a consumer product or substance, that is subject to a consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any other law enforced by the Commission, that is imported for consumption or warehousing, or is distributed in commerce, and that is packaged, sold, or held for sale to, or for use by, consumers.

Finished product certificate means a certificate of compliance for a finished product, as defined in this section, that is required by § 1110.5. There are two types of finished product certificates: Children’s Product Certificates (CPCs) and General Certificates of Conformity (GCCs).

Finished product certifier means a party who is required to issue a finished product certificate pursuant to § 1110.7. Pursuant to sections 14(a)(1) and (2) of the CPSA (15 U.S.C. 2052, 2063(a)(1), and 2063(a)(2)), a finished product certifier must be an importer, as defined in this section, or a manufacturer or private labeler as defined in sections 3(a)(11) and (12) of the CPSA (15 U.S.C. 2052(a)(11) and (12)).

General Certificate of Conformity (GCC) means a certificate of compliance for a finished product issued pursuant to section 14(a)(1) of the CPSA, 15 U.S.C. 2063(a)(1).

Importer, for the purposes of this part, means the Importer of Record (IOR) eligible to make entry for imported finished products under the Tariff Act of 1930, as amended (19 U.S.C. 1484(a)(2)(B)), who may be an owner, purchaser, or authorized customs broker; provided that, if the IOR is an authorized customs broker, the customs broker may identify the owner, purchaser, or consignee of the finished products who authorized the customs broker to make entry, as the party responsible for compliance with CPSC certificate requirements as part of the finished product certificate data filed in CPSC’s PGA Message Set. For finished products imported by mail, or for which a *de minimis* duty exemption under 19 U.S.C. 1321(a)(2)(C) is claimed, the importer for purposes of CPSC’s certificate requirements is a party

eligible to make entry for the finished products pursuant to CBP statutes and regulations, who may be an owner, purchaser, consignee, or authorized customs broker. For purposes of this rule, CPSC will not typically consider a consumer purchasing or receiving products for personal use or enjoyment to be the importer responsible for certification.

Manufacturer as defined in section 3(a)(11) of the CPSA, means any person who manufactures or imports a consumer product. 15 U.S.C. 2052(a)(11).

Owner or purchaser, for purposes of this part, means a party who has a financial interest in imported finished products for which CPSC certificate data are required, including the actual owner of the finished products, who may be held legally responsible by CPSC for the required finished product certificate data as set forth in § 1110.15.

Private labeler as defined in section 3(a)(12) of the CPSA, means an owner of a brand or trademark on the label of a consumer product which bears a private label. 15 U.S.C. 2052(a)(12). A consumer product bears a private label if: (i) the product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product; (ii) the person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled; and (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

Product Registry means a database created and maintained by CPSC that facilitates the electronic submission of required data elements on a finished product certificate, as provided in § 1110.11, by a finished product certifier as stated in § 1110.7(a), who is required to eFile the finished product certificate pursuant to § 1110.13(a)(1). This definition includes any CPSC successor system.

Third party conformity assessment body means a testing laboratory whose accreditation has been accepted by the CPSC to conduct certification testing on children's products, as required in § 1107.2 of this chapter.

§ 1110.5 Finished products required to be certified.

Finished products subject to a consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any other law enforced by the Commission, which are imported for consumption or warehousing, or are distributed in commerce, must be accompanied by a finished product certificate.

§ 1110.7 Who must certify finished products.

(a) *Imports*. Except as otherwise provided in a specific rule, ban, standard, or regulation enforced by CPSC, for a finished product manufactured outside of the United States that must be accompanied by a certificate as set forth in § 1110.5, the importer, as defined in this part, is the finished product certifier that must issue a finished product certificate that meets the requirements of this part.

(b) *Domestic products*. Except as otherwise provided in a specific rule, ban, standard, or regulation enforced by the Commission, for a finished product manufactured in the United States that must be accompanied by a certificate, as set forth in § 1110.5, the manufacturer is the finished product certifier that must issue a finished product certificate that meets the requirements of this part. However, if a finished product manufactured in the United States is privately labeled, the private labeler is the finished product certifier that must issue a finished product certificate that meets the requirements of this part, unless the manufacturer issues the finished product certificate.

§ 1110.9 Certificate language and format.

(a) *Language*. An eFiled finished product certificate must be in the English language. All other certificates, including hard copy and electronic certificates, must be in the English language and may also contain the same content in any other language.

(b) *Format*. Finished product certificates for finished products manufactured outside the United States and offered for importation into the United States for consumption or warehousing are required to be eFiled using the format required in § 1110.13(a)(1). All other finished product certificates must be made available as provided in § 1110.13(b) and (c), and may be provided in hard copy or electronically, as set forth in subsection (c) of this section.

(c) *Electronic certificates*. An electronic finished product certificate meets the requirements of § 1110.13(b) and (c) if it is identified prominently on the finished product, shipping carton, or invoice by a unique identifier and can be accessed via a World Wide Web uniform resource locator (URL) or other electronic means, provided that the finished product certificate, the URL or other electronic means, and the unique identifier are accessible, along with access to the electronic finished product certificate itself, to the Commission, CBP, distributors, and retailers, on or before the date the finished product is

distributed in commerce. If the electronic finished product certificate is password protected, the password must be provided at the same time as the certificate when requested by CPSC or CBP.

§ 1110.11 Certificate content.

(a) *Content requirements*. Each finished product certificate must:

(1) Identify the finished product(s) covered by the certificate. Finished product certificates must contain at least one of the following unique identifiers: global trade item number (GTIN), model number, registered number, serial number, stock keeping number (SKU), universal product code (UPC), or alternate identifier, along with a sufficient description to match the finished product to the certificate. Finished product certificates may also include other identifiers, such as lot number, model style, and model color, that may assist with product identification.

(2) State each consumer product safety rule under the CPSA, or similar rule, ban, standard, or regulation under any law enforced by the Commission, to which the finished product(s) are being certified. Finished product certificates must identify separately all applicable rules, bans, standards, or regulations.

(3) Identify the finished product certifier that is certifying compliance of the finished product(s), as set forth in § 1110.7, including the party's name, street address, city, state or province, country or administrative region, electronic mail (email) address, and telephone number.

(4) Identify and provide contact information (consisting, at a minimum, of the individual's name, street address, city, state or province, country or administrative region, email address, and telephone number) for the individual maintaining records listed in § 1110.17 on behalf of the finished product certifier. The individual can be a position title, provided that the position is always staffed and responsive to CPSC's requests.

(5) Provide the date (month and year, at a minimum) and place (including a manufacturer name, street address, city, state or province, country or administrative region, email address, and telephone number) where the finished product(s) were manufactured, produced, or assembled. For manufacturing runs over a series of days, provide the initial date of manufacture (month and year, at a minimum).

(6) Provide the most recent date and place(s) (including for each third party conformity assessment body or other

party on whose testing the finished product certificate depends, the name, street address, city, state or province, country or administrative region, email address, and telephone number) where the finished product(s) were tested for compliance with the rule(s), ban(s), standard(s), or regulation(s) cited in § 1110.11(a)(4).

(7) Provide the finished product certifier's attestation. For eFiled certificates required in § 1110.13(a)(1), attestations are included in the Product Registry and in CPSC's Partner Government Agency (PGA) Message Set CBP and Trade Automated Interface Requirements (CATAIR) Implementation Guide (including revisions thereto). Paper and electronic finished product certificates described in § 1110.9(b) and (c), and required in §§ 1110.13(a)(2), (b), and (c), must include the following attestation by the finished product certifier:

I hereby certify that the finished product(s) covered by this certificate comply with the rules, bans, standards, and regulations stated herein, and that the information in this certificate is true and accurate to the best of my knowledge, information, and belief. I understand and acknowledge that it is a United States federal crime to knowingly and willfully make any materially false, fictitious, or fraudulent statement, representation, or omission on this certificate.

(b) *Electronic access to records.* In addition to identification of the individual maintaining records, as described in § 1110.11(a)(4), a finished product certificate may include a URL, or other electronic means, which provides electronic access to the required underlying records to support the certificate as specified in §§ 1107.26 and 1109.5(g) of this chapter, or any other applicable consumer product safety rule, ban, standard, or regulation enforced by the Commission.

(c) *Statutory or regulatory testing exclusions:* Unless otherwise provided by the Commission, if a finished product certifier is claiming a statutory or regulatory testing exclusion to an applicable consumer product safety rule or similar rule, ban, standard, or regulation, then in addition to listing all applicable rules, bans, standards, and regulations as required under § 1110.11(a)(2), and in lieu of providing the date and place where testing was conducted for that regulation under § 1110.11(a)(6), a finished product certificate shall identify the applicable testing exclusion.

(d) *Duplicative testing not required.* Although finished product certificates must list each applicable rule, ban, standard, or regulation separately, finished product certifiers are not

required to conduct the same third party test on each sample more than once when a rule references, or incorporates fully, another applicable consumer product safety rule or similar rule, ban, standard, or regulation under any other law enforced by the Commission with the same requirement.

§ 1110.13 Certificate availability.

(a) *Accompanying certificates.* A finished product certificate must accompany each finished product or finished product shipment required to be certified pursuant to § 1110.5. Each finished product certificate must describe only one product.

(1) In the case of finished products that are manufactured outside the United States and are offered for importation into the United States for consumption or warehousing, including finished products offered for consumption or warehousing from a Foreign Trade Zone, or finished products eligible for the *de minimis* duty exemption under 19 U.S.C. 1321(a)(2)(C), the finished product certifier must eFile the finished product certificate data elements required in § 1110.11 at the time of filing the entry, or the time of filing the entry and entry summary, if both are filed together, in ACE as provided in CPSC's PGA Message Set CATAIR Implementation Guide (including revisions thereto). In the case of finished products that are manufactured outside of the United States and imported by mail, the finished product certifier must enter the finished product certificate data elements required in § 1110.11 into CPSC's Product Registry before arrival of the product or substance in the United States.

(2) In the case of finished products manufactured in the United States, the finished product certifier must issue the required certificate on or before the date the finished product is distributed in commerce and make the finished product certificate available for inspection immediately, meaning within 24 hours, upon request by CPSC.

(b) *Furnishing certificates.* A finished product certifier must furnish the required finished product certificate to each distributor or retailer of the finished product.

(c) *Availability.* Finished product certifiers must make finished product certificates available for inspection immediately, meaning within 24 hours, upon request by CPSC or CBP.

§ 1110.15 Legal responsibility of finished product certifiers.

Finished product certifiers may, directly or through another entity,

maintain an electronic certificate platform. Pursuant to part 1109 of this chapter, a finished product certifier may rely on another party to test or certify component parts or finished products. Also, for purposes of § 1110.13(a)(1), a finished product certifier may rely on another party to enter data into the Product Registry or to certify finished products on their behalf. The finished product certifier, identified in § 1110.7, remains legally responsible for the information in a finished product certificate, including its validity, accuracy, completeness, and availability.

§ 1110.17 Recordkeeping requirements.

Finished product certifiers are required to maintain finished product certificates and the following records supporting such certificates for at least five years from the certificate creation date:

(a) Records of test results on which a GCC is based, and records described in §§ 1109.5(g) and (j) of this chapter (where applicable).

(b) Records of test results and other records on which a CPC is based, as required by § 1107.26, and § 1109.5(g) and (j) of this chapter (where applicable).

(c) Records of test results and other records on which a component part certificate is based, as required by § 1109.5(g) and (j) of this chapter.

§ 1110.19 Component part certificates.

Pursuant to part 1109 of this chapter, component part certificates are voluntary, but may be relied upon by a finished product certifier to issue a finished product certificate. Component part certificates must not be eFiled in ACE upon importation of a component part. Certifiers of component parts, and finished product certifiers that rely on component part certificates to issue a finished product certificate, must meet the requirements in part 1109 of this chapter. Component part certificates must meet the same form, content, recordkeeping, and availability requirements as finished product certificates, described in §§ 1110.9, 1110.11, 1110.13(c), 1110.15, and 1110.17.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

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To designate the facility of the United States Postal Service located at 2300 Sylvan Avenue in Modesto, California, as the “Corporal Michael D. Anderson Jr. Post Office Building”. (Jan. 2, 2025; 138 Stat. 2802)

H.R. 1823/P.L. 118-212

To designate the facility of the United States Postal Service located at 207 East Fort Dade

Avenue in Brooksville, Florida, as the “Specialist Justin Dean Coleman Memorial Post Office Building”. (Jan. 2, 2025; 138 Stat. 2803)

H.R. 3354/P.L. 118-213

To designate the facility of the United States Postal Service located at 220 North Hatcher Avenue in Purcellville, Virginia, as the “Secretary of State Madeleine Albright Post Office Building”. (Jan. 2, 2025; 138 Stat. 2804)

H.R. 4136/P.L. 118-214

U.S. Congressman Sam Johnson Memorial VA Clinic Act (Jan. 2, 2025; 138 Stat. 2805)

H.R. 4955/P.L. 118-215

To name the community-based outpatient clinic of the Department of Veterans Affairs in Monroeville, Pennsylvania, as the “Henry Parham VA Clinic”. (Jan. 2, 2025; 138 Stat. 2806)

H.R. 5867/P.L. 118-216

To designate the facility of the United States Postal Service located at 109 Live Oaks Boulevard in Casselberry, Florida, as the “Colonel Joseph William Kittinger II Post Office Building”. (Jan. 2, 2025; 138 Stat. 2808)

H.R. 6116/P.L. 118-217

To designate the facility of the United States Postal Service located at 14280 South Military Trail in Delray Beach, Florida, as the “Benjamin Berell Ferencz Post Office

Building”. (Jan. 2, 2025; 138 Stat. 2809)

H.R. 6162/P.L. 118-218

To designate the facility of the United States Postal Service located at 379 North Oates Street in Dothan, Alabama, as the “LaBruce ‘Bruce’ Tidwell Post Office Building”. (Jan. 2, 2025; 138 Stat. 2810)

H.R. 6188/P.L. 118-219

To designate the facility of the United States Postal Service located at 420 Highway 17 North in Surfside Beach, South Carolina, as the “Nancy Yount Childs Post Office Building”. (Jan. 2, 2025; 138 Stat. 2811)

H.R. 6244/P.L. 118-220

To designate the facility of the United States Postal Service located at 1535 East Los Ebanos Boulevard in Brownsville, Texas, as the “1st Lieutenant Andres Zermeno Post Office Building”. (Jan. 2, 2025; 138 Stat. 2812)

H.R. 6633/P.L. 118-221

To designate the facility of the United States Postal Service located at 9355 113th Street in Seminole, Florida, as the “Army SSG Ryan Christian Knauss Memorial Post Office Building”. (Jan. 2, 2025; 138 Stat. 2813)

H.R. 6750/P.L. 118-222

To designate the facility of the United States Postal Service located at 501 Mercer Street Southwest in Wilson, North Carolina, as the “Milton F.

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H.R. 6983/P.L. 118-224

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