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# Contents

**Federal Register**

Vol. 87, No. 149

Thursday, August 4, 2022

**Reader Aids**
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**7 CFR**

**Proposed Rules:**
3555 ..... 47646

**10 CFR**

**Proposed Rules:**
626 ..... 47652

**31 CFR**
589 ..... 47621

**33 CFR**
165 (2 documents) ..... 47624, 47626

**Proposed Rules:**
165 (2 documents) ..... 47659, 47661

**40 CFR**
52 (2 documents) ..... 47630, 47632
180 ..... 47634

**Proposed Rules:**
52 (2 documents) ..... 47663, 47666

**42 CFR**

**Proposed Rules:**
438 ..... 47824
440 ..... 47824
460 ..... 47824

**43 CFR**

**Proposed Rules:**
8360 ..... 47669

**45 CFR**

**Proposed Rules:**
80 ..... 47824
84 ..... 47824
86 ..... 47824
91 ..... 47824
92 ..... 47824
147 ..... 47824
155 ..... 47824
156 ..... 47824

**47 CFR**

**Proposed Rules:**
51 ..... 47673
61 ..... 47673
69 ..... 47673

**49 CFR**
1249 ..... 47637

**50 CFR**
648 ..... 47644

# Rules and Regulations

Federal Register
Vol. 87, No. 149
Thursday, August 4, 2022



## DEPARTMENT OF THE TREASURY

## Office of Foreign Assets Control

## 31 CFR Part 589

## Publication of Ukraine-/Russia-Related Web General Licenses 17, 18, 19, 20, 21, 22, 23, 24, and 25

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Publication of web general licenses.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing nine general licenses (GLs) issued in the Ukraine-/Russia-related Sanctions program: GL 17, which was previously made available on OFAC's website and is now expired, and GLs 18, 19, 20, 21, 22, 23, 24, and 25, each of which was previously made available on OFAC's website.

**DATES:** GLs 17, 18, 19, 20, 21, and 22 were issued on February 21, 2022. GL 23 was issued on March 11, 2022. GL 24 was issued on March 18, 2022. GL 25 was issued on March 24, 2022. See **SUPPLEMENTARY INFORMATION** of this rule for additional relevant dates.

**FOR FURTHER INFORMATION CONTACT:** OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

**SUPPLEMENTARY INFORMATION:**

### Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

### Background

On February 21, 2022, OFAC issued GLs 17, 18, 19, 20, 21, and 22 to authorize certain transactions prohibited by Executive Order (E.O.) 14065 of February 21, 2022, ''Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to Continued Russian Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine'' (87 FR 10293, February 23, 2022). On March 11, 2022 and March 18, 2022, OFAC issued GLs 23 and 24, respectively, to authorize certain transactions prohibited by E.O. 14065. On March 24, 2022, OFAC issued GL 25 to authorize transactions prohibited by E.O. 14065 or E.O. 13685 of December 19, 2014, ''Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to the Crimea Region of Ukraine'' (79 FR 77357, December 24, 2014). At the time of issuance, OFAC made GL 17, which had an expiration date of 12:01 a.m. eastern daylight time, March 23, 2022, available on its website (*www.treas.gov/ofac*). At the time of issuance, OFAC also made GLs 18, 19, 20, 21, 22, 23, 24, and 25 available on its website (*www.treas.gov/ofac*). The text of GLs 17, 18, 19, 20, 21, 22, 23, 24, and 25 is provided below.

### OFFICE OF FOREIGN ASSETS CONTROL

### Executive Order of February 21, 2022

### Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to Continued Russian Efforts To Undermine the Sovereignty and Territorial Integrity of Ukraine

### GENERAL LICENSE NO. 17

### Authorizing the Wind Down of Transactions Involving the So-Called Donetsk People's Republic or Luhansk People's Republic Regions of Ukraine

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by Executive Order (E.O.) of February 21, 2022 that are ordinarily incident and necessary to the wind down of transactions involving the so-called Donetsk People's Republic (DNR) or Luhansk People's Republic (LNR) regions of Ukraine, including the divestiture or transfer to a non-U.S. person of a U.S. person's share of ownership in any pre-February 21, 2022 investment located in the DNR or LNR regions of Ukraine, and the winding down of operations, contracts, or other agreements in effect prior to February 21, 2022 involving the exportation, reexportation, sale, or supply of goods, services, or technology to, or importation of any goods, services, or technology from, the DNR or LNR regions of Ukraine, are authorized through 12:01 a.m. eastern daylight time, March 23, 2022.

(b) This general license does not authorize any transactions involving any person blocked pursuant to E.O. of February 21, 2022 unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 21, 2022.

### OFFICE OF FOREIGN ASSETS CONTROL

### Executive Order of February 21, 2022

### Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to Continued Russian Efforts To Undermine the Sovereignty and Territorial Integrity of Ukraine

### GENERAL LICENSE NO. 18

### Authorizing the Exportation or Reexportation of Agricultural Commodities, Medicine, Medical Devices, Replacement Parts and Components, or Software Updates to Certain Regions of Ukraine and Transactions Related to the Coronavirus Disease 2019 (COVID–19) Pandemic

(a) All transactions prohibited by Executive Order of February 21, 2022 that are ordinarily incident and necessary to: (1) the exportation or reexportation of agricultural commodities, medicine, medical devices, replacement parts and components for medical devices, or software updates for medical devices to the so-called Donetsk People's Republic (DNR) or Luhansk People's Republic (LNR) regions of Ukraine, or such other regions of Ukraine as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State (collectively, the ''Covered Regions''), or to persons in third countries purchasing specifically for resale to the Covered Regions; or (2) the prevention, diagnosis, or treatment of COVID–19 (including research or clinical studies relating to COVID–19) in the Covered Regions, are authorized.

(b) For the purposes of this general license, agricultural commodities, medicine, and medical devices are defined as follows:

(1) *Agricultural commodities.* For the purposes of this general license, agricultural commodities are:

(i) Products that fall within the term ''agricultural commodity'' as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602); and

(ii) That are intended for ultimate use in the Covered Regions as:

(A) Food for humans (including raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water) or animals (including animal feeds);

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or

(D) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

(2) *Medicine.* For the purposes of this general license, medicine is an item that falls within the definition of the term ''drug'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(3) *Medical devices.* For the purposes of this general license, a medical device is an item that falls within the definition of ''device'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

**Note to General License No. 18.** Nothing in this general license relieves any person from compliance with any other Federal laws or requirements of other Federal agencies.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 21, 2022.

**OFFICE OF FOREIGN ASSETS CONTROL**

**Executive Order of February 21, 2022**

**Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to Continued Russian Efforts To Undermine the Sovereignty and Territorial Integrity of Ukraine**

**GENERAL LICENSE NO. 19**

**Authorizing Transactions Related to Telecommunications and Mail**

(a)(1) Except as provided in paragraphs (a)(2) and (c) of this general license, all transactions prohibited by Executive Order (E.O.) of February 21, 2022 involving the so-called Donetsk People's Republic (DNR) or Luhansk People's Republic (LNR) regions of Ukraine, or such other regions of Ukraine as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State (collectively, the ''Covered Regions''), that are ordinarily incident and necessary to the receipt or transmission of telecommunications are authorized.

(2) This general license does not authorize:

(i) The provision, sale, or lease of telecommunications equipment or technology; or

(ii) The provision, sale, or lease of capacity on telecommunications transmission facilities (such as satellite or terrestrial network activity).

(b) Except as provided in paragraph (c) of this general license, all transactions of common carriers prohibited by E.O. of February 21, 2022 involving the Covered Regions that are ordinarily incident and necessary to the receipt or transmission of mail and packages are authorized.

(c) This general license does not authorize any transactions involving any person blocked pursuant to E.O. of February 21, 2022 unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 21, 2022.

**OFFICE OF FOREIGN ASSETS CONTROL**

**Executive Order of February 21, 2022**

**Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to Continued Russian Efforts To Undermine the Sovereignty and Territorial Integrity of Ukraine**

**GENERAL LICENSE NO. 20**

**Official Business of Certain International Organizations and Entities**

All transactions prohibited by Executive Order of February 21, 2022 that are for the conduct of the official business of the following entities by employees, grantees, or contractors thereof are authorized:

(a) The United Nations, including its Programmes, Funds, and Other Entities and Bodies, as well as its Specialized Agencies and Related Organizations;

(b) The International Centre for Settlement of Investment Disputes (ICSID) and the Multilateral Investment Guarantee Agency (MIGA);

(c) The African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank Group (IDB Group), including any fund entity administered or established by any of the foregoing;

(d) The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies; and

(e) The Organization for Security and Co-operation in Europe.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 21, 2022.

**OFFICE OF FOREIGN ASSETS CONTROL**

**Executive Order of February 21, 2022**

**Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to Continued Russian Efforts To Undermine the Sovereignty and Territorial Integrity of Ukraine**

**GENERAL LICENSE NO. 21**

**Authorizing Noncommercial, Personal Remittances and the Operation of Accounts**

(a)(1) All transactions prohibited by Executive Order (E.O.) of February 21, 2022 that are ordinarily incident and necessary to the transfer of noncommercial, personal remittances to or from the so-called Donetsk People's Republic (DNR) or Luhansk People's Republic (LNR) regions of Ukraine, or such other regions of Ukraine as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State (collectively, the ''Covered Regions''), or for or on behalf of an individual ordinarily resident in the Covered Regions are authorized, provided the transfer is not by, to, or through any person whose property and interests in property are blocked pursuant to E.O. of February 21, 2022.

**Note to paragraph (a)(1).** Noncommercial, personal remittances do not include charitable donations of funds to or for the benefit of an entity or funds transfers for use in supporting or operating a business, including a family-owned business.

(2) Transferring institutions may rely on the originator of a funds transfer with regard to compliance with paragraph (a)(1) of this general license, provided that the transferring institution does not know or have reason to know that the funds transfer is not in compliance with paragraph (a)(1).

(b) All transactions prohibited by E.O. of February 21, 2022 that are ordinarily incident and necessary to maintaining, operating, or closing an account of an individual ordinarily resident in the Covered Regions, other than an individual whose property and interests in property are blocked pursuant to E.O. of February 21, 2022, are authorized, provided that transactions processed through the account:

(1) Are of a personal nature and not for the benefit of an entity, including supporting or operating a business; and

(2) Do not involve transfers directly or indirectly to the Covered Regions or for the benefit of persons ordinarily resident in the Covered Regions unless

authorized by paragraph (a)(1) of this general license.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 21, 2022.

**OFFICE OF FOREIGN ASSETS CONTROL**

**Executive Order of February 21, 2022**

**Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to Continued Russian Efforts To Undermine the Sovereignty and Territorial Integrity of Ukraine**

**GENERAL LICENSE NO. 22**

**Authorizing the Exportation of Certain Services and Software Incident to Internet-Based Communications**

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) of February 21, 2022 that are ordinarily incident and necessary to the exportation or reexportation, directly or indirectly, from the United States or by U.S. persons, wherever located, to persons in the so-called Donetsk People's Republic (DNR) or Luhansk People's Republic (LNR) regions of Ukraine, or such other regions of Ukraine as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State (collectively, the ''Covered Regions''), of services incident to the exchange of personal communications over the internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging, are authorized.

(b) Except as provided in paragraph (c) of this general license, all transactions prohibited by E.O. of February 21, 2022 that are ordinarily incident and necessary to the exportation or reexportation, directly or indirectly, from the United States or by U.S. persons, wherever located, to persons in the Covered Regions of software necessary to enable the services described in paragraph (a) of this general license is authorized, provided that such software is designated EAR99 under the Export Administration Regulations, 15 CFR parts 730 through 774 (EAR), is classified by the U.S. Department of Commerce as mass market software under Export Control Classification Number (ECCN) 5D992.c of the EAR, or, in the case of software not subject to the EAR, is not listed under any multilateral export control regime.

(c) This general license does not authorize the exportation or reexportation, directly or indirectly, of services or software with knowledge or reason to know that such services or software are intended for any person whose property and interests in property are blocked pursuant to E.O. of February 21, 2022.

**Note to General License No. 22.** Nothing in this general license relieves any person from compliance with any other Federal laws or requirements of other Federal agencies.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 21, 2022.

**OFFICE OF FOREIGN ASSETS CONTROL**

**Executive Order 14065 of February 21, 2022**

**Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to Continued Russian Efforts To Undermine the Sovereignty and Territorial Integrity of Ukraine**

**GENERAL LICENSE NO. 23**

**Certain Transactions in Support of Nongovernmental Organizations' Activities**

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) 14065 that are ordinarily incident and necessary to the activities described in paragraph (b) by nongovernmental organizations are authorized, including the processing and transfer of funds, payment of taxes, fees, and import duties, and purchase or receipt of permits, licenses, or public utility services.

(b) The activities referenced in paragraph (a) of this general license are as follows:

(1) Activities to support humanitarian projects to meet basic human needs in the so-called Donetsk People's Republic or Luhansk People's Republic regions of Ukraine, or such other regions of Ukraine as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State (collectively, the ''Covered Regions''), including drought and flood relief; food, nutrition, and medicine distribution; the provision of health services; assistance for vulnerable or displaced populations, including individuals with disabilities and the elderly; and environmental programs;

(2) Activities to support democracy building in the Covered Regions, including activities to support rule of law, citizen participation, government accountability and transparency, human rights and fundamental freedoms, access to information, and civil society development projects;

(3) Activities to support education in the Covered Regions, including combating illiteracy, increasing access to education, international exchanges, and assisting education reform projects;

(4) Activities to support non-commercial development projects directly benefiting the people of the Covered Regions, including related to health, food security, and water and sanitation; and

(5) Activities to support environmental and natural resource protection in the Covered Regions, including the preservation and protection of threatened or endangered species, responsible and transparent management of natural resources, and the remediation of pollution or other environmental damage.

(c) This general license does not authorize any transactions involving any person blocked pursuant to E.O. 14065, unless otherwise authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: March 11, 2022.

**OFFICE OF FOREIGN ASSETS CONTROL**

**Executive Order 14065 of February 21, 2022**

**Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to Continued Russian Efforts To Undermine the Sovereignty and Territorial Integrity of Ukraine**

**GENERAL LICENSE NO. 24**

**Transactions Related to the Provision of Maritime Services**

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by Executive Order (E.O.) 14065 related to the provision or receipt of civil maritime services performed by individuals who are ordinarily resident in the so-called Donetsk People's Republic (DNR) or Luhansk People's Republic (LNR) regions of Ukraine, or such other regions of Ukraine as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State (collectively, the ''Covered Regions''), are authorized, provided that:

(1) Such services are performed outside the Covered Regions; and

(2) Such services are not performed on behalf of any entity located in, or organized under the laws of, the Covered Regions.

(b) This general license does not authorize:

(1) Any new investment in the Covered Regions prohibited by E.O. 14065, unless separately authorized; or

(2) Any transactions involving any person blocked pursuant to E.O. 14065, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: March 18, 2022.

**OFFICE OF FOREIGN ASSETS CONTROL**

**Executive Order 13685 of December 19, 2014**

**Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to the Crimea Region of Ukraine**

**Executive Order 14065 of February 21, 2022**

**Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to Continued Russian Efforts To Undermine the Sovereignty and Territorial Integrity of Ukraine**

**GENERAL LICENSE NO. 25**

**Journalistic Activities and Establishment of News Bureaus in Certain Regions of Ukraine**

(a) Except as provided in paragraph (d) of this general license, news reporting organizations that are United States persons, and individuals who are United States persons regularly employed by a news reporting organization, either as journalists (including photojournalists) or as supporting broadcast or technical personnel, are authorized to engage in the following transactions in the Crimea region of Ukraine, the so-called Donetsk People's Republic (DNR) or Luhansk People's Republic (LNR) regions of Ukraine, or such other regions of Ukraine as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State (collectively, the ''Covered Regions''), to the extent such transactions are ordinarily incident and necessary to their journalistic activities in the Covered Regions:

(1) Hiring and compensating support staff in the Covered Regions (*e.g.,* stringers, translators, interpreters, camera operators, technical experts, freelance producers, or drivers), persons to handle logistics, or other office personnel as needed;

(2) Leasing or renting office space;

(3) Purchasing, leasing, or renting Covered Regions-origin goods and services (*e.g.,* mobile phones and related air time), selling such goods when no longer needed, or importing them into the United States;

(4) Renting and using telecommunications facilities in the Covered Regions and paying fees or taxes related to the dissemination of information and transmission of news feeds (*e.g.,* fees for satellite uplink facilities, or live news feeds);

(5) Exporting and reexporting to the Covered Regions, and subsequently reexporting from the Covered Regions, equipment necessary for and ordinarily incident to journalistic activities, provided such equipment is designated as EAR99 under the Export Administration Regulations, 15 CFR parts 730 through 774 (the ''EAR''), and further provided that such equipment is reexported from the Covered Regions to the United States or a third country when no longer needed for journalistic activities in the Covered Regions; and

(6) Paying for all expenses ordinarily incident and necessary to journalistic activities, including sales or employment taxes.

(b) Except as provided in paragraph (d) of this general license, news reporting organizations that are United States persons are authorized to establish and operate news bureaus in the Covered Regions and to engage in the transactions set forth in paragraph (a) of this general license to the extent such transactions are ordinarily incident and necessary to the establishment and operation of a news bureau in the Covered Regions.

(c) For the purposes of this general license, the term ''news reporting organization'' means an entity whose primary purpose is the gathering and dissemination of news to the general public.

(d) This general license does not authorize:

(1) Any new investment in the Covered Regions prohibited by Executive Order (E.O.) 13685 or E.O. 14065 other than as authorized in paragraphs (a) or (b), unless separately authorized; or

(2) Any transactions involving any person blocked pursuant to E.O. 13685 or E.O. 14065, unless separately authorized.

**Note to General License 25.** Nothing in this general license relieves any person from compliance with any other Federal laws or requirements of other Federal agencies.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: March 24, 2022.

**Andrea M. Gacki,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2022–16667 Filed 8–3–22; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[[Docket Number USCG–2022–0275]**

**RIN 1625–AA00**

## Safety Zone; Cumberland River, Nashville, TN

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing to a temporary safety zone from mile marker 191.1 to 191.5 of the Cumberland River. This action is necessary to provide for the safety of life on these navigable waters near Korean Veterans Bridge, Nashville, TN, during Music City Grand Prix on August 5 through August 7, 2022. This rulemaking prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

**DATES:** This rule is effective every day from 2 p.m. August 5, 2022 p.m. through 4:30 p.m. August 7, 2022. See **SUPPLEMENTARY INFORMATION** for specific daily enforcement times.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0275 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Petty Officer Third Class Benjamin Gardner and Marine Safety Detachment Nashville, U.S. Coast Guard; telephone 615–736–5421, email *Benjamin.t.gardner@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background Information and Regulatory History

The Coast Guard was notified by Indy Car of a proposed racing event that goes over the Cumberland River. The event would take place from August 5, 2022 to August 7, 2022. On August 5, 2022 the river closure would be from 2 p.m.

until 6:30 p.m. On August 6, 2022 the river closure would be from 11 a.m. until 5 p.m. On August 7, 2022 the river closure would be from 2 p.m. until 4:30 p.m. The Captain of the Port Sector Ohio Valley (COTP) has determined that there is a need to protect the river users while the Indy cars are on the track between mile marker 191.1 and mile marker 191.5 on the Cumberland River. In response, on April 20, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Cumberland River, Nashville, TN, USCG–2022–0275 (87 FR 24486). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this Indy Car race. During the comment period that ended May 26, 2022, we received 1 comment.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the Indy Car race will be a safety concern for anyone within a 0.4 mile radius of the Korean Veterans Bridge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

## IV. Discussion of Comments, Changes, and the Rule

As noted above, we received 1 comment on our NPRM published April 26, 2022. The comment stated,'' We think this is a smart idea because the Coast Guard is accounting for the safety of the citizens in the Nashville area during these dates. Thank you for not only keeping our international waters safe but for also keeping us protected and secure close to home.'' This comment does not have any effect on our proposed rule and does not require any changes to the final rule.

This rule establishes a safety zone from that will be enforced from 2 p.m. until 6:30 p.m. on August 5, 2022, from 11 a.m. until 5 p.m. on August 6, 2022, and from 2 p.m. until 4:30 p.m. on August 7, 2022. The safety zone would cover all navigable waters within 0.4 miles of the Korean Veterans Bridge on the Cumberland River in Nashville, TN. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled Indy Car races. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The safety zone will be 13 hours spread over the course of 3 days during daylight hours in Nashville, TN. The safety zone will only encompass .4 miles of the Cumberland River. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Cumberland River before or after the time of the events on each day. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rulemaking would allow vessels to seek permission to enter the zone.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

### *C. Collection of Information*

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

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

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

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

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves 3 separate safety zones over the course of 3 days that in total will last for 13 hours. It is categorically excluded from further review under paragraph L[60] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

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

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

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

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

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

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

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1., Revision No. 01.2.

■ 2. Add § 165.T08–0275 to read as follows:

**§ 165.T08–0275 Safety Zone; Cumberland River, Nashville, TN**

(a) *Location.* The following area is a safety zone: all navigable waters of the Cumberland River, Mile Markers 191.1–191.5, extending the entire width of the river.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Enforcement period.* This section will be enforced on:

(1) August 5, 2022 from 2 p.m. until 6:30 p.m.;

(2) August 6, 2022 from 11 a.m. until 5 p.m.; and

(3) August 7, 2022 from 2 p.m. until 4:30 p.m.

Dated: July 25, 2022.

**H.R. Mattern,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.*

[FR Doc. 2022–16634 Filed 8–3–22; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[[Docket Number USCG–2022–0289]**

**RIN 1625–AA00**

## Safety Zones in Reentry Sites; Jacksonville, Daytona, Cape Canaveral, Tampa, and Tallahassee, Florida

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing five temporary safety zones for the safe splashdown and recovery of reentry vehicles launched by Space Exploration Technologies Corporation (SpaceX) in support of National Aeronautics and Space Administration (NASA) missions through December 31, 2022. The temporary safety zones are located within the Seventh Coast Guard District area of responsibility (AOR) offshore of Jacksonville, Daytona, Cape Canaveral, Tampa, and Tallahassee, Florida. This rule implements a special activities provision of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. This action is necessary to protect vessels and waterway users from the potential hazards created by reentry vehicle splashdowns and recovery operations in the U.S. Exclusive Economic Zone (EEZ). It is also necessary to provide for the safe recovery of reentry vehicles, and any personnel involved in reentry services, after the splashdown. This rule prohibits U.S.-flagged vessels from entering any of the temporary safety zones unless authorized by the District Commander of the Seventh Coast Guard District or a designated representative.

**DATES:** This rule is effective from August 10, 2022, through December 31, 2022.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0289 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Ryan Gilbert, District 7 Waterways Division (dpw), U.S. Coast Guard; telephone 305–415–6750, email *Ryan.A.Gilbert@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

BNM Broadcast Notice to Mariners
CRS–25 Commercial Resupply Service-25 Mission
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
EEZ Exclusive Economic Zone
FAA Federal Aviation Administration
FL Florida
FR Federal Register
JAXPORT Jacksonville Port Authority
MSIB Marine Safety Information Bulletin
NASA National Aeronautics and Space Administration
NM Nautical Mile
NPRM Notice of Proposed Rulemaking
§ Section
SpaceX Space Exploration Technologies Corporation
U.S. United States
U.S.C. United States Code

### II. Background Information and Regulatory History

On June 13, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** titled ''Safety Zones in Reentry Sites; Jacksonville, Daytona, Cape Canaveral, Tampa, and Tallahassee,

Florida.'' [1] In the NPRM, we stated the purpose of the rulemaking was to create five safety zones off the coast of Florida that would ensure the protection of vessels and waterway users in the U.S. Exclusive Economic Zone (EEZ) [2] from the potential hazards created by reentry vehicle splashdowns [3] and recovery operations, and the safe recovery of reentry vehicles and personnel involved in reentry services.[4] The NPRM invited comments on the proposed rule. During the comment period that ended July 13, 2022, we received one comment.

On January 1, 2021, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283) (Authorization Act) was enacted. Section 8343 (134 Stat. 4710) calls for the Coast Guard to conduct a 2-year pilot program to establish and implement a process to establish safety zones to address special activities in the U.S. EEZ. These special activities include space activities [5] carried out by United States (U.S.) citizens. Terms used to describe space activities, including *launch, reentry site, and reentry vehicle,* are defined in 51 U.S.C. 50902, and in this document.

The Coast Guard has long monitored space activities impacting the maritime domain and taken actions to ensure the safety of vessels and the public as needed during space launch [6] operations. In conducting this activity, the Coast Guard engages with other government agencies, including the Federal Aviation Administration (FAA) and National Aeronautics and Space Administration (NASA), and private space operators, including Space Exploration Technologies Corporation (SpaceX). This engagement is necessary to ensure statutory and regulatory obligations are met to ensure the safety of launch operations and waterway users.

During this engagement, the Coast Guard was informed of space reentry vehicles and recovery operations in the U.S. EEZ. Section 50902 of 51 U.S.C. defines ''reentry vehicle'' as a vehicle designed to return from Earth orbit or outer space to Earth, or a reusable launch vehicle designed to return from Earth orbit or outer space to Earth, substantially intact. SpaceX, a U.S. company, has identified five reentry sites [7] within the U.S. EEZ of the Seventh Coast Guard District area of responsibility (AOR) expected to be used for the splashdown and recovery of reentry vehicles. All of these sites are off the coast of Florida (FL)—three are located in the Atlantic Ocean and two are located in the Gulf of Mexico.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under section 8343 of the Authorization Act. The Seventh District Commander has determined that there are potential hazards in the U.S. EEZ created by reentry vehicle splashdowns and recovery operations, and the safe recovery of reentry vehicles and personnel involved in reentry services. The purpose of this rule is to ensure safety of vessels, reentry vehicles, personnel involved in reentry services and the navigable waters in the safety zone before, during, and after the scheduled event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because this rule is needed to ensure the safe splashdown and recovery of reentry vehicles launched by SpaceX in support of NASA missions for the remainder of 2022. Delaying the effective date of this rule would be impracticable because the Commercial Resupply Service-25 (CRS–25) Mission is expected to splashdown on approximately August 10, 2022, and the rule needs to be effective prior to that date to ensure the protection of vessels and waterway users in the U.S. EEZ from the potential hazards created by reentry vehicle splashdowns and recovery operations, and the safe recovery of reentry vehicles and personnel involved in reentry services.

## IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published on June 13, 2022. The commenter, Jacksonville Port Authority (JAXPORT), sought insight from the St. John's Bar Pilots, who are charged with navigating vessels on the St. Johns River. The commenter stated that the proposed Jacksonville safety zone would not interrupt the transit of vessels to or from JAXPORT. Therefore, JAXPORT had no objections to the proposed Jacksonville safety zone and would continue cooperating with the Coast Guard. The Coast Guard acknowledges this comment.

There are no changes in regulatory text to this rule from the proposed rule in the NPRM.

The rule establishes five temporary safety zones in the U.S. EEZ for the safe reentry vehicle splashdown and recovery of reentry vehicles launched by SpaceX in support of NASA missions through the remainder of 2022. Three of the five temporary safety zones are located off the coast of FL in the Atlantic Ocean in the following areas:

(1) Approximately 65 nautical miles (NM) northeast from Jacksonville;

(2) Approximately 29 NM northeast from Daytona; and

(3) Approximately 17 NM east from Port Canaveral.

The remaining two temporary safety zones are located off the coast of FL in the Gulf of Mexico in the following areas:

(1) Approximately 58 NM northwest from Tampa Bay; and

(2) Approximately 43 NM south from Tallahassee.

The Jacksonville, Daytona, Cape Canaveral, and Tampa safety zones have an approximate area of 256 square miles, and are diamond shaped with the top point of the diamond pointing to the North. The Tallahassee safety zone is approximately 59 square miles in size and is triangular in shape. The Tallahassee safety zone, as provided by NASA and SpaceX, is the same size and shape as the other four safety zones; however, only a portion of the safety zone is within the jurisdiction of the Seventh Coast Guard District, so only the 59 square miles is included in this rule. The remaining portion of the safety zone falls within the Eighth Coast Guard District AOR.

To the extent feasible, the District Commander or a designated representative will inform the public of the activation of the five temporary safety zones by Notice of Enforcement (NOE) published in the **Federal Register** at least 2 days before the reentry vehicle splashdown. The NOE would identify the approximate date(s) during which a reentry vehicle splashdown and recovery operations would occur.

To the extent possible, 24 hours before a reentry vehicle splashdown and recovery operation, the District Commander or designated representative will inform the public that only one of the five safety zones will remain activated (subject to enforcement) until announced by

[1] 87 FR 35697.

[2] The Coast Guard defines the U.S. *exclusive economic zone* in 33 CFR 2.30(a). *Territorial sea* is defined in 33 CFR 2.22.

[3] *Splashdown* refers to the landing of a reentry vehicle into a body of water.

[4] *Reentry Services* means (1) activities involved in the preparation of a reentry vehicle and payload, crew (including crew training), government astronaut, or space flight participant, if any, for reentry; and (2) the conduct of a reentry.

[5] *Space Activities* means space activities, including launch and reentry, as such terms are defined in section 50902 of Title 51, United States Code, carried out by United States citizens.

[6] The term *launch* is defined in 51 U.S.C. 50902.

[7] *Reentry site* means the location on Earth to which a reentry vehicle is intended to return (as defined in a license the FAA Administrator issues or transfers under this chapter).

Broadcast Notice to Mariners (BNM) on VHF–FM channel 16, and/or Marine Safety Information Bulletin (MSIB) (as appropriate) that the safety zone is no longer subject to enforcement. The specific temporary safety zone to be enforced would be based on varying mission and environmental factors, including atmospheric conditions, sea state, weather, and orbital calculations.

The MSIB will include the geographic coordinates of the activated safety zone, a map identifying the location of the activated safety zone, and information related to potential hazards associated with a reentry vehicle splashdown and recovery operations associated with space activities, including marine environmental and public health hazards, such the release of hydrazine and other potential oil or hazardous substances.

When the safety zone is activated, the District Commander or a designated representative will be able to restrict U.S.-flagged vessel movement including but not limited to transiting, anchoring, or mooring within the safety zone to protect vessels from hazards associated with space activities. The activated safety zone will ensure the protection of vessels and waterway users from the potential hazards created by reentry vehicle splashdowns and recovery operations. This includes protection during the recovery of a reentry vehicle, and the protection of personnel involved in reentry services and space support vessels.[8]

After a reentry vehicle splashdown, the District Commander or a designated representative would grant general permission to come no closer than 3 NM within the activated safety zone from any reentry vehicle or space support vessel engaged in the recovery operations. The recovery operations are expected to last approximately 1 hour. That should allow for sufficient time to let any potential toxic materials clear the reentry vehicle, recovery of the reentry vehicle by the space support vessel, and address any potential medical evacuations for any personnel involved in reentry services that were onboard the reentry vehicle.

Once a reentry vehicle and any personnel involved in reentry services are removed from the water and secured onboard a space support vessel, the District Commander or designated representative will issue a BNM on VHF–FM channel 16 announcing the activated safety zone is no longer subject to enforcement. A photograph of a reentry vehicle and space support vessel expected to use the reentry sites are available in the docket.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size, location, duration, and scope of the temporary safety zones. The temporary safety zones are limited in size and location to only those areas where reentry vehicles splashdown and recovery operations occur. The safety zones are limited in scope, as vessel traffic will be able to safely transit around the activated safety zone which will only impact a small part of the U.S. EEZ within the Atlantic Ocean and Gulf of Mexico. This rule involves the establishment of five temporary safety zones which would be activated 2 days before a reentry vehicle splashdown and recovery operations. Twenty-four hours before a reentry vehicle splashdown, one of the five temporary safety zones would remain active. After a reentry vehicle splashdown, general permission will be granted to come no closer than 3 NM within the activated safety zone. There is a danger associated with fumes from the reentry vehicle after it has splashed down. Once a reentry vehicle and any personnel involved in reentry services are removed from the water and secured onboard a space support vessel, the activated safety zone will no longer be subject to enforcement. The activated safety zone will ensure the protection of vessels and waterway users from the potential hazards created by a reentry vehicle splashdown and recovery operations and the recovery of a reentry vehicle, personnel involved in reentry services, and space support vessel.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The safety zones are only expected to last a few hours from reentry vehicle splashdown to recovery. Vessels will be able to transit around the activated safety zone location during these recoveries. We do not anticipate any significant economic impact resulting from activation of the safety zones.

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

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

### *C. Collection of Information*

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

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

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of

[8] *Space Support Vessel* means any vessel engaged in the support of space activities. These vessels are typically approximately 170 feet in length, have a forward wheelhouse, and are equipped with a helicopter pad and lifting crane.

power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of five temporary safety zones which would be activated 2 days before a reentry vehicle splashdown and recovery operations. Twenty-four hours before a reentry vehicle splashdown, one of the five temporary safety zones will remain active. After a reentry vehicle splashdown, general permission would be granted to come no closer than 3 NM within the activated safety zone. Once a reentry vehicle and any personnel involved in reentry services are removed from the water and secured onboard a space support vessel, the activated safety zone will no longer be subject to enforcement. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

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

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

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

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

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

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

**Authority:** 46 U.S.C. 70034, 70051; section 8343 of Pub. L. 116–283, 134 Stat. 3388, 4710; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T07–0289 to read as follows:

**§ 165.T07–0289 Safety Zones in Reentry Sites; Jacksonville, Daytona, Cape Canaveral, Tampa, and Tallahassee, Florida.**

(a) *Location.* The coordinates used in this paragraph are based on the World Geodetic System (WGS) 1984. The following areas are safety zones:

(1) *Jacksonville site.* All waters from surface to bottom encompassed within a line connecting the following points: Point 1, thence to Point 2, thence to Point 3, thence to Point 4, and then back to Point 1.

TABLE 1 TO PARAGRAPH (a)(1)

| | | |
|---|---|---|
| Point 1 | 31°06′28″ N | 080°15′00″ W |
| Point 2 | 30°55′01″ N | 080°01′40″ W |
| Point 3 | 30°43′30″ N | 080°15′00″ W |
| Point 4 | 30°55′01″ N | 080°28′19″ W |

(2) *Daytona site.* All waters from surface to bottom encompassed within a line connecting the following points: Point 1, thence to Point 2, thence to Point 3, thence to Point 4, and then back to Point 1.

TABLE 2 TO PARAGRAPH (a)(2)

| | | |
|---|---|---|
| Point 1 | 29°59′27″ N | 080°40′01″ W |
| Point 2 | 29°48′00″ N | 080°26′52″ W |
| Point 3 | 29°36′32″ N | 080°40′01″ W |
| Point 4 | 29°48′00″ N | 080°53′09″ W |

(3) *Cape Canaveral site.* All waters from surface to bottom encompassed within a line connecting the following points: Point 1, thence to Point 2, thence to Point 3, thence to Point 4, and then back to Point 1.

TABLE 3 TO PARAGRAPH (a)(3)

| | | |
|---|---|---|
| Point 1 | 29°02′27″ N | 080°13′48″ W |
| Point 2 | 28°51′00″ N | 080°00′46″ W |
| Point 3 | 28°39′32″ N | 080°13′48″ W |

TABLE 3 TO PARAGRAPH (a)(3)—Continued

| | | |
|---|---|---|
| Point 4 | 28°51′00″ N | 080°26′49″ W |

(4) *Tampa site.* All waters from surface to bottom encompassed within a line connecting the following points: Point 1, thence to Point 2, thence to Point 3, thence to Point 4, and then back to Point 1.

TABLE 4 TO PARAGRAPH (a)(4)

| | | |
|---|---|---|
| Point 1 | 28°17′27″ N | 083°54′00″ W |
| Point 2 | 28°06′00″ N | 083°41′02″ W |
| Point 3 | 27°54′32″ N | 083°54′00″ W |
| Point 4 | 28°06′00″ N | 084°06′57″ W |

(5) *Tallahassee site.* All waters from surface to bottom encompassed within a line connecting the following points: Point 1, thence to Point 2, thence to Point 3, and then back to Point 1.

TABLE 5 TO PARAGRAPH (a)(5)

| | | |
|---|---|---|
| Point 1 | 29°22′38″ N | 084°05′20″ W |
| Point 2 | 29°16′58″ N | 083°58′55″ W |
| Point 3 | 29°06′20″ N | 084°11′12″ W |

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

*Designated representative* means a Coast Guard Captain of the Port (COTP) in the Seventh Coast Guard District; Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel; Coast Guard Representatives in the Merrill Operations Center; and other officers designated by the District Commander of the Seventh Coast Guard District or cognizant COTP.

*District Commander* means Commander of the Seventh Coast Guard District.

*Reentry Services* means activities involved in the preparation of a reentry vehicle and payload, crew (including crew training), government astronaut, or space flight participant, if any, for reentry; and the conduct of a reentry.

*Reentry vehicle* means a vehicle designed to return from Earth orbit or outer space to Earth, or a reusable launch vehicle designed to return from Earth orbit or outer space to Earth, substantially intact.

*Space Support Vessel* means any vessel engaged in the support of space activities. These vessels are typically approximately 170 feet in length, have a forward wheelhouse, and are equipped with a helicopter pad and lifting crane.

*Splashdown* means the landing of a reentry vehicle into a body of water.

(c) *Regulations.* (1) Because the safety zones described in paragraph (a) of this section are within the U.S. Exclusive Economic Zone, only U.S.-flagged vessels are subject to enforcement. All foreign-flagged vessels are encouraged to remain outside the safety zones.

(2) In accordance with the general regulations in 33 CFR part 165, subpart C, no U.S.-flagged vessel may enter the safety zones described in paragraph (a) of this section unless authorized by the District Commander or a designated representative, except as provided in paragraph (d)(3) of this section.

(d) *Notification of enforcement.* (1) To the extent feasible, the District Commander or a designated representative will inform the public of the activation of the five safety zones described in paragraph (a) of this section by Notice of Enforcement published in the **Federal Register** at least two days before the splashdown.

(2) To the extent possible, twenty-four hours before a reentry vehicle splashdown, the District Commander or designated representative will inform the public that only one of the five safety zones described in paragraph (a) will remain activated until announced by Broadcast Notice to Mariners on VHF–FM channel 16, and/or Marine Safety Information Bulletin (as appropriate) that the safety zone is no longer subject to enforcement.

(3) After a reentry vehicle splashdown, the District Commander or a designated representative will grant general permission to come no closer than 3 nautical miles of any reentry vehicle or space support vessel engaged in the recovery operations, within the activated safety zone described in paragraph (a) of this section.

(4) Once a reentry vehicle, and any personnel involved in reentry service, are removed from the water and secured onboard a space support vessel, the District Commander or designated representative will issue a Broadcast Notice to Mariners on VHF–FM channel 16 announcing the activated safety zone is no longer subject to enforcement.

(e) *Effective period.* This section is effective from August 10, 2022, through December 31, 2022.

Dated: August 01, 2022.

**Brendan C. McPherson,**

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

[FR Doc. 2022–16743 Filed 8–3–22; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2022–0607; FRL–10024–02–R9]**

### Air Plan Approval; Arizona; Maricopa County Air Quality Management Department

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

**ACTION:** Interim final determination.

**SUMMARY:** The Environmental Protection Agency (EPA) is making an interim final determination that the Arizona Department of Environmental Quality (ADEQ) has submitted a rule and other materials on behalf of the Maricopa County Air Quality Department

(MCAQD or ''County'') that correct deficiencies in its Clean Air Act (CAA or ''Act'') state implementation plan (SIP) provisions concerning ozone nonattainment requirements. This determination is based on a proposed approval, published elsewhere in this issue of the **Federal Register**, of MCAQD's reasonably available control technology (RACT) demonstration for the aerospace coating category (''aerospace operations RACT certification'') and negative declarations for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS or ''standards'') in the portion of the Phoenix-Mesa ozone nonattainment areas regulated by the MCAQD, as well as a rule covering emissions of volatile organic compounds (VOCs) from surface coatings and industrial adhesives. The effect of this interim final determination is that the imposition of sanctions that were triggered by a previous partial disapproval by the EPA in 2021 is now deferred. If the EPA finalizes its approval of MCAQD's submission, relief from these sanctions will become permanent.

**DATES:** This interim final determination is effective on August 4, 2022. However, comments will be accepted on or before September 6, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0607 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Nicole Law, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4126 or by email at *Law.Nicole@epa.gov.*

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

**Table of Contents**



## I. Background

On January 7, 2021 (86 FR 971), the EPA issued a final rule promulgating the partial approval, partial disapproval, and partial conditional approval for revisions to portions of the MCAQD portion of the Arizona SIP that had been submitted by ADEQ to the EPA for approval (''the 2017 RACT Submittal''). The 2017 RACT Submittal action addressed the MCAQD's RACT SIP requirements under the Act. In our 2017 RACT Submittal action, we determined that while MCAQD's SIP revision submittal strengthened the SIP, the submittal did not fully meet the requirements for RACT SIPs under the CAA. Our 2017 RACT Submittal action included a final partial disapproval action under title I, part D of the Act, relating to requirements for nonattainment areas. Pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31, this partial disapproval action under title I, part D started a sanctions clock for imposition of offset sanctions 18 months after the action's effective date of February 8, 2021, and highway sanctions 6 months later.

On June 23, 2021, MCAQD adopted a RACT certification for VOCs emissions from aerospace operations (''aerospace operations RACT certification'') and on September 1, 2021, adopted negative declarations and revised Rule 336, ''Surface Coating Operations and Industrial Adhesive Application Process.'' On June 30, 2021, ADEQ submitted the aerospace operations RACT certification and on September 17, 2021, ADEQ submitted the revised Rule 336 and negative declarations to the EPA for approval into the Arizona SIP (''2021 RACT Submittal''). The revised rule, negative declarations, and RACT certification are intended to address the disapproval issues under title I, part D that we identified in our 2017 RACT Submittal action. In the Proposed Rules section of this **Federal Register**, we have proposed approval of MCAQD Rule 336, the negative declarations, and the County's aerospace operations RACT certification. Based on this proposed approval action, we are also making this interim final determination, effective on publication, to defer imposition of the offset sanctions and highway sanctions that were triggered by our partial disapproval of the 2017 RACT Submittal because we believe that the 2021 RACT Submittal corrects the deficiencies that triggered such sanctions.[1]

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed full approval of MCAQD Rule 336, the negative declarations, and the aerospace operations RACT certification in the 2021 RACT Submittal with respect to the title I, part D deficiencies identified in our 2017 RACT Submittal action, we would take final action to lift this deferral of sanctions under 40 CFR 52.31. If no comments are submitted that change our assessment, then sanctions and sanction clocks triggered by our 2017 RACT Submittal action would be permanently terminated on the effective date of our final approval of MCAQD Rule 336, the negative declarations, and the aerospace operations RACT certification.

## II. EPA Action

We are making an interim final determination to defer CAA section 179 sanctions associated with our partial disapproval action on January 7, 2021, of MCAQD's RACT SIP and Rule 336 with respect to the requirements of part D of title I of the CAA. This determination is based on our concurrent proposal to fully approve MCADQ Rule 336, the negative declarations, and the aerospace operations RACT certification, which resolve the deficiencies that triggered sanctions under section 179 of the CAA.

Because the EPA has preliminarily determined that MCAQD's 2021 RACT Submittal addresses the deficiencies under part D of title I of the CAA identified in our 2017 RACT Submittal action and are fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes

[1] 40 CFR 52.31(d)(2).

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. The EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has submitted a revision to the SIP that corrects deficiencies under part D of the Act that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State's submittal. 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

This action defers sanctions and imposes no additional requirements. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).
- Is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- 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 has made a good cause finding for this rule 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 October 3, 2022. Filing a petition for reconsideration by the EPA Administrator of this final rule does not affect the finality of this rule 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, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 27, 2022.

**Martha Guzman Aceves,**

*Regional Administrator, Region IX.*

[FR Doc. 2022–16740 Filed 8–3–22; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2022–0609; FRL–10025–02–R9]**

## Determination To Defer Sanctions; Arizona; Maricopa County; Reasonably Available Control Technology—Combustion Sources

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

**ACTION:** Interim final determination.

**SUMMARY:** The Environmental Protection Agency (EPA) is making an interim final determination that the Arizona Department of Environmental Quality (ADEQ) has submitted revised rules on behalf of the Maricopa County Air Quality Department (MCAQD or County) that correct deficiencies in its Clean Air Act (CAA or Act) state implementation plan (SIP) provisions concerning reasonably available control technology (RACT) ozone nonattainment requirements for controlling emissions of oxides of nitrogen ($NO_X$) from combustion equipment and internal combustion engines. This determination is based on a proposed approval, published elsewhere in this **Federal Register**, of MCAQD's Rules 323 and 324 which regulate these source categories. The effect of this interim final determination is that the imposition of sanctions that were triggered by two prior disapprovals by the EPA, the first in 2020 for these two rules, and the second in 2021 for the County's 2017 determination that it was implementing RACT for major sources of $NO_X$, are now deferred. If the EPA finalizes its approval of MCAQD's submission, relief from these sanctions will become permanent.

**DATES:** This rule is effective on August 4, 2022. However, comments will be accepted on or before September 6, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0609 at *https://www.regulations.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish

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

**FOR FURTHER INFORMATION CONTACT:** Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3073 or by email at *gong.kevin@epa.gov*.

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

## Table of Contents



## I. Background

On July 20, 2020 (85 FR 43692), the EPA issued a rule promulgating final disapproval and conditional approvals for the MCAQD regulations listed in Table 1 that had been submitted by the ADEQ to the EPA for inclusion into the Arizona SIP.

TABLE 1—COUNTY RULES WITH PREVIOUS EPA ACTION

| Rule No. | Rule title | Revised | Submitted | EPA action in 2020 |
|---|---|---|---|---|
| 322 | Power Plant Operations | November 2, 2016 | June 22, 2017 | Disapproval. |
| 323 | Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources. | November 2, 2016 | June 22, 2017 | Conditional Approval. |
| 324 | Stationary Reciprocating Internal Combustion Engines (RICE). | November 2, 2016 | June 22, 2017 | Conditional Approval. |

Areas classified as ''Moderate'' for nonattainment for an ozone standard must implement reasonably available control technology (RACT) for major sources of $NO_X$ and volatile organic compounds. The Phoenix-Mesa area is classified as ''Moderate'' nonattainment for the 2008 ozone standard. The 2020 action on the regulations in Table 1 supported our subsequent rulemaking on the requirement that the MCAQD demonstrate their implementation of RACT, in a submittal called a ''RACT SIP,'' for emissions sources in ozone nonattainment areas under the Act, specifically for major sources of $NO_X$.[1] In the 2020 final rule, we determined that the submitted County rules included several deficiencies that precluded our approval of the rules into the SIP, and thus the County failed to implement RACT for major sources of $NO_X$. Therefore, our 2021 action on the RACT SIP included a disapproval of the SIP revision under title I, part D of the Act, relating to requirements for nonattainment areas. Pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31, this disapproval action on the RACT SIP element under title I, part D started a sanctions clock for imposition of offset sanctions 18 months after the action's effective date of February 8, 2021, and highway sanctions 6 months later.

On June 23, 2021, the MCAQD revised Rules 323 and 324 and on June 24, 2021, ADEQ submitted the SIP revision to the EPA for approval into the Arizona SIP as described in Table 2 below.

TABLE 2—SUBMITTED RULES

| Rule No. | Rule title | Revised | Submitted |
|---|---|---|---|
| 323 | Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources | June 23, 2021 | June 30, 2021. |
| 324 | Stationary Reciprocating Internal Combustion Engines (RICE) | June 23, 2021 | June 30, 2021. |

The revised rules in Table 2 are intended to meet the commitments to revise the rules we had previously based our conditional approval on in our 2020 action. In the Proposed Rules section of this **Federal Register**, we have proposed approval of the revised MCAQD Rules 323 and 324. Based on this proposed approval action (and our proposed action approving Rule 322[2] into the Arizona SIP that regulates other major sources of $NO_X$ at power plants, which are not addressed by Rules 323 or 324), we are also taking this interim final determination, effective on publication, to defer imposition of the offset sanctions and highway sanctions that were triggered by our 2021 action's disapproval of the major sources of $NO_X$ RACT element, because we believe that the submittal corrects the deficiencies that triggered such sanctions.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed full approval of MCAQD's submittal demonstrating RACT for major sources of $NO_X$ with respect to the title I, part D deficiencies identified in our 2021 action, we would take final action to lift this deferral of sanctions under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks triggered by our 2021 action would be permanently terminated on the effective date of our final approval of the major sources of $NO_X$ RACT element.

[1] See, 86 FR 971 published on January 7, 2021.

[2] February 8, 2022 (87 FR 7042).

## II. The EPA's Evaluation and Action

We are making an interim final determination to defer CAA section 179 sanctions associated with our disapproval action on January 7, 2021, of MCAQD's RACT demonstration for major sources of $NO_X$ with respect to the requirements of part D of title I of the CAA. This determination is based on our previous proposed approval of Rule 322 and this concurrent proposal to fully approve Rules 323 and 324, which resolves the remaining deficiencies that triggered sanctions under section 179 of the CAA.

Because the EPA has preliminarily determined that MCAQD's submittal of Rules 322, 323 and 324 address the conditional approval issues and deficiencies under part D of title I of the CAA identified in our 2020 and 2021 actions and is fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is 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. The EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has submitted a revision to the SIP that corrects deficiencies under part D of the Act that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State's submittal. 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

This action defers sanctions and imposes no additional requirements. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).
- Is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- Is subject to the Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.,* 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 rule 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 October 3, 2022. Filing a petition for reconsideration by the EPA Administrator of this final rule does not affect the finality of this rule 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, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: July 27, 2022.

**Martha Guzman Aceves,**

*Regional Administrator, Region IX.*

[FR Doc. 2022–16493 Filed 8–3–22; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2022–0325; FRL–9983–01–OCSPP]**

### IN–11693: Oxirane, 2-Methyl-, Polymer With Oxirane, di-(9Z)-9-Octadecenoate; Tolerance Exemption

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate (CAS Reg. No. 67167–17–3) average number molecular weight (in amu), 2500 when used as an inert ingredient in a pesticide chemical formulation. Ethox Chemicals, LLC, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate on food or feed commodities.

**DATES:** This regulation is effective August 4, 2022. Objections and requests for hearings must be received on or before October 3, 2022, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0325, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Marietta Echeverria, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this action apply to me?*

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

### *C. Can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0325 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before October 3, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0325, by one of the following methods.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/contacts.html.*

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

## II. Background and Statutory Findings

In the **Federal Register** of May 20, 2022 (87 FR 30855) (FRL–9410–13), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–11693) filed by Ethox Chemicals, LLC (1801 Perimeter Road, Greenville, SC 29605). The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate (CAS Reg. No. 67167–17–3). That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

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

## III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the

relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize. Although hydrolysis is expected in the environment to yield oleic acid and ethylene oxide/propylene oxide (E.O./PO) copolymer, the E.O./PO copolymer portion is not anticipated to further biodegrade.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons. Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a $CF_3$- or longer chain length as listed in 40 CFR 723.250(d)(6). Additionally, the polymer also meets as required the following exemption criteria: specified in 40 CFR 723.250(e):

The number average molecular weight is greater than 1,000 and less than 10,000 Daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000 and the polymer does not contain any reactive functional groups as specified in 40 CFR 723.250.

Thus, oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate.

## IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate is 2,500 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate conforms to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

## V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate to share a common mechanism of toxicity with any other substances, and oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticides/cumulative.*

## VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

## VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate.

## VIII. Other Considerations

*Analytical Enforcement Methodology*

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

## IX. Conclusion

Accordingly, EPA finds that exempting residues of oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate from the requirement of a tolerance will be safe.

## X. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety

Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

### XI. Congressional Review Act

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

### List of Subjects in 40 CFR Part 180

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

Dated: July 27, 2022.

**Marietta Echeverria,**

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

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

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

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

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

■ 2. In § 180.960, add in alphabetical order the polymer ''Oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate'' to table 1 to read as follows:

**§ 180.960 Polymers; exemptions from the requirement of a tolerance.**

* * * * *

TABLE 1 TO 180.960

| Polymer | CAS No. |
|---|---|
| * * * * * * * | |
| Oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate, minimum number average molecular weight (in amu), 2500 | 67167–17–3 |
| * * * * * * * | |

[FR Doc. 2022–16645 Filed 8–3–22; 8:45 am]

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## SURFACE TRANSPORTATION BOARD

### 49 CFR Part 1249

**[Docket No. EP 769]**

## URCS Data Reporting

**AGENCY:** Surface Transportation Board.

**ACTION:** Final rule.

**SUMMARY:** The Surface Transportation Board adopts a final rule to codify a longstanding voluntary practice whereby Class I carriers, through the Association of American Railroads (AAR), have annually reported tare weight and loss and damage data for use in the Board's Uniform Railroad Costing System (URCS). Under the final rule, Class I carriers may choose to provide tare weight and loss and damage data through AAR or to file the data with the Board individually.

**DATES:** This rule is effective on August 13, 2022.

**FOR FURTHER INFORMATION CONTACT:** Pedro Ramirez at (202) 245–0333. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** The Board is authorized, under 49 U.S.C. 11161, to maintain cost accounting rules for rail carriers. In 1989, the Board's predecessor, the Interstate Commerce Commission, adopted URCS as its general purpose costing system. *Adoption of the Unif. R.R. Costing Sys. as a Gen. Purpose Costing Sys. for All Regul. Costing Purposes,* 5 I.C.C.2d 894 (1989). The Board uses URCS for a variety of regulatory functions. URCS is used in rate reasonableness proceedings as part of the initial market dominance determination, and at later stages is used in parts of the Board's determination as to whether the challenged rate is reasonable and, when warranted, the maximum rate prescription. URCS is also used, among other things, to develop variable costs for making cost determinations in abandonment proceedings, provide the railroad industry and shippers with a standardized costing model, cost the Board's Carload Waybill Sample to develop industry cost information, and provide interested parties with basic cost information regarding railroad industry operations.

As a longstanding practice, AAR has collected tare weight and loss and damage data for use in URCS from Class I carriers and voluntarily provided the

data annually to the Board. While the Board appreciates AAR's longstanding voluntary practice, to ensure the continued availability of the data, which are essential components of URCS,[1] the Board will formalize the reporting requirement and require Class I carriers to provide tare weight and loss and damage data on an annual basis, as described below. The Board has the statutory authority to obtain data from carriers and associations under 49 U.S.C. 11144 and 11145.

**Background**

*1. Notice of Proposed Rulemaking*

On April 29, 2022, the Board issued a notice of proposed rulemaking in this docket. *URCS Data Reporting* (*NPRM*), EP 769 (STB served Apr. 29, 2022). The proposed rule is consistent with Class I carriers' current and longstanding practice of providing summarized tare weight and loss and damage data to the Board through AAR. AAR's practice has been to provide the average tare weight by AAR car type code [2] in tons and pounds, as well as the number of cars. Additionally, AAR has historically provided summarized annual loss and damage expenses [3] and the number of tons originated by commodity. Class I carriers are required to report, quarterly and annually, the number of tons originated on their rail lines by commodity through the freight commodity statistics (FCS) report. 49 CFR 1248.2. AAR's practice has been to provide the Board with its own version of the FCS report that aggregates data from the Class I carriers. AAR has also provided the loss and damage per ton, which is calculated by dividing loss and damage expenses by the number of tons originated by commodity. The Board proposed that Class I carriers may continue to provide tare weight and loss and damage data in this format.

The Board also proposed an alternative to allow Class I carriers to individually report tare weight and loss and damage data directly to the Board. Under this option, Class I carriers would provide the tare weight totals by AAR car type code in tons and pounds and the number of cars, and the Board would calculate the average tare weight. For loss and damage data, Class I carriers would provide their total annual loss and damage expenses, number of tons originated, and loss and damage per ton by commodity using the specific commodity groupings identified in the proposed Annual Report of Loss and Damage Data, *see NPRM,* EP 769, slip op. at 11–13, and the Board would consolidate the data to calculate the loss and damage per ton for all Class I carriers.

To ensure the timely availability of data for use in URCS, the Board proposed to require Class I carriers, either individually or through AAR, to file the annual tare weight and loss and damage data with the Board within 60 days after the end of each calendar year. Additionally, to facilitate the prompt receipt of 2021 data for use in URCS this year, the Board proposed to require Class I carriers, either individually or through AAR, to file tare weight and loss and damage data for the year 2021 within 30 days of the effective date of the final rule.

To provide additional guidance, the Board proposed sample forms, attached as Appendices B (for reporting through AAR) and C (for reporting individually) to the *NPRM,* that Class I carriers may use to file tare weight and loss and damage data. The Board explained that its Office of Economics (OE) would make technical changes to the format of these forms in the future as necessary.[4]

The Board invited comments on the proposed rule. Comments were due by June 13, 2022; replies were due by June 28, 2022. The Board received comments from AAR and the Western Coal Traffic League (WCTL), and a reply from AAR.

*2. Comments and Reply*

AAR supports the Board's proposal to codify the voluntary practice and states that it ''plans to continue . . . to submit the information on behalf of the Class I railroads.'' (AAR Comments 1, 3.) AAR, however, proposes one modification to the submission deadline for loss and damage data because the Board's proposal to require submission of loss and damage data within 60 days of the end of the calendar year may not be feasible. (*Id.* at 1–2.) AAR explains that it uses four inputs to calculate loss and damage data,[5] not all of which are available until March 31. (*Id.* at 2.) Accordingly, AAR proposes that the Board move the submission deadline to May 31 to allow AAR 60 days from the date at which AAR receives the last input to verify, aggregate, and calculate the data and prepare the report. (*Id.* at 2–3.)

AAR also clarifies the parameters of the data it proposes to submit on behalf of CN and CP. (*Id.* at 3.) AAR explains that, in the past, CN and CP have provided AAR with loss and damage data on a consolidated basis for their operations. (*Id.*) However, under the Board's proposal, CN and CP would need to separate out loss and damage data for their U.S. operations. (*Id.* at 4.) To ensure that only U.S. data is provided, AAR explains that it would provide loss and damage data for those movements that originated in the U.S. (with destinations in the U.S. and Canada) and exclude those movements that originated in Canada. (*Id.*) AAR asserts that such practice is consistent with the Carmack Amendment and conforms to the proposed rule's focus on tons originated. (*Id.*)

WCTL generally supports the Board's proposal but requests that the Board require that the data be reported by the Class I carriers individually. (WCTL Comments 1.) WCTL argues that allowing AAR to submit data on behalf of the Class I carriers may undermine accuracy. For example, WCTL contends that if one carrier has lower tare weights for a particular car type, then ''the use of aggregate data will suppress that carrier's efficiencies,'' and, if one carrier experiences major loss and damage, the ''use of aggregate data will cause those costs to be socialized.'' (*Id.* at 2.)

In response to WCTL, AAR argues that the Board should continue to permit AAR to report the data in the aggregate. (AAR Reply 2.) AAR contends that its longstanding practice of providing aggregated data is more efficient for the Board since the individual reporting option would require the Board to collect, calculate, and aggregate the data. (*Id.*) Furthermore, AAR asserts that the aggregated data option is consistent with the purpose of URCS to generate

[1] Tare weights are used in URCS to calculate gross ton-mile costs, while loss and damage data are used to calculate the total variable shipment costs of each rail movement. The Railroad Cost Program User Manual is available on the Board's website at *www.stb.gov/reports-data/uniform-rail-costing-system/.*

[2] AAR car type codes include freight car types and intermodal equipment: A-Equipped box car, B-Unequipped box car. C-Covered hopper car, D-Locomotive, E-Equipped gondola, F-Flat car, G-Unequipped gondola, H-Unequipped hopper, J-Gondola car, K-Equipped hopper car, L-Special type car, M-Maintenance of way, scale, passenger, caboose, and end-of-train information systems, P-Conventional intermodal car, Q-Lighter weight, low-profile intermodal car, R-Refrigerator car, S-Stack car, T-Tank car, U-Container, V-Vehicular flat car, Z-Trailer.

[3] Historically, AAR has not reported loss and damage expenses for Grand Trunk Corporation (including U.S. affiliates of Canadian National Railway Company) (CN) and Soo Line Corporation (including U.S. affiliates of Canadian Pacific Railway Company) (CP). The Board proposed to require reporting from all Class I carriers because the Board's collection of loss and damage expenses from CN and CP for inclusion in URCS would allow the Board to provide more accurate cost estimates.

[4] If any technical changes were made, OE would post the revised templates to the Board's website and so notify the Class I carriers.

[5] AAR states that these inputs include the number of tons originated, the loss and damage payments and operating revenues, average tare weight of cars, and the number of cars by AAR car type. (AAR Comments 2.)

system averages for the industry, rather than monitor the operating practices of individual railroads. (*Id.*)

**Final Rule**

The Board will adopt the regulations as proposed in the *NPRM* with one modification and one clarification proposed by AAR, which are both reasonable and unopposed. First, the Board will modify the submission deadline for loss and damage data, from 60 days after the end of the calendar year to no later than May 31 of each year, to allow AAR sufficient time to collect the inputs, and verify and calculate the data. The Board will likewise modify the deadline for submission of tare weight data, from 60 days after the end of the calendar year to no later than May 31 of each year, so that both data sets are due simultaneously. Second, the Board clarifies that AAR's proposed methodology to ensure that the loss and damage data provided for CN and CP comprise only their U.S. operations (by including movements that originate in the U.S. and excluding movements that originate in Canada) is reasonable. With each annual submission of loss and damage data, AAR (or CN and CP, if the data is submitted by the carriers) will be required to explain the methodology by which Canadian operations are excluded so that the Board will be aware of any changes in that methodology.[6]

The final rule will retain the option for AAR to report the data for the Class I carriers in the aggregate. WCTL has provided the Board with no basis to conclude that the manner of the submission of the data (aggregated or individualized) would affect the accuracy of the collection. Moreover, the purpose of URCS is to provide system-average costing information for each railroad. Accordingly, the Board would have to undertake the additional burden of aggregating the data if they were submitted individually for each carrier. As discussed above, AAR's longstanding practice of collecting tare weight and loss and damage data from Class I carriers and providing aggregated data to the Board has worked successfully for decades and reduced administrative burdens for the Board. WCTL has not presented a compelling reason to change the Board's proposal and longstanding practice.

In the *NPRM,* the Board proposed to require Class I carriers, either individually or through AAR, to file tare weight and loss and damage data for the year 2021 within 30 days of the effective date of the final rule. To ensure the timely availability of data for use in URCS this year, the Board finds good cause to waive the 30-day effective period for the final rule so that the final rule will be effective 15 days after issuance. *See* 5 U.S.C. 553(d) (stating that an agency may waive the 30-day effective period for a final rule ''for good cause found and published with the rule''). AAR will have 45 days after issuance of the final rule to submit tare weight and loss and damage data to the Board for the year 2021. Since AAR has the inputs for the data collection by March 31 of each year, this deadline should not be burdensome.

The final rule, reflecting the modification to the proposed rule discussed above, is set forth below.

*Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to (1) assess the effect that its regulation will have on small entities, (2) analyze effective alternatives that may minimize a regulation's impact, and (3) make the analysis available for public comment. Section 601–604. In its final rule, the agency must either include a final regulatory flexibility analysis, section 604(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities,'' section 605(b). Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

The final rule will not have a significant impact on a substantial number of small entities within the meaning of the RFA[7] because it is limited to Class I carriers. Accordingly, the Board certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities as defined by the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

*Paperwork Reduction Act.* In the *NPRM,* the Board sought comments pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521, Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d), and Appendix D, about the impact of the new collection for URCS Data Reporting (OMB Control No. 2140–XXXX), concerning (1) whether the proposed collection of information, as described in Appendix D of the *NPRM,* is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate.

The Board estimated in the *NPRM* that the proposed new requirements would include a total annual hourly burden of 28 hours and a one-time, start-up hourly burden of 63 hours. There were no proposed non-hourly burdens associated with this collection. No comments were received pertaining to the collection of this information under the PRA.

The new collection will be submitted to OMB for review as required under the PRA, 44 U.S.C. 3507(d), and 5 CFR 1320.11.

[6] If, in the future, a U.S. railroad's operations extend into Mexico, then the Board expects that AAR (or the individual carrier, if the data is submitted by the carriers) would exclude those Mexican operations in the same manner as the exclusion of CN and CP's Canadian operations.

[7] For purposes of the RFA analysis, the Board defines a small entity as only including those rail carriers classified as Class III carriers under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regul. Flexibility Act,* EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting). Class III carriers have annual operating revenues of $40.4 million or less in 2019 dollars ($42,370,575 when adjusted for inflation using 2021 data). Class II carriers have annual operating revenues of less than $900 million in 2019 dollars ($943,898,958 when adjusted for inflation using 2021 data). The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its website. 49 CFR 1201.1–1; *Indexing the Ann. Operating Revenues of R.Rs.,* EP 748 (STB served June 29, 2022).

In the *NPRM,* footnote 5 on page 4 incorrectly indicated that the revenue thresholds for Class II and Class III carriers had been adjusted for inflation to the base year of 1991. On April 5, 2021, the Board issued a Final Rule in *Montana Rail Link, Inc.—Petition for Rulemaking—Classification of Carriers,* Docket No. EP 763, in which the revenue classification level for Class I railroads was raised from $250 million (1991 dollars) to $900 million (2019 dollars) effective for the reporting year beginning January 1, 2020. The Class II threshold was converted and rounded from $20 million (1991 dollars) to $40.4 million (2019 dollars). The corresponding footnote in this decision has been corrected to reflect the new base year of 2019.

*Congressional Review Act.* Pursuant to the Congressional Review Act, 5 U.S.C. 801–808, the Office of Information and Regulatory Affairs has designated this rule as a non-major rule, as defined by 5 U.S.C. 804(2).

Because the data required by the final rule is necessary to timely process the Board's URCS calculations, the Board finds good cause to make this rule effective on less than the 30 days' notice required under 5 U.S.C. 553(d).

**List of Subjects in 49 CFR Part 1249**

Railroads, Reporting and recordkeeping requirements.

*It is ordered:*

1. The Board adopts the final rule as set forth in this decision and the Appendices.

2. Notice of the final rule will be published in the **Federal Register**.

3. The final rule is effective on August 13, 2022.

4. Class I carriers, either individually or through AAR, shall file tare weight and loss and damage data for the year 2021 by September 12, 2022.

5. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

6. This decision is effective on its service date.

Decided: July 28, 2022.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

**Aretha Laws-Byrum,**

*Clearance Clerk.*

For the reasons set forth in the preamble, the Surface Transportation Board amends title 49, chapter X, subchapter C, of the Code of Federal Regulations by adding part 1249, consisting of §§ 1249.1 and 1249.2, to read as follows:

## PART 1249—REPORTS OF TARE WEIGHT AND LOSS AND DAMAGE DATA

**Authority:** 49 U.S.C. 1321, 11144, 11145.

### § 1249.1 Annual Report of Tare Weight Data.

Class I carriers, either individually or through AAR, shall annually file tare weight data, as detailed in the Annual Report of Tare Weight Data, with the Surface Transportation Board's Office of Economics no later than May 31 of each year. Forms and instructions are available at *www.stb.gov* and may also be obtained by contacting the Office of Economics.

### § 1249.2 Annual Report of Loss and Damage Data.

Class I carriers, either individually or through AAR, shall annually file loss and damage data, as detailed in the Annual Report of Loss and Damage Data, with the Surface Transportation Board's Office of Economics no later than May 31 of each year. Forms and instructions are available at *www.stb.gov* and may also be obtained by contacting the Office of Economics.

**Note:** The following appendices will not appear in the Code of Federal Regulations.

## Appendix A—Sample Forms for AAR Reporting

*Annual Report of Loss and Damage Data Instructions*

This report is applicable to all Class I railroads.

1. Update current reporting year.

2. For each standard transportation commodity code (STCC) identified, report total annual loss and damage expenses, the number of tons originated, and the loss and damage per ton.

3. Report the number of tons originated for each commodity for all railroads.

4. The loss and damage per ton is calculated by dividing loss and damage expenses by the number of tons originated by commodity. Round to the thousandths place.

5. For Commodity 49 Hazmat, only report data in the loss and damage column.

6. Explain the methodology by which non-U.S. operations, if any, are excluded.

BILLING CODE 4915–01–P

**SURFACE TRANSPORTATION BOARD**

**ANNUAL REPORT OF LOSS AND DAMAGE DATA**

All Class I Railroads

For the year ending December 31, 20__

| STCC | Commodity | Loss & Damage | Number of Tons Originated | Loss & Damage Per Ton |
|---|---|---|---|---|
| 01 | **FARM PRODUCTS** | | | |
| | 0113 Grains | | | |
| | 01195 Potatoes | | | |
| | 012 Fresh Fruits/Tree Nuts | | | |
| | 013 Fresh Vegetables | | | |
| 10 | **METALLIC ORES** | | | |
| 11 | **COAL** | | | |
| 14 | **NONMETALLIC MINERALS** | | | |
| 20 | **FOOD & KINDRED PRODUCTS** | | | |
| | 2011 Fresh Meat | | | |
| | 202 Dairy Products | | | |
| | 203 Canned/Preserved Fruits/Vegetable | | | |
| | 204 Grain Mill Products | | | |
| | 2041 Flour | | | |
| | 2042 Prep/Canned Animal Feeds | | | |
| | 2043 Cereal Preparations | | | |
| | 2044 Milled Rice/Flour/Meal | | | |
| | 2045 Prepared Flour | | | |
| | 2046 Corn Milling Products | | | |
| | 2062 Sugar, Refined | | | |
| | 20821 Beer/Ale/Porter/Stout | | | |
| | 2084 Wines/Brandy/Brandy Spirits | | | |
| | 20851 Distilled/Blended Liquors | | | |
| | 209 Misc. Food Preparations | | | |
| 21 | **TOBACCO PRODUCTS** | | | |
| 24 | **LUMBER & WOOD PRODUCTS** | | | |
| | 2421 Lumber/Dimension Stock | | | |
| | 2432 Veneer/Plywood | | | |
| 25 | **FURNITURE & FIXTURES** | | | |
| 26 | **PULP/PAPER/ALLIED PRODUCTS** | | | |
| | 26211 Newsprint | | | |
| | 26213 Printing Paper | | | |
| | 263 Paperboard/Pulpboard/Fiberboard | | | |
| | 264 Conv. Paper/Paperboard Products | | | |
| | 26471 Sanitary Tissues/Health Products | | | |
| 28 | **CHEMICALS & ALLIED PRODUCTS** | | | |
| | 281 Industrial Chemicals | | | |
| | 2812 Sodium/Potassium | | | |
| | 282 Plastic Materials/Synthetic Resins | | | |
| | 289 Miscellaneous Chemical Products | | | |
| 29 | **PETROLEUM & COAL PRODUCTS** | | | |
| 30 | **RUBBER & MISC. PLASTICS** | | | |
| | 301 Tires/Inner Tubes | | | |
| 32 | **STONE/CLAY/GLASS/CONC. PROD.** | | | |
| | 321 Flat Glass | | | |
| | 3295 Nonmetallic Minerals/Earths | | | |
| 33 | **PRIMARY METAL PRODUCTS** | | | |
| | 3312 Primary Iron/Steel Products | | | |
| | 3352 Aluminum/ABA Basic Shapes | | | |
| 34 | **FABRICATED METAL PRODUCTS** | | | |
| | 344 Fabric. Structural Metal Products | | | |
| 35 | **MACHINERY, EXCEPT ELECTRIC** | | | |
| | 351 Engines/Turbines | | | |
| | 352 Farm Machinery/Equipment | | | |
| | 353 Constr./Mining/Material Handling | | | |
| 36 | **ELECTRIC MACH./EQUIP/SUPPLIES** | | | |
| | 361 Electrical Trans./Distr. Equipment | | | |
| | 363 Household Appliances | | | |
| | 365 Radio/TV Sets | | | |
| 37 | **TRANSPORTATION EQUIPMENT** | | | |
| | 37111 Automobiles | | | |
| | 37112 Truck Tractors/Trucks | | | |
| | 3714 Motor Vehicle Parts/Access. | | | |
| 44 | **FREIGHT FORWARDER TRAFFIC** | | | |
| 45 | **SHIPPER ASSN. TRAFFIC** | | | |
| 46 | **MISC. MIXED SHIPMENTS** | | | |
| | 461 Miscellaneous Mixed Shipments | | | |
| | ALL OTHERS | | | |
| 49 | **HAZMAT** | | † | – |

† Do not report tons for Commodity 49 Hazmat.

*Annual Report of Tare Weight Data Instructions*

1. For each four-digit AAR Car Type Code, report the average tare weight for all Class I railroads by tons and pounds, and the number of cars.

2. Report detailed data for freight car types and intermodal equipment codes: A, B, C, D, E, F, G, H, J, K, L, M, P, Q, R, S, T, U, V, and Z.

**SURFACE TRANSPORTATION BOARD**

**ANNUAL REPORT OF TARE WEIGHT DATA**

All Class I Railroads

For the year ending December 31, 20__

| AAR Car Type Code | Average Tare Weight (Tons) | Cars | Average Tare Weight (Pounds) |
|---|---|---|---|

## Appendix B—Sample Forms for Individual Reporting

*Annual Report of Loss and Damage Data Instructions*

This report is applicable to all Class I railroads.

1. Update current reporting year.

2. For each standard transportation commodity code (STCC) identified, report total annual loss and damage expenses, the number of tons originated, and the loss and damage per ton.

3. Report the number of tons originated for each commodity for all railroads.

4. The loss and damage per ton is calculated by dividing loss and damage expenses by the number of tons originated by commodity. Round to the thousandths place.

5. For Commodity 49 Hazmat, only report data in the loss and damage column.

6. Explain the methodology by which non-U.S. operations, if any, are excluded.

**SURFACE TRANSPORTATION BOARD**

**ANNUAL REPORT OF LOSS AND DAMAGE DATA**

Railroad: _____

For the year ending December 31, 20__

| STCC | Commodity | Loss & Damage | Number of Tons Originated | Loss & Damage Per Ton |
|---|---|---|---|---|
| 01 | **FARM PRODUCTS** | | | |
| | 0113 Grains | | | |
| | 01195 Potatoes | | | |
| | 012 Fresh Fruits/Tree Nuts | | | |
| | 013 Fresh Vegetables | | | |
| 10 | **METALLIC ORES** | | | |
| 11 | **COAL** | | | |
| 14 | **NONMETALLIC MINERALS** | | | |
| 20 | **FOOD & KINDRED PRODUCTS** | | | |
| | 2011 Fresh Meat | | | |
| | 202 Dairy Products | | | |
| | 203 Canned/Preserved Fruits/Vegetable | | | |
| | 204 Grain Mill Products | | | |
| | 2041 Flour | | | |
| | 2042 Prep/Canned Animal Feeds | | | |
| | 2043 Cereal Preparations | | | |
| | 2044 Milled Rice/Flour/Meal | | | |
| | 2045 Prepared Flour | | | |
| | 2046 Corn Milling Products | | | |
| | 2062 Sugar, Refined | | | |
| | 20821 Beer/Ale/Porter/Stout | | | |
| | 2084 Wines/Brandy/Brandy Spirits | | | |
| | 20851 Distilled/Blended Liquors | | | |
| | 209 Misc. Food Preparations | | | |
| 21 | **TOBACCO PRODUCTS** | | | |
| 24 | **LUMBER & WOOD PRODUCTS** | | | |
| | 2421 Lumber/Dimension Stock | | | |
| | 2432 Veneer/Plywood | | | |
| 25 | **FURNITURE & FIXTURES** | | | |
| 26 | **PULP/PAPER/ALLIED PRODUCTS** | | | |
| | 26211 Newsprint | | | |
| | 26213 Printing Paper | | | |
| | 263 Paperboard/Pulpboard/Fiberboard | | | |
| | 264 Conv. Paper/Paperboard Products | | | |
| | 26471 Sanitary Tissues/Health Products | | | |
| 28 | **CHEMICALS & ALLIED PRODUCTS** | | | |
| | 281 Industrial Chemicals | | | |
| | 2812 Sodium/Potassium | | | |
| | 282 Plastic Materials/Synthetic Resins | | | |
| | 289 Miscellaneous Chemical Products | | | |
| 29 | **PETROLEUM & COAL PRODUCTS** | | | |
| 30 | **RUBBER & MISC. PLASTICS** | | | |
| | 301 Tires/Inner Tubes | | | |
| 32 | **STONE/CLAY/GLASS/CONC. PROD.** | | | |
| | 321 Flat Glass | | | |
| | 3295 Nonmetallic Minerals/Earths | | | |
| 33 | **PRIMARY METAL PRODUCTS** | | | |
| | 3312 Primary Iron/Steel Products | | | |
| | 3352 Aluminum/ABA Basic Shapes | | | |
| 34 | **FABRICATED METAL PRODUCTS** | | | |
| | 344 Fabric. Structural Metal Products | | | |
| 35 | **MACHINERY, EXCEPT ELECTRIC** | | | |
| | 351 Engines/Turbines | | | |
| | 352 Farm Machinery/Equipment | | | |
| | 353 Constr./Mining/Material Handling | | | |
| 36 | **ELECTRIC MACH./EQUIP/SUPPLIES** | | | |
| | 361 Electrical Trans./Distr. Equipment | | | |
| | 363 Household Appliances | | | |
| | 365 Radio/TV Sets | | | |
| 37 | **TRANSPORTATION EQUIPMENT** | | | |
| | 37111 Automobiles | | | |
| | 37112 Truck Tractors/Trucks | | | |
| | 3714 Motor Vehicle Parts/Access. | | | |
| 44 | **FREIGHT FORWARDER TRAFFIC** | | | |
| 45 | **SHIPPER ASSN. TRAFFIC** | | | |
| 46 | **MISC. MIXED SHIPMENTS** | | | |
| | 461 Miscellaneous Mixed Shipments | | | |
| | ALL OTHERS | | | |
| 49 | **HAZMAT** | | † | – |

† Do not report tons for Commodity 49 Hazmat.

*Annual Report of Tare Weight Data Instructions*

1. For each four-digit AAR Car Type Code, report the total tare weight in tons and pounds, and the number of cars.

2. Report detailed data for freight car types and intermodal equipment codes: A, B, C, D, E, F, G, H, J, K, L, M, P, Q, R, S, T, U, V, and Z.

**SURFACE TRANSPORTATION BOARD**

**ANNUAL REPORT OF TARE WEIGHT DATA**

Railroad: _____

For the year ending December 31, 20__

| AAR Car Type Code | Total Tare Weight (Tons) | Cars | Total Tare Weight (Pounds) |
|---|---|---|---|

[FR Doc. 2022–16598 Filed 8–3–22; 8:45 am]

**BILLING CODE 4915–01–C**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 220502–0109]**

**[TID 0648–XC191]**

## Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fishery; 2022 Longfin Squid Trimester II Quota Harvested

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

**ACTION:** Temporary rule; reduction of possession limit.

**SUMMARY:** Beginning August 5, 2022, and ending August 31, 2022, Federal longfin squid vessel permit holders are prohibited from fishing for, catching, possessing, transferring, or landing more than 250 lb (113.3 kg) of longfin squid per trip and landing such squid more than once per calendar day. This prohibition is required by regulation because NMFS projects that 90 percent of the 2022 annual Trimester II seasonal catch limit will have been caught by the effective date. In addition, based on this determination, other restrictions regarding catch of longfin squid by federally permitted *Illex* squid vessels and buying longfin squid by federally permit dealers go into place. This action is intended to prevent overharvest of longfin squid during Trimester II.

**DATES:** Effective 0001 hr local time, August 5, 2022, through August 31, 2022.

**FOR FURTHER INFORMATION CONTACT:** Aly Pitts, Fishery Management Specialist, (978) 281–9352.

**SUPPLEMENTARY INFORMATION:** The regulations at 50 CFR part 648 require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing, joint venture processing, and total allowable levels of foreign fishing for the species managed under the Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). The procedures for setting the annual initial specifications are described in § 648.22.

The 2022 longfin squid Trimester II quota was increased by 50 percent to account for the underage in the 2022 Trimester I catch. Trimester III quota for longfin squid will be available for harvest on September 1, 2022.

The regulations at § 648.24(a)(1) require that when the NMFS Administrator of the Greater Atlantic Region (Regional Administrator) projects longfin squid catch will reach 90 percent of the Trimester II quota designated in the Mackerel, Squid, and Butterfish FMP prior to August 15, NMFS must prohibit Federal longfin squid vessel permit holders from fishing for, catching, possessing, transferring, or landing more than 250 lb (113.3 kg) of longfin squid per trip and landing such squid more than once per calendar day for the remainder of the prohibition period. This type of prohibition effectively closes the directed squid fishery. The Regional Administrator monitors the longfin squid fishery catch in each trimester based on dealer reports, state data, and other available information. Upon the projection that 90 percent of a Trimester seasonal quota has been reached, NMFS must provide at least 72 hours of advance notice to the public that this determination has been made. NMFS also publishes in the **Federal Register** the date that the catch is projected to reach 90 percent of the quota, and the prohibitions on catch and landings for the remainder of Trimester II. In addition, upon this determination, vessels possessing a Tier 1 or 2 Federal Longfin Squid Moratorium permit that possesses 10,000 lb (4,536 kg) or more of *Illex* squid, fishing in the *Illex* Squid Exemption Area, as defined in Table 1 below and at § 648.23(a)(5), may possess up to 15,000 lb (6,803 kg) of longfin squid for a Tier 1 Longfin Squid Moratorium Permit and 5,000 lb (2,268 kg) for a Tier 2 Longfin Squid Moratorium Permit. If these vessels do not possess 10,000 lb (4.54 mt) of *Illex* squid, they are restricted to 250 lb (113.3 kg) of longfin squid. Once landward of the coordinates defining the *Illex* Squid Exemption Area, such vessels must stow all fishing gear, and render it not available for immediate use as defined in § 648.2, in order to possess more than 250 lb (113.3 kg) of longfin squid. Also, federally permitted dealers may not receive longfin squid from federally permitted longfin squid vessels that harvest more than 250 lb (113.3 kg) of longfin squid through 2400 hr local time, August 31, 2022, unless it is from a trip landed by a vessel that entered port before 0001 hr on the date of the closure, except that they may purchase up to 15,000 lb (6.80 mt) of longfin squid from permitted vessels on declared *Illex* squid trips fishing in the *Illex* Squid Exemption Area.

The Regional Administrator has determined, based on dealer reports and other available information, that the longfin squid fleet will catch 90 percent

of the total longfin squid Trimester II quota for the 2022 seasonal period from May 1, 2022, through August 31, 2022, by August 5, 2022. Therefore, effective 0001 hr local time, August 5, 2022, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 250 lb (113.3 kg) of longfin squid per trip and land such squid more than once per calendar day. In addition, vessels that have entered port before 0001 hr on August 5, 2022, may offload and sell more than 250 lb (113.3 kg) of longfin squid from that trip. Vessels possessing a Federal Tier 1 or 2 Longfin Squid Moratorium permit on directed *Illex* squid fishing trips (*i.e.,* possess over 10,000 lb (4.54 mt) of *Illex*) that are fishing in the *Illex* Squid Exemption Area, as defined in Table 1 below and at § 648.23(a)(5), may possess only up to 15,000 lb (6,803 kg) of longfin squid for a Tier 1 Longfin Squid Moratorium Permit and 5,000 lb (2,268 kg) for a Tier 2 Longfin Squid Moratorium Permit. Once landward of the coordinates defining the *Illex* Squid Exemption Area, such vessels must stow all fishing gear, and render it not available for immediate use as defined in § 648.2, in order to possess more than 250 lb (113.3 kg) of longfin squid. Also, federally permitted dealers may not receive longfin squid from federally permitted longfin squid vessels that harvest more than 250 lb (113.3 kg) of longfin squid through 2400 hr local time, August 31, 2022, unless it is from a trip landed by a vessel that entered port before 0001 hr on August 5, 2022, except that they may purchase up to 15,000 lb (6.80 mt) of longfin squid from permitted vessels on declared *Illex* squid trips fishing in the *Illex* Squid Exemption Area.

TABLE 1—ILLEX SQUID EXEMPTION AREA CO-ORDINATES

| North latitude | West longitude |
|---|---|
| 43°58.0′ | 67°22.0′ |
| 43°50.0′ | 68°35.0′ |
| 43°30.0′ | 69°40.0′ |
| 43°20.0′ | 70°00.0′ |
| 42°45.0′ | 70°10.0′ |
| 42°13.0′ | 69°55.0′ |
| 41°00.0′ | 69°00.0′ |
| 41°45.0′ | 68°15.0′ |
| 42°10.0′ | 67°10.0′ |
| 41°18.6′ | 66°24.8′ |
| 40°55.5′ | 66°38.0′ |
| 40°45.5′ | 68°00.0′ |
| 40°37.0′ | 68°00.0′ |
| 40°30.0′ | 69°00.0′ |
| 40°22.7′ | 69°00.0′ |
| 40°18.7′ | 69°40.0′ |
| 40°21.0′ | 71°03.0′ |
| 39°41.0′ | 72°32.0′ |
| 38°47.0′ | 73°11.0′ |
| 38°04.0′ | 74°06.0′ |
| 37°08.0′ | 74°46.0′ |
| 36°00.0′ | 74°52.0′ |
| 35°45.0′ | 74°53.0′ |
| 35°28.0′ | 74°52.0′ |

## Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest and impracticable. The longfin squid Trimester II fishery opened for the 2022 fishing year on May 1, 2022. Data and other information indicating the longfin squid fleet will have landed at least 90 percent of the 2022 Trimester II quota have only recently become available. Landings data is updated on a weekly basis, and NMFS monitors catch data on a daily basis as catch increases toward the limit. Further, high-volume catch and landings in this fishery increases total catch relative to the quota quickly. The regulations at § 648.24(a)(1) require such action to ensure that longfin squid vessels do not exceed the 2022 Trimester II quota. If implementation of this action is delayed to solicit prior public comment, the quota for this Trimester II may be exceeded, thereby undermining the conservation objectives of the FMP. If quotas are exceeded, the excess must also be deducted from a future Trimester and would reduce future fishing opportunities. Also, the public had prior notice and full opportunity to comment on this process when these provisions were put in place. Based on these considerations, NMFS further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: August 1, 2022.

**Jennifer M. Wallace,**

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

[FR Doc. 2022–16751 Filed 8–1–22; 4:15 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 87, No. 149
Thursday, August 4, 2022

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

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### 7 CFR Part 3555

**[Docket Number RHS–21–SFH–0017]**

**RIN 0575–AD08**

## Single Family Housing Guaranteed Loan Program

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

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Housing Service (RHS or Agency), a Rural Development agency within the United States Department of Agriculture, is proposing to amend its regulations that would grant to Delegated Lenders participating in the Single-Family Housing Guaranteed Loan Program (SFHGLP) the authority to make loans and issue the Loan Note Guarantees after closing using automated loan underwriting and closing systems.

**DATES:** Comments must be submitted on or before October 3, 2022.

**ADDRESSES:** Comments may be submitted electronically by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and in the ''Search for Rules, Proposed Rules, Notices or Supporting Documents'' box, enter the following docket number: (RHS–21–SFH–0017). To submit or view public comments, click ''Search'' button, select the ''Documents'' tab, then select the following document title: (Single Family Housing Guaranteed Loan Program) from the ''Search Results'' and select the ''Comment'' button. Before submitting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if available). Input your email address and select ''Submit Comment.'' Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

*Other Information:* Additional information about Rural Development and its programs is available on the internet at *https://www.rd.usda.gov.*

All comments will be available for public inspection online at the Federal eRulemaking Portal (*https://www.regulations.gov*).

**FOR FURTHER INFORMATION CONTACT:** Sara Thieleke, Finance and Loan Analyst, Single Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, STOP 0784, South Agriculture Building, 1400 Independence Avenue SW, Washington, DC 20250–0784. Telephone: (314) 457–5242; or email: *sara.thieleke@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

### Abbreviations

CFR Code of Federal Regulations
DA Delegated Authority
FHA Federal Housing Administration
FR Federal Register
OMB Office of Management and Budget
RHS Rural Housing Service
§ Section
SFHGLP Single Family Housing Guaranteed Loan Program
UMRA Unfunded Mandates Reform Act of 1995
U.S.C. United States Code
USDA U.S. Department of Agriculture
VA Veterans Affairs

### Background

The RHS administers the Single-Family Housing Guaranteed Loan Program (SFHGLP) that provides a 90% Loan Note Guarantee to approved lenders in order to reduce the lender's risk of extending loans to low- and moderate-income households in rural areas. The current Agency process requires lenders to submit loan documentation for Agency review and approval at various stages. Lenders submit application and underwriting documentation to the Agency for review before the Agency issues a Conditional Commitment for a guarantee (See 7 CFR 3555.107(f)). After loan closing, lenders submit the closing documentation, certifications, and fees to the Agency for another review before the Agency issues the Loan Note Guarantee (See 7 CFR 3555.107(i) and (j)).

The process can be time-consuming, and given the growing demand for SFHGLP loans, the Agency proposes to change its regulation to streamline the process of approving SFHGLP loans and issuing Loan Note Guarantees.

Under section 201 of the Housing Opportunity Through Modernization Act of 2016 (Pub. L. 114–201), the Congress amended section 502 of the Housing Act of 1949 by adding a new subsection (h) authorizing the Secretary of Agriculture to delegate, in part or in full, the Secretary's guarantee authority to eligible lenders. Therefore, RHS proposes to revise the SFHGLP regulation at 7 CFR part 3555 by adding a section for delegated approval authority to Delegated Lenders. Although subsection (h) of section 502 of the Housing Act of 1949 cites the term ''Preferred Lender'', the term ''Delegated Lender'' will be used for the purpose of this proposal. Currently, the Agency does not delegate approval authority to any lender.

The need for delegated approval authority arises due to issues associated with efficiency for loan approvals. A Delegated Lender would need limited to no Agency involvement in the pre-closing and post-closing Loan Note Guarantee approval process. These changes will accelerate approval processing timeframes to the benefit of applicants, Delegated Lenders, and the Agency. Under the proposed rule, lenders meeting certain criteria may receive delegated lender status that allows the Delegated Lender to approve SFHGLP loans and obtain Loan Note Guarantees with limited to no Agency involvement. Delegated Lenders would not need to submit a request for a Loan Note Guarantee, and the Conditional Commitment request and approval step would be eliminated.

The Department of Housing and Urban Development's Federal Housing Administration's (FHA) and the Department of Veterans Affairs' (VA) insurance and guaranty programs currently have delegated approval authority. FHA's Lender Insurance program, authorized by the National Housing Act section 256 (12 U.S.C. 1715z–21), and VA's Automatic Authority program, authorized by the Servicemen's Readjustment Act of 1944, (Pub. L. 78–346), permit lenders to obtain the insurance or guaranty certificates after underwriting and closing the loans with limited or no involvement of FHA or VA staff. Federal agencies have moved to the delegated process to leverage the processing

power and expertise of private-sector lenders and to balance growing programs with decreasing federal administrative resources. The Agency is proposing to mirror the HUD/FHA and VA processes, to the extent feasible, in order to create efficiencies, better serve stakeholders, and reduce the burden on Agency resources.

**Discussion of the Rule**

Under the proposed rule, loan approval and issuance of the Loan Note Guarantee would be delegated to the Delegated Lender. Delegated Lenders would be required to use Agency automated loan underwriting and closing systems to originate, process, close, and service loan applications in accordance with the published regulations and handbook guidance. In this respect, the Delegated Lender will act as the Agency and would require limited to no Agency involvement in the pre-closing loan approval process and post-closing issuance of the Loan Note Guarantee. The Delegated Lender would approve the loan in the Agency's automated system. With delegated authority, Conditional Commitments may not be required, and the provisions of § 3555.107(f) for issuance of the Conditional Commitment may not be applicable. After loan closing, Delegated Lenders would continue to adhere to the proper loan closing procedures under § 3555.107(i) and (j) for issuance of the Loan Note Guarantee. The Agency proposes to remove § 3555.107(i)(5) which provides lenders a self-certification option in lieu of submitting full documentation. Delegated Lenders will retrieve the Loan Note Guarantee from the Agency's automated system, which would have the same force and effect as a Loan Note Guarantee issued directly by the Agency. The Loan Note Guarantee would be supported by the full faith and credit of the United States, as provided in § 3555.108, regardless of whether the Loan Note Guarantee is obtained by a Delegated Lender through the Agency's automated system, or from the Agency directly. Therefore, unless provided otherwise or inapplicable, the Delegated Lender would be responsible for ensuring that both the applicant and the property meet the eligibility requirements and certification for the loan guarantee under subparts C, D, and E of 7 CFR part 3555 and the environmental requirements in § 3555.5.

The Agency proposes to modify the procedures for delegated lenders as follows:

*Environmental Reviews*—Delegated Lenders would be delegated the authority to perform the functions typically carried out by the Agency in order to comply with the environmental requirement responsibilities in § 3555.5 and 7 CFR part 1970, except in situations with extraordinary circumstances, as defined in 7 CFR 1970.52. Delegated Lenders would be required to be knowledgeable in reviewing and applying categorical exclusions as outlined under § 1970.51 and § 1970.53. While SFHGLP loans are generally considered categorical exclusions for environmental purposes, the Delegated Lender must notify the Agency if there is an extraordinary circumstance. The Agency will then decide the next best course of action. If an environmental assessment or environmental impact statement is necessary and the Delegated Lender prepares such document, the Agency must independently evaluate such document. In addition, Delegated Lenders may seek the assistance of the Agency at any point during the environmental review.

*Appraisal Reviews*—Agency administrative appraisal reviews under § 3555.107(d)(4) would be inapplicable to loans approved under the proposed model. Delegated Lenders would be responsible for ensuring that appraisal reports meet all requirements under § 3555.107(d).

*Application priority processing*—The requirements under § 3555.107(a) for prioritizing applications would not apply to Delegated Lenders.

In addition, the proposed rule clarifies a Delegated Lender's responsibilities under the conflict-of interest-provisions at § 3555.8. When a conflict of interest is disclosed by either the borrower or a Rural Development employee as described under § 3555.8, the Delegated Lender is required to document the disclosure in the permanent loan file. Under the proposed rule, a Delegated Lender would still be responsible for documenting any conflict of interest. However, since Delegated Lenders would process pre-closing and post-closing activities with limited to no Agency assistance under the proposed rule, reassignment of the application would not be necessary as described under § 3555.8(d).

This proposed delegated authority model could reduce the pre-closing loan approval processing timeframe by 3 to 4 business days. Currently, approved lenders fully underwrite and approve an application prior to submitting the application to the Agency for a Conditional Commitment. Historically, the average loan processing time for the Agency to review an application and provide a response to the lender is 3 to 4 business days. Under delegated authority, the approved lender will be able to obtain the Conditional Commitment upon completion of their underwriting and approval, eliminating the 3 to 4 business day Agency review time.

In addition, the proposed rule reduces post-closing issuance of the guarantee processing timeframes by an additional 3 to 4 business days. Historically, the Agency has taken on average 3 to 4 business days to process a request for a Loan Note Guarantee. Under delegated authority, the lender will retrieve their own Loan Note Guarantee from the Agency automated systems, eliminating the 3 to 4 business day Agency processing time. Combining the pre-closing loan approval processing timeframe and the post-closing issuance of the guarantee processing timeframe, a total of 6 to 8 business days could be eliminated with delegated authority.

Upon implementation, the Agency would be able to reallocate staff to mission-critical functions, such as portfolio risk management and expanded lender monitoring and oversight. The proposed changes, which align Agency processes with industry standards, create efficiencies and provide faster and better service to low- and moderate-income borrowers, resulting in earlier home move-in dates.

RHS proposes to delegate this type of pre-closing loan approval and post-closing guarantee issuance authority to Delegated Lenders that meet specific requirements for portfolio performance and underwriting capability. The Agency does not propose changing basic lender eligibility requirements, as outlined in 7 CFR 3555.51, ''Lender Eligibility,'' but rather proposes to add a section to define a Delegated Lender as an entity with delegated authority (DA) approval.

RHS proposes to add § 3555.55, ''Delegated Lenders,'' to delegate the authority to approve and execute loan guarantees with limited to no involvement of Agency staff. Proposed paragraphs (a) and (b) outline requirements for lenders to qualify for Delegated Lender status, which include meeting the general lender eligibility requirements in § 3555.51, participation in the SFHGLP for at least the previous two years, and higher than average performance standards in delinquency, default, and loss claim rates for that two-year period prior to approval. Delegated Lenders would need to maintain general lender eligibility under § 3555.51 as well as the higher performance metrics in delinquency, loss claim, and default rates to retain delegated lender status, which would be evaluated every two years. The Agency

may adjust, modify, or cancel the delegated lender program based on overall program considerations such as budget, program performance, and program integrity. In the event that modifications are made to the performance metrics for new Delegated Lenders, existing Delegated Lenders would retain their status, and the Agency would provide a reasonable timeframe to meet the new performance metrics in order to continue retaining delegated lender status. The Agency would perform a controlled rollout for the delegated authority of Delegated Lenders to foster a smooth implementation. The rollout will be phased-in to allow the Agency some control over the number of loans guaranteed by Delegated Lenders over a period of at least three years after the final rule is published. The top 10 percent performing lenders will be in the first phase of the rollout for participation. The Agency will then evaluate the performance of the process, the efficiency of the process, and necessary adjustments. The Agency will continue to phase in new lenders as the process is refined. The number of lenders approved for delegated lender status will be contingent on the progress of the Agency's systems modifications, budgetary constraints, portfolio performance, and availability of resources required to perform lender oversight and monitoring. Full implementation is expected by the end of the third year.

Proposed paragraphs (a) and (b) outline the conditions under which a lender's delegated status may be removed. As stated in proposed paragraph (a), the Agency would have the right to terminate any lender's delegated status for reasons including, but not limited to, approving loans that do not meet Agency loan program guidelines, entering data into the Agency's automated underwriting system which is not supported by documentation retained by the lender, maintaining a portfolio that does not meet the established delinquency, loss claim, and default rate performance metrics, and an inability to meet the criteria described in § 3555.51, ''Lender Eligibility.''

The Agency proposes ongoing monitoring and oversight for Delegated Lenders from two perspectives: (1) Monitoring Performance—regular collection and analysis of loan level data and performance, and (2) Lender Oversight—on-site and off-site reviews and examinations.

*(1) Monitoring Performance*

Loan level data is collected from lenders each month through the Electronic Status Reporting system. This data is compiled, reviewed, and monitored by the Agency every month to determine portfolio performance as well as risks and trends in delinquency, default, and loss claim rates. This loan level data would be collected and analyzed for Delegated Lenders and provide the Agency with information regarding the performance of Delegated Lenders.

*(2) Lender Oversight (LO) Reviews/ Examinations*

The Agency's Quality Assurance and Lender Oversight Division will institute a regular LO process specifically for Delegated Lenders to ensure adherence to Agency loan program requirements found at 7 CFR 3555 and continuing eligibility for the program. The process will consist of reviews/examinations of multiple elements of the mortgage origination and servicing processes based on the review of a representative sample of loans, financial requirements, and portfolio performance. The Agency will perform these reviews every two years or more frequently, as determined by the Agency, on lenders that originate more than 50 loans and/or service more than 200 loans per year. The Agency would review a stratified random sample of no less than two percent of loan files originated by Delegated Lenders. A report would be provided, and findings and observations would be recorded and reported back to the lender, along with any suggestions for improvement. If necessary, the lender would have the opportunity to use a Corrective Action Plan (CAP) to resolve any deficiencies; they would be counseled, offered training, and given the opportunity to improve. Recurring findings identified through the LO process may result in additional reviews/examinations and may adversely affect their delegated lender status.

To bolster the Agency's efforts to perform robust monitoring and lender oversight across the program (not just for Delegated Lenders), the proposed rule also eliminates the self-certification option at § 3555.107(i)(5). The Agency is unaware of any lenders using the option to self-certify instead of submitting complete loan closing documentation. Furthermore, the Agency has determined that such option would be inappropriate in balancing streamlining of the program with risk mitigation and proposes to eliminate the option so that the Agency would have easier and direct access to loan documents.

The proposed § 3555.55(c)(4) would provide the Agency with the authority to revoke the delegated lender status of those lenders that fail to meet the delegated lender criteria. This revocation is distinct from termination of the program as an approved lender under § 3555.52. However, if the Agency pursues termination of a Delegated Lender's participation under § 3555.52, the Agency need not separately pursue a separate revocation of delegated lender status, as termination from the program would automatically revoke delegated lender status.

Taken together, this proposed rule would continue the Agency's efforts to streamline and improve delivery of the SFHGLP while providing measures to mitigate risk. Agency approval of a lender for Delegated Authority does not create or imply a warranty or endorsement by the Agency of the approved lender, or its employees, nor does it represent a warranty of any service provided by the lender or any employee of the lender.

**Request for Comment**

Stakeholder input is vital to ensure that implementation of the proposed rule would continue to support the Agency's mission, while ensuring that new regulations and policies are reasonable and do not overly burden the Agency's lenders and their customers. Comments must be submitted on or before October 3, 2022 and may be submitted electronically by going to the Federal eRulemaking Portal: *http://www.regulations.gov.* Details on how to submit comments to the Federal eRulemaking Portal are in the **ADDRESSES** section of this proposed rule.

The following questions and discussion items are posed to guide stakeholder comments. Where possible, RHS requests that comments include specific suggestions regarding ways to improve the proposal. RHS welcomes pertinent comments that are beyond the scope of these questions.

1. The Agency is proposing a controlled rollout of delegated authority, phasing in Delegated Lenders over a three-year period. The three-year period is intended to ensure the process of adding lenders is done using a controlled method to identify and address any concerns or questions that may arise. Is a three-year rollout period appropriate?

2. The Agency is proposing to define the eligibility criteria for Delegated Lenders to include participation in the SFHGLP for at least the previous two

years,[1] as well as higher than average performance standards in delinquency, default, and loss claim rates for the two-year period prior to approval. Are there additional criteria that should be considered?

3. Is it important that Delegated Lenders retain the option to submit loan applications to the Agency for review and approval under the current process, at their discretion?

4. The Agency has identified the following alternatives to the rule:

a. Rather than delegate the complete loan approval process to Delegated Lenders, the Agency could delegate the initial underwriting review and issuance of the Conditional Commitment, leaving the responsibility for issuance of the Loan Note Guarantee with the Agency.

b. The Agency could assign the post-closing issuance of the Loan Note Guarantee to Delegated Lenders, with the initial review, approval, and issuance of the Conditional Commitment remaining an Agency responsibility.

Are there additional alternatives that could be considered? Is there a preference between the process identified in the proposed rule versus the alternatives?

5. The Agency has identified the following benefits to Delegated Lenders, borrowers, and the Agency.

a. A time savings for Delegated Lenders and borrowers, as intervention by the Agency at origination through closing would be limited, resulting in fewer delays experienced through the loan origination process.

b. A cost savings to Delegated Lenders, as several Agency forms would be eliminated from the process.

c. A cost savings to the Agency due to the streamlining of activities, allowing a reallocation of resources to other important initiatives.

Are there additional benefits of implementing this proposed rule that have not been identified?

6. Delegated Lenders will realize a time savings of approximately 3 to 4 business days for Conditional Commitment requests and an additional 3 to 4 business days for Loan Note Guarantee requests. What is the estimated cost savings that will be realized by Delegated Lenders with this reduction in Agency processing time?

7. Consistent with current Agency procedures, the Agency is proposing to review a stratified random sample of two percent of delegated authority loans post-closing to evaluate lender performance. Is two percent a reasonable expectation?

8. Consistent with OMB Circular A–129, the Agency is proposing to review the delegated lender status of participating lenders every two years. Is this a reasonable expectation?

9. The Agency expects to use existing processes and technology systems, with substantial modifications, to implement this proposal. As described in the Regulatory Impact Analysis, the Agency does not anticipate the provisions to results in significant new costs, such as additional training, staff time, or staff hires, for the lender. However, the Agency requests comment on its evaluation of potential costs. In particular, is there any data available regarding the costs of implementing this proposal for the public that the Agency hasn't considered?

10. The Agency's proposal is intended to mirror HUD/FHA and VA processes, to the extent feasible. Are there additional changes that could be made to assist in reconciling these delegated approval processes?

[1] Consistent with OMB Circular A–129, the Agency reviews lender eligibility every two years. Therefore, the two-year participation minimum would ensure that a lender has gone through at least one lender recertification process, providing an additional review of the lender's processes prior to being eligible for this increased authority.

**Statutory Authority**

The Housing Opportunity Through Modernization Act of 2016 (Pub. L. 114–201) and Section 510(k) of Title V of the Housing Act of 1949 (42 U.S.C. 1480(k)), as amended, authorizes the Secretary of the Department of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

**Executive Orders 12866 and 13563**

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if a regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

In accordance with Executive Order 12866, a Regulatory Impact Analysis was completed, outlining the costs and benefits of implementing this program in rural America. For a complete analysis, please see the Regulatory Impact Analysis on *http://www.regulations.gov* using docket number RHS–21–SFH–0017.

**Executive Order 12988, Civil Justice Reform**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all state and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry federal requirements. No person is required to apply for funding under SFHGLP, but if they do apply and are selected for funding, they must comply with the requirements applicable to recipients of SFHGLP federal financial assistance, including all applicable nondiscrimination federal laws and regulations. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 must be exhausted.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effect of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

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

**National Environmental Policy Act**

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (''Environmental Policies

and Procedures''). The Agency has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not ''connected'' to other actions with potentially significant impacts, is not considered a ''cumulative action'' and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore, neither an Environmental Assessment nor an Environmental Impact Statement is required.

**Executive Order 13132, Federalism**

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

**Regulatory Flexibility Act**

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The North American Industry Classification System (NAICS) classifies small lenders in the following categories:

| NAICS code | NAICS U.S. industry title | Size standards (in millions of dollars) |
|---|---|---|
| 522120 | Savings Institutions | $600 million in assets. |
| 522130 | Credit Unions | 600 million in assets. |
| 522190 | Other Depository Credit Intermediation | 600 million in assets. |
| 522292 | Real Estate Credit | 41.5. |
| 522310 | Mortgage and Nonmortgage Loan Brokers | 8.0. |

This proposed rule affects lenders that utilize the SFHGLP and any potential lenders that may utilize the program in the future. There are approximately 1,864 lenders currently approved to utilize the SFHGLP. The Agency does not maintain data that identifies the number of approved lenders that would be considered small lenders, as defined above. However, it is estimated that less than 3% of approved SFHGLP lenders meet the criteria of a small lender.

The proposed rule is an enhancement to the SFHGLP, providing an opportunity for participating lenders to obtain delegated loan approval authority. Applying to become a Delegated Lender is optional. Small lenders, as described above, will be afforded the same opportunities to become a Delegated Lender as large lenders. Lenders who choose not to pursue delegated authority will continue to operate as they do today.

All lenders are required to maintain a permanent loan file on each individual guaranteed borrower. This will remain a requirement for lenders utilizing delegating authority, as well as those who do not. This is typical for any mortgage loan product and is an action that is completed in a lenders' normal course of business. This requirement is consistent with standard mortgage industry practices and represents no additional burden of recordkeeping placed upon the lender or public.

The qualifying factors involved in becoming a Delegated Lender will be based on a lender's loan performance using the same criteria regardless of the size of the lender. There are no costs assessed to lenders to apply for delegated authority, to continue participation in the program, or to receive Agency training.

The undersigned has determined and certified by signature on this document, that this rule will not have a significant economic impact on a substantial number of small entities, since this rulemaking action does not involve a new or expanded program, nor does it require any more action on the part of a small business than would be required of a large entity.

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

This program is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented under USDA's regulations at 7 CFR part 3015.

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

This executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that this proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this proposed rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this proposed rule, they are encouraged to contact USDA's Office of Tribal Relations or Rural Development's Native American Coordinator at (720) 544–2911 or *AIAN@usda.gov* to request such a consultation.

**Civil Rights Impact Analysis**

Rural Development has reviewed this proposed rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, or marital or familial status. Based on the review and analysis of the rule and all available data, issuance of this Final Rule is not likely to negatively impact low- and moderate-income populations, minority populations, women, Indian tribes, or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status.

**Programs Affected**

The program affected by this proposed rule is listed in the Assistance Listing (AL) (*formerly Catalog of Federal Domestic Assistance*) Number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection activities associated with this rule are covered under OMB Control Number 0575–0179. This proposed rule contains no new reporting or recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995. It is anticipated that Agency forms currently required would be eliminated for Delegated Lenders. As a result, the Agency

anticipates a reduction in recordkeeping requirements upon implementation of this rule.

**E-Government Act Compliance**

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

**USDA Non-Discrimination Policy**

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

In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form *AD–3027, USDA Program Discrimination Complaint Form,* found online at *http://www.ascr.usda.gov/complaint_filing_cust.html,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

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

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

(3) Email: *Program.Intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

**List of Subjects in 7 CFR Part 3555**

Administrative practice and procedure; Business and industry; Conflicts of interest; Credit, Environmental impact statements; Fair housing; Flood insurance; Grant programs-housing and community development; Home improvementLoan programs—Housing and community development; Low- and moderate-income housing; Mortgages; Reporting and recordkeeping requirements; Rural areas.

For the reasons discussed in the preamble, the Agency is proposing to amend 7 CFR part 3555 as follows:

## PART 3555—GUARANTEED RURAL HOUSING PROGRAM

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

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

### Subpart A—General

■ 2. Amend § 3555.10 by adding the definition of ''Delegated Lender'' to read as follows:

**§ 3555.10 Definitions and abbreviations.**

* * * * *

*Delegated Lender* is an entity that meets the requirements under § 3555.51 and has been delegated authority by the Agency to underwrite and approve loans that meet the requirements of this part without prior review and approval by Agency staff, unless provided otherwise in this part.

* * * * *

### Subpart B—Lender Participation

■ 3. Add § 3555.55 to subpart B to read as follows:

**§ 3555.55 Delegated Lenders.**

(a) The Agency may approve certain lenders for Delegated Lender status as defined in § 3555.10. The Delegated Lender assumes the responsibility for meeting all loan requirements on behalf of the Agency for the purposes of pre-closing loan processing, loan approval, and post-closing issuance of loan guarantee under subparts C, D and E of this part with the following exceptions and clarifications:

(1) Application priority processing procedures under § 3555.107(a) are not applicable to applications processed by Delegated Lenders.

(2) Delegated Lenders must ensure appraisals meet the requirements under § 3555.107(d); however, loans made by Delegated Lenders are not subject to Agency administrative appraisal reviews prior to loan approval under § 3555.107(d)(4).

(3) Conditional Commitments under § 3555.107(f) may not be applicable to Delegated Lenders.

(b) The following regulatory provisions in subpart A are not applicable to Delegated Lenders or are modified as described below:

(1) Applications processed by Delegated Lenders with a conflict of interest under § 3555.8 are not subject to the requirements under § 3555.8(d). The other paragraphs in § 3555.8 still apply.

(2) Delegated Lenders will perform environmental reviews under § 3555.5 and 7 CFR part 1970 prior to loan approval. Delegated Lenders must be knowledgeable in reviewing and applying categorical exclusions as outlined under 7 CFR 1970.51 and 1970.53. The Delegated Lender must notify the Agency if there is an extraordinary circumstance as defined in 7 CFR 1970.52 so that the Agency may determine the appropriate course of action. If an environmental assessment or environmental impact statement is necessary and the Delegated Lender prepares such document, the Agency will independently evaluate such document.

(c) *Eligibility.* Lenders must be approved to participate in the SFHGLP as provided in § 3555.51 and meet the following requirements:

(1) Have participated in the SFHGLP for at least the previous two years.

(2) Met the performance standards established by the Agency for delinquency, default, and loss claims for the previous two years; and

(3) Complete Agency sponsored training each year.

(d) Delegated lenders must use the Agency's automated underwriting system as described in § 3555.107(b).

(e) *Oversight.* The Agency will monitor lender performance through the regular use of loan level data and lender oversight and monitoring reviews/examinations. If the lender is unwilling or unable to improve performance within an acceptable timeframe, the Agency may revoke Delegated Lender status.

(f) *Termination of Delegated Authority.* (1) The Agency may terminate the lender's delegated status for reasons including, but not limited to:

(i) Approving loans that do not meet Agency guidelines.

(ii) Entering data into the Agency's automated underwriting system which is not supported by documentation retained by the lender.

(iii) Unacceptable portfolio performance as evidenced by delinquency, loss claim, default rates, material deficiencies, or any other performance metric established by the Agency; and

(iv) Noncompliance with other requirements described in § 3555.51, or if the Agency determines that other good cause exists.

(2) Termination of a Delegated Lender's participation in the SFHGLP under § 3555.52 automatically revokes Delegated Lender status without separate Agency action under paragraph 3555.52(g).

(g) *Revocation of Delegated Status.* Delegated Lenders will retain delegated status until revoked by the Agency or withdrawn by the lender. If the Agency revokes the delegated authority of a Delegated Lender, the Delegated Lender will be given appeal rights as specified in § 3555.4. This is distinct from termination from participation in the SFHGLP under § 3555.52.

(h) *Administration of Delegated Program.* The Agency may adjust, modify, or cancel the Delegated Lender program based on overall program considerations such as budget, program performance, and program integrity.

**§§ 3555.56–3555.99 [Reserved]**

■ 4. Reserve §§ 3555.56–3555.99.

* * * * *

## Subpart C—Loan Requirements

**§ 3555.107 [Amended]**

■ 5. Amend § 3555.107 by removing paragraph (i)(5).

* * * * *

**Joaquin Altoro,**

*Administrator, Rural Housing Service.*

[FR Doc. 2022–16637 Filed 8–3–22; 8:45 am]

**BILLING CODE 3410–XV–P**

## DEPARTMENT OF ENERGY

## 10 CFR Part 626

**RIN 1901–AB56**

## Procedures for the Acquisition of Petroleum for the Strategic Petroleum Reserve

**AGENCY:** Office of Petroleum Reserves, Department of Energy.

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** The Energy Policy Act of 2005 directed the Secretary of Energy to develop procedures for the acquisition of petroleum products for the Strategic Petroleum Reserve (''SPR''). Pursuant to that direction, the Department of Energy (''DOE'' or the ''Department'') promulgated the Procedures for Acquisition of Petroleum for the Strategic Petroleum Reserve. Over the intervening 16 years, the existing regulations have become outdated due to changes in statutory authority, agency practice, and market dynamics. In this notice of proposed rulemaking (''NOPR''), DOE proposes to amend the procedures for the acquisition of petroleum products for the SPR to: more closely align the regulatory language with the applicable statutory language; remove outdated procedures for acquisition under the royalty-in-kind program; add procedures for acquisition by exchange to better reflect petroleum product acquisition operations as conducted by the Office of Petroleum Reserves; and increase the Department's flexibility in structuring acquisitions.

**DATES:** DOE will accept comments, data, and information regarding this NOPR no later than September 6, 2022.

Comments regarding the likely competitive impact of the proposed standard are to be sent to the DOE by the methods set forth in the **ADDRESSES** section on or before September 6, 2022.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by RIN 1901–AB56, by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: sprassistance@hq.doe.gov.* Include the RIN 1901–AB56 in the subject line of the message.

3. *Postal Mail:* U.S. Department of Energy, Office of the General Counsel (GC–33), Room 6B–159, 1000 Independence Avenue SW, Washington, DC 20585.

4. *Hand Delivery/Courier:* U.S. Department of Energy, Room 6B–159, 1000 Independence Avenue SW, Washington, DC 20585.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section III, Public Participation, for details.

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

The docket web page can be found at the *www.regulations.gov* web page associated with RIN 1901–AB56. The docket web page contains simple instructions on how to access all documents, including public comments, in the docket. See section III, Public Participation, for information on how to submit comments through *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas McGarry, U.S. Department of Energy, Office of Petroleum Reserves, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3G–024, 1000 Independence Avenue SW, Washington, DC 20585; (202) 586–8197, email*: thomas.mcgarry@hq.doe.gov;* or Mr. Edward Toyozaki, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, Room 6B–159, 1000 Independence Avenue SW, Washington, DC 20585; (202) 586–0126, email*: edward.toyozaki@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**



### I. Background and Introduction

The SPR was established by the Energy Policy and Conservation Act (''EPCA''), (Pub. L. 94–163), to store petroleum products to diminish the impact of disruptions on petroleum supplies and to carry out the obligations of the United States under the International Energy Program. (42 U.S.C. 6231 *et seq.*) Section 160 of EPCA authorizes the Secretary of Energy to acquire petroleum products for the SPR. Subsequently, the Energy Policy Act of 2005, (Pub. L. 109–58), amended EPCA and directed the Secretary of Energy to develop, with the opportunity for public notice and comment, procedures for the acquisition of petroleum products for the SPR (42 U.S.C. 6240). The principal method for acquiring SPR petroleum products is by purchase, but SPR petroleum may also be acquired via exchange. (42 U.S.C. 6240(a)) On November 8, 2006, and pursuant to EPCA, as amended by the Energy Policy Act of 2005, DOE established procedures for the acquisition of SPR

petroleum at 10 CFR part 626. 71 FR 65376 (''2006 final rule''). The 2006 final rule included provisions regarding the direct purchase, exchange, and transfer of royalty oil from the Department of the Interior (''DOI'').

Subsequent to DOE promulgating the 2006 final rule, the Government Accountability Office and the DOI Inspector General published several reports between 2008 and 2009 on the shortcomings of and personnel misconduct related to the royalty-in-kind program, and, as a result, the DOI terminated its royalty-in-kind program in 2010. Then, in 2013, with section 306(a) of the Bipartisan Budget Act of 2013, Congress repealed DOE's authority to conduct SPR acquisitions under the royalty-in-kind program that was incorporated into the 2006 final rule. However, 10 CFR part 626 has not been updated since it was promulgated by DOE in the 2006 final rule, and, thus, does not reflect the intervening changes to the authorizing statutory authority.

Additionally, as DOE has had numerous opportunities to conduct exchanges, mostly in an emergency exchange capacity, DOE is in a position to rewrite these regulations to both provide more clarity and better reflect operational realities.

Lastly, in light of changing petroleum product market dynamics, the Department intends to align the acquisition regulations more closely with the statutory language of 42 U.S.C. 6240 and provide the Secretary with additional flexibility in structuring acquisitions.

## II. Discussion of Proposed Rule

The proposed rule would revise 10 CFR part 626 in several respects. First, the proposed rule would update language throughout part 626 to more closely align with the statutory language found in Section 160 of EPCA. This includes updating the definitions for ''DOE'', ''Exchange'', and ''Strategic Petroleum Reserve'', while adding new definitions for ''Premium'', ''Requestor'', and ''Solicitation''. The definition pertaining to ''DOI'' would also be struck. These changes would provide more clarity and maintain continuity throughout the part while supporting other proposed changes.

Second, because Congress repealed DOE's authority for it in 2013, all references to the royalty-in-kind program would be removed. This includes removal of the procedures for acquisition under the royalty-in-kind program currently at 10 CFR 626.7.

Third, the proposed rule would codify procedures for the exchange of petroleum products at a revised 10 CFR 626.7, as well as add references to ''exchange'' throughout part 626, as appropriate. These proposed changes are intended to reflect current operational practices of the SPR. Since 1996, in accordance with statutory authority in Sections 159 and 160 of EPCA, DOE has conducted over a dozen emergency exchanges with private industry. In these emergency exchanges, upon request from refiners and verification of the request by DOE, the SPR provides emergency barrels of petroleum product to refiners; in return, the requesting refiners later provide the SPR the original number of barrels plus extra barrels called a ''premium.'' In addition to the emergency exchanges by request, since 2000, DOE has twice utilized the exchange authority to conduct solicitations for exchange, whereby the general public may bid to contract to accept barrels of SPR petroleum products in the present and return those barrels plus a premium in the future. DOE is proposing to codify these long-standing procedures into the acquisition regulations.

Fourth, the proposed rule would amend 10 CFR 626.5 and 626.6 to increase flexibility for DOE to enter into contracts for the purchase of petroleum products, consistent with the requirements and objectives of section 160 of EPCA. These changes ensure that DOE continues to acquire petroleum products in accordance with the competitive principles of the Federal Acquisition Regulations and the DOE Acquisition Regulations, while providing DOE the flexibility to use either fixed-price or index-priced contracts for future petroleum product acquisitions. DOE is proposing these changes because the current acquisition regulations, including the requirement that DOE acquire oil in accordance with the Federal Acquisition Regulations and the requirement to use a price index to set purchase prices, unnecessarily restrict DOE's flexibility to procure petroleum products using fixed price contracts, notwithstanding the fact that there may be circumstances in which a fixed price acquisition would better meet the statutory objectives of EPCA.

Lastly, the proposed rule would add 10 CFR 626.9 to implement 42 U.S.C. 6240(f). This final proposed change has been included because, while the Department has had the statutory authority to suspend previously announced or contracted acquisitions of petroleum products or divert the injection of petroleum products into the SPR when there is a perceived imminent severe energy supply interruption, to date, this authority has not been incorporated into any existing regulations.

## III. Public Participation

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

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

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

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

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

provides after you have successfully uploaded your comment.

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

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

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

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

## IV. Regulatory Review

### *A. Executive Order 12866*

This proposed rule has been determined to not be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive order by the Office of Information and Regulatory Affairs (''OIRA'') of the Office of Management and Budget (''OMB'').

### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process, 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's website: *www.energy.gov/gc/office-general-counsel.*

The proposed rule would update the procedures DOE utilizes for the acquisition of petroleum products for the SPR, change definitions, and remove references to the repealed royalty-in-kind program. DOE has reviewed the proposed changes under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. These proposed procedures are procedural and not designed to set the terms or conditions of an acquisition and apply only to entities that are engaged in the sale of petroleum products to the Strategic Petroleum Reserve. Historically, Strategic Petroleum Reserve acquisitions have typically been large volume acquisitions, and usually filled by larger entities operating in the petroleum industry. Therefore, the proposed procedures are unlikely to directly affect small businesses or other small entities. For these reasons, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

### *C. Paperwork Reduction Act of 1995*

The proposed rule would impose no new information or record keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### *D. Review Under the National Environmental Policy Act of 1969*

Per 10 CFR 1021.410(a), DOE has determined that promulgation of these regulations fall into a class of actions that does not individually or cumulatively have a significant impact on the human environment as set forth under DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Furthermore, this proposed rulemaking is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A6 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an EIS nor an EA is required.

### *E. Executive Order 13132*

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. DOE examined this proposed rule and determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of Government. No further action is required by Executive Order 13132.

### *F. Executive Order 13175*

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian Tribes. The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175. Because this proposed rule would not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

*G. Review Under Executive Order 12988*

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

*H. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a) and (b)). UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *www.energy.gov/gc/office-general-counsel*). DOE examined this proposed rule according to UMRA and its statement of policy and has determined that the proposed rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year by State, local, and tribal governments, in the aggregate, or by the private sector. Accordingly, no further assessment or analysis is required under UMRA.

*I. Treasury and General Government Appropriations Act of 1999*

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*J. Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed the proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*K. Executive Order 13211*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA and OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This proposed rule would update DOE's acquisition of petroleum product procedures for the SPR to align the regulatory language more closely with existing statutory language and current practice. Accordingly, the proposed rule would also update definitions, as appropriate, for the newly aligned regulatory language. This proposed rule, therefore, does not meet any of the three criteria listed above and would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant regulatory action. Accordingly, DOE has not prepared a Statement of Energy Effects.

## V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and request for comment.

## List of Subjects in 10 CFR Part 626

Government contracts, Oil and gas reserves, Strategic and critical materials.

## Signing Authority

This document of the Department of Energy was signed on July 21, 2022, by Bradford J. Crabtree, Assistant Secretary for Fossil Energy and Carbon Management, 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 July 22, 2022.

**Treena V. Garrett,**

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

For reasons stated in the preamble, DOE proposes to revise part 626 in chapter II of title 10 of the Code of Federal Regulations as set forth below:

## PART 626—PROCEDURES FOR ACQUISITION OF PETROLEUM FOR THE STRATEGIC PETROLEUM RESERVE

Sec.



**Authority:** 42 U.S.C. 6240(c); 42 U.S.C. 7101, *et seq.*

### § 626.1 Purpose.

This part establishes the procedures for acquiring petroleum products for, and deferring contractually scheduled deliveries to, the Strategic Petroleum Reserve. The procedures do not represent actual terms and conditions to be contained in the contracts for the acquisition of SPR petroleum products.

### § 626.2 Definitions.

*Backwardation* means a market situation in which prices are progressively lower in succeeding delivery months than in earlier months.

*Contango* means a market situation in which prices are progressively higher in the succeeding delivery months than in earlier months.

*Contract* means the agreement under which DOE acquires SPR petroleum products, consisting of the solicitation, the contract form signed by both parties, the successful offer, and any subsequent modifications, including those granting requests for deferrals.

*Contracting Officer* means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings, including entering into sales contracts on behalf of the Government. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

*DEAR* means the Department of Energy Acquisition Regulation.

*Deferral* means a process whereby petroleum products scheduled for delivery to the SPR in a specific contract period is rescheduled for later delivery, outside of that period and encompasses the future delivery of the originally scheduled quantity plus an in-kind premium.

*DOE* means the Department of Energy and includes any of its subsidiary offices, such as the Office of Petroleum Reserves (OPR) and the Strategic Petroleum Reserve Program Management Office.

*Exchange* means a process whereby petroleum products owned by or due to the SPR are provided to an entity or requestor in return for petroleum products of comparable quality plus a premium quantity of petroleum products (in barrels)—or another form of premium as permitted by law—delivered to the SPR in the future, or when SPR petroleum products are traded for petroleum products of a different quality preferred by DOE for operational reasons based on the relative values of the quantities traded.

*FAR* means the Federal Acquisition Regulation.

*Government* means the United States Government and includes DOE as its representative.

*OPR* means the Office of Petroleum Reserves within DOE, whose responsibilities include the operation of the Strategic Petroleum Reserve.

*Petroleum products* means crude oil, residual fuel oil, or any refined product (including any natural gas liquid, and any natural gas liquid product) owned, or contracted for, by DOE and in storage in any permanent SPR facility, or temporarily stored in other storage facilities.

*Premium* means the additional amount of petroleum product (in barrels)—or another form of payment as permitted by law—that must be delivered to the SPR above the principal amount of petroleum product owed to SPR in the case of an exchange or a deferred contractually scheduled delivery. The premium may include a calculation based on a rate set by DOE and duration of time until the SPR receives the petroleum product.

*Requestor* is an entity that makes an emergency request under § 626.7(b).

*Secretary* means the Secretary of Energy.

*Solicitation* means the written request by DOE for submission of offers or quotations to DOE for the acquisition of petroleum products.

*Strategic Petroleum Reserve* or *SPR* means the reserve for the storage of up to 1 billion barrels of petroleum products established by Title I, Part B, of the Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*

### § 626.3 Applicability.

The procedures in this part apply to the acquisition of petroleum products by DOE for the Strategic Petroleum Reserve through purchase or exchange, as well as to deferrals of contractually scheduled deliveries.

### § 626.4 General acquisition strategy.

(a) *Criteria for commencing acquisition.* DOE shall consider the following factors prior to commencing acquisition of petroleum products for the SPR:

(1) The current inventory of the SPR;

(2) The current level of private inventories;

(3) Days of net import protection;

(4) Current price levels for petroleum products and related commodities, the ability to minimize costs and avoid incurring excessive costs in acquisition, and the possible effect on consumer and market prices of any SPR acquisition;

(5) The outlook for international and domestic production levels;

(6) Existing or potential disruptions in supply or refining capability;

(7) The level of market volatility;

(8) Futures market price differentials for petroleum products and related commodities;

(9) The need to protect national security; and

(10) Any other factor the Secretary deems necessary or appropriate to consider.

(b) *Review of rate of acquisition.* DOE shall review the appropriate rate of petroleum product acquisition each time an open market acquisition has been suspended for more than three months.

(c) *Acquisition through other Federal agencies.* DOE may enter into arrangements with another Federal agency for that agency to acquire petroleum products for the SPR on behalf of DOE.

### § 626.5 Acquisition procedures—general.

(a) *Notice of acquisition.*

(1) Except when DOE has determined there is good cause to do otherwise, DOE shall provide advance public notice of its intent to acquire petroleum

products for the SPR. The notice of acquisition will, to the extent feasible, include the general terms and details of DOE's petroleum products acquisition and inform the public of DOE's overall fill goals.

(2) The notice of acquisition will generally include the:

(i) Manner of acquisition;

(ii) Time period for solicitations;

(iii) Quantity of petroleum products sought;

(iv) Minimum petroleum product quality requirements;

(v) Time period for delivery;

(vi) Acceptable delivery locations; and

(vii) Instructions for the offer process.

(b) *Manner of acquisition.*

(1) DOE shall specify the manner of petroleum product acquisition, either purchase or exchange, in the notice of acquisition.

(2) DOE shall, to the greatest extent practicable, determine the manner of petroleum product acquisition after considering:

(i) The availability of appropriated funds;

(ii) Minimization of costs;

(iii) Minimization of the Nation's vulnerability to a severe energy supply interruption;

(iv) Minimization of the impact to supply levels and market forces;

(v) Whether the manner of acquisition would encourage competition in the petroleum industry; and

(vi) Other considerations DOE deems to be relevant.

(c) *Solicitation.*

(1) To secure the economic benefit and security of a diversified base of potential suppliers of petroleum products to the SPR, DOE shall maintain a listing, developed through online registration, direct requests to DOE, and outreach to potential suppliers by DOE. Upon the issuance of a solicitation, DOE shall notify potential suppliers via their registered email addresses.

(2) DOE shall make the solicitation publicly available on the website of the OPR: *www.spr.doe.gov.*

(d) *Timing and duration of solicitation.*

(1) DOE shall determine petroleum products requirements on nominal six-month cycles, and shall review and update these requirements prior to each solicitation cycle.

(2) Unless termination rights are explicitly waived by DOE, DOE may terminate any solicitations and contracts pertaining to the acquisition or exchange of petroleum products at the convenience of the Government, and in such event shall not be responsible for any costs incurred by suppliers, other than costs for petroleum products delivered to the SPR and for reasonable, customary, and applicable costs incurred by the supplier in the performance of a valid contract for delivery before the effective date of termination of such contract. In no event shall the Government be liable for consequential damages or the entity's lost profits as a result of such termination.

(e) *Quality.*

(1) DOE shall define minimum petroleum product quality specifications for the SPR. DOE shall include such specifications in acquisition solicitations, and shall make them available on the website of the OPR: *www.spr.doe.gov.*

(2) DOE shall periodically review the quality specifications to ensure, to the greatest extent practicable, the petroleum product mix in storage matches the demand of the United States refining system.

(f) *Quantity.* In determining the quantities of petroleum products to be delivered to the SPR, DOE shall:

(1) Take into consideration market conditions and the availability of transportation systems; and

(2) Seek to avoid adversely affecting other market participants or petroleum product market fundamentals.

(g) *Offer and evaluation procedures.*

(1) Each solicitation shall provide necessary instructions on offer format and submission procedures. The details of the offer, evaluation and award procedures may vary depending on the method of acquisition.

(2) DOE may use relative values and time differentials to manage acquisition and delivery schedules to reduce acquisition costs.

(3) DOE may evaluate offers based on prevailing market prices of specific petroleum products, and shall award contracts on a competitive basis.

(4) Whether acquisition is by purchase or exchange, DOE may use a price index to account for fluctuations in absolute and relative market prices at the time of delivery to reduce market risk to all parties throughout the contract term.

(h) *Scheduling and delivery.*

(1) Except as provided in paragraph (h)(4) of this section, DOE shall accept offers for petroleum products delivered to specified SPR storage sites via pipeline or as waterborne cargos delivered to the terminals serving those sites.

(2) Except as provided in paragraph (h)(4) of this section, DOE shall generally establish schedules that allow for evenly spaced deliveries of economically sized marine and pipeline shipments within the constraints of SPR site and commercial facilities receipt capabilities.

(3) DOE shall strive to maximize U.S. flag carrier utilization through the terms of its supply contracts.

(4) DOE reserves the right to accept offers for other methods of delivery if, in DOE's sole judgment, market conditions and logistical constraints require such other methods.

**§ 626.6 Acquiring petroleum products by purchase.**

(a) *General.* For the purchase of petroleum products, DOE shall, through certified contracting officers, conduct petroleum product acquisitions in accordance with the competitive principles of the FAR and the DEAR.

(b) *Acquisition strategy.*

(1) DOE solicitations:

(i) May be either continuously open or fixed for a period of time; and

(ii) May provide either for immediate delivery or for delivery at future dates.

(2) DOE may alter the acquisition plan to take advantage of differentials in prices for different qualities of petroleum products, based on a consideration of factors, including the availability of storage capacity in the SPR sites, the logistics of changing delivery streams, and the availability of ships, pipelines and terminals to move and receive the petroleum products.

(3) Based on the market analysis described in paragraph (d) of this section, DOE may refuse offers or suspend the acquisition process on the basis of Government estimates projecting substantially lower petroleum product prices in the future than those contained in offers. If DOE determines there is a high probability that the cost to the Government can be reduced without significantly affecting national energy security goals, DOE may either contract for delivery at a future date or delay purchases to take advantage of the projected lower future prices. Conversely, DOE may increase the rate of purchases if prices fall below recent price trends or futures markets present a significant contango and prices offer the opportunity to reduce the average cost of petroleum product acquisitions in anticipation of higher future prices.

(4) Based on the market analysis described in paragraph (d) of this section, DOE may refuse offers, decrease the rate of purchase, or suspend the acquisition process if DOE determines acquisition will add significant upward pressure to prices either regionally or on a world-wide basis. DOE may consider recent price changes, private inventory levels, petroleum product acquisition by other stockpiling entities, the outlook

for world petroleum products production, incipient disruptions of supply or refining capability, logistical problems for moving petroleum products, macroeconomic factors, and any other considerations that may be pertinent to the balance of petroleum product supply and demand.

(c) *Fill requirements determination.* DOE shall develop SPR fill requirements for each solicitation based on an assessment of national energy security goals, the availability of storage capacity, and the need for specific grades and quantities of petroleum products.

(d) *Market analysis.*

(1) DOE shall establish a market value for each petroleum product to be acquired based on a market analysis at the time of contract award.

(2) DOE may consider prices on futures markets, spot markets, recent price movements, current and projected shipping rates, forecasts by the DOE Energy Information Administration, and any other analytic tools available to DOE to determine the most desirable purchase profile.

(3) DOE may also consider factors including recent price changes, private inventory levels, petroleum product acquisition by other stockpiling entities, the outlook for world petroleum product production, disruptions of supply or refining capability, logistical problems for moving petroleum products, macroeconomic factors, and any other considerations that may be pertinent relevant to the balance of petroleum product supply and demand.

(e) *Evaluation of offers.*

(1) DOE shall evaluate offers using:

(i) The criteria and requirements stated in the solicitation; and

(ii) The market analysis under paragraph (d) of this section.

(2) DOE shall require financial guarantees from the contracting entity, in the form of a letter of credit or equivalent financial assurance.

**§ 626.7 Acquiring petroleum products by exchange.**

(a) *General.* DOE may, through certified contracting officers, conduct petroleum product acquisitions through the exchange of petroleum products. Exchanges are conducted through emergency requests or by solicitation.

(b) *Emergency Requests.*

(1) Notwithstanding the requirements of Section 626.5, the requirements of this subsection shall control all exchanges by emergency request.

(2) At any point, in the event of an emergency, a requestor may request, in writing, for an exchange of petroleum product from the SPR.

(3) All requests shall include the following:

(i) A justification of need that describes:

(A) The emergency event,

(B) The emergency event's impact on the requestor, and

(C) The requestor's inability to acquire petroleum product from an alternative source;

(ii) The quantity of petroleum product (in barrels) requested;

(iii) The quality specifications of petroleum product requested; and

(iv) The anticipated duration of the emergency event.

(4) Upon receipt of an emergency request, DOE will verify the emergency, evaluate the need, and assess the market to ensure there is no alternative source of petroleum products available to the requester. DOE, in its sole discretion, may approve or disapprove any emergency request.

(5) Upon approval of an emergency request, DOE may enter into contract negotiations with the requestor.

(6) Repayment to the SPR for an exchange by emergency request shall be in the form of barrels of petroleum products, or another form of repayment as permitted by law, and shall include the following to be returned to the SPR by the contracted date:

(i) The principal amount of petroleum products provided to the requestor;

(ii) A premium; and

(iii) Costs incurred by DOE in conducting the emergency request.

(c) *Solicitation for Exchange.*

(1) A solicitation for exchange:

(i) May be either continuously open or fixed for a period of time;

(ii) Shall advertise the quantity and quality specification of petroleum product available for exchange;

(iii) May provide either for immediate delivery or for delivery at future dates to a bidding entity;

(iv) May, in DOE's sole discretion, include a rate table from which offerors may offer dates for repayment; and

(v) May require financial guarantees from offerors in the form of a letter of credit or equivalent financial assurance to accompany their bids.

(2) In conducting the bidding and selection process:

(i) Offerors shall follow the instructions to offerors included in the solicitation;

(ii) DOE shall evaluate and select bids that best support national energy security goals, the availability of petroleum products and storage capacity, and need for specific grades and quantities of petroleum products; and

(iii) Upon selection of a successful bid, DOE shall notify the apparently successful offeror.

(3) Repayment to the SPR for an exchange by solicitation shall be in the form of barrels of petroleum products or another form of repayment as permitted by law, and may be calculated based on any rate table, if applicable, and shall include the following:

(i) Principal amount of petroleum product owed to SPR in the case of an exchange or a deferred contractually scheduled delivery;

(ii) Costs incurred by DOE in conducting the exchange; and

(iii) A premium for each prospective date for repayment.

(4) Based on the market analysis described in paragraph (c)(5) of this section, DOE may refuse offers, decrease the rate of acquisition, or suspend the exchange process if DOE determines acquisition will add significant upward pressure to prices either regionally or on a worldwide basis. DOE may consider recent price changes, private inventory levels, petroleum product acquisition by other stockpiling entities, the outlook for world petroleum products production, incipient disruptions of supply or refining capability, logistical problems for moving petroleum products, macroeconomic factors, and any other considerations that may be pertinent to the balance of petroleum product supply and demand.

(5) Market analysis.

(i) DOE shall establish a market value for each petroleum product to be acquired based on a market analysis at the time of contract award.

(ii) DOE may consider prices on futures markets, spot markets, recent price movements, current and projected shipping rates, forecasts by the DOE Energy Information Administration, and any other analytic tools available to DOE to determine the most desirable purchase profile.

(iii) DOE may also consider factors including recent price changes, private inventory levels, petroleum product acquisition by other stockpiling entities, the outlook for world petroleum product production, disruptions of supply or refining capability, logistical problems for moving petroleum products, macroeconomic factors, and any other considerations that may be pertinent relevant to the balance of petroleum product supply and demand.

**§ 626.8 Deferrals of contractually scheduled deliveries.**

(a) *General.*

(1) DOE prefers to take deliveries of petroleum products for the SPR at times scheduled under applicable contracts.

However, in the event the market is distorted by disruption to supply or other factors, DOE may defer scheduled deliveries or consider deferral requests from awardees.

(2) An awardee seeking to defer scheduled deliveries of petroleum products to the SPR may submit a deferral request to DOE.

(b) *Deferral criteria.* DOE shall only grant a deferral request for negotiation under paragraph (c) of this section if it determines that DOE can receive a premium for the deferral and, based on DOE's deferral analysis, that at least one of the following conditions exists:

(1) DOE can reduce the cost of its petroleum products acquisition per barrel and increase the volume of petroleum products being delivered to the SPR by means of the premium barrels required by the deferral process;

(2) DOE anticipates private inventories are approaching a point where unscheduled outages may occur;

(3) There is evidence that refineries are reducing their run rates for lack of feedstock; or

(4) There is an unanticipated disruption to petroleum product supply.

(c) *Negotiating terms.*

(1) If DOE decides to negotiate a deferral of deliveries, DOE shall estimate the market value of the deferral and establish a strategy for negotiating with suppliers the minimum percentage of the market value to be taken by the Government. During these negotiations, if the deferral request was initiated by DOE, DOE may consider any reasonable, customary, and applicable costs already incurred by the supplier in the performance of a valid contract for delivery. In no event shall such consideration account for any consequential damages or lost profits suffered by the supplier as a result of such deferral.

(2) DOE shall only agree to amend the contract if the negotiation results in an agreement to give the Government a fair and reasonable share of the market value.

**§ 626.9 Suspension and pre-drawdown diversion.**

Where the Secretary has found that a severe energy supply interruption may be imminent, the Secretary may suspend any previously announced or contracted acquisition of any petroleum product by the SPR or injection of petroleum products into the SPR; or sell any petroleum product acquired for injection into the SPR that has not yet been injected into the SPR.

[FR Doc. 2022–16081 Filed 8–3–22; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2022–0641]**

**RIN 1625–AA00**

## Safety Zone; Firework Event, Willamette River, Portland, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Willamette River. This action is necessary to provide for the safety of life on these navigable waters between the Marquam Bridge to Hawthorne Bridge, Portland, Oregon, during a fireworks display on the evening of September 3, 2022. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Columbia River or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before August 19, 2022.

**ADDRESSES:** You may submit comments identified by docket number USCG–2022–0641 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email LT Sean Murphy, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email *D13-SMB-MSUPortlandWWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Columbia River
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

### II. Background, Purpose, and Legal Basis

On July 19, 2022, the Oregon Symphony notified the Coast Guard that it will be conducting a fireworks display from 9 p.m. to 9:30 p.m. on September 3, 2022. The fireworks are to be launched from a barge in the Willamette River between Marquam Bridge and Hawthorne Bridge, Portland, Oregon. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Columbia River (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 300-yard radius of the barge before, during, or after the fireworks display.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 300-yard radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 8:30 p.m. to 10 p.m. on September 3, 2022. The safety zone would cover all navigable waters within a 300-yard radius of a barge in the Willamette River located between the Marquam Bridge and Hawthorne Bridge, Portland, OR. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9 p.m. to 9:30 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

### 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 a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

*A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size, location, and

duration, of the safety zone. The safety zone created by this proposed rule is designed to minimize its impact on navigable waters. This proposed rule will prohibit entry into certain navigable waters of the Willamette River and is not anticipated to exceed two hours in duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Moreover, under certain conditions vessels may still transit through the safety zone when permitted by the COTP. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this 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 safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this 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 call or email 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 not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this 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 call or email 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 would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination 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 involves a safety zone lasting 1.5 hours that would prohibit entry within 300 yards of a fireworks barge. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*G. Protest Activities*

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

## 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–2022–0641 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 you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule 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. 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 to the docket 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 165**

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

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

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

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T13–0641 to read as follows:

**§ 165.T13–0641 Safety Zone; Willamette River, Portland, OR**

(a) *Location.* The following area is a safety zone: All navigable waters of the Willamette River, from surface to bottom, in a 300-yard radius from the fireworks barge located between the Marquam Bridge and Hawthorne Bridge, Portland, OR.

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

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

(c) *Regulations.*

(1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide advanced notice of the regulated area via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 8:30 p.m. to 10 p.m. on September 3, 2022. It will be subject to enforcement this entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: July 29, 2022.

**M. Scott Jackson,**

*Captain, U.S. Coast Guard, Captain of the Port Columbia River.*

[FR Doc. 2022–16670 Filed 8–3–22; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2022–0623]**

**RIN 1625–AA00**

## Safety Zone; Swim, Columbia River, Cascade Locks, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Columbia River. This action is necessary to provide for the safety of participants and the maritime public during a cross-channel swim on the Columbia River near Cascade Locks, Oregon, to Stevenson, Washington, on the morning of September 5, 2022. This proposed rulemaking would prohibit non-participant persons and vessels from being in the safety zone unless authorized by the Captain of the Port Columbia River or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before August 19, 2022.

**ADDRESSES:** You may submit comments identified by docket number USCG–2022–0623 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email LT Sean Murphy, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email *D13-SMB-MSUPortlandWWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Columbia River
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

### II. Background, Purpose, and Legal Basis

On April 20, 2022, True West LLC with Visit Hood River notified the Coast Guard that the Roy Webster Cross Channel Swim, an annually recurring marine event, will be occurring at Cascade Locks to Stevenson. The event consists of a cross-channel swim from 07:30 to 10:30 a.m. on September 5, 2022. The Captain of the Port Columbia River (COTP) has determined that the potential hazards associated with the swim event would be a safety concern for anyone within the designated area of the safety zone before, during, or after the swim.

The purpose of this rulemaking is to protect personnel, vessels, and the marine environment in these navigable waters before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 7 until 11 a.m. on September 5, 2022. The safety zone will cover all navigable waters of the Columbia River between RM 149 and RM 150 near Cascade Locks, Oregon. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 7:30 a.m. to 10:30 p.m. swim. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

### 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 a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

*A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size, location, and duration of the safety zone. The safety zone created by this proposed rule is designed to minimize its impact on navigable waters. This proposed rule would prohibit entry into certain navigable waters of the Columbia River and is not anticipated to exceed four hours in duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Moreover, under certain conditions, vessels may still transit through the safety zone when permitted by the COTP. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this 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 safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this 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 call or email 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 not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this 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 call or email 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 would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination 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 involves safety zone lasting 4 hours that would prohibit entry between RM 149 to RM 150 on the Columbia River. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*G. Protest Activities*

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

## 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–2022–0623 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 you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule 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. 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 to the docket 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 165**

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

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

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

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T13–0623 to read as follows:

**§ 165.T13–0623 Safety Zone; Columbia River, Cascade Locks, OR.**

(a) *Location.* The following area is a safety zone: All navigable waters of the Columbia River, from surface to bottom, starting approximately RM 150 to RM 149.

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

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

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

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide advance notice of the regulated area via broadcast notice to mariners. The COTP may also designate on-scene representatives to provide such advance notice.

(d) *Enforcement period.* This section will be enforced from 7 until 11 a.m. on September 5, 2022. It will be subject to enforcement this entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: July 29, 2022.

**M. Scott Jackson,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Columbia River.*

[FR Doc. 2022–16669 Filed 8–3–22; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2022–0607; FRL–10024–01–R9]**

### Air Plan Approval; Arizona; Maricopa County Air Quality Management Department

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Maricopa County Air Quality Department (MCAQD or ''County'') portions of the Arizona State Implementation Plan (SIP). These revisions concern the County's reasonably available control technology (RACT) demonstration for the aerospace coating category (''aerospace operations RACT certification'') and negative declarations for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS or ''standards'') in the portion of the Phoenix-Mesa ozone nonattainment areas regulated by the MCAQD, as well as a rule covering emissions of volatile organic compounds (VOCs) from surface coatings and industrial adhesives. We are proposing to approve the SIP revisions under the Clean Air Act (CAA or ''the Act''). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments must be received on or before September 6, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0607 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Nicole Law, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4126 or by email at *Law.Nicole@epa.gov.*

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

**Table of Contents**



## I. The State's Submittal

### *A. What documents did the State submit?*

Table 1 lists the documents addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1—SUBMITTED DOCUMENTS

| Local agency | Document | Adopted | Submitted |
|---|---|---|---|
| MCAQD | Maricopa County Reasonably Available Control Technology (RACT) Certification for Volatile Organic Compound (VOC) Emissions from Aerospace Manufacturing and Rework Operations in Maricopa County June 2021. | 06/23/21 | 06/30/21 |
| MCAQD | Rule 336 Surface Coating Operations and Industrial Adhesive Application Processes | 09/01/21 | 09/17/21 |
| MCAQD | Negative Declarations for Three Coating Categories Listed in the 2008 Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings. | 09/01/21 | 09/17/21 |

On December 20, 2021, the submittal for the aerospace operations RACT certification was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V. On March 17, 2022, the submittals for the negative declarations and MCAQD Rule 336 were deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V. The completeness criteria in 40 CFR part 51 Appendix V must be met before formal EPA review.

### *B. Are there other versions of these documents?*

There are no previous versions of the aerospace operations RACT certification in the MCAQD portion of the Arizona SIP for the 2008 Ozone NAAQS. ADEQ previously submitted a negative declaration for this RACT control techniques guideline (CTG) category, though the EPA disapproved the negative declaration on January 7, 2021 (86 FR 971).

We conditionally approved an earlier version of Rule 336 and RACT demonstration for the Miscellaneous Metal and Plastic Parts Coating (MMPPC) CTG [1] into the SIP on January 7, 2021 (86 FR 971). The MCAQD adopted revisions to the SIP-approved version and negative declarations for subcategories of the CTG on September 1, 2021, and ADEQ submitted them to us on September 17, 2021. In its submittal letter, ADEQ requested that, upon approval of the revised version of Rule 336, the EPA remove the old version of this rule from this SIP. If we take final action to approve the September 1, 2021 version of Rule 336, this version will replace the previously approved version of this rule in the SIP.

### *C. What is the purpose of the submitted documents?*

Emissions of VOCs contribute to the production of ground-level ozone, smog, and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as Moderate or above implement RACT for any source covered by a Control Techniques Guidelines (CTG) document and for any major source of VOCs or $NO_X$. The MCAQD is subject to this requirement because it regulates the Maricopa County portion of the Phoenix-Mesa ozone nonattainment area that is currently classified as a Moderate nonattainment area for the 2008 8-hour ozone NAAQS. Therefore, the MCAQD must, at a minimum, adopt RACT-level controls for all sources covered by a CTG document and for all major non-CTG sources of VOCs or $NO_X$ within the ozone nonattainment area that it regulates. Any stationary source that emits or has the potential to emit at least 100 tons per year (tpy) of VOCs or $NO_X$ is a major stationary source in a Moderate ozone nonattainment area (CAA section 182(b)(2), (f) and 302(j)).

Section III.D of the preamble to the EPA's final rule to implement the 2008 ozone NAAQS [2] discusses RACT requirements. It states in part that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that no sources in the nonattainment area are covered by a specific CTG.[3] It also provides that states must submit appropriate supporting information for their RACT submissions as described in the EPA's implementation rule for the 1997 ozone NAAQS.[4] On January 7, 2021 (86 FR 971), the EPA partially disapproved MCAQD's negative declarations for RACT categories associated with the following CTG categories:

- ''National Emission Standards for Hazardous Air Pollutants for Source Categories: Aerospace Manufacturing and Rework'' (59 FR 29216),
- ''Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations'' (EPA–453/R–97–004),
- ''Control Techniques Guidelines for Miscellaneous Industrial Adhesives'' (EPA–453/R–08–005).

The submitted aerospace operations RACT certification provides MCAQD's analyses of its compliance with the CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS. It addresses the CTG RACT requirements in the ''National Emission Standards for Hazardous Air Pollutants for Source Categories: Aerospace Manufacturing and Rework'' and ''Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations'' CTGs.

MCAQD also adopted and submitted for SIP approval the following rule and negative declarations which address the CTG RACT requirements for the CTG

[1] ''Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings,'' EPA–453/R–08–003, September 2008.

[2] 80 FR 12264 (March 6, 2015).

[3] Id. at 12278.

[4] See id. and 70 FR 71612, 71652 (November 29, 2005).

categories for Miscellaneous Industrial Adhesives and MMPPC.

Rule 336 is a local control measure that establishes VOC content limits for surface coating operations and industrial adhesive application in the Maricopa County portion of the Phoenix-Mesa 8-hour ozone nonattainment area. On January 7, 2021 (86 FR 971), the EPA conditionally approved MCAQD Rule 336 and the RACT certification associated with the rule and the CTG categories. The conditional approval was based on a commitment from the State to submit a revised rule that would correct deficiencies in Rule 336 and establish RACT-level controls for sources covered by the CTG source categories:

- Control of Volatile Oranic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks'' EPA–450/2–77–008, May 1977 (cans and fabrics portions only [5]),
- ''Control Technique Guidelines for Miscellaneous Metal and Plastic Parts Coatings,'' EPA–450/2–78–15, June 1978, and
- ''Control Techniques Guidelines fo Miscellaneous Metal and Plastic Parts Coatings,'' EPA–453/R–08–003, September 2008.

The Rule 336 submittal included negative declarations for three subcatgories under the 2008 MMPPC CTG:

- Business Machine Plastic Part Coatings (Table 4 of the 2008 MMPPC CTG),
- Automotive/Transportation Plastic Part Coatings (Table 4 of the 2008 MMPPC CTG),
- Motor Vehicle Materials (Table 6 of the 2008 MMPPC CTG).

Revisions to Rule 336 and the negative declarations adopted on September 1, 2021, corrected the deficiencies. EPA's technical support document (TSD) has more information about the County's rule and the EPA's evaluations thereof.

## II. The EPA's Evaluation and Action

### *A. How is the EPA evaluating the submitted documents?*

SIP rules must require RACT for each category of sources covered by a CTG document and for each major source of VOCs or $NO_X$ in ozone nonattainment areas classified as Moderate or above (CAA section 182(b)(2)). The MCAQD regulates a Moderate ozone nonattainment area (40 CFR 81.305) so MCAQD's rules must implement RACT.

States should also submit for SIP approval negative declarations for those source categories for which they have not adopted RACT-level regulations (because they have no sources above the CTG-recommended applicability threshold) regardless of whether such negative declarations were made for an earlier SIP. To do so, the submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist in the portion of the ozone nonattainment area that is regulated by the MCAQD.

The County's analysis must demonstrate that each major source of VOCs or $NO_X$ in the ozone nonattainment area is covered by a RACT-level rule. In addition, for each CTG source category, the County must either demonstrate that a RACT-level rule is in place or submit a negative declaration. Guidance and policy documents that we use to evaluate CAA section 182 RACT requirements include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. Memorandum dated May 18, 2006, from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Subject: ''RACT Qs & As—Reasonably Available Control Technology (RACT): Questions and Answers.''
3. ''Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2,'' 70 FR 71612 (November 29, 2005).
4. ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements,'' 80 FR 12264 (March 6, 2015).

Rules that are submitted for inclusion into the SIP must be enforceable (CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (CAA section 193).

In addition to the documents listed above, guidance and policy documents that we use to evaluate enforceability, stringency, and revision/relaxation requirements include the following:

1. EPA Office of Air Quality Planning and Standards, ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' May 25, 1988 (''the Bluebook,'' revised January 11, 1990).
2. EPA Region IX, ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' August 21, 2001 (''the Little Bluebook'').
3. ''Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks'' (EPA–450/2–77–008, May 1977).
4. ''Control of Volatile Organic Emissions from Existing Stationary Sources—Volume III: Surface Coating of Metal Furniture'' (EPA–450/2–77–032, December 1977).
5. ''Control of Volatile Organic Emissions from Existing Stationary Sources—Volume V: Surface Coating of Large Appliances'' (EPA–450/2–77–034, December 1977).
6. ''Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products'' (EPA–450/2–78–15 June 1978).
7. ''Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings'' (EPA–453/R–08–003, September 2008).
8. ''Control Techniques Guidelines for Metal Furniture Coatings'' (EPA–453/R–07–005, September 2007).
9. ''Control Techniques Guidelines for Large Appliance Coatings'' (EPA 453/R–07–004, September 2007).
10. ''Control Techniques Guidelines for Paper, Film, and Foil Coatings'' (EPA–453/R–07–003, September 2007).
11. ''Control Techniques Guidelines for Miscellaneous Industrial Adhesives'' (EPA–453/R–08–005, September 2008).

### *B. Do the documents meet the evaluation criteria?*

The submitted rule meets CAA requirements and is consistent with relevant guidance regarding enforceability, RACT, and SIP revisions. The TSD has more information on our evaluation. The submitted negative declarations describe how the MCAQD evaluated whether there were sources emitting VOCs in the CTG subcategories. After review of the emissions inventories list, we agree with the County's assessment determining the negative declarations are correct.

The MCAQD's aerospace operations RACT certification constitutes the County's demonstration that the existing SIP-approved MCAQD Rule 348 ''Aerospace Manufacturing and Rework Operations'' satisfies CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS for the CTG category

[5] Note that on January 7, 2021 (86 FR 971) EPA finalized approval of negative declaration for the other categories covered by this CTG: surface coating of coils, paper, automobiles, and light-duty trucks.

covered by the EPA CTG for Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace and Manufacturing Rework (EPA–453/R–97–004). This conclusion is based on MCAQD's comparison of Rule 348 against the EPA CTG as well as other EPA SIP-approved rules for this category in California,[6] Indiana,[7] and Texas.[8] The VOC limits for various categories in Rule 348 are either equally or more stringent than the CTG, as well as the Indiana and Texas rules. However, the California district rules are more stringent in 16 coating categories and less stringent than Rule 348 in 13 coating categories. Of the 16 coating categories where the California district rules had more stringent VOC limits, MCAQD surveyed affected sources and determined the VOC emissions from those categories were found to be less than 0.5% of each facility's total VOC emissions. Additionally, the County summarized where the rule was consistent with the CTG: VOC control and capture efficiency of at least 85% by weight is an alternative to limiting the VOC limits: solvent cleaning requirements; VOC containment and disposal; exemptions; and definitions. Based on these findings, the EPA concludes that the RACT demonstration satisfies CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS for the CTG category covered by the EPA CTG for Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace and Manufacturing Rework (EPA–453/R–97–004).

*C. Public Comment and Proposed Action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule, negative declarations, and RACT demonstration because they fulfill all relevant requirements. In addition, we propose to convert the partial conditional approval of RACT demonstrations for the 2008 8-hour ozone NAAQS with respect to the VOC source categories covered by Rule 336 and the negative declarations, as found in 40 CFR 52.119 (c)(3), to full approval. We will accept comments from the public on this proposal until September 6, 2022. If we take final action to approve the submitted rule and RACT demonstration, our final action would correct the deficiencies identified in our January 7, 2021 partial approval, partial disapproval, and partial conditional approval of parts of MCAQD's RACT SIP submittal for the 2008 8-hour ozone NAAQS (86 FR 971).

[6] Eastern Kern Air Pollution Control District Rule 410.8 Aerospace Assembly and Coating Operations, adopted March 13, 2014 and EPA SIP approved May 17, 2016 (81 FR 30484) and Mojave Desert Air Quality Management District Rule 1118 Aerospace Assembly, Rework and Component Manufacturing Operations, adopted October 26, 2015 and EPA SIP approved June 21, 2017 (82 FR 28240).

[7] 326 Indiana Administrative Code 8–21, adopted October 13, 2011 and approved as RACT February 13, 2019 (84 FR 3711).

[8] 30 Texas Administrative Code 115.420–429, amended June 25, 2015 and approved as RACT April 30, 2019 (84 FR 18145).

## III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference MCAQD Rule 336, ''Surface Coating Operations and Industrial Adhesive Application Process,'' as described in Section I of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

### List of Subjects in 40 CFR Part 52

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

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

Dated: July 27, 2022.

**Martha Guzman Aceves,**

*Regional Administrator, Region IX.*

[FR Doc. 2022–16490 Filed 8–3–22; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2022–0609; FRL–10025–01–R9]**

## Air Plan Approval; Arizona; Maricopa County; Reasonably Available Control Technology—Combustion Sources

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a

revision to the Maricopa County Air Quality Department's (MCAQD or County) portion of the Arizona State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen ($NO_X$) and particulate matter (PM) from combustion equipment and internal combustion (IC) engines. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act) and to determine that the County's control measures implement Reasonably Available Control Technology (RACT) for major sources of $NO_X$ under the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). We are taking comments on this proposal and plan to follow with a final action. Elsewhere in thi's **Federal Register**, we are making an interim final determination to defer CAA sanctions associated with our previous disapproval action concerning the County's RACT demonstration for major sources of $NO_X$.

**DATES:** Comments must be received on or before September 6, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0609 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3073 or by email at *gong.kevin@epa.gov.*

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

**Table of Contents**



## I. The State's Submittal

### *A. What rules did the State submit?*

Table 1 lists the rules proposed for approval with the date they were revised by Maricopa County and the date they were submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1—SUBMITTED RULES

| Rule No. | Rule title | Revised | Submitted |
|---|---|---|---|
| 323 | Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources | June 23, 2021 | June 30, 2021. |
| 324 | Stationary Reciprocating Internal Combustion Engines (RICE) | June 23, 2021 | June 30, 2021. |

On September 25, 2021, the EPA determined that the submittal for the rules in Table 1 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

### *B. Are there other versions of these rules?*

We conditionally approved previous versions of Rule 323 and Rule 324 (locally revised on November 2, 2016 and submitted to EPA in 2017 [1]) into the Arizona SIP on July 20, 2020 (85 FR 43692). If we take final action to approve the June 23, 2021 versions of Rule 323 and Rule 324, these versions will replace the previously approved versions of the rules in the SIP.

### *C. What is the purpose of these rules?*

Emissions of $NO_X$ contribute to the production of ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Emissions of PM, including PM equal to or less than 2.5 microns in diameter ($PM_{2.5}$) and PM equal to or less than 10 microns in diameter ($PM_{10}$), contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control $NO_X$ and PM emissions. Any stationary source that emits or has the potential to emit at least 100 tons per year (tpy) of VOCs or $NO_X$ is a major stationary source in a Moderate ozone nonattainment area (CAA section 182(b)(2), (f) and 302(j)).

Section III.D of the preamble to the EPA's final rule to implement the 2008 ozone NAAQS [2] discusses RACT requirements. It states, in part, that in order to meet the RACT requirements, SIP revisions implementing these requirements (RACT SIPs) must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that no sources in the nonattainment area are covered by a specific control techniques guidelines (CTG).[3] It also provides that states must submit appropriate supporting information for their RACT submissions as described in the EPA's

[1] The original date of submittal for this SIP revision was December 19, 2016. However, due to an administrative error, the submittal lacked adequate documentation that demonstrated the County's SIP revision had met the public notice requirements required for completeness under 40 CFR part 51 Appendix V. The County subsequently addressed the public notice requirement and the State resubmitted the submittal on June 22, 2017, and withdrew the December 19, 2016 submittal on May 17, 2019. As such, we will refer to the 2017 submittal when discussing the previously submitted version of Rule 323.

[2] 80 FR 12264 (March 6, 2015).

[3] Id. at 12278.

implementation rule for the 1997 ozone NAAQS.[4]

Rule 323 regulates combustion equipment at non-power plant facilities and Rule 324 regulates stationary reciprocating internal combustion engines. The EPA's technical support documents (TSDs) have more information about these rules.

## II. The EPA's Evaluation and Action

### *A. How is the EPA evaluating these rules?*

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require RACT for each major source of $NO_X$ in ozone nonattainment areas classified as Moderate or above (see CAA sections 182(b)(2) and 182(f)). The MCAQD regulates a portion of the Phoenix-Mesa ozone nonattainment area which is classified as Moderate for the 2008 8-hour ozone national ambient air quality standard (40 CFR 81.303). Maricopa County's ''Analysis of Reasonably Available Control Technology For The 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP),'' adopted December 5, 2016, submitted June 22, 2017 (the ''2016 RACT SIP''), found that there were major sources of $NO_X$ within the Maricopa County portion of the Phoenix-Mesa nonattainment area subject to the County's regulations. Accordingly, these rules must establish RACT levels of control for applicable major sources of $NO_X$.

The EPA's previous rulemaking on the 2017 versions of Rule 323 and Rule 324 found several deficiencies, which precluded full approval of these SIP revisions. Commitments from Maricopa County and ADEQ to resolve the approvability issues allowed the EPA to issue conditional approvals of these revisions to the Arizona SIP as provided under section 110(k)(4) of the CAA. The deficiencies in the 2017 submittal that Maricopa County and ADEQ committed to resolve are listed below. We further explain the deficient provisions in these rules in the TSDs.

Rule 323 Deficiencies

a. Emergency fuel use exemptions in Section 104 were not adequately constrained, and had unclear language that could result in unintended emissions.

b. Burner maintenance requirements in section 304.1.a did not meet RACT, as other jurisdictions regulating units in this size category are able to achieve numeric limits or have more stringent tuning requirements.

c. The $NO_X$ limits of 42 ppmv for gas fuel-fired operations and 65 ppmv for liquid fuel-fired operations for non-turbine combustion equipment in this rule were not consistent with limits found in other jurisdictions and did not meet RACT.

d. Section 306 allowed for operators to comply with the emission limits in this rule by installing an Emission Control System (ECS), but the effectiveness of such a system in meeting the applicable emission standards was unknown without a compliance determination requirement (which in Section 503 only applies to Sections 301–304, and only for units larger than 100 million Btu/hr).

e. The operations and maintenance plan requirements were only approved by the Control Officer in Section 306.3. This constituted unacceptable director's discretion.

f. Section 503.2 specified that boilers larger than 100 MMBtu/hr must source test triennially, but did not describe a testing frequency for other units.

g. Section 200 did not include a definition for ''boiler,'' which is used throughout this rule and in the context of definitions for ''annual capacity factor,'' ''steam generating unit,'' and others, nor is the term defined in Maricopa's Rule 100 General Provisions and Definitions. Section 200 also did not include a definition for ''continuous emissions monitoring system.''

Rule 324 Deficiencies

a. The Rule's structure for applicability and emission limits did not clearly outline RACT limits for all applicable IC engines. Engines that were subject to similar Federal requirements in the NSPS and NESHAP could be exempt from this rule's RACT limits.

b. The Rule only applied to engines rated greater than 250 bhp, and to engines greater than 50 bhp only when aggregated at a facility operating engines with a combined bhp rating of greater than 250 bhp.

c. The Rule allowed for excessive flexibility in the treatment of replacement engines. Emergency engines that serve as backups to replace non-emergency engines may do so until the non-emergency engine is repaired, but this time span was unbounded, and such engines may operate above RACT limits. Rule provisions also allowed for engines that are deemed equivalent or identical to replace existing engines to be treated the same as the engine being replaced, but there were no requirements for replacement engines to quantify emissions equivalency or reductions.

d. The Rule did not specify a compliance determination interval for engines, beyond the Control Officer's discretion.

In our July 20, 2020 (85 FR 43692) final rule promulgating our conditional approval of Rules 323 and 324, the EPA also finalized disapproval of the 2017 revision to Rule 322 regulating power plant combustion sources which also must implement RACT for major sources of $NO_X$. Our conditional approvals and disapproval of these rules led to our subsequent disapproval of the County's demonstration for the County's 2008 8-hour ozone RACT SIP on January 7, 2021 (86 FR 971), which initiated offset sanctions to commence 18 months after the effective date of that rulemaking (February 8, 2021), and highway sanctions and a Federal Implementation Plan to be due 24 months after the effective date, under CAA sections 110(k)(3) and 301(a). The MCAQD must resolve the identified deficiencies in all of the associated rules in order for the EPA to determine that that the RACT requirement is met, and to turn off these penalty clocks.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).

2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

3. ''Alternative Control Techniques Document—$NO_X$ Emissions from Stationary Gas Turbines,'' EPA 453/R–93–007, January 1993.

4. ''Alternative Control Techniques Document—$NO_X$ Emissions from Industrial, Commercial & Institutional Boilers,'' EPA 453/R–94–022, March 1994.

5. ''Alternative Control Techniques Document—$NO_X$ Emissions from Stationary Reciprocating Internal Combustion Engines,'' EPA 453/R–93–032, July 1993.

[4] See id. and 70 FR 71612, 71652 (November 29, 2005).

6. ''De Minimis Values for $NO_X$ RACT,'' Memorandum from G. T. Helms, Group Leader, Ozone Policy and Strategies Group, U.S. EPA, January 1, 1995.

7. ''Cost-Effective Nitrogen Oxides ($NO_X$) Reasonably Available Control Technology (RACT),'' Memorandum from D. Ken Berry, Acting Director, Air Quality Management Division, U.S. EPA, March 16, 1994.

*B. Do the rules meet the evaluation criteria?*

We believe that these revisions to Rules 323 and 324 meet CAA requirements, and address the conditional approval deficiencies we identified in our 2020 rulemaking. Our TSDs contain more information about how the revised rules meet the commitments.

The revisions are otherwise consistent with relevant guidance regarding enforceability, RACT, and SIP revisions. The TSDs have more information on our evaluations on these factors for each rule. On February 8, 2022 (87 FR 7069) we proposed approval for MCAQD Rule 322 to replace the SIP-approved version of that rule, and which would address our previous disapproval. Therefore, we find that all three rules regulating major sources of $NO_X$ in Maricopa County meet the applicable CAA requirements and include requirements that are consistent with RACT for $NO_X$ sources. Based on this finding, the EPA concludes that the submitted rules satisfy CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS for major sources of $NO_X$.

*C. Public Comment and Proposed Action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted Rules 323 and 324 because they fulfill all relevant requirements. In addition, we propose to convert the partial conditional approval of RACT demonstrations for the 2008 8-hour ozone NAAQS with respect to Rules 323 and 324 as found in 40 CFR 52.119(c)(2), to full approval. We will accept comments from the public on this proposal until September 6, 2022. If we take final action to approve the submitted rules, our final action would correct the deficiencies identified in our January 7, 2021 partial approval, partial disapproval, and partial conditional approval of the RACT demonstration as they relate to major sources of $NO_X$ in MCAQD's RACT SIP submittal for the 2008 8-hour ozone NAAQS (86 FR 971).

## III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the rules identified above in sections I.A, I.B. and I.C of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: July 27, 2022.

**Martha Guzman Aceves,**

*Regional Administrator, Region IX.*

[FR Doc. 2022–16492 Filed 8–3–22; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Part 8360

**[LLMTB01000–L12200000.MA0000 212—MO# 4500157128]**

## Notice of Proposed Supplementary Rule for Public Lands Managed by the Missoula Field Office in Missoula, Granite, and Powell Counties, Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed supplementary rule.

**SUMMARY:** The Bureau of Land Management (BLM) proposes to establish a supplementary rule for BLM-administered public lands within the jurisdiction of the Missoula Field Office. This proposed supplementary rule would allow the BLM to enforce decisions in the Missoula Resource Management Plan (RMP) that cover the general area and specific rules for the Bear Creek Flats, Blackfoot River Recreation Area, Dupont Acquired Lands, Garnet Ghost Town, Limestone

Cliffs, and Sperry Grade Area. This rule is needed to further protect natural and historic resources and provide for public health and safety.

**DATES:** The BLM must receive your comment by October 3, 2022. Comments received after this date may not be considered in the development of the final supplementary rule.

**ADDRESSES:** You may submit comments by the following methods: email to *BLM_MT_Missoula_FO@blm.gov,* or mail or hand deliver comments to Proposed Supplementary Rule, Bureau of Land Management, Attention: Erin Carey, Missoula Field Manager, Missoula Field Office, 3255 Fort Missoula Road, Missoula, MT 59804.

**FOR FURTHER INFORMATION CONTACT:** Kelly Cole, Field Staff Law Enforcement Ranger at *kccole@blm.gov* or Erin Carey, Missoula Field Manager at *ecarey@blm.gov;* Missoula Field Office, at (406) 329–3914.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Kelly Cole. 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:**

## I. Public Comment Procedures

Written comments on this proposed supplementary rule should be specific, confined to issues pertinent to this proposed supplementary rule, and explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of this proposed supplementary rule the comments are addressing. The BLM will consider comments received before the end of the comment period (see **DATES**), including those postmarked before the deadline and delivered to the address listed earlier (see **ADDRESSES**). Comments, including your name, street address, phone number, and other personally identifiable information included in the comment will be available for public review during regular business hours (8 a.m. to 4:30 p.m. local time Monday through Friday, except on Federal holidays) in the Missoula Field Office. 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 in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

## II. Background

The Missoula Field Office completed an RMP covering approximately 167,000 acres of public lands within its boundaries in January 2021. The RMP is available at *https://eplanning.blm.gov/eplanning-ui/project/58107.* These public lands are in Missoula, Granite, and Powell Counties in western Montana. The Missoula Field Office needs to adopt this proposed supplementary rule to implement decisions in the RMP. The supplementary rule would allow enforcement of these decisions and would protect natural resources and public health and safety.

The BLM included the proposed supplementary rule in the draft RMP and draft environmental impact statement (EIS), which were available for a 60-day public comment period following publication of a notice in the **Federal Register** (84 FR 22513, May 17, 2019). The BLM again included the draft supplementary rule in the final EIS, which was subject to a 30-day public protest period following publication of a notice in the **Federal Register** (85 FR 8607, February 14, 2020).

The BLM received no public comments on this proposed supplementary rule during either of these public engagement periods.

## III. Discussion of the Proposed Supplementary Rule

This proposed supplementary rule would apply to public lands and BLM facilities managed by the Missoula Field Office.

The proposed rule conforms with management decisions contained in the Missoula RMP (2021). The focus of an RMP is to guide the management of resources for both protection and utilization, and to address issues related to public health and safety. The RMP includes decisions concerning restrictions, prohibitions, and allowable uses to address identified issues or achieve management goals and objectives. For these decisions to be effectively implemented, enforcement is often needed, first to ensure the management decision is properly understood and followed and second to provide for civil and criminal penalties should these restrictions and prohibitions not be followed.

Although many management decisions can be implemented through existing laws and regulations, often unique and site-specific restrictions and prohibitions need to be clearly defined for ease of understanding and clarity as described further below. The BLM's tools to achieve this understanding and clarity are closure and restriction orders, supplementary rules, and special rules.

Specifically, this proposed supplementary rule for the Missoula RMP includes:

- Four restrictions that would apply to all public lands and facilities managed by the BLM Missoula Field Office. These restrictions are intended to promote public safety, reduce user conflicts and safety hazards on public lands, and prevent resource damage. A prohibition on burning treated lumber and wood materials containing nails and screws is needed because such activity not only leaves garbage on public lands but could also lead to vehicle tire damage. Limiting the use of airsoft and paintball guns would reduce the number of false alarms to law enforcement about the use of ''guns'' in highly visited areas. Creating a rule to limit memorials on public lands would give managers the flexibility to decide the appropriate uses of public lands as well as reduce conflicts and resource damage. The intent of the 72-hour limit on unattended personal property is to curb transient camps from forming, along with any associated garbage that may accumulate.
- The proposed supplementary rule's provisions for the Limestone Cliffs Special Recreation Management Area (SRMA) are needed to protect the unique geological feature of the limestone cliffs, which are an integral part of the SRMA, and to provide for public safety while rock climbing along the cliffs.
- The proposed supplementary rule's provisions in Bear Creek Flats would supplement the existing supplementary rule, finalized in March 2004 (69 FR 10743), for the Blackfoot River, which established consistency with the Montana Department of Fish, Wildlife and Parks' Blackfoot River Recreation Corridor rules. The proposed Bear Creek Flats provisions would not replace the existing rule; rather, they would expand the existing rule to include the Bear Creek Flats acquisition.
- The proposed supplementary rule includes two new restrictions for lands within the Blackfoot SRMA: (1) no jumping off any bridges along the Blackfoot River corridor, which is intended to enhance public safety for all recreational river users; and (2) time restrictions for day-use sites, from 10 p.m. to 5 a.m., thereby prohibiting camping at day-use-only sites.

• The proposed supplementary rule's provisions in the Dupont Acquired Lands area are needed to be consistent with conditions the BLM agreed to when it acquired the area via donation. These conditions are specified in the Dupont Conservation Easement signed in April 1997. Although the BLM has complied with these conditions since the acquisition, this supplementary rule would enable the BLM to enforce the conditions.

• The proposed supplementary rule's provisions for Sperry Grade are necessary to enforce a seasonal closure on human entry to the Sperry Grade area, which would be consistent with the Montana Department of Fish, Wildlife and Parks' closure-to-human-entry rule for the adjacent Blackfoot-Clearwater Game Range. The purpose of the seasonal closure is to protect the elk and elk winter range. When the BLM acquired the Sperry Grade in 1992, the BLM decided, informed by an environmental assessment, that the grade would be managed similarly to the Blackfoot-Clearwater Game Range, including closing it to human entry during the winter. This proposed supplementary rule would make that seasonal closure on the Sperry Grade enforceable.

• The proposed supplementary rule's provisions for Garnet Ghost Town would help reduce threats to the fragile late 19th century buildings and artifacts that comprise the popular tourist area.

The authority for this supplementary rule is set forth at sections 303 and 310 of the Federal Land Policy and Management Act, 43 U.S.C. 1733 and 1740. The BLM is proposing this supplementary rule under the authority of 43 Code of Federal Regulations (CFR) 8365.1–6, which allows BLM State Directors to establish supplementary rules for the protection of persons, property, and public lands and resources. This provision allows the BLM to issue rules of less than national effect by publishing the rules in the **Federal Register**, without codifying them in the CFR.

## IV. Procedural Matters

*Executive Order 12866, Regulatory Planning and Review*

This proposed supplementary rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. The proposed supplementary rule would not have an effect of $100 million or more on the economy and would not adversely affect in a material way productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities. The proposed supplementary rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed supplementary rule would not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs, or the rights or obligations of their recipients, nor does it raise novel legal or policy issues. The proposed supplementary rule would merely impose limitations on certain activities on certain public lands to protect natural resources and human health and safety.

*National Environmental Policy Act*

The BLM analyzed this proposed supplementary rule's requirements in the EIS associated with the Missoula RMP.

The BLM included the proposed supplementary rule in the draft RMP and draft EIS, which were available for a 60-day public comment period. The BLM again included the draft supplementary rule in the final EIS, which was subject to a 30-day public protest period. The BLM received no comments on the proposed rule's requirements during either of the public engagement periods.

*Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), which requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This proposed supplementary rule would have no effect on business entities of any size. The proposed supplementary rule would merely impose reasonable restrictions on certain activities on certain public lands to protect natural resources and the environment and human health and safety. Therefore, the BLM certifies under the RFA that this proposed supplementary rule would not have a significant economic impact on a substantial number of small entities.

*Small Business Regulatory Enforcement Fairness Act*

This proposed supplementary rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). The proposed supplementary rule would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources, the environment, and human health and safety. The proposed supplementary rule would not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local agencies; or

(3) Have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign based enterprises in domestic and export markets.

*Unfunded Mandates Reform Act*

This proposed supplementary rule would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year; nor would it have a significant or unique effect on State, local, or Tribal governments or the private sector. The proposed supplementary rule would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources, the environment, and human health and safety. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

*Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

This proposed supplementary rule would not constitute a government action capable of interfering with constitutionally protected property rights. The proposed supplementary rule would not address property rights in any form and would not cause the impairment of constitutionally protected property rights. Therefore, the BLM has determined that this proposed supplementary rule would not cause a ''taking'' of private property or require further discussion of takings implications under this Executive order.

*Executive Order 13132, Federalism*

This proposed supplementary rule would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the BLM has determined that the proposed supplementary rule would not have sufficient federalism implications to warrant preparation of a federalism assessment.

*Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, the BLM has determined that this proposed supplementary rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

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

In accordance with Executive Order 13175, the BLM has found that this proposed supplementary rule does not include policies that have Tribal implications and would have no bearing on trust lands or on lands for which title is held in fee status by Indian Tribes or U.S. Government-owned lands managed by the Bureau of Indian Affairs.

*Information Quality Act*

In developing this proposed supplementary rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

*Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use*

This proposed supplementary rule would not comprise a significant energy action. The proposed supplementary rule would not have an adverse effect on energy supply, production, or consumption and would have no connection with energy policy.

*Executive Order 13352, Facilitation of Cooperative Conservation*

In accordance with Executive Order 13352, the BLM has determined that this proposed supplementary rule would not impede facilitating cooperative conservation; would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources; would properly accommodate local participation in the Federal decision-making process; and would provide that the associated programs, projects, and activities are consistent with protecting public health and safety.

*Paperwork Reduction Act*

This proposed supplementary rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

## V. Proposed Rule

*Author*

The principal author of this proposed supplementary rule is Erin Carey, Field Manager, BLM Missoula Office.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1733(a) and 1740, and 43 CFR 8365.1–6, the State Director proposes a supplementary rule for public lands and facilities in the Missoula Field Office.

**Proposed Supplementary Rule for the Missoula Field Office**

*Definitions*

As used in this Supplementary Rule, the term:

*Airsoft and paintball activities* means any recreational activity that involves the use of replica firearms to fire non-lethal, plastic or form pellets, or paint-laden capsules, using compressed gas or electric and/or spring driven pistons. Such activities may include shooting targets or games/combat situations involving multiple people.

*Firearms* means any weapon capable of firing a projectile, including but not limited to a rifle, shotgun, handgun, BB-gun, pellet gun, or paintball gun.

*Public lands* means any lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management (BLM) without regard to how the United States acquired ownership. This includes paved or unpaved parking lots or other paved or unpaved areas where vehicles are parked or areas where the public may drive a motorized vehicle, paved or unpaved roads, routes, or trails.

*Prohibited Acts on Public Lands in the Missoula Field Office*

1. You must not burn treated lumber and woody materials containing hardware (such as nails and screws) on public lands unless approved by the authorized officer.

2. You must not:

a. Use airsoft guns and paintball guns across any designated route of travel; across any body of water, including flowing rivers and streams, lakes, and ponds; or within 150 yards of any man-made object, structure, camp, or dwelling, unless such structure is specifically designed and permitted for use in those activities;

b. Use anything other than biodegradable ammunition in airsoft and paintball guns; or

c. Leave behind debris associated with the use of airsoft and paintball guns after completion of those activities in areas where airsoft and paintball guns are allowed.

3. You must not establish or erect a permanent or semi-permanent symbol, shrine, placard, or other structure on public lands without prior written authorization from the BLM.

4. You must not leave personal property unattended for 72 hours or longer without prior authorization from the BLM. After that time, it is deemed abandoned and can be duly removed and disposed of by the BLM, or any person acting on its behalf.

5. Prohibited Acts within the Sperry Grade Area

To be consistent with Montana Fish and Wildlife and Parks management of the Blackfoot-Clearwater Game Range, you must not enter the BLM-administered public lands in the Sperry Grade area from November 11 to May 14 of each year.

6. Prohibited Acts within the Dupont Acquired Lands

a. You must not camp outside of designated sites or areas.

b. You must not light or maintain a warming fire or campfire.

c. You must not operate a motor vehicle within the Dupont Acquired Lands unless for administrative purposes upon approval by the Missoula field manager.

d. You must not collect firewood except for predetermined authorized use established by the Missoula field manager.

e. You must not discharge a firearm or projectile (except for legal game hunting purposes as established by the Montana Department of Fish, Wildlife and Parks) or engage in other recreational shooting including, but not limited to, plinking, target shooting, or shooting varmints.

7. Prohibited Acts within the Bear Creek Flats

a. You must not camp outside of designated sites or areas.

b. You must not light or maintain a fire except in designated areas or government-installed fire rings.

c. You must not collect firewood except for use onsite. You may only burn dead and down wood.

d. You must not discharge a firearm or projectile (except for legal game hunting purposes as established by the Montana Department of Fish, Wildlife and Parks) or engage in other recreational shooting including, but not limited to, plinking, target shooting, or shooting varmints.

8. Prohibited Acts within Garnet Ghost Town

a. You must not use any device for detecting metal, except when allowed by permit.

b. You must not camp unless permitted by an authorized officer.

c. You must not discharge firearms, weapons, fireworks, or any projectile, or

engage in other recreational shooting including, but not limited to, plinking, target shooting, or shooting varmints.

d. You must not bring an animal into the area unless the animal is on a leash that is not longer than 6 feet and is secured to an object or under the control of a person or is otherwise physically restrained at all times.

e. You must not light or maintain a fire except in designated fire rings established by the government.

f. You must not smoke in the buildings or within 10 feet of any building.

9. Prohibited Acts within Blackfoot Special Recreation Management Area (SRMA)

a. You must not occupy the following day-use sites between the hours of 10 p.m. and 5 a.m.: Daigles Eddy Day Use Site, Sheep Flats Day Use Site, Thibodeau Rapids Day Use Site, Whitaker Bridge Day Use Site, Red Rock Day Use Site, Belmont Day Use Site, and River Bend Day Use Site.

b. You must not jump from any bridge over the Blackfoot River.

10. Prohibited Acts within Limestone Cliffs Area

a. You must not install new, permanent climbing hardware for new or existing routes unless approved by the authorized officer.

b. You must not discharge a firearm or projectile (except for legal game hunting purposes as established by the Montana Department of Fish and Wildlife and Parks) or engage in other recreational shooting including, but not limited to, plinking, target shooting, or shooting varmints.

c. You must not bring an animal into the area unless the animal is on a leash that is not longer than 6 feet and is secured to an object or under the control of a person or is otherwise physically restrained at all times.

*Exemptions*

The following persons are exempt from this supplementary rule: any Federal, State, local, or military employees acting within the scope of their official duties; members of any organized rescue or fire fighting force performing an official duty; and persons who are expressly authorized or approved by the BLM.

*Enforcement*

Any person who violates any part of this supplementary rule may be tried before a U.S. Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned for no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Montana law.

(Authority: 43 U.S.C. 1733(a), 1740; 43 CFR 8365.1–6)

**Theresa M. Hanley,**

*Acting BLM Montana State Director.*

[FR Doc. 2022–16295 Filed 8–3–22; 8:45 am]

**BILLING CODE 4310–JB–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 51, 61, and 69

**[WC Docket No. 18–155; FCC 22–54; FR ID 98377]**

## Updating the Intercarrier Compensation Regime To Eliminate Access Arbitrage

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission seeks comment on proposed amendments to prevent companies from attempting to evade its existing access stimulation rules, harming customers, and imposing unwarranted costs on America's telecommunications networks.

**DATES:** Comments filed in response to this Further Notice of Proposed Rulemaking are due September 6, 2022. Reply comments are due October 3, 2022.

**ADDRESSES:** Federal Communications Commission, 45 L St. NW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Lynne Engledow, FCC Wireline Competition Bureau, at 202–418–1520 or via email at *lynne.engledow@fcc.gov.* For additional information concerning the proposed Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele at 202–418–2991.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking adopted on July 14, 2022, and released on July 15, 2022. A full-text copy of this document may be obtained at the following internet address: *https://www.fcc.gov/document/fcc-proposes-updated-rules-eliminate-access-arbitrage-0.*

### Background

1. The access charge regime was originally designed to compensate carriers for the use of their networks by other carriers. It also helped ensure that people living in rural areas had access to affordable telephone service through a system of implicit subsidies. The key to this system was the charges IXCs were required to pay to LECs for access to their networks—particularly the high charges IXCs had to pay rural LECs to terminate calls to rural customers. In 1996, Congress directed the Commission to eliminate these implicit subsidies—a process the Commission has pursued by steadily moving access charges to a bill-and-keep framework. As part of the ongoing transition to bill-and-keep, the Commission has capped most access charges and moved terminating end-office charges and some tandem switching and transport charges to bill-and-keep.

2. Arbitrage schemes take advantage of relatively high access charges, particularly for the remaining terminating tandem switching and transport services that have not yet transitioned to bill-and-keep. Switched access charges were originally established based on the costs of providing service and normal call volumes. These rates were subsequently capped and are no longer based on actual costs or actual usage and therefore no longer decrease when traffic volumes increase. Some LECs devised business plans to exploit this fact by artificially stimulating terminating call volumes through arrangements with entities that offer high-volume calling services. The resulting high call volumes generate revenues that far exceed the costs that the terminating tandem switching and tandem switched transport charges are designed to cover.

3. ''Free'' conference calling, chat lines, and certain other services accessed by dialing a domestic telephone number are all types of calling services that can be, and are, used to artificially increase call volumes. The terminating switched access charges, however, were intended to allow LECs to recover the costs of operating their networks, not to allow LECs to subsidize ''free'' conference calling, chat line, and similar ''free'' services offered by the LECs' end-user customers. IXCs nonetheless have no choice but to carry traffic to these high-volume calling services and pay the tariffed access charges to the terminating LECs or the Intermediate Access Providers the LECs choose, inefficiently transferring revenues from IXCs to the traffic stimulators that greatly exceed the cost these termination charges are intended to cover. As a result, terminating tandem switching and tandem switched transport charges that these high-volume calls generate are shared by all

of the IXC's customers, who collectively fund the ''free'' services offered by high-volume calling service providers, whether the IXC customers use those services or not.

4. In the 2011 *USF/ICC Transformation Order,* the Commission adopted rules identifying rate-of-return LECs and competitive LECs engaged in access stimulation and requiring that such LECs lower their tariffed access charges. The 2011 rules defined ''access stimulation'' as occurring when two conditions are satisfied: (1) the rate-of-return LEC or competitive LEC has entered into an access revenue sharing agreement that, ''over the course of the agreement, would directly or indirectly result in a net payment to the other party;'' and (2) one of two traffic triggers is met: either an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month, or more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month, compared to the same month in the preceding year. At the same time, the Commission began moving terminating, end-office switched access charges to bill-and-keep.

5. Parties engaged in access stimulation adapted to these rules by taking advantage of tandem switching and transport access charges that had not yet transitioned to bill-and-keep, namely, the terminating tandem charges for rate-of-return and competitive LECs. As a result, new access arbitrage schemes forced IXCs to pay high tandem switching and tandem switched transport charges to access-stimulating LECs or to Intermediate Access Providers that may be chosen by those access-stimulating LECs. And although the direct cost to IXCs of access stimulation dropped because of the rules adopted in 2011, the number of access-stimulated minutes did not. Indeed, arbitrageurs openly promoted ''opportunities to get paid for generating minutes by dialing telephone numbers owned by access stimulator LECs.''

6. In 2019, the Commission responded to the new access arbitrage schemes that had sprung up after 2011 by broadening the scope and reach of its Access Stimulation Rules. Most significantly, the Commission found that requiring ''IXCs to pay the tandem switching and tandem switched transport charges for access-stimulation traffic is an unjust and unreasonable practice'' that was prohibited pursuant to section 201(b) of the Communications Act of 1934, as amended (the Act). The Commission then adopted rules making access-stimulating LECs—rather than IXCs—financially responsible for the tandem switching and tandem switched transport service access charges associated with the delivery of traffic from an IXC to an access-stimulating LEC serving end users at its end office or its equivalent. The Commission adopted these changes to reduce carriers' incentives to artificially inflate traffic volumes by routing traffic inefficiently to maximize access charge revenues. The Commission also found that combatting such arbitrage reduces call congestion and service disruptions. The Commission recognized that arbitrage may occur even when there is no revenue sharing agreement, so it modified the definition of access stimulation to include two alternative traffic ratio triggers (one applicable to competitive LECs and one applicable to rate-of-return LECs) that do not require a revenue sharing component.

7. Since these rules took effect, parties have advised Commission staff of new efforts by access stimulators to evade the updated rules by integrating into the call flow IP enabled (IPES) Providers. For example, some parties described concerns that access stimulators are ''converting traditional CLEC [(competitive LEC)] phone numbers to IPES numbers in order to claim that the [*Access Arbitrage Order*] is inapplicable'' because the traffic is bound for telephone numbers obtained by IPES Providers and not bound for LECs serving end users.

8. USTelecom and its members allege that a substantial and growing portion of traffic that previously terminated through access-stimulating LECs now terminates through IPES Providers. AT&T and Verizon allege that certain LECs are attempting to evade the Commission's Access Stimulation Rules by, for example, having an IPES Provider take the place of the LEC delivering calls to an end user. As a result, IXCs allege, certain LECs claim the Access Stimulation Rules do not apply because the IPES Provider—and not the LEC—is responsible for delivering calls to the end user. In such a scenario, it is alleged that because the call flow does not include an access-stimulating LEC serving end users, such LECs continue to bill IXCs for the termination of access-stimulated traffic. Thus, IXCs and their long-distance customers continue to bear the costs of these calls to high-volume calling services. Inteliquent and Lumen describe a different call flow scheme in which the traffic does not pass through a LEC. In this call flow, an Intermediate Access Provider (tandem service provider) transmits long-distance traffic directly to an IPES Provider. USTelecom explains that some IPES Providers claim that the Access Stimulation Rules do not apply to traffic terminating to ''IPES numbers,'' and therefore the IPES Providers are not responsible for the costs of tandem switching and transport, ''regardless that their traffic patterns qualify as access stimulation under the Commission's rules.''

**Discussion**

9. In this Further Notice, we propose to eliminate perceived ambiguity in our rules that the record shows companies are seeking to leverage to force IXCs and their long-distance customers to continue to bear the costs of high-volume calling services by incorporating IPES Providers into the call path. This is an increasingly important issue because IPES Providers are prevalent in today's networks. As a result, we propose that when traffic is delivered to an IPES Provider by a LEC or an Intermediate Access Provider and the terminating-to-originating traffic ratios of the IPES Provider exceed the triggers in the Access Stimulation Rules, the IPES Provider will be deemed to be engaged in access stimulation. In such cases, we propose that the Intermediate Access Provider would be prohibited from imposing tariffed terminating tandem switching and transport access charges on IXCs sending traffic to the IPES Provider or the IPES Provider's end-user customer.

10. The rules we propose will serve the public interest by reducing carriers' incentives and ability to send traffic over the Public Switched Telephone Network (PSTN) solely for the purpose of collecting tariffed tandem switching and transport access charges from IXCs to subsidize high-volume calling services, which the Commission has found to be an unjust and unreasonable practice. Consistent with the Commission's previous efforts to eliminate this conduct, our proposals seek to reduce the routing of artificially high volumes of calls to places where above-cost access charges continue to exist. Our proposals will reduce the ability to apply access charges to those calls, the costs of which are ultimately borne by consumers, most of whom do not even use high-volume calling services.

**Proposed Rules When IPES Providers' Traffic Ratios Exceed the Access Stimulation Triggers**

11. We seek comment on call paths involving Intermediate Access Providers, LECs, and IPES Providers. As an initial matter, we seek comment on whether the following diagram accurately illustrates how calls are delivered to high-volume calling service

providers by IPES Providers that receive those calls from LECs. If not, how should the diagram be modified to make it more accurate? We encourage commenters to submit diagrams and explanations in the record to provide a more comprehensive and clearer understanding of the flow of traffic to high-volume calling service providers when an IPES Provider is inserted into the call flow. We strongly encourage parties to submit simple diagrams showing all providers in the call path to illustrate and help clarify the various calling scenarios that our proposals to combat access stimulation should target.

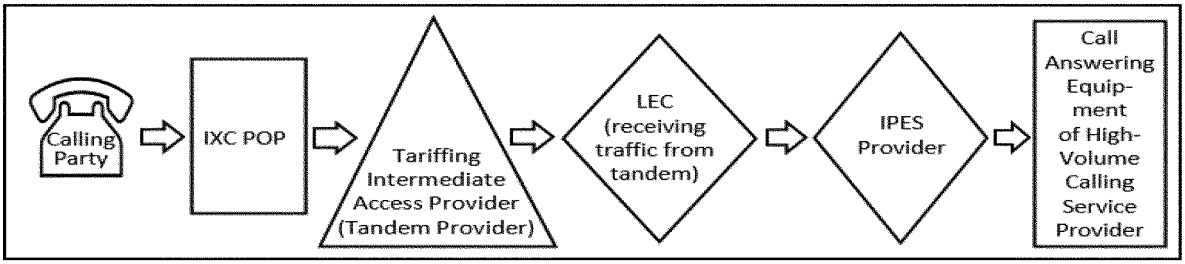


**Diagram 1:** Hypothetical call path including a LEC and an IPES Provider

12. We also seek information on the providers' services (tariffed and non-tariffed) and the access charges involved in routing these calls. When traffic is routed from an Intermediate Access Provider to a LEC as in Diagram 1, is that LEC at times the same entity that serves as the Intermediate Access Provider? In what circumstances? Commenters should enumerate each of the services provided by the Intermediate Access Provider, the LEC, and IPES Provider along this call path and which entities are charged for each service. For instance, when the LEC sends calls to the IPES Provider in the call path, is the LEC providing transport or other services? If the LEC delivers these calls to the IPES Provider, is the LEC providing any end-office functionality? When traffic is exchanged between the LEC and the IPES Provider, how is compensation, if any, handled between the two entities? What other services does the LEC charge for? Does the IPES Provider charge any entity in the call path for any services? If so, what services are provided by the IPES Provider, and which entity does the IPES Provider charge? Parties should provide any additional information that will enhance our understanding of how calls are routed and billed for along the hypothetical call path in Diagram 1, so we can better assess whether entities are meeting their financial responsibilities when they route traffic in this manner.

13. The record suggests that there are call flows that do not include a LEC between the Intermediate Access Provider and the IPES Provider (or the end user), as pictured in Diagram 2 below. In this scenario, the Intermediate Access Provider (tandem provider) delivers calls directly to an IPES Provider without an intermediate LEC. We seek comment on the existence of such call flows. Does Diagram 2 below accurately depict such call flows? If not, what adjustments need to be made to the diagram to make it more accurate?

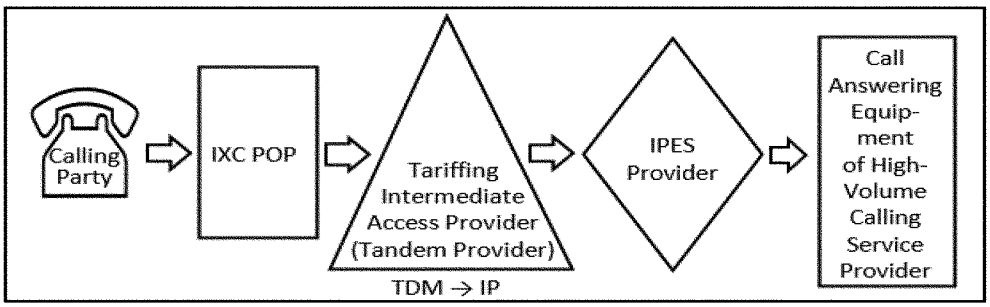


**Diagram 2:** Hypothetical call path where the Intermediate Access Provider sends traffic directly to the IPES Provider

14. IPES Providers are not ''LECs'' and thus parties may argue that our Access Stimulation Rules do not apply to them, whether traffic they terminate to high-volume calling service providers is received directly from Intermediate Access Providers or from LECs. This argument, however, leaves IXCs, who are captive to the routing decisions of IPES Providers that may choose Intermediate Access Providers solely to receive traffic they then deliver to the high-volume calling service provider, having to bear the cost of those routing decisions. These costs are ultimately passed onto the IXCs' customers. These schemes are similar to those that existed before the *Access Arbitrage Order* was adopted, where access-stimulating LECs had no incentive to make economical routing decisions because the cost implications of those decisions would be borne by IXCs who would pass the resultant inflated costs on to their customer bases.

15. For example, in response to the *Access Arbitrage Order,* one competitive LEC, Wide Voice, modified its business to no longer offer service to end users, and instead only functions as a competitive tandem provider and sends call destined for a high-volume calling service to HD Carrier (an IPES provider),

which then terminates calls to the end user. The Commission found that Wide Voice's actions resulted in it continuing to unlawfully bill IXCs for tandem services contrary to section 201(b) of the Act. Commenters should describe additional real-world examples of calls being routed from an Intermediate Access Provider directly to an IPES Provider (or indirectly through a LEC) that then terminates those calls to a high-volume calling service provider. Does this routing scheme impose unlawful costs on IXCs? We seek additional detail on this practice and specific proposals as to how best it should be addressed. Parties should explain what charges are being assessed, what entity is billing for what services, and which parties are being charged in these situations. Commenters should likewise describe any other aspects of this call flow that might provide additional opportunities for arbitrage and suggest ways our rules might be revised to foreclose those opportunities.

16. *Proposal.* We propose to clarify that an Intermediate Access Provider shall not charge an IXC tariffed charges for terminating switched access tandem switching and switched access tandem transport for traffic bound to an IPES Provider whose traffic exceeds the ratios in sections 61.3(bbb)(1)(i) or 61.3(bbb)(1)(ii) of our Access Stimulation Rules. We seek comment on this proposal, including the question of whether it is appropriate to apply to IPES Providers the 3:1 terminating-to-originating traffic ratio plus revenue sharing agreement trigger in section 61.3(bbb)(1)(i), and the 6:1 terminating-to-originating traffic ratio trigger, absent a revenue sharing agreement, in section 61.3(bbb)(1)(ii). Commenters should consider that although we intend to reduce or eliminate arbitrage opportunities, we do not want the financial consequences of our Access Stimulation Rules to apply to LECs or IPES Providers that are not engaged in harmful arbitrage schemes.

17. Under our proposal, the IPES Provider would be responsible for calculating its traffic ratios and for making the required notifications to the Commission and affected carriers, just as LECs are responsible for these activities under the current rules. This proposal is consistent with other reporting requirements imposed on VoIP providers, such as the obligation to report certain information on FCC Forms 477 and 499. Similar to the approach the Commission took in the *Access Arbitrage Order,* we do not propose a specific format for the notification an access-stimulating IPES Provider would provide to affected carriers and the Commission. After the rules adopted in the *Access Arbitrage Order* became effective, some carriers satisfactorily notified the Commission that they were stopping their access stimulation activities by filing letters in docket 18–155.

18. Under our proposal, if the IPES Provider's traffic ratios exceed the applicable rule triggers, it would have to notify the Intermediate Access Provider, the Commission, and affected IXCs. The Intermediate Access Provider would then be prohibited from billing IXCs tariffed rates for terminating switched access tandem switching or terminating switched access transport charges. Instead, the Intermediate Access Provider could recover the costs from the IPES Provider, or the IPES Provider's LEC partner. Thus, the entities choosing the call path—the IPES Provider or its partner—should only be willing to generate traffic that creates more value than the costs these tariffed access charges are intended to recover. As a result, they would have an economic incentive to make efficient call routing decisions and little, if any, incentive to artificially stimulate traffic. Do commenters agree with our view that this proposal, reflected in the amended rules, will help ''ensure that the entities choosing what network to use . . . have appropriate incentives to make efficient decisions''? If commenters disagree, they should explain what other, or additional, actions we should take to ensure that service providers have the proper incentives.

19. As an alternative to imposing a requirement that the IPES Provider calculate its traffic ratios for purposes of our Access Stimulation Rules, we could require that the Intermediate Access Provider calculate the IPES Provider's traffic ratios. Under this alternative, if the Intermediate Access Provider cannot perform this calculation, or the IPES Provider will not share relevant traffic ratio information with the Intermediate Access Provider, we would create a presumption that the IPES Provider's traffic exceeds the Access Stimulation Rule ratios. In that case, the Intermediate Access Provider would not be able to charge IXCs terminating switched access tandem switching or terminating switched access transport charges. Would such an approach be more effective than the rule modifications described above and proposed? Commenters are encouraged to propose possible rule language to codify this presumption.

20. We propose to use the same framework for determining when an IPES Provider that was engaged in access stimulation no longer is considered to be engaged in access stimulation that we currently use for competitive LECs that have engaged in access stimulation. Thus, for example, if an IPES Provider is engaged in access stimulation because it exceeds the 6:1 traffic ratio in section 61.3(bbb)(1)(ii) of the Commission's rules, we propose that it would no longer be considered to be engaged in access stimulation if its traffic ratio falls below 6:1 for six consecutive months and it does not engage in Access Stimulation as defined in section 61.3(bbb)(1)(i). Additionally, once such an IPES Provider no longer meets those criteria, it would be required to notify the Commission and any affected Intermediate Access Providers and IXCs that it is no longer engaged in access stimulation. We seek comment on these proposals. Do commenters consider the proposals to be over-inclusive or unnecessary? If so, are there ways to moderate the proposals to effect the same objective?

21. *Calculations.* We propose that IPES Providers would be responsible for calculating traffic ratios. Parties should describe any possible challenges that may affect the ability of an IPES Provider to perform the calculations needed to determine whether it meets the triggers established by the Access Stimulation Rules. Commenters should also explain if any of those challenges are so significant as to make our proposal unworkable. If so, we ask those commenters to propose alternatives that pose fewer challenges but still achieve our goals of removing the incentives for entities to engage in wasteful arbitrage and the imposition of unlawful charges on IXCs and their customers.

22. The Access Stimulation Rules currently require traffic ratios to be calculated on the basis of traffic ''in an end office'' for the purposes of determining whether the 6:1 and 10:1 traffic ratios are exceeded. We propose rule modifications to apply this same method to the 3:1 traffic ratio and when IPES Providers calculate traffic ratios for purposes of the Access Stimulation Rules. Would there be a benefit to making the Access Stimulation Rules uniform between LEC obligations and IPES Provider obligations? For example, does the inconsistent application of the ''in an end office'' requirement in the current rules cause confusion or opportunities for arbitrage? We also propose that the traffic ratios in our Access Stimulation Rules all be based on terminating-to-originating traffic measured ''in an end office or equivalent.'' To apply these requirements to an IPES Provider, what guidance should we provide as to what would be considered ''equivalent'' to a

LEC's end office? For example, when an IPES Provider is inserted in the call flow, should wherever the Intermediate Access Provider sends traffic be considered the ''end office or equivalent''? Does the Commission's holding in the *VoIP Symmetry Declaratory Ruling* that a VoIP provider will be providing end office functionality ''equivalent'' to a LEC when it provides the physical connection to the end user have any application here?

23. Alternatively, should IPES Providers be required to calculate their traffic ratios based on the traffic the IPES Provider terminates in a specific state or to a specific end user? Is there some other method of calculation that would better aid us in identifying access stimulation for the purposes of our Access Stimulation Rules? Should IPES Providers calculate their traffic ratios in a manner that mirrors the geographic area served by the LEC's end office, or by specific LATAs? Should we require IPES Providers to calculate their traffic ratios based on the traffic they receive from a specific Intermediate Access Provider? Are there other alternatives we should consider? Which approach would best support the effectiveness of our Access Stimulation Rules, ensure that all providers in a call flow have the proper economic incentives to promote efficiency, and eliminate harmful arbitrage opportunities? Commenters should submit any data they have that support a particular approach or that show the relative benefits of one approach versus another.

24. We also seek comment on any challenges related to our alternative proposal of requiring that the Intermediate Access Provider calculate the IPES Providers' traffic ratios. Would an Intermediate Access Provider know, or have access to, the information necessary to determine the terminating-to-originating traffic ratios of IPES Providers to which it delivers and from which it receives traffic? Would tracking the originating and terminating traffic of individual IPES Providers be unduly burdensome for Intermediate Access Providers? What if the Intermediate Access Provider delivers traffic along multiple call paths and needs to calculate the traffic ratios for an IPES Provider for each call path? For example, do providers send originating and terminating traffic on different call paths when they partner with multiple LECs or other IPES Providers? Does an IPES Provider designate different traffic routes in the Local Exchange Routing Guide (LERG), such that it may select one LEC for the purposes of receiving local traffic, but receives long-distance traffic from a different access tandem to avoid having incoming long-distance and local traffic traverse the same LEC's facilities? Are there reasons, other than promoting access arbitrage, for an IPES Provider to use more than one route for terminating traffic? If so, we ask commenters to explain those specific reasons.

25. *Implementation.* What implementation issues do our proposals raise? How much time would providers need to comply with the proposed rule changes? In the *Access Arbitrage Order,* the Commission gave carriers 45 days to come into compliance with the newly effective rules. Anticipating that IPES Providers would not need longer to comply than carriers did, we also propose a 45-day period for compliance after the effective date of the revised rules. Is this sufficient? Do interested parties foresee difficulties that would affect the time it will take to comply with the revised rules? Commenters should include suggested timeframes for implementation and an explanation of any challenges or concerns relating to coming into compliance with our proposed rules within a 45-day period. If 45 days are insufficient, how long should the transition period last, what steps would it include, and why is more time necessary now than was needed at the time the Commission adopted the *Access Arbitrage Order*? If proposing an alternative timeframe, we remind interested parties to balance any proposed implementation period with the fact that the longer the implementation period lasts, the longer these forms of wasteful access arbitrage continue.

26. *Revenue Sharing.* The reforms adopted in the 2011 *USF/ICC Transformation Order* focused on revenue sharing agreements between the terminating LEC and end users or other providers along the call path that provided incentives for improper behavior. In the 2019 *Access Arbitrage Order,* the Commission adopted rules to identify and address access stimulation arrangements that did not include a revenue sharing component. As we work to further strengthen our rules to combat ongoing arbitrage, we seek comment on whether revenue sharing agreements exist in the call routing scenarios described above. For example, do IPES Providers share revenue with common carriers that transmit traffic to the IPES Providers or their customers? Do Intermediate Access Providers share their revenues with IPES Providers, high-volume calling service providers, or the high-volume calling service providers' end users?

27. Conversely, do high-volume calling service providers (or their end users) share revenue with LECs, Intermediate Access Providers, or IPES Providers? In any alternative call paths commenters describe in response to our questions in this Further Notice, we ask commenters to specify which entities, if any, could be or are sharing revenues with other entities. We are particularly interested in what makes certain call paths—or call path manipulations—attractive to those involved. For example, what entities are sharing revenues right now? What functions do those entities serve in completing calls, and whose revenues are being shared with others? We propose modifying the existing definition of Access Stimulation in section 61.3(bbb) to include IPES Providers with or without access revenue sharing agreements, similar to the approach that currently applies to competitive LECs. Are ongoing revenue sharing arrangements covered effectively by the current Access Stimulation Rules? If not, what additional rule revisions are needed to capture today's revenue sharing arrangements? Is there specific rule language commenters would propose to address revenue sharing arrangements that may not be covered by our current rules?

**Other Proposed Rule Changes**

28. We seek comment on several additional rule change proposals. Are the proposed rule changes below necessary, or helpful, to the goal of eliminating harmful arbitrage? Would they, in concert with the other rule changes proposed in this Further Notice, help to comprehensively address arbitrage of our intercarrier compensation system?

29. *End User and End Office Language.* AT&T suggests that clarifications to the ''end user'' and ''end office'' language in the existing rules will prevent LECs from evading financial responsibility for access-stimulation traffic when an IPES Provider is inserted into the call path. First, AT&T suggests that we clarify the meaning of ''end user'' in section 61.3(bbb)(1) of our rules, which defines when carriers engage in access stimulation, by adding the *italicized* language, as follows.

A Competitive Local Exchange Carrier serving end user(s) engages in Access Stimulation when it satisfies either paragraph (bbb)(1)(i) or (ii) of this section; and a rate-of-return local exchange carrier serving end user(s) engages in Access Stimulation when it satisfies either paragraph (bbb)(1)(i) or (iii) of this section. *For purposes of this*

*section, a Local Exchange Carrier is serving end users when it provides service to a called or calling party, either directly or through arrangements with one or more VoIP providers or other entities that serve called or calling parties. For purposes of this section, a Local Exchange Carrier is not serving end users when it is an Intermediate Access Provider as defined in paragraph (ccc) of this section, i.e., when it is not the first or last LEC in the routing of a call to a called or calling party.*

30. We seek comment on this proposed amendment to our existing rule. Would the proposed language effectively remedy any perceived ambiguity that parties have sought to exploit in our current rules? Would the proposed language lead to any potentially unintended consequences that we should consider? Do commenters propose any revisions to this language? Would this rule modification successfully prevent LECs from avoiding financial responsibility for access-stimulation traffic when IPES Providers are in the call path? Are there considerations that would weigh against such a rule modification or in favor of some other modification(s) to this rule? Are the proposed rule modifications sufficient to address the concerns that AT&T intends to address with this proposed rule change? Alternatively, should we delete the ''serving end user(s)'' phrase from section 61.3(bbb)(1) of our rules? Would doing so be a simpler approach to address this perceived ambiguity? Or, should we add the phrase ''serving end users'' to sections 61.3(bbb)(2) and 61.3(bbb)(3)? Would there be a benefit to making the rules consistent? Would there be any detrimental effects from doing so?

31. Secondly, AT&T proposes that we modify section 61.3(bbb)(1)(ii) of our existing rules to remove the reference to traffic calculations ''in an end office'' and revise how the access-stimulation traffic ratio is computed for LECs that provide numbers or interconnection to IPES Providers, as follows. The *italicized* language represents what would be added.

A Competitive Local Exchange Carrier has an interstate terminating-to-originating traffic ratio of at least 6:1 in a calendar month. *For any Competitive Local Exchange Carrier that provides numbers or interconnection to a VoIP provider, the LEC is engaged in access stimulation for purposes of that VoIP provider's traffic when that VoIP provider has an interstate terminating-to-originating traffic ratio of at least 6:1 in a calendar month.*

32. Should we adopt this proposal? Would removing the language ''in an end office'' better accomplish our goal of providing clarity and understanding of our rules? Does the deletion of ''in an end office'' recognize, as AT&T suggests, that arbitrage schemes no longer target end office charges? Under this proposed approach, should the LEC be responsible for calculating the traffic ratios of the IPES Provider? If the LEC delivers traffic to multiple IPES Providers, should the LEC calculate a traffic ratio for each individual IPES Provider separately? Alternatively, should we maintain the ''in the end office'' language in section 61.3(bbb)(1)(ii) and (iii), and add it to section 61.3(bbb)(1)(i)? Would making the rules consistent in this manner reduce the opportunity for continued arbitrage of the ICC system?

33. *Treat IPES Providers as LECs for Purposes of the Access Stimulation Rules.* We also seek comment on a proposal submitted by Inteliquent and Lumen, suggesting that the Commission could, as an alternative to adopting new rules, ''issue a declaratory ruling clarifying that IPES providers are treated as LECs for the purpose of the access stimulation rules.'' Inteliquent and Lumen argue that ''[t]o the extent an IPES provider's ratio of terminating to originating traffic meets the triggers, it should be deemed to be engaged in access stimulation just like a traditional LEC,'' because ''the IPES provider both functions like a LEC for the purposes of the access stimulation rules and necessarily has visibility into its own access traffic.'' According to Inteliquent, a LEC that provides interconnection to an IPES Provider serves only as a conduit for delivery of local traffic and has no insight into the IPES Provider's long-distance traffic volumes. Therefore, Inteliquent contends, it would be inappropriate to make the LEC responsible for the IPES Provider's traffic volumes. We seek comment on this suggestion. How relevant are other situations in which the Commission has applied certain regulations to VoIP providers? IPES Providers have the ability to obtain direct access to numbers. Could the Commission condition the ability of an IPES Provider to obtain direct access to numbers on an agreement by the provider to voluntarily subject itself to our Access Stimulation Rules? How would doing so affect our efforts to eliminate access arbitrage?

34. What rule changes would be necessary were we to decide to implement the proposal to issue a declaratory ruling to treat IPES Providers as LECs for purposes of the Access Stimulation Rules? For example, would we need to add a definition of ''LEC'' to our Access Stimulation Rules that would include IPES Providers solely for the purpose of compliance with the Access Stimulation Rules? Are the proposed rules sufficient to address Inteliquent and Lumen's concerns that IPES Providers are being used to avoid the application of the Access Stimulation Rules and to allow the continued unlawful charging of IXCs? If not, what specific language do commenters suggest to help address these concerns or further the Commission's goal of eliminating harmful access arbitrage?

35. As an addition or alternative to their declaratory ruling proposal, Inteliquent and Lumen suggest that ''the Commission could declare that it is an inherently unjust and unreasonable practice for a party to attempt to evade the access arbitrage rules by moving LEC end office traffic to an affiliated IPES provider, where the traffic in question otherwise would have caused the LEC to be engaged in access stimulation under the rules.'' We seek comment on this idea. What are the relevant considerations of such an approach? Would such an approach be overly broad? Would this approach efficiently capture improper behavior? The Commission has repeatedly resisted an outright ban on access stimulation. Would doing as Inteliquent and Lumen suggest effectively be a ban on access stimulation?

36. *Interstate/Intrastate Language.* The Commission made clear in the 2019 *Access Arbitrage Order* that the rules adopted to combat access stimulation were intended to prohibit access-stimulating entities from unlawfully billing IXCs for intrastate terminating switched access tandem switching or terminating switched access transport, bound for access-stimulating LECs, in addition to such interstate traffic. However, that language was not reflected in the text of the rules, only in the text of the Order. We now propose to codify, in sections 69.4(l), and 69.5(b) of our rules that IXCs shall not be billed for interstate or intrastate terminating switched access tandem switching or terminating switched access transport. Would making these amendments facilitate enforcement of our Access Stimulation Rules? Are there other benefits in making these changes? Are any other amendments to these or other sections of our rules needed to fully and accurately capture the text of the *Access Arbitrage Order*?

37. *IPES Provider Definition.* We propose to define an ''IPES Provider,'' for purposes of our Access Stimulation Rules, as:

*IPES Provider* means, for purposes of this part and §§ 51.914, 69.4(l) and

69.5(b) of this chapter, a provider offering a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location or end to end; (3) requires internet Protocol-compatible customer premises equipment (CPE); and (4) permits users to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network or that originate from an internet Protocol service and terminate to an internet Protocol service or an internet Protocol application.

38. Parties have suggested using the term ''IPES Provider'' when referring to the provider being inserted in the place of the ''LEC serving end users'' as used in the Access Stimulation Rules. For example, Inteliquent suggests that IPES is ''an industry term commonly used for VoIP providers that have received direct access to numbers, and it originates from the company code (OCN) type assigned to these providers by NECA [(National Exchange Carrier Association)].'' AT&T suggests that ''IPES providers are entities that, among other things, provide or facilitate Over the Top VoIP calling services, including '2-stage' International calling services.'' Do commenters agree with either of these definitions? We also seek comment on the definition proposed above, which is limited in its application to the Access Stimulation Rules. USTelecom suggests that our proposed ''IPES Provider'' definition not require two-way calling or the termination of calls. Do commenters agree that we should modify the proposed definition as USTelecom suggests? Are there other alternative definitions of ''IPES Provider'' that commenters would suggest we use for purposes of our Access Stimulation Rules? What are the important functions or concepts this definition should capture? Would limiting our definition of ''IPES Providers'' to providers that have received direct access to numbers, as Inteliquent suggests, limit the effectiveness of the Access Stimulation Rules? Would commenters suggest using an existing definition to describe these IPES Providers who are being inserted into the call path, such as ''IP-enabled voice service'' provider, as defined in section 615b(8) of the Act?

39. Alternatively, should we refer to these providers as ''interconnected VoIP'' providers, as defined in section 9.3 of our rules? Are there meaningful distinctions among these terms that would make one defined term better than another for purposes of the Access Stimulation Rules? We propose a definition of ''IPES Provider'' to be used solely in the context of our Access Stimulation Rules. Despite our attempts to limit the use of this defined term, do we need to be concerned about potential confusion with other, similar, terms defined elsewhere in our rules? Will the proposed definition capture all providers that could be used to try to circumvent the Access Stimulation Rules?

40. *Intermediate Access Provider Definition.* An Intermediate Access Provider currently is defined in our rules as ''any entity that carries or processes traffic at any point between the final Interexchange Carrier in a call path and a local exchange carrier engaged in Access Stimulation.'' Pursuant to our current Access Stimulation Rules, neither the Intermediate Access Provider nor the access-stimulating LEC shall bill an IXC for tariffed terminating switched access tandem switching and terminating switched access tandem transport charges for traffic between the Intermediate Access Provider and the access-stimulating LEC. In keeping with our other proposed rule modifications, we propose to amend the definition of Intermediate Access Provider to include any entity that ''provides terminating switched access tandem switching and terminating switched access tandem transport services between the final Interexchange Carrier in a call path and: (1) a local exchange carrier engaged in Access Stimulation, as defined in paragraph (bbb) of this section; or (2) a local exchange carrier delivering traffic to an IPES Provider engaged in Access Stimulation, as defined in paragraph (bbb) of this section; or (3) an IPES Provider engaged in Access Stimulation, as defined in paragraph (bbb) of this section, where the Intermediate Access Provider delivers calls directly to the IPES Provider.''

41. We seek comment on this proposed change to our definition of ''Intermediate Access Provider.'' Inteliquent and Lumen state that ''IPES providers designate a Hosting LEC for purposes of receiving *local* traffic'' and that ''[t]his designation does not apply to long distance traffic, which is the traffic subject to the *Access Arbitrage Order*.'' Therefore, we seek input on whether the part of our proposed definition above that includes ''a local exchange carrier delivering traffic to an IPES Provider engaged in Access Stimulation'' is necessary or how this part of the definition would otherwise be affected by what Inteliquent and Lumen describe in their filing. Do commenters suggest any other modifications to the definition? Are there services, other than terminating switched access tandem switching or terminating switched access tandem transport, that an Intermediate Access Provider might provide? If so, what are these services and who should be financially responsible for them?

42. *Conforming Edits to Our Rules.* Section 51.914(a)(2) of our rules presently states that a LEC shall designate, ''if needed,'' the Intermediate Access Provider that will provide certain terminating access services to the LEC. This designation is applicable in cases where an Intermediate Access Provider is different than the end office LEC. We therefore propose changing ''if needed'' to ''if any,'' so that the rule denotes a LEC shall designate an Intermediate Access Provider when and ''if any'' such designation is required. Not only is the ''if any'' language more accurate, but removing the ''if needed'' provision prevents any misconception that a LEC may otherwise subjectively decide on its own when such designation is needed. Regarding the designation of an Intermediate Access Provider by an IPES Provider, are there any instances when an IPES Provider is not required to designate an Intermediate Access Provider or when proposed sections 51.914(c)(1) and (d) would not be necessary?

43. Section 69.4(l) of the Commission's rules requires that a LEC engaged in access stimulation ''may not bill'' IXCs terminating switched access tandem switching or terminating switched access tandem transport charges for access-stimulation traffic. Yet, in the *Access Arbitrage Order,* the Commission made clear that it is unlawful for a LEC engaged in access stimulation to charge an IXC terminating switched access tandem switching or terminating switched access tandem transport charges. We propose edits to section 69.4(l) of our rules to make this rule consistent with the Commission's intent adopted in the *Access Arbitrage Order;* that a LEC engaged in access stimulation ''shall not bill'' IXCs for terminating switched access tandem switching or terminating switched access tandem transport charges on access-stimulation traffic. Similarly, we also propose to correct an error in section 69.5(b)(2) of the Commission's rules that excluded the word ''not,'' change the word ''may'' to ''shall'' to be consistent with other uses in these rules, and make clear that it is ''IXCs'' and not ''local exchange carriers'' that are not being charged.

44. We also seek comment on whether any rule changes proposed in this Further Notice introduce new opportunities for unlawful arbitrage. Would our proposed rule modifications

accomplish our objectives of sending accurate pricing signals to customers by prohibiting Intermediate Access Providers that deliver traffic to IPES Providers that trigger the Access Stimulation Rules from charging IXCs for such calls? Would adopting our proposed rule changes create unintended consequences? For example, would any of the proposals introduce unnecessary complexity and present practical implementation challenges? If so, we seek comment on what exactly are the perceived complexities and implementation challenges related to the proposals in this Further Notice. Are there other types of access arbitrage happening today that are not described in this Further Notice? For example, are services that allow consumers to make long-distance calls to a domestic number and listen to foreign radio stations unfairly exploiting our access charge regime, as USTelecom suggests? Would these type of services be covered by our proposed rules? Or are they ''one-way,'' as USTelecom argues? If so, what additional actions, if any, should we take to ensure our proposed rules address these types of services? We ask commenters to provide any other proposed actions, alternatives, and rule additions or modifications we should consider. Are there any other conforming rule changes that commenters consider necessary? Are there any conflicts or inconsistencies between existing rules and those we propose? Finally, we propose several non-substantive edits, to, among other things, enhance readability and ensure compliance with rule drafting guidelines applicable to the Code of Federal Regulations.

**Clarifying or Interpreting Current Access Stimulation Rules**

45. *Applying the Existing Rules to IPES Providers.* As an alternative to modifying our rules as proposed, we seek comment on whether it would be preferable for the Commission to issue a Declaratory Ruling interpreting the existing Access Stimulation Rules as applying to traffic routed from the PSTN through a LEC to an IPES Provider, or directly to the IPES Provider or to the end user, as parties have suggested since the rules first became effective. In the *Access Arbitrage Order,* the Commission explained that the access-stimulation traffic ratios are based on ''the *actual* minutes traversing the LEC switch.'' Most relevant to the current discussion, the Commission clarified that ''*all traffic* should be counted regardless of how it is routed.'' Indeed, the Commission emphasized this point several times in the *Access Arbitrage Order.* These explanations form the basis of arguments that ''the *Access Arbitrage Order* already rejects'' claims that traffic routed by LECs through an IPES Provider should not be counted for determining access-stimulation ratios. Is this a reasonable and accurate interpretation of the Commission's decision? Would issuing a declaratory ruling interpreting the Access Stimulation Rules as requested above adequately address any perceived lack of clarity in the existing rules identified in this Further Notice?

46. *Traffic to Be Counted.* AT&T argues that the Commission should clarify that, when calculating the traffic ratios for the purposes of our Access Stimulation Rules, a LEC ''may not include aggregated originating 8YY traffic—particularly traffic that it obtains from VoIP providers—as part of its traffic ratio'' because of the potential for arbitrage and fraud associated with the routing of 8YY traffic. The Commission previously identified certain forms of toll free or 8YY aggregation as a form of originating arbitrage and took steps to minimize that arbitrage. AT&T suggests that if a LEC ''aggregate[s] 8YY traffic from VoIP providers that have obtained numbering authorization,'' the LEC ''could begin routing access stimulation traffic from VoIP providers in the hope that, by engaging in *both* originating 8YY aggregation schemes *and* terminating access stimulation schemes, it could balance its terminating access stimulation traffic against its longstanding originating 8YY traffic and avoid hitting the Commission's triggers.'' We seek greater detail on this issue, as well as comment on the validity of AT&T's concerns. Is this happening in the market now? If so, we ask commenters to propose rule revisions to address this issue. We also seek comment on any other issues regarding the treatment of originating 8YY traffic for purposes of calculating the traffic ratios related to the triggers in our Access Stimulation Rules. Would excluding such traffic alter carriers' ratios sufficiently so as to cause them to trigger our Access Stimulation Rules even though they are not engaging in arbitrage? Should a significant increase in a carrier's 8YY originating traffic be reported and treated as another trigger for our Access Stimulation Rules? Should 8YY traffic be included in those ratios? Why or why not? Should originating 8YY traffic be treated as terminating traffic for purposes of our Access Stimulation Rules?

**Legal Authority**

47. We tentatively conclude that sections 201, 251, 254 and 256 of the Act provide us with the authority needed to adopt the rule changes proposed in this Further Notice. We seek comment on this authority, our ancillary authority in section 4(i) of the Act, and any other statutory authority that may support our proposed actions. We also seek comment on any concerns parties might have about our authority to adopt any of the proposals made in this Further Notice.

48. *Section 201 of the Act.* Our primary authority to adopt our proposed changes to the Access Stimulation Rules is section 201(b) of the Act. In the *Access Arbitrage Order,* the Commission determined that the imposition of tariffed tandem switching and tandem switched transport access charges on IXCs for terminating access-stimulation traffic is an unjust and unreasonable practice under section 201(b) of the Act. In our view, providers' attempts to continue to assess tandem switching or tandem switched transport access charges on IXCs for delivering access-stimulation traffic to IPES Providers is unjust and unreasonable pursuant to section 201(b) of the Act, and virtually indistinguishable from practices the Commission has already found to be unjust and unreasonable. We seek comment on this view. Section 201(b) of the Act gives us the authority to ''prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.'' We seek comment on whether this language provides us with the authority to require IPES Providers to designate the Intermediate Access Provider(s) that will provide terminating switched access tandem switching and transport services, to calculate their traffic ratios, and to notify Intermediate Access Providers, IXCs, and the Commission if the IPES Provider is engaged in Access Stimulation so that Intermediate Access Providers can determine whether they can lawfully charge IXCs for interstate and intrastate tandem services (and IXCs can determine if charges are appropriate). We also seek comment on our tentative conclusion that section 201(b) provides us the authority necessary to prohibit Intermediate Access Providers or other LECs from charging IXCs for access stimulation traffic routed through an IPES Provider, rather than through a LEC.

49. *Sections 251, 254, and 256 of the Act.* Our authority to take the actions proposed in this Further Notice is also rooted in other sections of the Act on which the Commission relied in the

*Access Arbitrage Order.* First, section 251(b)(5) of the Act applies because our proposed new and modified rules apply, in large part, to exchange access and providers of exchange access that meet the definition of a LEC. Second, section 251(g) of the Act provides us with the authority to address problematic conduct which is occurring while the transition to bill-and-keep is not complete. Third, section 254 of the Act provides the Commission with the authority to eliminate implicit subsidies. Finally, section 256 of the Act requires the Commission to oversee and promote interconnection by providers of telecommunications services that is ''efficient.'' We seek comment on the applicability of sections 201, 251, 254, and 256 of the Act to give us the authority to take the actions proposed herein.

50. *Section 4(i) of the Act.* Although we propose to conclude that our direct sources of authority identified above provide the basis to adopt our proposed rules, we also seek comment on whether our ancillary authority in section 4(i) of the Act provides an independent basis to adopt limited rules with respect to IPES Providers. We consider the proposed requirements to be ''reasonably ancillary to the Commission's effective performance of [its] . . . responsibilities.'' Specifically, IPES Providers interconnected with the PSTN and exchanging IP traffic clearly constitutes ''communication by wire or radio.'' We seek comment on whether requiring IPES Providers to comply with our proposed limited rules is reasonably ancillary to the Commission's effective performance of its statutory responsibilities under sections 201(b), 251, 254, and 256 as described above.

**Costs and Benefits of the Proposals**

51. Our intercarrier compensation regime continues to be an important source of funding for certain rural service providers, including providers of tandem switching, to ensure all Americans are connected. Access arbitrage exploits our intercarrier compensation regime to benefit activities and providers that our policies are not intended to benefit. This encourages further exploitation of our rules, threatening the basic goals of connectivity at just and reasonable prices, a cost that alone justifies our action. The excess payments made due to arbitrage also operate as an unnecessary tax on end users, shrinking the efficient use of telecommunications services. Further, because the party that chooses the call path does not pay that tax, it has incentives to engage in wasteful actions. Examples of this waste include:

- the pursuit of access arbitrage opportunities by routing traffic along more expensive call paths;
- artificial stimulation of traffic;
- disputes over questionable demands for payment by access stimulators;
- attempts by IXCs to identify the sources of fraudulent traffic; and
- time and money spent by parties seeking to protect against or reduce access arbitrage opportunities, as in this proceeding.

52. Costs incurred by these activities are not fully paid for by the consumers of high-volume calling services, who often pay nothing for these services. If consumers of these services were charged prices that wholly recovered the costs of arbitrage, then those who value the service less than those prices would decline to purchase the service. This would reduce waste or equivalently create value equal to the difference between the cost-covering prices and these consumers' valuations of the service.

53. We recognize that any action we take to address ongoing access arbitrage may affect the costs and benefits to carriers and their customers and the choices they make, as they provide and receive telecommunications services. Consumers who enjoy high-volume calling services could be adversely affected by regulatory adjustments targeting arbitrage. Are there perceived benefits to access arbitrage or access stimulation? Would addressing access arbitrage as we propose unfairly advantage any competitor or class of competitors? If so, are there alternative means to address the arbitrage issues described here and presented in the record?

54. In the *USF/ICC Transformation Order,* the Commission considered direct costs imposed on consumers by arbitrage schemes. The Commission also found that access stimulation diverts capital away from more productive uses, such as broadband deployment. There is also evidence that the staggering volume of minutes generated by these schemes can result in call blocking and dropped calls. What has been the effect of the 2019 revisions to the Access Stimulation Rules? Are there additional, more-recent data available to estimate the annual cost of arbitrage schemes to companies, long-distance customers, and consumers in general? Likewise, are there data available to quantify the resources being diverted from more productive uses because of arbitrage schemes? To what degree are consumers indirectly affected by potentially inefficient networking or incorrect pricing signals due to ongoing access stimulation? Has competition been negatively impacted because ''access-stimulation revenues subsidize the costs of high-volume calling services, granting providers of those services a competitive advantage over companies that collect such costs directly from their customers?'' Are there other costs or benefits to the proposals in this Further Notice that we should consider?

**Efforts To Promote Digital Equity and Inclusion**

55. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

**Procedural Matters**

56. *Filing Instructions.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be

addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.

○ During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

○ After COVID–19 restrictions are lifted, the Commission has established that hand-carried documents are to be filed at the Commission's office located at 9050 Junction Drive, Annapolis Junction, MD 20701. This will be the only location where hand-carried paper filings for the Commission will be accepted.

57. *People with Disabilities.* 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).

58. *Ex Parte Requirements.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

59. *Paperwork Reduction Act Analysis.* This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

60. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Further Notice and the IRFA (or summaries thereof) will be published in the **Federal Register**.

**Need for, and Objectives of, the Proposed Rules**

61. For many years the Commission has been fighting efforts to arbitrage its system of intercarrier compensation. In the 2011 *USF/ICC Transformation Order,* the Commission adopted rules identifying local exchange carriers (LECs) engaged in access stimulation and requiring that such LECs lower their tariffed access charges. In 2019, to address access arbitrage schemes that persisted despite prior Commission action, the Commission adopted the *Access Arbitrage Order,* in which it revised its Access Stimulation Rules to prohibit LECs and Intermediate Access Providers from charging interexchange carriers (IXCs) for terminating tandem switching and transport services used to deliver calls to access-stimulating LECs. The revised rules were adopted to end the ability of LECs to engage in arbitrage of the intercarrier compensation system by extracting artificially inflated tandem switching and transport charges from IXCs to subsidize ''free'' high-volume calling services.

62. Since the 2019 rules took effect, the Commission has received information about new ways carriers are manipulating their businesses to continue their arbitrage schemes in the wake of the new rules. In the Further Notice, we seek comment on ways to address perceived loopholes in our rules that companies may be exploiting and to eliminate these new arbitrage schemes and the harms those schemes inflict on consumers. The rules we propose will serve the public interest by reducing carriers' incentives and ability to send traffic over the Public Switched Telephone Network solely for the purpose of collecting tariffed tandem switching and transport access charges from IXCs to subsidize high-volume calling services, which the Commission has found to be an unjust and unreasonable practice.

63. We propose to modify our Access Stimulation Rules to address access arbitrage that takes place when an internet Protocol Enabled Service (IPES) Provider is incorporated into the call flow. We propose that when a LEC or Intermediate Access Provider delivers traffic to an IPES Provider and the terminating-to-originating traffic ratios of the IPES Provider exceed the triggers in the Access Stimulation Rules, the IPES Provider will be deemed to be engaged in access stimulation. In such cases, we propose prohibiting an Intermediate Access Provider from charging an IXC tariffed charges for terminating switched access tandem switching and switched access transport for traffic bound to an IPES Provider whose traffic exceeds the ratios in sections 61.3(bbb)(1)(i) or 61.3(bbb)(1)(ii) of our Access Stimulation Rules. We propose that the IPES Provider be responsible for calculating its traffic ratios and for making the required notifications to the

Intermediate Access Provider and the Commission. We likewise propose modifying the definition of Intermediate Access Provider to include entities delivering traffic to an IPES Provider.

64. We propose to use the same framework for determining when an IPES Provider that was engaged in access stimulation no longer is considered to be engaged in access stimulation, that we currently use for competitive LECs that have engaged in access stimulation. The Access Stimulation Rules currently require traffic ratios to be calculated at the end office. We propose rule modifications to apply this manner of traffic calculations to IPES Providers as well and that any final rules that are adopted will be effective 45 days after publication in the **Federal Register**.

**Legal Basis**

65. The legal basis for any action that may be taken pursuant to the Further Notice is contained in sections 1, 2, 4(i), 201, 251, 254, 256, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 251, 254, 256, 303(r), and 403, and section 1.1 of the Commission's rules, 47 CFR 1.1.

**Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

66. 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 proposed rule revisions, if adopted. 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 which: (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.

67. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, 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 SBA's 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 32.5 million businesses.

68. 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 2020, there were approximately 447,689 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.

69. 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 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

70. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

71. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,737 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.

72. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,737 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.

73. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small

business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

74. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,808 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.

75. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

76. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 289 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.

77. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only five have more than 400,000 subscribers. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

78. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice. Based on industry data, only four cable system operators have more than 677,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

79. *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.

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

80. In the Further Notice, we propose and seek comment on rule changes that will affect LECs, Intermediate Access Providers, and IPES Providers. We propose to modify our Access Stimulation Rules to address arbitrage which takes place when an IPES Provider is incorporated into the call flow. In the Further Notice, we propose rules to further limit or eliminate the occurrence of access arbitrage, including access stimulation, which could affect potential reporting requirements. The proposed rules also contain recordkeeping, reporting and third-party notification requirements for access-stimulating LECs and IPES Providers, which may impact small entities. Some of the proposed requirements may also involve tariff changes.

81. We propose that when a LEC delivers traffic to an IPES Provider and the terminating-to-originating traffic ratios of the IPES Provider exceed the triggers in the Access Stimulation Rules, the IPES Provider will be deemed to be engaged in access stimulation. We propose that the IPES Provider be responsible for calculating its traffic ratios and for making the required third-party notifications. As such, providers may need to modify their in-house recordkeeping to comply with the proposed rules. Under our proposal, if the IPES Provider's ratios exceed the applicable rule triggers, it would have to notify the Intermediate Access Provider, the Commission, and affected IXCs. The Intermediate Access Provider would then be prohibited from charging IXCs tariffed rates for terminating switched access tandem switching or terminating switched access transport charges.

82. Our proposals may also require affected LECs and Intermediate Access Providers to file tariff revisions to remove any tariff provisions they have filed for terminating tandem switched access or terminating switched access transport charges. Although we decline to opine on whether our proposals may require carriers to file further tariff revisions, affected carriers may nonetheless choose to file additional tariff revisions to add provisions allowing them to charge access-stimulating LECs or access-stimulating IPES Providers, rather than IXCs, for the termination of traffic.

83. As an alternative to imposing a measurement requirement on the IPES Provider, we seek comment on requiring that the Intermediate Access Provider calculate the IPES Provider's traffic ratios for purposes of our Access Stimulation Rules. If adopted, this proposal could impose recordkeeping, reporting, and third-party notification requirements on Intermediate Access Providers. Under this alternative proposal, if the Intermediate Access Provider cannot perform this calculation, or the IPES Provider will not share relevant traffic ratio information with the Intermediate Access Provider, the Intermediate Access Provider would not be able to charge IXCs terminating switched access tandem switching or terminating switched access transport charges.

84. Our proposals may also necessitate that affected carriers make various revisions to their billing systems. For example, Intermediate Access Providers that serve LECs with access-stimulating IPES Providers in the call path (or that deliver traffic directly to an IPES Provider when no LEC is in the call path) will no longer be able to charge IXCs terminating tandem switched access rates and transport charges. As Intermediate Access Providers cease billing IXCs they will likely need to make corresponding adjustments to their billing systems.

85. In the Further Notice, we also seek comment on other actions we could take to further discourage or eliminate access arbitrage activity. Rules which achieve these objectives could potentially affect recordkeeping, reporting, and third-party notification requirements.

**Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered**

86. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities. We expect to consider all of these factors when we receive substantive comment from the public and potentially affected entities.

87. In this Further Notice, we invite comment on a number of proposals and alternatives to modify our Access Stimulation Rules. The Commission has found these arbitrage practices inefficient and to ultimately increase consumer telecommunications rates. Therefore, in the Further Notice, we propose rules to further limit or eliminate the occurrence of access stimulation in turn promoting the efficient function of the nation's telecommunications network. We believe that if companies are able to operate with greater efficiency this will benefit the communications network as a whole, and its users, by allowing companies to increase their investment in broadband deployment.

88. Thus, we propose to adopt rules to address arbitrage which takes place when an IPES Provider is incorporated into the call flow. We propose that when a LEC delivers traffic to an IPES Provider and the terminating-to-originating traffic ratios of the IPES Provider exceed the triggers in the Access Stimulation Rules, the IPES Provider will be deemed to be engaged in access stimulation. In such cases, we propose that the Intermediate Access Provider would be prohibited from imposing tariffed terminating tandem switching and transport access charges on IXCs sending traffic to an IPES Provider or the IPES Provider's end-user customer. As an alternative to imposing a measurement requirement on the IPES Provider, we could require that the Intermediate Access Provider calculate the IPES Provider's traffic ratios for purposes of our Access Stimulation Rules. Under this alternative proposal, if the Intermediate Access Provider cannot perform this calculation, or the IPES Provider will not share relevant traffic ratio information with the Intermediate Access Provider, we would create a presumption that the IPES Provider's traffic exceeds the Access Stimulation Rule ratios. In that case, the Intermediate Access Provider would not be able to charge IXCs terminating switched access tandem switching or terminating switched access transport charges.

89. We also seek comment on whether IPES Providers should be treated as LECs for the purpose of our Access Stimulation Rules. We received a proposal in the record that the Commission should ''issue a declaratory ruling clarifying that IPES Providers are treated as LECs for the purpose of the access stimulation rules.'' We seek interested parties' opinion on whether adopting such a proposal would be more or less burdensome on small businesses.

90. In the Further Notice, we also propose to require carriers to comply

with any adopted rules within 45 days. We seek comment on this time period and whether interested parties foresee difficulties that would affect the time it will take to comply with the revised rules. We expect that time period will allow even small entities adequate time to amend their tariffs, if needed, and meet the requirements in the proposed rules.

91. Comment is sought on how best to address access arbitrage activities. In the Further Notice, we seek comment on the costs and benefits of these proposals. Providing carriers, especially small carriers, with options will enable them to best assess the financial effects on their operations allowing them to determine how best to respond. We invite comment on how our proposals may affect the costs and benefits to carriers and their customers and the choices they make, as they provide and receive telecommunications services. We invite commenters to quantify both the costs and the benefits of our proposals and of any alternative approaches to reducing access stimulation activities.

92. We expect to consider the economic impact on small entities, as identified in comments filed in response to the Further Notice and this IRFA, in reaching our final conclusions and promulgating rules in this proceeding. The proposals and questions laid out in the Further Notice are designed to ensure the Commission has a complete understanding of the benefits and potential burdens associated with the different proposed actions.

**Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules**

93. None.

94. *Contact Person.* For further information about this proceeding, please contact Lynne Engledow, FCC Wireline Competition Bureau, Pricing Policy Division, 45 L Street NE, Washington, DC 20554, 202–418–1520, *Lynne.Engledow@fcc.gov*.

**Ordering Clauses**

95. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 201, 251, 254, 256, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 251, 254, 256, 303(r), and 403 and section 1.1 of the Commission's rules, 47 CFR 1.1, this Further Notice of Proposed Rulemaking is adopted.

96. *It is further ordered* that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Further Notice of Proposed Rulemaking on or before 30 days after publication of this Further Notice of Proposed Rulemaking in the **Federal Register**, and reply comments on or before 60 days after publication of this Further Notice of Proposed Rulemaking in the **Federal Register**.

97. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects**

*47 CFR Part 51*

Interconnection; Communications; Communication common carriers; Telecommunications; Telephone.

*47 CFR Part 61*

Tariffs.

Communication Common Carriers; Radio; Reporting and recordkeeping requirements; Telegraph; Telephone.

*47 CFR Part 69*

Access Charges; Communications common carriers; Reporting and recordkeeping requirements; Telephone.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

**Proposed Rules**

For the reasons set forth, the Federal Communications Commission proposes to amend 47 CFR parts 51, 61 and 69 as shown below.

## PART 51—INTERCONNECTION

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 47 U.S.C. 151–55, 201–05, 207–09, 218, 225–27, 251–52, 271, 332 unless otherwise noted.

■ 2. Amend § 51.903 by adding paragraph (q) to read as follows:

**§ 51.903 Definitions.**

* * * * *

(q) IPES Provider has the same meaning as that term is defined in § 61.3(eee) of this chapter.

■ 3. Amend § 51.914 by revising paragraphs (a) through (e) and adding paragraphs (f) and (g) as follows:

**§ 51.914 Additional provisions applicable to Access Stimulation traffic.**

(a) Notwithstanding any other provision of this part, if a local exchange carrier is engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, it shall, within 45 days of commencing Access Stimulation, or within 45 days of September 6, 2022, whichever is later:

(1) Not bill any Interexchange Carrier for interstate or intrastate terminating switched access tandem switching or terminating switched access transport charges for any traffic between such local exchange carrier's terminating end office or equivalent and the associated access tandem switch; and

(2) Designate the Intermediate Access Provider(s), if any, that will provide terminating switched access tandem switching and terminating switched access tandem transport services to the local exchange carrier engaged in Access Stimulation; and

(3) Assume financial responsibility for any applicable Intermediate Access Provider's charges for such services for any traffic between such local exchange carrier's terminating end office or equivalent and the associated access tandem switch.

(b) Notwithstanding any other provision of this part, if a local exchange carrier is engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, it shall, within 45 days of commencing Access Stimulation, or within 45 days of September 6, 2022, whichever is later, notify in writing the Commission, all Intermediate Access Providers that it subtends, and Interexchange Carriers with which it does business of the following:

(1) That it is a local exchange carrier engaged in Access Stimulation; and

(2) That it shall designate the Intermediate Access Provider(s) that will provide the terminating switched access tandem switching and terminating switched access tandem transport services to the local exchange carrier engaged in Access Stimulation; and

(3) That the local exchange carrier shall pay for those services as of that date.

(c) Notwithstanding any other provision of the Commission's rules, if an IPES Provider, as defined in § 61.3(eee) of this chapter, is engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, it shall, within 45 days of commencing Access Stimulation, or within 45 days of September 6, 2022, whichever is later:

(1) Designate the Intermediate Access Provider(s), if any, that will provide terminating switched access tandem switching and terminating switched access tandem transport services to the IPES Provider engaged in Access Stimulation; and further

(2) The IPES Provider may assume financial responsibility for any applicable Intermediate Access Provider's charges for such services for any traffic between such IPES Provider's terminating end office or equivalent and the associated access tandem switch, and

(3) The Intermediate Access Provider shall not assess any charges for such services to the Interexchange Carrier.

(d) Notwithstanding any other provision of the Commission's rules, if an IPES Provider, as defined in § 61.3(eee) of this chapter, is engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, it shall, within 45 days of commencing Access Stimulation, or within 45 days of September 6, 2022, whichever is later, notify in writing the Commission, all Intermediate Access Providers that it subtends, and Interexchange Carriers with which it does business of the following:

(1) That it is an IPES Provider engaged in Access Stimulation; and

(2) That it shall designate the Intermediate Access Provider(s), if any, that will provide the terminating switched access tandem switching and terminating switched access tandem transport services directly, or indirectly through a local exchange carrier, to the IPES Provider engaged in Access Stimulation; and

(3) That the IPES Provider may pay for those services as of that date.

(e) In the event that an Intermediate Access Provider receives notice under paragraphs (b) or (d) of this section that it has been designated to provide terminating switched access tandem switching or terminating switched access tandem transport services to a local exchange carrier engaged in Access Stimulation or to an IPES Provider engaged in Access Stimulation, directly, or indirectly through a local exchange carrier, and that local exchange carrier engaged in Access Stimulation shall pay or the IPES Provider engaged in Access Stimulation may pay for such terminating access service from such Intermediate Access Provider, the Intermediate Access Provider shall not bill Interexchange Carriers for interstate or intrastate terminating switched access tandem switching or terminating switched access tandem transport service for traffic bound for such local exchange carrier or IPES Provider but, instead, shall bill such local exchange carrier or may bill such IPES Provider for such services.

(f) Notwithstanding paragraphs (a) and (b) of this section, any local exchange carrier that is not itself engaged in Access Stimulation, as that term is defined in § 61.3(bbb) of this chapter, but serves as an Intermediate Access Provider with respect to traffic bound for a local exchange carrier engaged in Access Stimulation or bound for an IPES Provider engaged in Access Stimulation, or receives traffic from an Intermediate Access Provider destined for an IPES Provider engaged in Access Stimulation, shall not itself be deemed a local exchange carrier engaged in Access Stimulation or be affected by paragraphs (a) and (b) of this section.

(g) Upon terminating its engagement in Access Stimulation, as defined in § 61.3(bbb) of this chapter, the local exchange carrier or IPES Provider engaged in Access Stimulation shall provide concurrent, written notification to the Commission and any affected Intermediate Access Provider(s) and Interexchange Carrier(s) of such fact.

## PART 61—TARIFFS

■ 4. The authority citation for part 61 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 201–205, 403, unless otherwise noted.

■ 5. Amend § 61.3 by revising paragraphs (bbb) through (ddd), and adding paragraph (eee) to read as follows:

### § 61.3 Definitions.

* * * * *

(bbb) Access Stimulation.

(1) A Competitive Local Exchange Carrier or an IPES Provider serving end user(s) engages in Access Stimulation when it satisfies either paragraphs (bbb)(1)(i) or (ii) of this section; and a rate-of-return local exchange carrier serving end user(s) engages in Access Stimulation when it satisfies either paragraphs (bbb)(1)(i) or (iii) of this section.

(i) The rate-of-return local exchange carrier, Competitive Local Exchange Carrier, or IPES Provider:

(A) Has an access revenue sharing agreement, whether express, implied, written or oral, that, over the course of the agreement, would directly or indirectly result in a net payment to the other party (including affiliates) to the agreement, in which payment by the rate-of-return local exchange carrier, Competitive Local Exchange Carrier, or IPES Provider is based on the billing or collection of access charges from interexchange carriers or wireless carriers. When determining whether there is a net payment under this rule, all payments, discounts, credits, services, features, functions, and other items of value, regardless of form, provided by the rate-of-return local exchange carrier, Competitive Local Exchange Carrier, or IPES Provider to the other party to the agreement shall be taken into account; and

(B) Has either an interstate terminating-to-originating traffic ratio of at least 3:1 in an end office or equivalent in a calendar month, or has had more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year for such end office or equivalent.

(ii) A Competitive Local Exchange Carrier or IPES Provider has an interstate terminating-to-originating traffic ratio of at least 6:1 in an end office or equivalent in a calendar month.

(iii) A rate-of-return local exchange carrier has an interstate terminating-to-originating traffic ratio of at least 10:1 in an end office or equivalent in a three-calendar month period and has 500,000 minutes or more of interstate terminating minutes-of-use per month in the same end office in the same three-calendar month period. These factors will be measured as an average over the three-calendar month period.

(2) A Competitive Local Exchange Carrier serving end users or an IPES Provider serving end users that has engaged in Access Stimulation will continue to be deemed to be engaged in Access Stimulation until: For a carrier or provider engaging in Access Stimulation as defined in paragraph (1)(i) of this section, it terminates all revenue sharing agreements covered in paragraph (1)(i) of this section and does not engage in Access Stimulation as defined in paragraph (1)(ii) of this section; and for a carrier or provider engaging in Access Stimulation as defined in paragraph (1)(ii) of this section, its interstate terminating-to-originating traffic ratio for an end office or equivalent falls below 6:1 for six consecutive months, and it does not engage in Access Stimulation as defined in paragraph (1)(i) of this section.

(3) A rate-of-return local exchange carrier serving end users that has engaged in Access Stimulation will continue to be deemed to be engaged in Access Stimulation until: For a carrier engaging in Access Stimulation as defined in paragraph (1)(i) of this section, it terminates all revenue sharing agreements covered in paragraph (1)(i) of this section and does not engage in Access Stimulation as defined in paragraph (1)(iii) of this section; and for a carrier engaging in Access Stimulation as defined in paragraph (1)(iii) of this section, its interstate terminating-to-originating traffic ratio falls below 10:1 for six consecutive months and its

monthly interstate terminating minutes-of-use in an end office or equivalent falls below 500,000 for six consecutive months, and it does not engage in Access Stimulation as defined in paragraph (1)(i) of this section.

(4) A local exchange carrier engaging in Access Stimulation is subject to revised interstate switched access charge rules under § 61.26(g) (for Competitive Local Exchange Carriers) or § 61.38 and § 69.3(e)(12) of this chapter (for rate-of-return local exchange carriers).

(ccc) *Intermediate Access Provider.* The term means, for purposes of this part and §§ 69.3(e)(12)(iv) and 69.5(b) of this chapter, any entity that provides terminating switched access tandem switching and terminating switched access tandem transport services between the final Interexchange Carrier in a call path and:

(1) A local exchange carrier engaged in Access Stimulation, as defined in paragraph (bbb) of this section; or

(2) A local exchange carrier delivering traffic to an IPES Provider engaged in Access Stimulation, as defined in paragraph (bbb) of this section or;

(3) An IPES Provider engaged in Access Stimulation, as defined in paragraph (bbb) of this section where the Intermediate Access Provider delivers calls directly to the IPES Provider.

(ddd) *Interexchange Carrier.* The term means, for purposes of this part and §§ 69.3(e)(12)(iv) and 69.5(b) of this chapter, a retail or wholesale telecommunications carrier that uses the exchange access or information access services of another telecommunications carrier for the provision of telecommunications.

(eee) *IPES (internet Protocol Enabled Service) Provider.* The term means, for purposes of this part and §§ 51.914, 69.4(l) and 69.5(b) of this chapter, a provider offering a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location or end to end; (3) requires internet Protocol-compatible customer premises equipment (CPE); and (4) permits users to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network or that originate from an internet Protocol service and terminate to an internet Protocol service or an internet Protocol application.

* * * * *

## PART 69—ACCESS CHARGES

■ 6. The authority citation for part 69 continues to read as follows:

**Authority:** 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

■ 7. Amend § 69.4 by revising paragraph (l) to read as follows:

### § 69.4 Charges to be filed.

* * * * *

(l) Notwithstanding paragraph (b)(5) of this section, a local exchange carrier engaged in Access Stimulation as defined in § 61.3(bbb) of this chapter or the Intermediate Access Provider it subtends, or an Intermediate Access Provider that delivers traffic directly or indirectly to an IPES Provider engaged in Access Stimulation as defined in § 61.3(bbb) of this chapter, shall not bill an Interexchange Carrier as defined in § 61.3(bbb) of this chapter for interstate or intrastate terminating switched access tandem switching or terminating switched access tandem transport charges for any traffic between such local exchange carrier's or such IPES Provider's terminating end office or equivalent and the associated access tandem switch.

■ 8. Amend § 69.5 by revising paragraph (b) to read as follows:

### § 69.5 Persons to be assessed.

* * * * *

(b) Carrier's carrier charges shall be computed and assessed upon all Interexchange Carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services, except that:

(1) Local exchange carriers shall not assess terminating interstate or intrastate switched access tandem switching or terminating switched access tandem transport charge*s* described in § 69.4(b)(5) of this chapter on Interexchange Carriers when the terminating traffic is destined for a local exchange carrier or an IPES Provider engaged in Access Stimulation, as that term is defined in § 61.3(bbb) of this chapter consistent with the provisions of § 61.26(g)(3) of this chapter and § 69.3(e)(12)(iv).

(2) Intermediate Access Providers shall not assess ~~a~~ terminating interstate or intrastate switched access tandem switching or terminating switched access tandem transport charge~~s~~ described in § 69.4(b)(5) of this chapter on Interexchange Carriers when the terminating traffic is destined for a local exchange carrier engaged in Access Stimulation, or is destined, directly or indirectly, for an IPES Provider engaged in Access Stimulation, as that term is defined in § 61.3(bbb) of this chapter consistent with the provisions of § 61.26(g)(3) of this chapter and § 69.3(e)(12)(iv).

* * * * *

[FR Doc. 2022–16237 Filed 8–3–22; 8:45 am]

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# Notices

**Federal Register**

Vol. 87, No. 149

Thursday, August 4, 2022

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

### Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 6, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Food and Nutrition Service

*Title:* 7 CFR part 225, Summer Food Service Program.

*OMB Control Number:* 0584–0280.

*Summary of Collection:* Section 13 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758), as amended, authorizes the Summer Food Service Program (SFSP). The SFSP is directed toward children in low-income areas when school is not in session and is administered by FNS in partnership with State agencies and local program sponsors. Approved sponsors may include public or private non-profit school food authorities (SFAs), public or private non-profit residential summer camps, units of local, municipal, county or State governments, or other private non-profit organizations that develop a special summer program and provide meal service similar to that available to children during the school year under the National School Lunch Program and the School Breakfast Program. Through this revision, FNS is adding two existing monitoring requirements into the collection which have been in use without approval. These requirements state that sponsors must visit each of their sites at least once during the first week of operation under the SFSP (7 CFR 225.15(d)(2)) and conduct a full review of food service operations at each site within the first four weeks of operation (7 CFR 225.15(d)(3)). This revision also resolves rounding issues found in the currently approved burden hours for the collection.

*Need and Use of the Information:* It is mandatory for the sponsors (who can either be State, Local, or Tribal or business/non-profit organization respondents) on an annual basis to visit each of their sites at least once during the first week of operation and to conduct a full review of the food service operations once at each site within the first four weeks of operation. Program sponsors use this information to ensure program integrity and to correct operational issues discovered at the sites. FNS uses this information to ensure compliance and to allocate and reimburse claims in a timely manner.

*Description of Respondents:* Individuals or households; Business or other for-profit; Non-profit institutions; and State, Local, or Tribal Government.

*Number of Respondents:* 63,942.

*Frequency of Responses:* Recordkeeping; Reporting; Third Party Disclosure (Public Disclosure): Annually.

*Total Burden Hours:* 462,699.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2022–16687 Filed 8–3–22; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Forest Service Handbook 2409.12, Timber Cruising, Chapters 30, 40, 60, and 70, and Forest Service Handbook 2409.15, Timber Sale Administration, Chapters 20, 40, and 60

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice of availability for public comment.

**SUMMARY:** The Forest Service, United States Department of Agriculture, is revising its directives related to timber appraisal and renewable resources.

**DATES:** Comments must be received in writing by October 3, 2022.

**ADDRESSES:** Comments may be submitted electronically to *https://cara.fs2c.usda.gov/Public/CommentInput?project=ORMS-3241.* Written comments may be mailed to Michael Van Dyck, Forest Management Service Center, 2150 Centre Avenue Building A, Fort Collins, CO 80526. All timely received comments, including names and addresses, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received at *https://cara.fs2c.usda.gov/Public/ReadingRoom?project=ORMS-3241.*

**FOR FURTHER INFORMATION CONTACT:** Michael Van Dyck, Forest Management Service Center, at 970–295–5774 or by electronic mail to *michael.vandyck@usda.gov.* Individuals who use telecommunications devices for the deaf or hard of hearing (TDD) may call the Federal Relay Service (FRS) at 800–877–8339 24 hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:** The proposed directives reorganize and eliminate redundant policies and procedures, delete obsolete references

and update agency policies and procedures to reflect new authorities and more closely align with current and future forest restoration needs. An analysis of existing agency policy in Forest Service Handbooks and Manuals was conducted to identify revisions needed to support this initiative.

The proposed directives update Forest Service Handbook 2409.12, ''Timber Cruising,'' Chapters 30, 40, 60, and 70, and Forest Service Handbook 2409.15, ''Timber Sale Administration,'' Chapters 20, 40, and 60. These directives set forth policy, responsibilities, and direction for several aspects of management and move the agency closer to its goal of providing more current direction.

The Forest Service has determined that the changes to the manual and handbook formulate standards, criteria, or guidelines applicable to a Forest Service program and it is therefore publishing the proposed directives for public comment in accordance with 36 CFR part 216. The Forest Service is seeking public comment on the proposed directives, including the sufficiency of the proposed directives in meeting the stated objectives, ways to enhance the utility and clarity of information within the direction, or ways to streamline processes outlined.

Forest Service National Environmental Policy Act (NEPA) procedures exclude from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish service-wide administrative procedures, program processes, or instructions'' (36 CFR 220.6(d)(2)). The Agency's conclusion is that these proposed directives fall within this category of actions and that no extraordinary circumstances exist as currently defined that require preparation of an environmental assessment or an environmental impact statement.

After the public comment period closes, the Forest Service will consider timely comments that are within the scope of the proposed directive in the development of the final directive. A notice of the final directive, including a response to timely comments, will be posted on the Forest Service's web page at *https://www.fs.fed.us/about-agency/regulations-policies/comment-on-directives.*

Dated: July 27, 2022.

**Tina Johna Terrell,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. 2022–16726 Filed 8–3–22; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

**[Docket No. NRCS–2022–0009]**

### Notice of Availability of the Draft Programmatic Environmental Assessment for the Partnerships for Climate-Smart Commodities Funding Opportunity

**AGENCY:** Natural Resources Conservation Service (NRCS), Department of Agriculture (USDA).

**ACTION:** Notice of availability and finding of no significant impact.

**SUMMARY:** NRCS is announcing the draft Programmatic Environmental Assessment (PEA) and Finding of No Significant Impact (FONSI) for the Partnerships for Climate-Smart Commodities funding opportunity is available for public review and comment.

**DATES:** We will consider comments that we receive by August 18, 2022.

**ADDRESSES:** We invite you to submit comments on the PEA and FONSI. You may submit comments:

- By going through the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and search for Docket ID NRCS–22–0009. Follow the instructions for submitting comments.

All comments will be posted without change and will be publicly available on *www.regulations.gov.*

A copy of the draft PEA and Finding of No Significant Impact (FONSI) may be obtained from:

- *www.regulations.gov* search for Docket ID NRCS–22–0009, supporting documents;
- *https://www.usda.gov/climate-solutions/climate-smart-commodities*; or
- Email *scott.blackburn@usda.gov* with ''Request for PEA'' in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Scott Blackburn; telephone: (202) 360–8195; or email: *scott.blackburn@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

**SUPPLEMENTARY INFORMATION:** Partnerships for Climate-Smart Commodities is a voluntary USDA funding opportunity with funding made available through NRCS for partnerships to support the production and marketing of climate-smart commodities. Partnerships for Climate-Smart Commodities is designed to use the funds and authorities of the Commodity Credit Corporation (CCC) (15 U.S.C. 714–714f) to support the development of markets and production of agricultural commodities using agricultural (farming, ranching, or forestry) production practices that reduce greenhouse gas emissions or sequester carbon. NRCS is administering the Partnerships for Climate-Smart Commodities on behalf of CCC.

The environmental impacts of the Partnerships for Climate-Smart Commodities funding opportunity have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the NRCS regulations for compliance with NEPA (7 CFR part 650). A draft PEA has been prepared and based on this analysis, NRCS has preliminarily determined there will not be a significant impact to the human environment. As a result, an Environmental Impact Statement (EIS) has not been initiated (40 CFR 1501.6).

In efforts to diligently involve the public, NRCS is making the draft EA and FONSI available for review and comment for 14 calendar days from the date of publication of this document in the **Federal Register**. NRCS will consider this input and determine whether there is any new information provided relevant to environmental concerns and bearing on the proposed action or its impacts that warrant supplementing or revising the draft PEA and FONSI. After the comment period, NRCS will issue either a Final EA and FONSI, or it will issue a Notice of Intent to prepare an Environmental Impact Statement.

**Terry Cosby,**

*Chief, Natural Resources Conservation Service.*

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**BILLING CODE 3410–16–P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

**[Docket Number: RUS–22–Telecom–0010]**

### Rural eConnectivity Program

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Funding Opportunity Announcement.

**SUMMARY:** The Rural Utilities Service, a Rural Development agency of the United States Department of Agriculture (USDA), hereinafter referred to as ''RUS'' or ''the Agency'' is issuing a

Funding Opportunity Announcement (FOA) to announce that it is accepting applications for the second funding round in fiscal year 2022 (FY 22) for the Rural eConnectivity Program (the ReConnect Program) utilizing funding provided under the Infrastructure and Investment Jobs Act. In addition, this FOA defines requirements that are determined at the time a funding announcement is published, as outlined in the regulation.

**DATES:** Beginning on September 6, 2022, applications can be submitted through the RUS on-line application portal until 11:59 a.m. Eastern on November 2, 2022. Applications will not be accepted after November 2, 2022 until a new application opportunity has been opened with the publication of an additional FOA in the **Federal Register**.

**ADDRESSES:** Applications must be submitted electronically through the RUS on-line application portal located at *https://www.usda.gov/reconnect.* This FOA will be made available on *Grants.gov*.

**FOR FURTHER INFORMATION CONTACT:** For general inquiries regarding the ReConnect Program, contact Laurel Leverrier, Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture (USDA), email *laurel.leverrier@usda.gov,* telephone: (202) 720–9554.

For inquiries regarding eligibility concerns, please contact the ReConnect Program Staff at *https://www.usda.gov/reconnect/contact-us.*

**SUPPLEMENTARY INFORMATION:**

## Overview

*Federal Agency:* Rural Utilities Service.

*Funding Opportunity Title:* The Rural eConnectivity Program.

*Announcement Type:* Funding Opportunity Announcement.

*Assistance Listing:* 10.752.

*Funding Opportunity Number (grants.gov):* RUS–REC–2022–2

*Dates:* Beginning on September 6, 2022, applications can be submitted through the RUS on-line application portal until 11:59 a.m. Eastern on November 2, 2022. Applications will not be accepted after November 2, 2022 until a new application opportunity has been opened with the publication of an additional FOA in the **Federal Register**.

*Administrative:* The Agency encourages applicants to consider projects that will advance the following key priorities:

- Assisting Rural communities recover economically from the impacts of the COVID–19 pandemic, particularly disadvantaged communities.
- Ensuring all rural residents have equitable access to Rural Development programs and benefits from Rural Development funded projects.
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

In addition, the Agency would like to highlight the importance of creating good-paying jobs with strong labor standards.

## A. Program Description

1. *Program purpose.* The ReConnect Program provides loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas. In facilitating the expansion of broadband services and infrastructure, the program will fuel long-term rural economic development and opportunities in rural America.

2. *Statutory authority.* The ReConnect Program is authorized by the Consolidated Appropriations Act, 2018 (Pub. L. 115–141), which directs the pilot to be conducted under the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*). Since its establishment in 2018, the ReConnect Program has been implemented by issuing three prior FOAs that detailed the requirements for submitting an application. The ReConnect Program has received successive appropriations by Congress and has matured due to Agency experience and feedback provided by stakeholders. The policies and procedures for the ReConnect Program are codified in a final rule, 7 CFR part 1740, that was published in the **Federal Register** on February 26, 2021 (86 FR 11603). Among other things, those rules require that the applicant demonstrate that the project can be completely built out within five years from the date funds are first made available; the project is technically feasible; all project costs can be fully funded or accounted for; facilities funded with grant funds will provide the broadband service proposed in the application for the composite economic life of the facilities, as approved by RUS, or as provided in the Award Documents; and that facilities funded with loan funds must provide broadband service through the amortization period of the loan. Applicants should carefully review those rules in conjunction with this FOA.

This FOA will use funds appropriated for ReConnect under the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58). Under this FOA, loans, grants, and loan/grant combinations will be made for the costs of construction, improvement, or acquisition of facilities and equipment needed to facilitate broadband deployment in rural areas.

The IIJA provides that in administering the ReConnect Program, the Secretary of Agriculture may, for purposes of determining entities eligible to receive assistance, consider those communities which are ''Areas Rural in Character'', as defined in section 343(a)(13)(D) of the Consolidated Farm and Rural Development Act. USDA is currently developing the process that will be used to implement this option. Under this FOA, the Secretary of Agriculture is encouraging stakeholders to begin this process and accepting requests to designate communities as rural in character.

3. *Definition of terms.* The definitions applicable to this FOA are as follows:

i. *Alaska Native Corporation* means an Alaska Native Regional Corporation or an Alaska Native Village Corporation pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(g)(j).

ii. *Local government* means the administration of a particular town, county, or district, with representatives elected by those who live there.

iii. *Persistent Poverty County* is defined as any county with 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and the 2007–2011 American Community Survey 5–6 year average, or any territory or possession of the United States.

iv. *Remote areas* means areas classified by the USDA Economic Research Service as Frontier and Remote Area (FAR) Level 4. A geographic information system (GIS) layer of FAR Level 4 areas can be found at *https://www.usda.gov/reconnect.*

v. *Socially Vulnerable Community* means a community or area identified in the Center for Disease Control's Social Vulnerability Index with a score of .75 or higher. For the purposes of this FOA, Puerto Rico, Guam, America Samoa, the Northern Mariana Islands, Palau, the Marshall Islands, the Federated States of Micronesia, the U.S. Virgin Islands, and Hawaiian Census Tribal areas are considered to be Socially Vulnerable Communities. A GIS layer identifying the Socially Vulnerable Communities can be found at *https://www.usda.gov/reconnect.*

vi. *Sufficient access to broadband* (7 CFR 1740.2) means any rural area in which households have fixed, terrestrial broadband service defined as 100 megabits per second (Mbps) downstream and 20 Mbps upstream.

vii. *System requirements* (7 CFR 1740.3(a)(2)). Facilities proposed to be constructed with award funds must be capable of delivering 100 Mbps symmetrical service to every premise in the Proposed Funded Service Area (PFSA). Please note that capable of delivering 100 Mbps symmetrical service to every premise means that all premises in the PFSA must be able to receive this service at the same time.

viii. *Tribal Government* means the governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community listed pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5130.

ix. *Tribal Land* means any area identified by the United States Department of Interior as tribal land over which a Tribal Government exercises jurisdiction. A GIS layer of most Tribal Lands can be found on the RUS mapping tool located at *https://www.usda.gov/reconnect.*

x. *Other definitions* related to the ReConnect Program are contained in 7 CFR 1740.2.

**B. Federal Award Information**

1. Funding categories, interest rates and terms (7 CFR 1740.3(b)).

i. *100 Percent Loan.* Applications will be processed and awarded on a rolling basis. In the event two loan applications are received for the same PFSA, the application submitted first will be considered first. The interest rate for a 100 percent loan will be set at a fixed 2 percent. Principal and interest payments will be deferred for three years. The amortization period will be based on the composite economic life of the assets funded plus three years.

ii. *50 Percent Loan/50 Percent Grant Combination.* The interest rate for the 50 percent loan component will be set at the Treasury rate for the remaining amortization period at the time of each advance of funds. The latest Treasury rates that the ReConnect Program will be using can be found under U.S. government securities, available at: *https://www.federalreserve.gov/releases/h15/.* RUS also provides the latest information on interest rates here: *https://www.rd.usda.gov/page/rural-utilities-loan-interest-rates#BaseRates.* Loans shall bear interest equal to the cost of borrowing to the Department of Treasury for obligations of comparable maturity. Principal and interest payments will be deferred for three years. The amortization period will be based on the composite economic life of the assets funded plus three years. Applicants may propose substituting cash for the loan component at the time of application and funds must be deposited into the applicant's operating accounts at the closing of the award.

iii. *100 Percent Grant.* Applicants must provide a matching contribution equal to at least 25 percent of the cost of the overall project. The applicant must clearly identify the source of the matching funds even if it is to be provided from the applicant's operating accounts. All matching funds must be deposited into the applicant's operating accounts.

Given the cashflow pinches on many telecommunications providers during the COVID pandemic, many previous awardees have requested complying with the matching requirement over time, rather than depositing all matching funds at once into the Pledged Deposit Account (PDA). Because of these extraordinary circumstances, RUS has agreed to modify the grant agreement to permit awardees to deposit the required matching and other required funds into the PDA on a rolling basis. If the matching funds are provided by a third party, a commitment letter from the third party must be submitted indicating that the funds will be available at the closing of the award if approved. The matching contribution can be used only for eligible purposes. If the applicant elects to initiate a loan to satisfy the matching requirement, documentation must be included as part of the application indicating the terms and conditions for the loan and that the grant funded assets cannot be used as collateral for the matching funds loan. The loan must be entered into and funds transferred into the applicant's accounts by the closing of the award.

*iv. 100 Percent Grant for Alaska Native Corporations, Tribal Governments, Colonias, Persistent Poverty Areas and Socially Vulnerable Communities.*

For applications submitted under this funding category that meet one of the following criteria, no matching funds will be required:

a. Alaska Native Corporations may submit an application to provide service on land owned by the corporation, as defined in the Alaska Native Claims Settlement Act. Applicants must submit documentation supporting the incorporation.

b. Tribal Governments may submit an application to provide service on Tribal Lands; lands held in trust by the United States for Native Americans; lands subject to restrictions on alienation imposed by the United States on Indian Lands; or land that they own, provide services to, or administer. Applicants must submit documentation supporting land ownership, services, or administration.

c. Projects where 75 percent of the applicant's PFSA(s) are located in areas recognized as Colonia as of October 1, 1989. Colonias are identified using the GIS layer (Colonia Areas) in the RUS mapping tool located at *https://reconnect.usda.gov.*

d. Projects where 75 percent of the applicant's PFSA(s) is located in persistent poverty counties, defined as any county with 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and the 2007–2011 American Community Survey 5–6 year average, or any territory or possession of the United States.

e. Projects where 75 percent of the area of an applicant's PFSA(s) consists of Socially Vulnerable Communities, as defined in section A.3.iv of this FOA.

Colonias, persistent poverty counties, Socially Vulnerable Communities, and most Tribal Lands are identified on the GIS layers included in the RUS mapping tool located at *reconnect.usda.gov.*

*v. Projects where 90 percent of households lack sufficient access to broadband.* Applications submitted under this funding category must demonstrate that 90 percent of the households in each PFSA do not have sufficient access to broadband as defined in this FOA. For applications submitted under this funding category, no matching funds will be required.

2. Maximum and minimum funding amounts (7 CFR 1740.3(b)).

i. *100 Percent Loan.* Up to $150,000,000 is available for loans. The maximum amount that can be requested in an application is $50,000,000.

ii. *50 Percent Loan—50 Percent Grant Combination.* Up to $150,000,000 is available for loans and up to $150,000,000 is available for grants. The maximum amount that can be requested in an application is $25,000,000 for the loan and $25,000,000 for the grant. Loan and grant amounts will always be equal.

iii. *100 Percent Grant.* Up to $150,000,000 is available for grants. The maximum amount of grant funds that can be requested in an application is $25,000,000. However, to encourage broadband deployment in remote areas, if an applicant provides supporting information that demonstrates that the PFSA(s) is comprised 100 percent of areas classified by the USDA Economic Research Service as FAR Level 4, the applicant may request up to $35,000,000. A GIS layer of FAR Level 4 areas can be found at *https://www.usda.gov/reconnect.*

*iv. 100 Percent Grant for Alaska Native Corporations, Tribal*

*Governments, Colonias, Persistent Poverty Areas and Socially Vulnerable Communities.* Up to $350,000,000 is available for grants. The maximum amount of grant funds that can be requested in an application is $25,000,000. However, to encourage broadband deployment in remote areas, if an applicant provides supporting information that demonstrates that the PFSA(s) is comprised 100 percent of locations within areas classified by the USDA Economic Research Service as FAR Level 4, the applicant may request up to $35,000,000. A GIS layer of FAR Level 4 areas can be found at *https://www.usda.gov/reconnect.*

v. *Projects serving areas where 90% of households lack sufficient access to broadband.* Up to $200,000,000 is available for grants. The maximum amount of grant funds that can be requested in an application is $25,000,000. USDA reserves the right to offer funding to eligible Round 3 applicants once all awards from the current round have been made.

vi. *Minimum amount.* The minimum amount that can be requested in any ReConnect Program application is $100,000.

vii. *Repooling.* For categories that do not receive applications that request the full amount of allocated funds, excess funds may be directed to another funding category at RUS's discretion, including but not limited to eligible applications not funded in Round 3. Additionally, if RUS does not make awards in the full amount allocated to a category, RUS may, at its discretion, direct such excess funds to another category or round of funding.

viii. *Additional funding.* RUS may at its discretion, increase the total level of funding available in this funding round or in any category in this funding round from any available source provided the awards meet the requirements of the statute which made the funding available to the agency.

**C. Eligibility Information**

1. *Eligibility requirements.* The eligibility requirements for the ReConnect Program are published at 7 CFR part 1740, subpart B.

2. *Eligible service areas.* The following areas are eligible:

i. For a PFSA to be eligible for funding under this FOA, except for funding category B.1.v, at least 50 percent of the households in the PFSA must lack sufficient access to broadband as defined in this FOA. Applicants must submit evidence that sufficient access to broadband does not exist for 50 percent of the households in the PFSA, identify all existing providers in the PFSA, and indicate what level of service is being provided. If these areas are found to have sufficient service beyond the threshold, the application may be rejected.

ii. Pursuant to the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), the service areas of existing RUS borrowers without sufficient access to broadband, as defined in this FOA, are eligible for ReConnect funding.

iii. Areas receiving, or under consideration for other Federal funds are eligible for ReConnect funding as long as an entity has not received final approval to receive other Federal funding to construct terrestrial facilities providing at least 100/20 Mbps service in the proposed funded service areas as of September 6, 2022. With respect to RDOF, final approval for this FOA means an RDOF awardee's long-form application has received final approval as ready-to-authorize or has been authorized to begin receiving support. Applicants submitting a project to serve an area in which an entity has already received final approval for other Federal funding must explain in the application why ReConnect funding is being requested and why RUS should provide additional funding, as funds must not be used for duplicative purposes. Awardees that receive both other Federal funds and ReConnect funding must submit a statement certifying that the funds requested from ReConnect have not and will not be reimbursed by another Federal award nor used to reimburse another Federal award, and that the Awardee will keep separate accounts for each source of funding to track the uses of the funding to support the certification statement submitted with the ReConnect application. RUS can consider adjusting the service area or award amount of a project selected for ReConnect funding if in the course of evaluating an application, the Agency learns that the service area or a portion of it is already sufficiently served or has received final approval for Federal funding to construct facilities that will provide sufficient access to broadband as defined under this FOA.

3. *Tribal Government Resolution of Consent.* Pursuant to 7 CFR 1740.60(d)(19), a certification from the appropriate tribal official is required if service is being proposed over or on Tribal Lands. The appropriate certification is a Tribal Government Resolution of Consent. The appropriate tribal official is the Tribal Council of the Tribal Government with jurisdiction over the Tribal Lands at issue. Any applicant that fails to provide a certification to provide service on the Tribal Lands identified in the PFSA will not be considered for funding.

4. *Pre-application and environmental review expenses.* The costs associated with satisfying the environmental review requirements are also eligible for reimbursement as pre-application expenses. Up to three percent of the requested award funds can be used for this purpose. Please note that any environmental expenses will count as part of the overall five percent that is allowable for pre-application expenses.

In addition, up to three percent of the requested amount can be used to fund post-award monitoring expenses that are required to mitigate any environmental requirements as long as they are capitalized as part of the project. This cost must be specified in the Professional Services section of Capital Investment Workbook included as part of the application system.

Pre-application expenses that were incurred under the previous round of ReConnect, but benefit an application for this round, may be funded up to the five percent of the total award in this round.

5. *Pole attachment.* Pole attachment fees associated with the construction funded under this FOA are eligible for funding throughout the five-year construction period. In addition, if the pole owner requires that a pole needs to be replaced to support the broadband facilities, the cost of the pole replacement is also an eligible expense.

6. *Advance of funds.* For this FOA, the advance of funds for a 50/50 loan grant combination will be as follows: (a) funds substituted for the loan component will be advanced first, (b) loan funds will be advanced second and (c) grant funds will be advanced third. The advance of funds for 100 percent grants that require a matching component will be prorated against the amount of matching funds that are required and the amount of the grant funds approved.

7. *Community Project Funding/Congressionally Directed Spending.* The Consolidated Appropriations Act, 2022 (Pub. L. 117–103), included funding in the ReConnect Program for nineteen specific broadband projects. The proposed service areas for these projects are not eligible for funding under this FOA. A GIS layer of the proposed service areas for these nineteen projects are located in the ReConnect Mapping Tool and can be viewed at *https://www.usda.gov/reconnect.*

8. *Cybersecurity risk management.* It is the policy of the United States to strengthen the security and resilience of its critical infrastructure against both physical and cyber threats. Applicants

selected for Federal funding under this notice must demonstrate, prior to the signing of the award agreement, effort to consider and address cybersecurity risks consistent with the cybersecurity performance goals for critical infrastructure and control systems directed by the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems, or the current draft of these goals, found at *https://www.cisa.gov/control-systems-goals-and-objectives.*

9. *Audit requirements.* Non-Federal entities are subject to 2 CFR part 200, and therefore are only required to submit a single audit in compliance with 2 CFR part 200.

10. *Affordable Connectivity Program.* To ensure that all Americans can access reliable, high-speed internet, this vital service must also be affordable. The Affordable Connectivity Program (ACP), established by the IIJA, is a benefit program that helps households afford the broadband service they need for work, school, healthcare, civic engagement, and economic opportunity. To make the ACP benefit available to eligible households, internet providers also need to participate in the program. Therefore, to ensure that rural households can take advantage of the ACP benefit, applicants selected for Federal funding under this notice will be required to apply to participate in the ACP before award funds are disbursed.

**D. Application and Submission Information**

1. All requirements for submission of an application under the ReConnect Program are subject to 7 CFR part 1740.

2. Applications must be submitted through the Agency's online application system located on the ReConnect web page, *https://www.usda.gov/reconnect.* All materials required for completing an application are included in the online system. Please note there are a number of supporting documents that will need to be uploaded through the application system.

3. Applicants can submit only one application. Applicants may start multiple applications in the system but only one can be submitted.

**E. Application Review Information**

1. *Evaluation.* All applications are subject to the submission and evaluation requirements contained in 7 CFR part 1740, subpart E.

2. *Scoring.* Applications that have a grant component will be scored based on the following criteria:

i. *Rurality of PFSA (25 Points).* Points will be awarded for serving the least dense rural areas as measured by the population of the PFSA per square mile or if the PFSA is located at least one hundred miles from a city or town that has a population of greater than 50,000 inhabitants. If multiple service areas are proposed, the density calculation will be made on the combined areas as if they were a single area and not the average densities. For population densities of 6 or less or if the PFSA is located one hundred miles from a city or town of 50,000, 25 points will be awarded.

ii. *Level of existing service (25 Points).* Projects that are proposing to build in areas where at least 50 percent of the households in each proposed service area are not receiving service of at least 25 Mbps downstream and 3 Mbps upstream will receive 25 points. Applicants must provide supporting evidence that 25/3 service does not exist for those households. To the extent possible, applicants must identify all existing providers in the PFSA and indicate what level of service is actually being provided.

iii. *Economic need of the community (20 Points).* Economic need is based on the county poverty percentage of the PFSA in the application. The percentages must be determined by utilizing the United States Census Small Area Income and Poverty Estimates (SAIPE) Program. For applications where 75 percent of the PFSA(s) are proposing to serve communities with a SAIPE score of 20 percent or higher, 20 points will be awarded. Proposed funded service areas located in geographic areas for which no SAIPE data exist will be determined to have an average SAIPE poverty percentage of 30 percent. Such geographic areas may include territories of the United States or other locations eligible for funding through the ReConnect Program. A GIS layer identifying SAIPE areas can be found in the RUS mapping tool located at *https://reconnect.usda.gov.*

iv. *Affordability (20 Points).* Applications can receive 20 points if, in their service offerings, they include at least one low-cost option offered at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning.

v. *Labor Standards (20 points).* It is important that necessary investments in broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. The Agency understands the importance of promoting workforce development and encourages recipients to ensure that broadband projects use strong labor standards, consistent with Tribal laws when projects propose to build infrastructure on Tribal Lands. Using these practices in construction projects not only promotes effective and efficient delivery of high-quality infrastructure and supports the economic recovery through employment opportunities for workers, but may also help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

Applicants should include in their applications a description of whether and, if so, how the project will incorporate three categories of strong labor standards and protections:

a. Strong labor standards: whether workers (including employees of contractors and subcontractors) will be paid wages at or above the prevailing rate; [1] whether the project will be covered by a project labor agreement; and/or whether the project will use a unionized project workforce;

b. Demonstrated compliance with and plans for future compliance with labor and employment laws: whether the applicant, has any violations of tribal, state or federal labor, workplace safety and health, or employment laws within the last five years; and/or whether the applicant, its contractors, or subcontractors will commit to union neutrality; and/or whether the applicant, its contractors, or subcontractors will commit to permitting workers to create worker-led health and safety committees that management will meet with upon reasonable request; and

c. A plan to recruit and support an appropriately skilled, trained and credentialed workforce (including by contractors and subcontractors): whether work will be performed by a directly employed workforce or whether the employer has policies and practices in place to ensure employees of contractors and subcontractors are qualified; how the applicant will ensure use of an appropriately skilled workforce (*e.g.,* through Registered Apprenticeships or other joint labor-management training programs that

[1] This means that all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the ''Davis-Bacon Act'') or, for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate state entity pursuant to a corollary state prevailing-wage-in-construction law (commonly known as ''baby Davis-Bacon Acts'').

serve all workers, particularly those underrepresented or historically excluded); how the applicant will ensure use of an appropriately credentialed workforce (*i.e.,* satisfying requirements for appropriate and relevant pre-existing occupational training, certification, and licensure); and/or whether a locally-based workforce will be used. In addition, the plan should include whether there are any partnerships with training providers, unions, or community colleges to support the recruitment and training of the workforce.

For applicants that commit to strong labor standards, consistent with Tribal Laws when the project proposes to build infrastructure on Tribal Lands, 20 points will be awarded. An applicant requesting these points must incorporate components from each of the three categories above. Projects that propose to build infrastructure on Tribal Lands must follow Tribal laws such as Tribal Employment Rights Ordinances to be in compliance with a ReConnect award, regardless of receiving points under this standard. The Agency reserves the right to adjust award amounts for unforeseen circumstances.

vi. *Tribal areas (15 Points).* For applicants that are Tribal governments and Tribal government wholly-owned entities and, at least, 75 percent of the geographical area of the PFSA(s) is on Tribal lands, 15 points shall be awarded. For non-Tribal governmental entities where at least 50 percent of the geographical area of the PFSA(s) is on Tribal Lands, 10 points shall be awarded. Tribal Lands will be analyzed using the GIS layers (Tribal Area (BIA LAR); Tribal Supplemental Area (BIA LAR); and Tribal Statistical Area (BIA)) in the RUS mapping tool located at *https://reconnect.usda.gov.* For applicants that are ANCs or Alaska Native Tribal Governments where at least 50 percent of the geographical area of the PFSA(s) is on Census Tribal areas in Alaska, 15 points shall be awarded. For non-ANC or non-Alaska Native Tribal Government entities where at least 50 percent of the geographical area of the PFSA(s) is on Census Tribal areas in Alaska, 10 points shall be awarded. Census Tribal areas in Alaska will be analyzed using the GIS layer (Alaska Census Tribal Areas) layer in the RUS mapping tools located at *https://reconnect.usda.gov.*

vii. *Local governments, non-profits and cooperatives (15 points).* Applications submitted by local governments, non-profits or cooperatives (including for projects involving public-private partnerships where the local government, non-profit, or cooperative is the applicant) will be awarded 15 points.

viii. *Socially Vulnerable Communities (15 points).* For applications where at least 75 percent of the PFSA(s) are proposing to serve Socially Vulnerable Communities, as defined in this FOA, 15 points will be awarded.

ix. *Net neutrality (10 points).* For applicants that commit to net neutrality principles, 10 points will be awarded. A board resolution or its equivalent must be submitted in the application committing that the applicant's networks shall not (a) block lawful content, applications, services, or non-harmful devices, subject to reasonable network management; (b) impair or degrade lawful internet traffic on the basis of internet content, application, or service, or use of a non-harmful device, subject to reasonable network management; and (c) engage in paid prioritization, meaning the management of a broadband provider's network to directly or indirectly favor some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (1) in exchange for consideration (monetary or otherwise) from a third party, or (2) to benefit an affiliated entity.

x. *Wholesale broadband services (10 points).* Companies that propose to buy market access, bandwidth, functionality and servicing on a wholesale basis with the intent of reselling their purchased ''capacity'' on the retail market to businesses and consumers, with terms that are reasonable and nondiscriminatory, will receive 10 points.

### F. Federal Award Administration Information

1. *Closing, servicing and reporting.* All applications are subject to the requirements contained in 7 CFR part 1740, subpart F.

2. *Compliance with applicable law.* Use of funds for this program shall comply with requirements outlined in the Secure and Trusted Communications Networks Act of 2019 (Pub. L. 116–124). Listed equipment and services covered by Section 2 of The Secure and Trusted Communications Networks Act are prohibited. See *https://www.fcc.gov/supplychain/coveredlist* for details.

3. *Other requirements.* All applications are subject to the additional requirements contained in 7 CFR part 1740, subpart G.

4. *Ineligible costs.* A recipient may not use grant or loan funds, whether directly or indirectly as an offset for other funds, to support or oppose union organizing.

### G. Federal Awarding Agency Contacts

Any questions should be addressed to the contact information located in the **FOR FURTHER INFORMATION CONTACT** section of this FOA.

### H. Build America, Buy America

1. *Funding to non-Federal entities.* Funding to non-Federal entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABA) within the IIJA.

2. *Funding to entities that are not non-Federal entities.* Funding to any entity that is not a non-Federal entity shall be governed by the Agency's Buy American requirement at 7 CFR part 1787.

### I. Other Information

1. *Paperwork Reduction Act.* In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with the ReConnect Program, as covered in this FOA, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572–0152. This funding announcement does not create any new information collection requirements nor does it change existing information collection requirements.

2. *Congressional Review Act.* Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA), 5 U.S.C. 801 *et seq.,* the Office of Information and Regulatory Affairs in the Office of Management and Budget designated this action as a major rule as defined by 5 U.S.C. 804(2), because it is likely to result in an annual effect on the economy of $100,000,000 or more. Accordingly, there is a 60-day delay in the effective date of this action. Application selection will not begin until after October 3, 2022. Therefore, the 60-day delay required by the CRA is not expected to have a material impact upon the administration and/or implementation of the ReConnect Program.

3. *USDA Non-Discrimination Statement.* In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from

discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, familial status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program Information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Mission Area, Agency, or staff office; the USDA TARGET Center at 202–720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

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

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

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

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

USDA is an equal opportunity provider, employer, and lender.

**Christopher A. McLean,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 2022–16694 Filed 8–1–22; 11:15 am]

**BILLING CODE 3410–15–P**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### First Responder Network Authority

### Public Combined Board and Board Committees Meeting

**AGENCY:** First Responder Network Authority (FirstNet Authority), National Telecommunications and Information Administration (NTIA), Department of Commerce.

**ACTION:** Announcement of meeting.

**SUMMARY:** The FirstNet Authority Board will convene an open public meeting of the Board and Board Committees.

**DATES:** August 17, 2022; 9:00 a.m. to 11:00 a.m. Pacific Daylight Time (PDT); Los Angeles, California.

**ADDRESSES:** The meeting will be held at the Los Angeles Airport Marriott hotel located at 5855 West Century Boulevard, Los Angeles, CA 90045. Due to restrictions on the number of people who can be present, members of the public will not be able to attend in person but may listen to the meeting and view the presentation by visiting the URL: *https://stream2.sparkstreetdigital.com/20220817-firstnet.html* . If you experience technical difficulty, contact *support@sparkstreetdigital.com.* WebEx information can also be found on the FirstNet Authority website (*FirstNet.gov*).

**FOR FURTHER INFORMATION CONTACT:**

General information: Janell Smith, (202) 257–5929, *Janell.Smith@FirstNet.gov.*

Media inquiries: Ryan Oremland, (571) 665–6186, *Ryan.Oremland@FirstNet.gov.*

**SUPPLEMENTARY INFORMATION:**

Background: The Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. 1401 *et seq.*) (Act) established the FirstNet Authority as an independent authority within NTIA. The Act directs the FirstNet Authority to ensure the building, deployment, and operation of a nationwide interoperable public safety broadband network. The FirstNet Authority Board is responsible for making strategic decisions regarding the operations of the FirstNet Authority.

Matters to be Considered: The FirstNet Authority will post a detailed agenda for the Combined Board and Board Committees Meeting on *FirstNet.gov* prior to the meeting. The agenda topics are subject to change. Please note that the subjects discussed by the Board and Board Committees may involve commercial or financial information that is privileged or confidential, or other legal matters affecting the FirstNet Authority. As such, the Board may, by majority vote, close the meeting only for the time necessary to preserve the confidentiality of such information, pursuant to 47 U.S.C. 1424(e)(2).

Other Information: The public Combined Board and Board Committees Meeting is accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Janell Smith at (202) 257–5929 or email: *Janell.Smith@FirstNet.gov* at least five (5) business days (August 10) before the meeting.

Records: The FirstNet Authority maintains records of all Board proceedings. Minutes of the Combined Board and Board Committees Meeting will be available on *FirstNet.gov.*

Dated: August 1, 2022.

**Janell Smith,**

*Board Secretary, First Responder Network Authority.*

[FR Doc. 2022–16718 Filed 8–3–22; 8:45 am]

**BILLING CODE 3510–TL–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–11–2022]**

### Foreign-Trade Zone (FTZ) 61—San Juan, Puerto Rico; Authorization of Production Activity, AIAC International Pharma, LLC; (Pharmaceutical Products) Arecibo, Puerto Rico

On April 1, 2022, the Department of Economic Development and Commerce, grantee of FTZ 61, submitted a notification of proposed production activity to the FTZ Board on behalf of AIAC International Pharma, LLC, within Subzone 61D, in Arecibo, Puerto Rico.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (87 FR 20813–20814, April 8, 2022). On August 1, 2022, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: August 1, 2022.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2022–16724 Filed 8–3–22; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–351–858]**

## Certain Lemon Juice From Brazil: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that certain lemon juice (lemon juice) from Brazil is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2020, through September 30, 2021. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable August 4, 2022.

**FOR FURTHER INFORMATION CONTACT:** Lilit Astvatsatrian or Dakota Potts, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6412 or (202) 482–0223, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on January 25, 2022.[1] On May 19, 2022, Commerce postponed the preliminary determination of this investigation and the revised deadline is now July 28, 2022.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II 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.*

### Scope of the Investigation

The product covered by this investigation is lemon juice from Brazil. For a complete description of the scope of this investigation, *see* Appendix I.

### Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.* Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

### Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

### All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce calculated estimated weighted-average dumping margins for the mandatory respondents, Citrus Juice Eireli (Citrus Juice) and Louis Dreyfus Company Sucos S.A. (LDC), that are not zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others rate by applying a simple average of the estimated weighted-average dumping margins that it calculated for the individually examined respondents.[6]

### Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

| Exporter/Producer | Estimated weighted-average dumping margin (percent) |
|---|---|
| Citrus Juice Eireli[7] | 21.49 |
| Louis Dreyfus Company Sucos S.A | 4.45 |
| All Others | 12.97 |

### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash

[1] *See Lemon Juice from Brazil and South Africa: Initiation of Less-Than-Fair-Value Investigations,* 87 FR 3768 (January 25, 2022) (*Initiation Notice*).

[2] *See Certain Lemon Juice from Brazil and the Republic of South Africa: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 87 FR 30452 (May 19, 2022).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Lemon Juice from Brazil,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). As complete publicly ranged sales data was unavailable, Commerce based the all-others rate on the simple average of the estimated weighted-average dumping margins of the mandatory respondents. For a complete analysis of the data, please *see* the All-Others Rate Calculation Memorandum.

[7] Commerce preliminarily determines that Citrus Juice Eireli and Sucos Kiki Eireli are a single entity. *See* Preliminary Decision Memorandum; *see also* Memorandum, ''Analysis Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Lemon Juice from Brazil: Citrus Juice Eireli,'' dated July 28, 2022.

deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Should the final estimated weighted-average dumping margin be zero or *de minimis* for the producer/exporter combinations identified above, entries of shipments of subject merchandise from these producer/exporter combinations will be excluded from the potential antidumping duty order. Such exclusions are not applicable to merchandise exported to the United States by these respondents in any other producer/exporter combinations or by third parties that sourced subject merchandise from the excluded producer/exporter combinations. These suspension of liquidation instructions will remain in effect until further notice.

**Disclosure**

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

**Verification**

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

**Public Comment**

A timeline for the submission of case briefs and written comments will be notified to interested parties at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline for case briefs.[8] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days after the date of publication of this notice. Requests should contain (1) the party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

**Postponement of Final Determination and Extension of Provisional Measures**

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On July 21, 2022, pursuant to 19 CFR 351.210(e), Citrus Juice requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[10] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

**International Trade Commission Notification**

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

**Notification to Interested Parties**

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c) and 9 CFR 351.210(g).

Dated: July 28, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix I—Scope of the Investigation**

The product covered by this investigation is certain lemon juice. Lemon juice is covered: (1) with or without addition of preservatives, sugar, or other sweeteners; (2) regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity; (3) regardless of the grade, horticulture method (*e.g.,* organic or not), processed form (*e.g.,* frozen or not-from-concentrate), the size of the container in which packed, or the method of packing; and (4) regardless of the U.S. Department of Agriculture Food and Drug Administration (FDA) standard of identity (as defined under 19 CFR 146.114 *et seq.*) (*i.e.,* whether or not the lemon juice meets an FDA standard of identity).

Excluded from the scope are: (1) lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers; and (2) beverage products, such as lemonade, that contain 20 percent or less lemon juice as an ingredient by actual volume. ''Retail-sized containers'' are defined as lemon juice products sold in ready-for-sale packaging (*e.g.,* clearly visible branding, nutritional facts listed, *etc.*) containing up to 128 ounces of lemon juice by actual volume.

The scope also includes certain lemon juice that is blended with certain lemon juice from sources not subject to this investigation. Only the subject lemon juice component of such blended merchandise is covered by the scope of this investigation. Blended lemon juice is defined as certain lemon juice with two distinct component parts of differing

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[10] *See* Citrus Juice's Letter, ''Lemon Juice from Brazil: Request for Postponement of Final Antidumping Determination,'' dated July 21, 2022.

country(s) of origin mixed together to form certain lemon juice where the component parts are no longer individually distinguishable.

The product subject to this investigation is currently classifiable under subheadings 2009.31.4000, 2009.31.6020, 2009.31.6040, 2009.39.6020, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

### Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum



[FR Doc. 2022–16640 Filed 8–3–22; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–489–846]**

## Certain Steel Nails From the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that certain steel nails (nails) from the Republic of Turkey (Turkey) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2020, through September 30, 2021. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable August 4, 2022.

**FOR FURTHER INFORMATION CONTACT:** David Crespo or Amaris Wade, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3693 or (202) 482–6334, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on January 26, 2022.[1] On May 20, 2022, Commerce postponed the preliminary determination of this investigation until July 28, 2022.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II 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.*

### Scope of the Investigation

The products covered by this investigation are nails from Turkey. For a complete description of the scope of this investigation, *see* Appendix I.

### Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice.* On July 5, 2022, Commerce issued its preliminary determination regarding the scope of the investigation.[6] For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum. Based on an analysis of the comments received, Commerce preliminarily determined to make no changes to the scope language from the *Initiation Notice,* as reflected in Appendix I.[7] Commerce has established a separate briefing schedule for interested parties to address the preliminary scope determination.[8]

### Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export price in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

### All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act.

In this investigation, Commerce calculated estimated weighted-average dumping margins for Aslanbas Civi Tel Ve Celik Hasir San A.S. (Aslanbas) and Sertel Vida Metal A.S. (Sertel Vida) that are not zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the estimated weighted-average dumping margins calculated for the individually examined respondents using the publicly ranged total value of each respondent's sales of the merchandise under consideration to the United States during the POI.[9]

[1] *See Certain Steel Nails From India, Sri Lanka, Thailand, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 87 FR 3965 (January 26, 2022) (*Initiation Notice*).

[2] *See Certain Steel Nails From India, Sri Lanka, Thailand, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 87 FR 30868 (May 20, 2022).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Steel Nails from the Republic of Turkey,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 87 FR at 3966.

[6] *See* Memorandum, ''Antidumping Duty Investigations of Certain Steel Nails from India, Sri Lanka, Thailand, and Turkey and Countervailing Duty Investigations of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey: Preliminary Scope Decision Memorandum,'' dated July 5, 2022 (Preliminary Scope Decision Memo).

[7] Though Commerce preliminarily determined to make no changes to the language of the scope in response to interested parties' comments, we note that the scope language as listed in Appendix I omits an HTSUS subheading (*i.e.,* 7318.15.5060) originally included in the scope language from the *Initiation Notice,* because Commerce determined that this HTSUS subheading does not exist. *Id.* at 15.

[8] *Id.* at 4–5.

[9] With two respondents under examination, Commerce normally calculates (A) a weighted

Continued

**Preliminary Determination**

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

| Exporter or producer | Estimated weighted-average dumping margin (percent) | Export subsidy offset (percent) | Cash deposit rate adjusted for subsidy offset (percent) [10] |
|---|---|---|---|
| Aslanbas Civi Tel Ve Celik Hasir San A.S | 22.72 | 0.72 | 22.00 |
| Sertel Vida Metal A.S | 38.38 | 0.78 | 37.60 |
| All Others | 35.77 | 0.77 | 35.00 |

**Suspension of Liquidation**

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit for estimated antidumping duties that is equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the companies listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion CVD proceeding. Accordingly, in a LTFV investigation where Commerce has made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate countervailed export subsidy rate. The adjusted cash deposit rate may be found in the ''Preliminary Determination'' section above.

These suspension of liquidation instructions will remain in effect until further notice.

**Disclosure**

Commerce intends to disclose under Administrative Protective Order its calculations and related analysis to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

**Verification**

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

**Public Comment**

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance.[11] Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days after the date 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; (3) whether any participant is a foreign national, and (4) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and

average of the estimated weighted-average dumping margins calculated for the examined respondents using the confidential total U.S. sales value of the merchandise under consideration; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged total U.S. sale values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for the estimated weighted-average dumping margin assigned to all other producers and exporters. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1. For a complete analysis of the data, *see* Memorandum, ''Less-Than-Fair-Value Investigation of Certain Steel Nails from the Republic of Turkey: Calculation of the All-Others Rate for the Preliminary Determination,'' dated concurrently with this notice.

[10] In the preliminary determination of the companion countervailing duty (CVD) proceeding, Commerce found that certain of the programs conferring a benefit to the two mandatory respondents, Aslanbas and Sertel Vida, were export contingent subsidies. In accordance with section 772(c)(1)(C) of the Act, we have preliminarily relied on the CVD rates of 0.72 and 0.78 percent (*i.e.,* the rates only related to export contingent subsidies) calculated for Aslanbas and Sertel Vida, respectively, as well as the CVD all others rate of 0.77 percent, for purposes of determining the preliminary AD cash deposit rate. *See* Memorandum, ''Less-Than-Fair-Value Investigation of Certain Steel Nails from the Republic of Turkey: Placing Public Information Related to the Calculation of the ''All Others Rate'' from the Preliminary Determination of the Companion Countervailing Duty Investigation of Certain Steel Nails from the Republic of Turkey,'' dated July 25, 2022.

[11] Case briefs, other written comments, and rebuttal briefs submitted by parties in response to this preliminary LTFV determination should not include scope-related issues. The scope case briefs deadline was July 19, 2022. *See* Preliminary Scope Decision Memorandum at 4.

[12] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All requests and submissions must be filed electronically using ACCESS.[13] An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. Eastern Time on the date that the submission is due. Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[14]

### Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the date of this preliminary determination, unless postponed pursuant 19 CFR 351.210(b)(2).

### International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If Commerce's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of nails from Turkey are materially injuring, or threaten material injury to, the U.S. industry.

### Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: July 28, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix I—Scope of the Investigation

The merchandise covered by this investigation is certain steel nails having a nominal shaft or shank length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel or long-rolled flat steel bars. Certain steel nails may be of one piece construction or constructed of two or more pieces. Examples of nails constructed of two or more pieces include, but are not limited to, anchors comprised of an anchor body made of zinc or nylon and a steel pin or a steel nail; crimp drive anchors; split-drive anchors, and strike pin anchors. Also included in the scope are anchors of one piece construction.

Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank or shaft styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted.

Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope of this investigation are certain steel nails with a nominal shaft or shank length of one inch or less that are a component of an unassembled article, where the total number of nails is sixty (60) or less, and the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.2000 and 7317.00.3000.

Also excluded from the scope of this investigation are nails suitable for use in gas-actuated hand tools. These nails have a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS subheading 7317.00.1000.

Also excluded from the scope are decorative or upholstery tacks.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.5501, 7317.00.5502, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5508, 7317.00.5511, 7317.00.5518, 7317.00.5519, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560 and 7317.00.7500. Certain steel nails subject to this investigation also may be classified under HTSUS subheadings 7318.15.5090, 7907.00.6000, 8206.00.0000 or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

### Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum



[FR Doc. 2022–16721 Filed 8–3–22; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–542–804]**

### Certain Steel Nails From Sri Lanka: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that certain steel nails (steel nails) from Sri Lanka are not being, or are not likely to be, sold in the United States at less than fair value (LTFV). The

[13] *See generally* 19 CFR 351.303.

[14] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

period of investigation (POI) is October 1, 2020, through September 30, 2021. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable August 4, 2022.

**FOR FURTHER INFORMATION CONTACT:** Allison Hollander, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2805.

**SUPPLEMENTARY INFORMATION:**

## Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on January 26, 2022.[1] On May 20, 2022, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now July 28, 2022.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II 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.*

## Scope of the Investigation

The products covered by this investigation are steel nails from Sri Lanka. For a complete description of the scope of this investigation, *see* Appendix I.

## Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice.* On July 5, 2022, Commerce issued its preliminary determination regarding the scope of the investigation.[6] For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum. Based on an analysis of the comments received, Commerce preliminarily determined to make no change to the scope language from the *Initiation Notice,* as reflected in Appendix I.[7] Commerce established a separate briefing schedule for interested parties to address the preliminary scope determination.[8]

## Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

## Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margin exists:

| Exporter or producer | Estimated weighted-average dumping margin (percent) |
|---|---|
| Trinity Steel Private Limited ..... | 0.00 |

Consistent with section 733(b)(3) of the Act, Commerce disregards *de minimis* rates. Accordingly, Commerce preliminarily determines that Trinity Steel Private Limited, the only individually examined respondent with a zero rate, has not made sales of subject merchandise at LTFV.

Consistent with section 733(d) of the Act, Commerce has not calculated an estimated weighted-average dumping margin for all other producers and exporters because it has not made an affirmative preliminary determination of sales at LTFV.

## Suspension of Liquidation

Because Commerce has made a negative preliminary determination of sales at LTFV with regard to subject merchandise, Commerce will not direct U.S. Customs and Border Protection to suspend liquidation or to require a cash deposit of estimated antidumping duties for entries of steel nails from Sri Lanka.

## Disclosure

Commerce intends to disclose its calculations and related analysis to interested parties within five days of any public announcement of the preliminary determination or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

## Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

## Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance.[9] Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in these case briefs, may be submitted no later than seven days after

[1] *See Certain Steel Nails from India, Sri Lanka, Thailand, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 87 FR 3965 (January 26, 2022) (*Initiation Notice*).

[2] *See Certain Steel Nails from India, Sri Lanka, Thailand, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 87 FR 30868 (May 20, 2022).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Negative Determination in the Less-Than-Fair-Value Investigation of Certain Steel Nails from Sri Lanka,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 87 FR at 3966.

[6] *See* Memorandum, ''Antidumping Duty Investigations of Certain Steel Nails from India, Sri Lanka, Thailand, and Turkey and Countervailing Duty Investigations of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey: Preliminary Scope Decision Memorandum,'' dated July 5, 2022 (Preliminary Scope Decision Memorandum).

[7] Though Commerce preliminarily determined to make no change to the language of the scope in response to interested parties' comments, we note that the scope language as listed in Appendix I omits an HTSUS subheading (7318.15.5060) originally included in the scope language from the *Initiation Notice,* because Commerce determined that the HTSUS subheading does not exist. *Id.* at 15.

[8] *Id.* at 4–5.

[9] Case briefs, other written comments, and rebuttal briefs submitted by parties in response to this preliminary LTFV determination should not include scope-related issues. The scope case briefs deadline was July 19, 2022. *See* the Preliminary Scope Decision Memorandum at 4.

the deadline date for case briefs.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[11]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

## Postponement of Final Determination

Section 735(a)(2)(B) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** if, in the event of a negative preliminary determination, a request for such postponement is made by the petitioner.

On July 14, 2022, Mid Continent Steel & Wire, Inc. (the petitioner) requested that Commerce postpone the final determination in the event of a negative preliminary determination.[12] In accordance with section 735(a)(2)(B) of the Act and 19 CFR 351.210(b)(2)(i), because: (1) the preliminary determination is negative; (2) the petitioner has requested the postponement of the final determination; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination. Accordingly, Commerce will make its final determination by no later than 135 days after the date of publication of this preliminary determination in the **Federal Register**, pursuant to section 735(a)(2) of the Act.[13]

## U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If Commerce's final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of steel nails from Sri Lanka are materially injuring, or threaten material injury to, the U.S. industry.

## Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: July 28, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

## Attachment I—Scope of the Investigation

The merchandise covered by this investigation is certain steel nails having a nominal shaft or shank length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel or long-rolled flat steel bars. Certain steel nails may be of one piece construction or constructed of two or more pieces. Examples of nails constructed of two or more pieces include, but are not limited to, anchors comprised of an anchor body made of zinc or nylon and a steel pin or a steel nail; crimp drive anchors; split-drive anchors, and strike pin anchors. Also included in the scope are anchors of one piece construction.

Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank or shaft styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted.

Screw-threaded nails subject to this investigation are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel, and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft or shank length of one inch or less that are a component of an unassembled article, where the total number of nails is sixty (60) or less, and the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.2000 and 7317.00.3000.

Also excluded from the scope of this investigation are nails suitable for use in gas-actuated hand tools. These nails have a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS subheading 7317.00.1000.

Also excluded from the scope are decorative or upholstery tacks.

Certain steel nails subject to this investigation are currently classified under

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[12] *See* Petitioner's Letter, ''Certain Steel Nails from India, Sri Lanka and Thailand—Petitioner's Request for Postponement Final Determination,'' dated July 14, 2022.

[13] *See also* 19 CFR 351.210(e).

HTSUS subheadings 7317.00.5501, 7317.00.5502, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5508, 7317.00.5511, 7317.00.5518, 7317.00.5519, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560, and 7317.00.7500. Certain steel nails subject to this investigation also may be classified under HTSUS subheadings 7318.15.5090, 7907.00.6000, 8206.00.0000, or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

### Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Discussion of the Methodology
V. Currency Conversion
VI. Recommendation
VII.

[FR Doc. 2022–16722 Filed 8–3–22; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–874]**

### Certain Steel Nails From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2020–2021

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that Daejin Steel Company (Daejin) and Korea Wire Co., Ltd. (KOWIRE), the producers and/or exporters subject to this administrative review, made sales of certain steel nails (steel nails) from the Republic of Korea (Korea) at less than normal value (NV) during the period of review (POR) July 1, 2020, through June 30, 2021.

**DATES:** Applicable August 4, 2022.

**FOR FURTHER INFORMATION CONTACT:** Eva Kim and Reginald Anadio, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8283 or (202) 482–3166, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 13, 2015, Commerce published the *Order* in the **Federal Register**.[1] On July 1, 2021, we published a notice of opportunity to request an administrative review of the *Order*.[2] On September 7, 2021, based on timely requests for review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), we initiated an administrative review of the *Order* on steel nails from Korea covering the following individually-examined companies: Daejin and KOWIRE.[3] On March 11, 2022, pursuant to section 751(a)(3)(A) of the Act, Commerce extended the preliminary results of this review to no later than July 29, 2022.[4] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[5]

### Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On July 29, 2021, Mid Continent Steel & Wire, Inc. (the petitioner) requested an administrative review of 213 producers and/or exporters, including Daejin and KOWIRE. On September 21, 2021, the petitioner timely withdrew its request for 209 of the 213 companies.[6]

Because all requests for administrative review of the 209 companies were timely withdrawn, and no other parties requested review of these companies, Commerce is rescinding this review, in part, with respect to these 209 companies. On October 5, 2021, based on U.S. Customs and Border Protection (CBP) data, we selected Daejin and KOWIRE as the mandatory respondents in this administrative review.[7] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.

### Scope of the Order

The merchandise subject to the *Order* is steel nails from Korea. For a complete description of the scope of the *Order, see* Preliminary Decision Memorandum.

### Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Act. Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached 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/.*

### Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists for the period July 1, 2020, through June 30, 2021:

| Producer/exporter | Weighted-average dumping margin (percent) |
|---|---|
| Daejin Steel Company | 4.38 |
| Korea Wire Co., Ltd | 0.75 |
| Je-il Wire Production Co., Ltd | 2.57 |
| Koram Inc | 2.57 |

### Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[8] Interested parties may submit case briefs to Commerce no later than 30 days after

[1] *See Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 80 FR 39994 (July 13, 2015) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 86 FR 35065 (July 1, 2021).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 50034 (September 7, 2021).

[4] *See* Memorandum, ''Certain Steel Nails from the Republic of Korea: Extension of Deadline for Preliminary Results of the 2020–2021 Antidumping Duty Administrative Review,'' dated March 11, 2022.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the Republic of Korea; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* Petitioner's Letter, ''Certain Steel Nails from Korea—Withdrawal of Review Request,'' dated September 21, 2021.

[7] *See* Memorandum, ''2020–2021 Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the Republic of Korea: Respondent Selection,'' dated October 5, 2021.

[8] *See* 19 CFR 351.224(b).

the date of publication of this notice.[9] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the deadline for filing case briefs.[10] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[11] Case and rebuttal briefs should be filed using ACCESS.[12]

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 30 days after the date of publication of this notice.[13] Hearing 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. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.[14] An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of these preliminary results, unless otherwise extended.[15]

## Assessment Rates

Upon issuance of the final results, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[16] For the companies for which we have rescinded this review, Commerce intends to instruct CBP to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawn from warehouse, for consumption, during the POR, in accordance with 19 CFR 351.212(c)(1)(i).

Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[17]

For the companies (*i.e.,* Je-il Wire Production Co., Ltd and Koram Inc.) that were not selected for individual examination, we will instruct CBP to assess antidumping duties at an *ad valorem* rate equal to the companies' weighted-average dumping margins determined in the final results of this review.

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by companies included in these preliminary results of review for which the reviewed companies did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[18]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

## Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 11.80 percent, the all-others rate established in the LTFV investigation.[19] These deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

## Notification to Interested Parties

Commerce is issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4) and 351.213(d)(4).

Dated: July 27, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

### List of Topics Discussed in the Preliminary Decision Memorandum



[9] *See* 19 CFR 351.309(c)(1)(ii).

[10] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[11] *See* 19 CFR 351.309(c)(2) and (d)(2).

[12] *See* 19 CFR 351.303.

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 351.310(d).

[15] *See* section 751(a)(3)(A) of the Act; *see also* 19 CFR 351.213(h).

[16] *See* 19 CFR 351.212(b)(1).

[17] *See* section 751(a)(2)(C) of the Act.

[18] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[19] *See Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 80 FR 39994 (July 13, 2015).

[FR Doc. 2022–16643 Filed 8–3–22; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–423–808, A–791–805, A–583–830, C–791–806]**

### Stainless Steel Plate in Coils From Belgium, South Africa, and Taiwan: Continuation of Antidumping Duty Orders and Countervailing Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on stainless steel plate in coils (SSPC) from Belgium, South Africa, and Taiwan, and the countervailing duty (CVD) order on SSPC from South Africa would likely lead to a continuation or recurrence of dumping, net countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD orders and the CVD order.

**DATES:** Applicable August 4, 2022.

**FOR FURTHER INFORMATION CONTACT:** George McMahon or Carolyn Adie, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1167 or (202) 482–6250, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 11, 1999, Commerce published the *CVD Order* on SSPC from South Africa.[1] On May 21, 1999, Commerce published the *AD Orders* on SSPC from Belgium, South Africa, and Taiwan.[2] On December 1, 2021, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), Commerce published the initiation of the fourth sunset reviews of the *Orders* and the ITC instituted its review of the *Orders*.[3] As a result of its reviews, Commerce determined that that revocation of the *AD Orders* would likely lead to a continuation or recurrence of dumping and that revocation of the *CVD Order* would likely lead to the continuation or recurrence of countervailable subsidies. Commerce, therefore, notified the ITC of the magnitude of the margins and net countervailable subsidy rates likely to prevail should the *Orders* be revoked.[4]

On July 25, 2022, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the *Orders* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

#### Scope of the Orders

The product covered by these *Orders* is certain stainless steel plate in coils. Stainless steel is alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.,* cold-rolled, polished, *etc.*) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of these *Orders* are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. The merchandise subject to these *Orders* is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.02, 7219.12.00.05, 7219.12.00.06, 7219.12.00.20, 7219.12.00.21, 7219.12.00.25, 7219.12.00.26, 7219.12.00.50, 7219.12.00.51, 7219.12.00.55, 7219.12.00.56, 7219.12.00.65, 7219.12.00.66, 7219.12.00.70, 7219.12.00.71, 7219.12.00.80, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, and 7220.90.00.60.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to these *Orders* is dispositive.

#### Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders* on SSPC from Belgium, South Africa, and Taiwan. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year (sunset) reviews of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

#### Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary information disclosed under APO in

[1] *See Notice of Amended Final Determinations: Stainless Steel Plate in Coils from Belgium and South Africa; and Notice of Countervailing Duty Orders: Stainless Steel Plate in Coils from Belgium, Italy and South Africa,* 64 FR 25288 (May 11, 1999) (*CVD Order*).

[2] *See Antidumping Duty Orders; Certain Stainless Steel Plate in Coils from Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 64 FR 27756 (May 21, 1999), amended by *Notice of Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils from Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 11520 (March 11, 2003), corrected by *Notice of Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils from Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 16117 (April 2, 2003), corrected by *Notice of Correction to the Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils from Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 20114 (April 24, 2003) (*AD Orders;* collectively with the *CVD Order,* the *Orders*).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 68220 (December 1, 2021); and *Stainless Steel Plate from Belgium, South Africa, and Taiwan; Institution of Five-Year Reviews,* 86 FR 68278 (December 1, 2021).

[4] *See Stainless Steel Plate in Coils from Belgium, South Africa, and Taiwan: Final Results of the Expedited Fourth Sunset Reviews of the Antidumping Duty Orders,* 87 FR 19485 (April 4, 2022), and accompanying Issues and Decision Memorandum (IDM); *see also Stainless Steel Plate in Coils from South Africa: Final Results of the Expedited Fourth Five-Year Sunset Review of the Countervailing Duty Order;* 87 FR 16457 (March 23, 2022), and accompanying IDM.

[5] *See Stainless Steel Plate in Coils from Belgium, South Africa, and Taiwan* (*Fourth Review*), 87 FR 44150 (July 25, 2022); (Investigation Nos. 701–TA–379 and 731–TA–788, 792, and 793).

accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

**Notification to Interested Parties**

These five-year sunset reviews and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: July 28, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2022–16642 Filed 8–3–22; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–791–827]**

## Certain Lemon Juice From the Republic of South Africa: Preliminary Affirmative Determination of Sales at Less Than Fair Value

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that certain lemon juice (lemon juice) from the Republic of South Africa (South Africa) is being, or is likely to be, sold in the United States at less than fair value. The period of investigation (POI) is October 1, 2020, through September 30, 2021. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable August 4, 2022.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Bremer or Zachary Shaykin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4987 or (202) 482–2638, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on January 25, 2022.[1] On May 19, 2022, Commerce postponed the preliminary determination of this investigation and the revised deadline is now July 28, 2022.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II 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.*

### Scope of the Investigation

The product covered by this investigation is lemon juice from South Africa. For a complete description of the scope of this investigation, *see* Appendix I.

### Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.* Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

### Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. Furthermore, pursuant to section 776(a) and (b) of the Act, Commerce has preliminarily relied upon total facts otherwise available, with adverse inferences, for Granor Passi (Pty) Ltd. (Granor Passi), and partial facts otherwise available, with adverse inferences, for Cape Fruit Processors (Pty) Ltd. (Cape Fruit). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

### All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce preliminarily assigned a rate based entirely on facts available to Granor Passi. Therefore, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for Cape Fruit. Consequently, the rate calculated for Cape Fruit is also assigned as the rate for all other producers and exporters.

### Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

| Exporter/producer | Estimated weighted-average dumping margin (percent) |
|---|---|
| Cape Fruit Processors Pty. Ltd .. | 55.67 |
| Granor Passi Pty. Ltd ..... | [6] 74.04 |
| All Others ..... | 55.67 |

### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed

[1] *See Lemon Juice from Brazil and South Africa: Initiation of Less-Than-Fair-Value Investigations,* 87 FR 3768 (January 25, 2022) (*Initiation Notice*).

[2] *See Certain Lemon Juice from Brazil and the Republic of South Africa: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 87 FR 30452 (May 19, 2022).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Lemon Juice from the Republic of South Africa,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] Based on total facts available with adverse inferences (AFA). For a full description of the methodology underlying our conclusions regarding the application of AFA, see the Preliminary Decision Memorandum.

above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

**Disclosure**

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

**Verification**

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

**Public Comment**

A timeline for the submission of case briefs and written comments will be notified to interested parties at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[7] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days after the date of publication of this notice. Requests should contain (1) the party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national, and (4) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

**Final Determination**

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the date of this preliminary determination, unless postponed pursuant 19 CFR 351.210(b)(2).

**International Trade Commission Notification**

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

**Notification to Interested Parties**

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: July 28, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix I—Scope of the Investigation

The product covered by this investigation is certain lemon juice. Lemon juice is covered: (1) with or without addition of preservatives, sugar, or other sweeteners; (2) regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity; (3) regardless of the grade, horticulture method (*e.g.,* organic or not), processed form (*e.g.,* frozen or not-from-concentrate), the size of the container in which packed, or the method of packing; and (4) regardless of the U.S. Department of Agriculture Food and Drug Administration (FDA) standard of identity (as defined under 19 CFR 146.114 *et seq.*) (*i.e.,* whether or not the lemon juice meets an FDA standard of identity).

Excluded from the scope are: (1) lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers; and (2) beverage products, such as lemonade, that contain 20 percent or less lemon juice as an ingredient by actual volume. ''Retail-sized containers'' are defined as lemon juice products sold in ready-for-sale packaging (*e.g.,* clearly visible branding, nutritional facts listed, *etc.*) containing up to 128 ounces of lemon juice by actual volume.

The scope also includes certain lemon juice that is blended with certain lemon juice from sources not subject to this investigation. Only the subject lemon juice component of such blended merchandise is covered by the scope of this investigation. Blended lemon juice is defined as certain lemon juice with two distinct component parts of differing country(s) of origin mixed together to form certain lemon juice where the component parts are no longer individually distinguishable.

The product subject to this investigation is currently classifiable under subheadings 2009.31.4000, 2009.31.6020, 2009.31.6040, 2009.39.6020, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

## Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum



[FR Doc. 2022–16641 Filed 8–3–22; 8:45 am]

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[7] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–549–844]**

## Certain Steel Nails From Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that certain steel nails (steel nails) from Thailand are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2020, through September 30, 2021. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable August 4, 2022.

**FOR FURTHER INFORMATION CONTACT:** Laurel LaCivita or Matthew Palmer, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–1678, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on January 26, 2022.[1] On May 20, 2022, Commerce postponed the preliminary determination of this investigation until July 28, 2022.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II 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.*

## Scope of the Investigation

The products covered by this investigation are steel nails from Thailand. For a complete description of the scope of this investigation, *see* Appendix I.

## Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.,* scope).[5] Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice.* On July 5, 2022, Commerce issued its preliminary determination regarding the scope of the investigation.[6] For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum. Based on an analysis of the comments received, Commerce preliminarily determined to make no change to the scope language from the *Initiation Notice,* as reflected in Appendix I.[7] Commerce established a separate briefing schedule for interested parties to address the preliminary scope determination.[8]

## Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

## All-Others Rate

Section 733(d)(1)(ii) of the Act provides that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. In this investigation, Commerce assigned a rate based entirely on facts available to Jinhai Hardware Co., Ltd. (Jinhai). Therefore, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for Come Best Co., Ltd. (Come Best). Consequently, the rate calculated for Come Best is also assigned as the rate for all other producers and exporters.

## Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

| Exporter/producer | Estimated weighted-average dumping margin (percent) |
|---|---|
| Come Best (Thailand) Co. Ltd ... | [9] 17.12 |
| Jinhai Hardware Co., Ltd ..... | [10] 65.87 |
| All Others ..... | [11] 17.12 |

## Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

To determine the cash deposit rate, pursuant to section 772(c)(1)(C) of the Act, Commerce normally adjusts the

[1] *See Certain Steel Nails from India, Sri Lanka, Thailand, and the Republic of Turkey: Initiation of Less-Than-Fair Value Investigations,* 87 FR 3965 (January 26, 2022) (*Initiation Notice*).

[2] *See Certain Steel Nails from India, Sri Lanka, Thailand, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair Value Investigations,* 87 FR 30868 (May 20, 2022).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Steel Nails from Thailand,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 87 FR at 3966.

[6] *See* Memorandum, ''Antidumping Duty Investigations of Certain Steel Nails from India, Sri Lanka, Thailand, and Turkey and Countervailing Duty Investigations of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey: Preliminary Scope Decision Memorandum,'' dated July 5, 2022 (Preliminary Scope Decision Memorandum).

[7] Though Commerce preliminarily determined to make no change to the language of the scope in response to interested parties' comments, we note that the scope language as listed in Appendix I omits a Harmonized Tariff Schedule of the United States (HTSUS) subheading (7318.15.5060) originally included in the scope language from the *Initiation Notice,* because Commerce determined that the HTSUS subheading does not exist. *Id.* at 15.

[8] *Id.* at 4–5.

[9] *See* Memorandum, ''Antidumping Duty Investigation of Certain Steel Nails from Thailand: Analysis of the Preliminary Determination Margin Calculations for Come Best Co., Ltd.,'' dated concurrently with this notice.

[10] *See* Preliminary Decision Memorandum at section VI., ''Use of Facts Available with Adverse Inferences.''

[11] *Id.* at section VII., ''All-Others Rate.''

estimated weighted-average dumping margin by the amount of export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. However, Commerce did not find countervailable export subsidies in the preliminary determination of the companion CVD investigation.[12] Accordingly, we have not made any adjustment to offset for export subsidies. These suspension of liquidation instructions will remain in effect until further notice.

**Disclosure**

Commerce intends to disclose the calculations performed in connection with this preliminary determination to interested parties within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

**Verification**

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

**Public Comment**

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance.[13] Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs may be submitted no later than seven days after the deadline for case briefs.[14] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[15]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

**Postponement of Final Determination and Extension of Provisional Measures**

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On July 6 and 11, 2022, pursuant to 19 CFR 351.210(e), Come Best and Jinhai Hardware, respectively, requested Commerce to postpone the final determination to the maximum of 135 days after the date of the publication of the preliminary determination, and to extend provisional measures to a period not to exceed six months, in the event that Commerce issued an affirmative preliminary antidumping determination in this proceeding.[16] On July 14, 2022, Mid Continent Steel & Wire, Inc. (the petitioner) similarly requested that Commerce postpone the final determination for a period not to exceed 135 days after the date of the publication of the preliminary determination in this proceeding, in the event that it issued a negative preliminary determination.[17] The petitioner stated further that it supports the respondents' requests to extend any provisional measures from a four-month period not to exceed a six-month period in the investigation, should Commerce reach an affirmative preliminary determination and should the deadline for a final determination be fully extended.[18]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

**U.S. International Trade Commission Notification**

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of steel nails from Thailand are materially injuring, or threaten material injury to, the U.S. industry.

**Notification to Interested Parties**

This preliminary determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: July 28, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix I—Scope of the Investigation**

The merchandise covered by this investigation is certain steel nails having a nominal shaft or shank length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel or long-rolled flat steel bars. Certain steel nails may be of one piece construction or constructed of two or more pieces. Examples

[12] *See Certain Steel Nails from Thailand: Preliminary Negative Countervailing Duty Determination,* 87 FR 34651 (June 7, 2022), and accompanying Preliminary Decision Memorandum.

[13] Case briefs, other written comments, and rebuttal briefs submitted by parties in response to this preliminary LTFV determination should not include scope-related issues. The scope case briefs deadline was July 19, 2022. *See* Preliminary Scope Decision Memorandum at 4.

[14] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[15] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[16] *See* Come Best's Letter, ''Certain Steel Nails from Thailand; Request to Extend Final Determination,'' dated July 6, 2022; *see also* Jinhai Hardware's Letter, ''Certain Steel Nails from Thailand: Request to Postpone the Final Determination of the Investigation,'' dated July 11, 2022.

[17] *See* Petitioner's Letter, ''Certain Steel Nails from India, Sri Lanka and Thailand—Petitioner's Request for Postponement Final Determination,'' dated July 14, 2022.

[18] *Id.*

of nails constructed of two or more pieces include, but are not limited to, anchors comprised of an anchor body made of zinc or nylon and a steel pin or a steel nail; crimp drive anchors; split-drive anchors, and strike pin anchors. Also included in the scope are anchors of one piece construction.

Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank or shaft styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted.

Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft or shank length of one inch or less that are a component of an unassembled article, where the total number of nails is sixty (60) or less, and the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, Frenchwindows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.2000 and 7317.00.3000.

Also excluded from the scope of this investigation are nails suitable for use in gas-actuated hand tools. These nails have a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS subheading 7317.00.1000.

Also excluded from the scope are decorative or upholstery tacks.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.5501, 7317.00.5502, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5508, 7317.00.5511, 7317.00.5518, 7317.00.5519, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560, and 7317.00.7500. Certain steel nails subject to this investigation also may be classified under HTSUS subheadings 7318.15.5090, 7907.00.6000, 8206.00.0000, or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

## Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum



[FR Doc. 2022–16720 Filed 8–3–22; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–910, C–570–911, A–580–809, A–583–008, A–583–814, A–533–502, A–570–914, C–570–915, A–580–859, A–583–803]**

# Circular Welded Carbon Quality Steel Pipe From the People's Republic of China; Certain Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Certain Welded Carbon Steel Standard Pipes and Tubes From India; Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan; Certain Circular Welded Non-Alloy Steel Pipe From Taiwan; Light-Walled Rectangular Pipe and Tube From the People's Republic of China; Light-Walled Rectangular Pipe and Tube From the Republic of Korea; Light-Walled Welded Rectangular Carbon Steel Tubing From Taiwan: Initiation of Circumvention Inquiries on the Antidumping and Countervailing Duty Orders

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests from Atlas Tube Inc., Bull Moose Tube Company, Maruichi American Corporation, Nucor Tubular Products Inc., Searing Industries, Vest Inc., Wheatland Tube Company, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (collectively, the domestic interested parties), the U.S. Department of Commerce (Commerce) is initiating country-wide circumvention inquiries to determine whether imports of circular welded carbon quality steel pipe from the People's Republic of China (China) (CWP China), certain circular welded non-alloy steel pipe from the Republic of Korea (Korea) (CWP Korea), certain welded carbon steel standard pipes and tubes from India (pipe and tube India), certain circular welded carbon steel pipes and tubes from Taiwan (pipe and tube Taiwan), certain circular welded non-alloy steel pipe from Taiwan (CWP Taiwan), light-walled rectangular pipe and tube from China (LWRPT China), light-walled rectangular pipe and tube from Korea (LWRPT Korea), and light-walled welded rectangular carbon steel tubing (LWR tubing Taiwan), which are completed in the Socialist Republic of Vietnam (Vietnam) from hot-rolled steel (HRS) produced in China, Korea, India, or Taiwan are circumventing the respective antidumping duty (AD) and countervailing duty (CVD) orders on

CWP China, CWP Korea, pipe and tube India, pipe and tube Taiwan, CWP Taiwan, LWRPT China, LWRPT Korea, and LWR tubing Taiwan.

**DATES:** Applicable August 4, 2022.

**FOR FURTHER INFORMATION CONTACT:** Krisha Hill at (202) 482–4037 (CWP China, AD/CVD Operations, Office IV); Andre Gziryan at (202) 482–2201 (CWP Korea, AD/CVD Operations, Office I); Dmitry Vladimirov at (202) 482–0665 (Pipe and Tube India, AD/CVD Operations, Office I); Nicolas Mayora at (202) 482–3053 (Pipe and Tube Taiwan, AD/CVD Operations, Office V); Preston Cox and Scarlet Jaldin at (202) 482–5041 and (202) 482–4275, respectively (CWP Taiwan, AD/CVD Operations, Office VI); Reginald Anadio at (202) 482–3166, (LWRPT China, AD/CVD Operations, Office IV); Carolyn Adie at (202) 482–6250 (LWRPT Korea, AD/CVD Operations, Office VI); and Bryan Hansen at (202) 482–3683 (LWR tubing Taiwan, AD/CVD Operations, Office I); Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

## Background

On May 17, 2022, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.226(i), domestic interested parties filed circumvention inquiry requests alleging that CWP, pipe and tube, LWRPT, and LWR tubing completed in Vietnam using HRS manufactured in China, India, Korea, or Taiwan are circumventing the *Orders*[1] on pipe products from those countries and, accordingly, should be included within the scope of the *Orders*.[2] On June 2, 2022, SeAH Steel VINA Corporation (SeAH VINA) filed opposition comments in response to the domestic interested parties' request regarding the CWP and pipe and tube allegations; the comments did not address the LWRPT and LWR tubing allegations.[3] On June 13, 2022, we extended the deadline to initiate these circumvention inquiries by 15 days, in accordance with 19 CFR 351.226(d)(1).[4] On June 21, 2022, we issued supplemental questionnaires to the domestic interested parties.[5] On June 28, 2022, the domestic interested parties filed their responses to our supplemental questionnaires.[6] On July 1, 2022, Commerce clarified that we issued the supplemental questionnaires because we had found that the requests to conduct circumvention inquiries were insufficient for purposes of initiation, in accordance with 19 CFR 351.226(d)(1)(i). Additionally, we clarified that we consider the initial requests and supplementary information together to constitute the applications for circumvention inquires, and that based on the date that the domestic parties filed the supplemental information, we consider the inquiry requests to have been filed on June 28, 2022.[7] On July 20, 2022, Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd. (Vietnam Haiphong) filed opposition comments in response to the domestic interested parties' request regarding CWP from China.[8]

## Scope of the Orders

Please *see* each respective Circumvention Initiation Memorandum for a complete description of the scope of *Orders*.[9]

[1] *See Notice of Antidumping Duty Order: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China,* 73 FR 42547 (July 22, 2008); *see also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order,* 73 FR 42545 (July 22, 2008); *Final Determination of Sales at Less Than Fair Value: Certain Welded Non-Alloy Steel Pipe and Tube from the Republic of Korea,* 57 FR 42942 (September 17, 1992), as amended by *Notice of Antidumping Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992); *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Antidumping Duty Order,* 49 FR 19369 (May 7, 1984); *Notice of Antidumping Duty Order: Circular Welded Non-Alloy Steel Pipe from Taiwan,* 57 FR 49454 (November 2, 1992); *Certain Welded Carbon Steel Standard Pipes and Tubes from India,* 51 FR 17384 (May 12, 1986); *Antidumping Duty Order; Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan,* 54 FR 12467 (March 27, 1989); *Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less than Fair Value,* 73 FR 45403 (August 5, 2008); and *Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Notice of Countervailing Duty Orde*r, 73 FR 45405 (August 5, 2008) (collectively, *Orders*).

[2] *See* Domestic Interested Parties' Letters, ''Circular Welded Carbon Quality Steel Pipe from the People's Republic of China—Request for Circumvention Inquiry''; ''Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea—Request for Circumvention Inquiry''; ''Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan (A–583–008) and Circular Welded Non-Alloy Steel Pipe from Taiwan (A–583–814)—Request for Circumvention Inquiries''; ''Certain Welded Carbon Steel Standard Pipes and Tubes from India—Request for Circumvention Inquiry''; ''Light-Walled Rectangular Pipe and Tube from the People's Republic of China—Request for Circumvention Inquiry''; ''Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Request For Circumvention Inquiry''; and ''Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan: Request for a Circumvention Inquiry,'' all dated May 17, 2022.

[3] *See* SeAH VINA's Letter, ''Certain Circular Welded Carbon Quality Steel Pipe and Certain Circular Welded Non Alloy Steel Pipe from China, Korea, Taiwan, and India—Comments in Opposition to Initiation of Anticircumvention Inquiries,'' dated June 2, 2022 (SeAH VINA's Comments).

[4] *See* Memorandum, ''Circular Welded Carbon Quality Steel Pipe from the People's Republic of China (A–570–910 and C–570–911): Extension of Time to Determine Whether to Initiate Circumvention Inquiry,'' dated June 13, 2022.

[5] *See* Commerce's Letters, ''Circumvention Inquiry of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China (A–570–910, C–570–911): Supplemental Questionnaire''; ''Circumvention Inquiry of Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea (A–580–809): Supplemental Questionnaire''; ''Circumvention Inquiry of Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan (A–583–008) and Circular Welded Non-Alloy Steel Pipe from Taiwan (A–583–814): Supplemental Questionnaire''; ''Circumvention Inquiry of Certain Welded Carbon Steel Standard Pipes and Tubes from India (A–533–502): Supplemental Questionnaire''; ''Circumvention Inquiry of Light-Walled Rectangular Pipe and Tube from the People's Republic of China (A–570–914, C–570–915): Supplemental Questionnaire,'' (LWRPT China Supplemental); ''Circumvention Inquiry of Light-Walled Rectangular Pipe and Tube from Korea (A–580–859): Supplemental Questionnaire''; and ''Circumvention Inquiry of Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan (A–583–803): Supplemental Questionnaire,'' all dated June 21, 2022. Please note, LWRPT China Supplemental was uploaded on June 22, 2022.

[6] *See* Domestic Interested Parties' Letters, ''Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea—Response to Supplemental Questionnaire''; ''Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan (A–583–008) and Circular Welded Non-Alloy Steel Pipe from Taiwan (A–583–814)—Response to Supplemental Questionnaire''; ''Certain Welded Carbon Steel Standard Pipes and Tubes from India—Response to Supplemental Questionnaire''; ''Light-Walled Rectangular Pipe and Tube from the People's Republic of China—Circumvention Inquiry Supplemental Questionnaire Response''; ''Light-Walled Rectangular Pipe and Tube from the Republic of Korea—Response to Supplemental Questionnaire''; and ''Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan—Response to Supplemental Questionnaire,'' all dated June 28, 2022 (Supplemental Responses).

[7] *See* Commerce's Letter, ''Circumvention Inquiries on Circular and Rectangular Pipe and Tube Products from China, India, Korea, and Taiwan,'' dated July 1, 2022.

[8] *See* Vietnam Haiphong's Letter, ''Circular Welded Carbon Quality Steel Pipe from People Republic of China: Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd.'s Comments on the Request for Circumvention Inquiry,'' dated July 20, 2022.

[9] For a complete description of the scope of the *Orders, see* Memoranda, ''Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders''; *see also* ''Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Initiation of Circumvention Inquiry on the Antidumping Duty Order''; ''Certain Welded Carbon Steel Standard Pipes and Tubes from India: Initiation of Circumvention Inquiry on the Antidumping Duty Order''; ''Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Initiation of Circumvention Inquiry on the

**Merchandise Subject to the Circumvention Inquiries**

These circumvention inquiries cover CWP China, CWP Korea, pipe and tube India, pipe and tube Taiwan, CWP Taiwan, LWRPT China, LWRPT Korea, and LWR tubing Taiwan, completed in Vietnam using Chinese, Indian, Korean, or Taiwan-produced HRS and subsequently exported from Vietnam to the United States.

**Initiation of Circumvention Inquiries**

Section 351.226(d) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce ''will accept the request and initiate a circumvention inquiry.'' Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each circumvention inquiry request alleges ''that the elements necessary for a circumvention determination under section 781 of the Act exist'' and be ''accompanied by information reasonably available to the interested party supporting these allegations.'' The domestic interested parties alleged circumvention pursuant to section 781(b) of the Act, which pertains to merchandise completed or assembled in other foreign countries.

Section 781(b)(1) of the Act provides that Commerce may find circumvention of an AD order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting a circumvention inquiry, under section 781(b)(1) of the Act, Commerce relies on the following criteria: (A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD or CVD order or finding; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or merchandise which is produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in section (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD or CVD order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding.

In determining whether the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider: (A) the level of investment in the foreign country; (B) the level of research and development in the foreign country; (C) the nature of the production process in the foreign country; (D) the extent of production facilities in the foreign country; and (E) whether or not the value of processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in a third country is minor or insignificant.[10] Accordingly, it is Commerce's practice to evaluate each of these five factors, depending on the totality of the circumstances of the particular circumvention inquiry.[11]

In addition, section 781(b)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in a third country within the scope of an AD or CVD order. Specifically, Commerce shall take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise is affiliated with the person who, in the third country, uses the merchandise to complete or assemble the merchandise which is subsequently imported into the United States; and (C) whether imports of the merchandise into the third country have increased after the initiation of the investigation that resulted in the issuance of such order or finding.

Based on our analysis of the domestic interested parties' circumvention requests, Commerce determines that the domestic interested parties have satisfied the criteria under 19 CFR 351.226(c) to warrant the initiations of circumvention inquiries of these *Orders.* Therefore, pursuant to 19 CFR 351.226(d)(1)(ii), we are initiating the requested circumvention inquiries. For a full discussion of the basis for our decisions to initiate these circumvention inquiries, *see* each respective Circumvention Initiation Memorandum.[12] As explained in the Circumvention Initiation Memoranda, the information provided by domestic interested parties in this instance warrants initiating these circumvention inquiries on a country-wide basis. Commerce has taken this approach in prior circumvention inquiries, where the facts warranted initiation on a country-wide basis.[13]

Consistent with the approach in the prior circumvention inquiries that were initiated on a country-wide basis, Commerce intends to issue questionnaires to solicit information from producers and exporters in Vietnam concerning their shipments of CWP China, CWP Korea, pipe and tube India, pipe and tube Taiwan, CWP Taiwan, LWRPT China, LWRPT Korea, and LWR tubing Taiwan, made respectively from Chinese, Indian, Korean, or Taiwan-origin HRS to the United States. A company's failure to respond completely to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

**Suspension of Liquidation**

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify U.S. Customs and Border Protection (CBP) of the initiation

Antidumping Duty Order''; ''Circular Welded Non-Alloy Steel Pipe from Taiwan: Initiation of Circumvention Inquiry on the Antidumping Duty Order''; ''Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders''; ''Light-Walled Rectangular Pipe and Tube from Korea: Initiation of Circumvention Inquiry on the Antidumping Duty Order''; and ''Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan: Initiation of Circumvention Inquiry on the Antidumping Duty Order,'' (collectively, Circumvention Initiation Memoranda).

[10] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, Vol. 1 (1994) (SAA), at 893.

[11] *See Uncovered Innerspring Units from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 83 FR 65626 (December 21, 2018), and accompanying Issues and Decision Memorandum, at 4.

[12] *See* Circumvention Initiation Memoranda. These memoranda are public documents and available electronically online via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).

[13] *See, e.g., Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 83 FR 37785 (August 2, 2018); *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order*, 82 FR 40556, 40560 (August 25, 2017) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted); and *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 81 FR 79454, 79458 (November 14, 2016) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted).

and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiries that were already subject to the suspension of liquidation under the *Orders.* Should Commerce issue preliminary or final circumvention determinations, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)–(4).

### Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(b) of the Act, Commerce determines that the domestic interested parties' requests for these circumvention inquiries satisfy the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of these circumvention inquiries to determine whether certain imports of CWP China, CWP Korea, pipe and tube India, pipe and tube Taiwan, CWP Taiwan, LWRPT China, LWRPT Korea, and LWR tubing Taiwan, completed in and exported from Vietnam using HRS inputs manufactured respectively in China, Korea, India, or Taiwan, are circumventing the *Orders.* In addition, we have included a description of the products that are the subject of these inquiries, and an explanation of the reasons for Commerce's decision to initiate these inquiries as provided above and in the accompanying Circumvention Initiation Memoranda.[14] In accordance with 19 CFR 351.226(e)(2), Commerce intends to issue its final circumvention determination within 300 days from the date of publication of the notice of initiation of a circumvention inquiry in the **Federal Register**.

This notice is published in accordance with section 781(b) of the Act and 19 CFR 351.226(d)(1)(ii).

Dated: July 28, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix—List of Topics Discussed in the Circumvention Initiation Memoranda



[FR Doc. 2022–16715 Filed 8–3–22; 8:45 am]

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[14] *See* Circumvention Initiation Memoranda.

[15] As Commerce did not receive comments with regard to the LWRPT allegations, this section is not present in those initiation memoranda.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–026]**

## Corrosion-Resistant Steel Products From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that Metalco S.A. (Metalco), the sole company subject to this administrative review of the antidumping duty (AD) order on corrosion-resistant steel products (CORE) from the People's Republic of China (China), is part of the China-wide entity because it did not file a separate rate application (SRA). The period of review (POR) is July 1, 2020, through June 30, 2021. We invite interested parties to comment on these preliminary results.

**DATES:** Applicable August 4, 2022.

**FOR FURTHER INFORMATION CONTACT:** Gene H. Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3586.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 25, 2016, Commerce published the AD order on CORE from China in the **Federal Register**.[1] On July 1, 2021, Commerce published a notice of opportunity to request an administrative review of the *Order* covering the POR.[2] On September 7, 2021, in response to a timely request from California Steel Industries, Cleveland-Cliffs Inc., Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (collectively, Domestic Interested Parties),[3] Commerce initiated an administrative review of the *Order* with respect to Metalco.[4]

On September 24, 2021, we placed on the record U.S. Customs and Border Protection (CBP) entry data under administrative protective order (APO) for all interested parties having APO access.[5] The deadline for Metalco to submit a no-shipment certification or SRA [6] was October 7, 2021.[7] Metalco did not submit a no-shipment certification or an SRA.

### Scope of the Order

The products covered by this order are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and

[1] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016) (*Order*). The *Order* was subsequently modified to correct unintended errors regarding the estimated weighted-average dumping margins for China and the date that the extended period of provisional measures expired. *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan; Notice of Correction to the Antidumping Duty Orders,* 81 FR 58475 (August 25, 2016) (*Corrected Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 86 FR 35065 (July 1, 2021).

[3] *See* Domestic Interested Parties' Letter, ''Corrosion-Resistant Steel Products from the People's Republic of China: Request for Administrative Review of Antidumping Duty Order,'' dated July 30, 2021.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 50034 (September 7, 2021) (*Initiation Notice*).

[5] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order on Corrosion-Resistant Steel Products from the People's Republic of China, 2020–2021: Release of U.S. Customs and Border Protection (CBP) Data,'' dated September 24, 2021.

[6] Metalco currently does not have a separate rate with respect to this AD order, and, therefore, was not eligible to file a separate rate certification.

[7] *See Initiation Notice,* 86 FR at 50034 (''If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. . . . Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice.''). Thirty calendar days after the *Initiation Notice* published in the **Federal Register** was October 7, 2021.

that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

2.50 percent of manganese, or
3.30 percent of silicon, or
1.50 percent of copper, or
1.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
2.00 percent of nickel, or
0.30 percent of tungsten (also called wolfram), or
0.80 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.30 percent of vanadium, or
0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels and high strength low alloy (HSLA) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this order unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this order:

Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin free steel''), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;

Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and

Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20 percent-60 percent-20 percent ratio.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the order may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

**Methodology**

Commerce is conducting this administrative review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213.

**Preliminary Results of Review**

Metalco, the sole company subject to this administrative review, did not file a no-shipment certification or an SRA. Thus, Commerce preliminarily determines that Metalco has not demonstrated its eligibility for separate rate status. As such, Commerce also preliminarily determines that Metalco is part of the China-wide entity.

In addition, Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an AD administrative review.[8] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity. In this administrative review, no party requested a review of the China-wide entity and we have not self-initiated a review of the China-wide entity. Because no review of the China-wide entity is being conducted, the China-wide entity's entries are not subject to this review, and the rate applicable to the NME entity is not subject to change as a result of this review. The China-wide entity rate is 199.43 percent.[9]

**Public Comment**

Interested parties are invited to comment on these preliminary results and may submit case briefs and/or written comments, filed electronically via Enforcement and Compliance's

[8] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Non-Market Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013).

[9] *See Order,* unchanged in *Corrected Order.*

Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), within 30 days after the date of publication of these preliminary results of review.[10] ACCESS is available to registered users at *https://access.trade.gov.* Rebuttal briefs, limited to issues raised in the case briefs, must be filed within seven days after the time limit for filing case briefs.[11] Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities.[12]

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the publication of this notice.[13] 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 and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held.[14] Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act.

**Assessment Rates**

Upon issuance of the final results of this review, Commerce will determine, and CBP will assess, antidumping duties on all appropriate entries covered by this review.[15] We intend to instruct CBP to liquidate entries of subject merchandise exported by Metalco at the China-wide entity rate of 199.43 percent.[16]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided for by section 751(a)(2)(C) of the Act: (1) for previously investigated or reviewed Chinese and non-Chinese exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the China-wide rate of 199.43 percent; and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification to Interested Parties**

Commerce is issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 19 CFR 351.221(b)(4).

Dated: July 27, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2022–16727 Filed 8–3–22; 8:45 am]

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[10] *See* 19 CFR 351.309(c)(1)(ii).

[11] *See* 19 CFR 351.309(d)1) and (2). Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice. *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[12] *See* 19 CFR 351.309(c) and (d); *see also* 19 CFR 351.303 (for general filing requirements).

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 310(d).

[15] *See* 19 CFR 351.212(b)(1).

[16] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–878]**

### Certain Corrosion-Resistant Steel Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that certain corrosion-resistant steel products (CORE) from the Republic of Korea (Korea) were sold in the United States at less than normal value (NV) during the period of review of July 1, 2020, through June 30, 2021.

**DATES:** Applicable August 4, 2022.

**FOR FURTHER INFORMATION CONTACT:** Jaron Moore or William Horn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3640 or (202) 482–4868, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 25, 2016, Commerce published the antidumping duty (AD) order on CORE from Korea.[1] Commerce initiated this administrative review on September 7, 2021.[2] This review covers eight companies,[3] of which we selected

[1] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016) (*Order*); and *Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Notice of Correction to the Antidumping Duty Orders,* 81 FR 58475 (August 25, 2016).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 50034, 50040 (September 7, 2021).

[3] The eight companies are: Dongbu Incheon Steel Co., Ltd., Dongbu Steel Co., Ltd., KG Dongbu Steel Co., Ltd. (formerly Dongbu Steel Co., Ltd.), Dongkuk Steel Mill Co., Ltd. (Dongkuk), Hyundai Steel Company (Hyundai), POSCO, POSCO Coated & Color Steel Co., Ltd., and POSCO International Corporation (formerly, POSCO Daewoo Corporation).

Dongkuk and Hyundai as mandatory respondents.[4]

On March 23, 2022, we extended the deadline for the preliminary results of this review. until July 29, 2022.[5] For a detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[6]

**Scope of the Order**

The merchandise covered by the *Order* is CORE from Korea. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[7]

**Methodology**

Commerce is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price were calculated in accordance with section 772 of the Act. NV was calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as an 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.*

**Rate for Non-Examined Companies**

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy AD investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

Consistent with section 735(c)(5)(A) of the Act, we determined the weighted-average dumping margin for each of the non-selected companies by using the weighted-average dumping margins calculated for Dongkuk and Hyundai in this administrative review.[8]

**Preliminary Results**

We preliminarily determine the following weighted-average dumping margins for the period July 1, 2020, through June 30, 2021:

| Exporter/producer | Weighted-average dumping margin (percent) |
|---|---|
| Dongkuk Steel Mill Co., Ltd | 1.67 |
| Hyundai Steel Company | 0.86 |
| KG Dongbu Steel Co., Ltd./ Dongbu Incheon Steel Co., Ltd[9] | 1.47 |
| POSCO | 1.47 |
| POSCO Coated & Color Steel Co., Ltd | 1.47 |
| POSCO International Corporation | 1.47 |

**Assessment Rates**

Upon completion of the administrative review, Commerce shall determine, and U.S Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. For any individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review and the respondent reported entered values, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the POR to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). If the respondent has not reported entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those transactions. To determine whether an importer-specific, per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values.

Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If a respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [10]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by any of the above-referenced respondents for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate in the original less-than-fair-value (LTFV) investigation (as

[4] *See* Memorandum, ''Respondent Selection,'' dated September 29, 2020.

[5] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2020–2021 Antidumping Duty Administrative Review,'' dated March 23, 2022.

[6] *See* Memorandum, ''Decision Memorandum for Preliminary Results: Certain Corrosion-Resistant Steel Products from the Republic of Korea, 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *Id.*

[8] For more information regarding the calculation of this margin, *see* Memorandum, ''Calculation of the Cash Deposit Rate for Non-Reviewed Companies,'' dated concurrently with this notice.

[9] In a recently completed changed circumstances review, Commerce found that KG Dongbu Steel Co., Ltd. is the successor-in-interest to Dongbu Steel Co., Ltd. for purposes of determining antidumping cash deposits and liabilities. *See Certain Cold-Rolled Steel Flat Products and Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews,* 86 FR 10922 (February 23, 2021). Also, in the previous segment of this proceeding, Dongbu Steel Co., Ltd. and Dongbu Incheon Steel Co., Ltd. were collapsed and treated as a single entity for antidumping purposes. *See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2018–2019,* 85 FR 74987 (November 24, 2020), unchanged in *Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 86 FR 28571 (May 27, 2021). As the facts have not changed with respect to these companies, we continue to treat them as a single entity for purposes of this review.

[10] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

amended) [11] if there is no rate for the intermediate company(ies) involved in the transaction.[12]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the underlying investigation, but the producer is, then the cash deposit rate will be the rate established for the most recent segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 8.31 percent, the all-others rate established in the LTFV investigation (as amended).[13] These deposit requirements, when imposed, shall remain in effect until further notice.

**Verification**

As provided in section 782(i)(3) of the Act, Commerce intends to verify the information relied upon for its final results.

**Disclosure and Public Comment**

We intend to disclose the calculations performed for these preliminary results of review to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties will be notified of the deadline for the submission of case briefs and written comments at a later date. Rebuttal briefs, the content of which is limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[14] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[15] Executive summaries should be limited to five pages total, including footnotes.

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 Commerce's electronic records system, ACCESS, within 30 days after the date of publication of this notice. [16] Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold a hearing at a time and date to be determined.[17] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions to Commerce must be filed using ACCESS [18] and must be served on interested parties.[19] An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time on the date that the document is due. Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[20]

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs, no later than 120 days after the date of publication of this notice, unless this deadline is extended.[21]

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

**Notification to Interested Parties**

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: July 27, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**List of Topics Discussed in the Preliminary Decision Memorandum**



[FR Doc. 2022–16639 Filed 8–3–22; 8:45 am]

**BILLING CODE 3510–DS–P**

[11] *See Order; Certain Corrosion-Resistant Steel Products from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination of Investigation and Notice of Amended Final Results,* 83 FR 39054 (August 8, 2018) (*Timken and Amended Final Results*).

[12] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[13] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016), as amended by *Timken and Amended Final Results.*

[14] *See* 19 CFR 351.309(d)(1) and (2); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect).'').

[15] *See* 19 CFR 351.309(c)(2) and (d)(2).

[16] *See* 19 CFR 351.310(c).

[17] *See* 19 CFR 351.310(d).

[18] *See* 19 CFR 351.303.

[19] *See* 19 CFR 351.303(f).

[20] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID 19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[21] *See* section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–904]**

## Certain Steel Nails From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that certain steel nails (steel nails) from India are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2020, through September 30, 2021. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable August 4, 2022.

**FOR FURTHER INFORMATION CONTACT:** David Lindgren or Deborah Cohen, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1671 or (202) 482–4521, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on January 26, 2022.[1] On May 20, 2022, Commerce postponed the preliminary determination of this investigation until July 28, 2022.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II 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.*

### Scope of the Investigation

The products covered by this investigation are steel nails from India. For a complete description of the scope of this investigation, *see* Appendix I.

### Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice.* On July 5, 2022, Commerce issued its preliminary determination regarding the scope of the investigation.[6] For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum. Based on an analysis of the comments received, Commerce preliminarily determined to make no change to the scope language from the *Initiation Notice,* as reflected in Appendix I.[7] Commerce established a separate briefing schedule for interested parties to address the preliminary scope determination.[8]

### Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export and constructed export prices in accordance with sections 772(a) and (b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

### All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce calculated estimated weighted-average dumping margins for Astrotech Steels Private Limited (Astrotech) and Geekay Wires Limited (Geekay) that are not zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the estimated weighted-average dumping margins calculated for the individually-examined respondents using the publicly-ranged total values of each respondent's sales of the merchandise under consideration to the United States during the POI.[9]

### Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

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[1] *See Certain Steel Nails from India, Sri Lanka, Thailand, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 87 FR 3965 (January 26, 2022) (*Initiation Notice*).

[2] *See Certain Steel Nails from India, Sri Lanka, Thailand, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 87 FR 30868 (May 20, 2022).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Steel Nails from India'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice*, 87 FR at 3966.

[6] *See* Memorandum, ''Antidumping Duty Investigations of Certain Steel Nails from India, Sri Lanka, Thailand, and Turkey and Countervailing Duty Investigations of Certain Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey: Preliminary Scope Decision Memorandum,'' dated July 5, 2022 (Preliminary Scope Decision Memorandum).

[7] Although Commerce preliminarily determined to make no change to the language of the scope in response to interested parties' comments, we note that the scope language as listed in Appendix I omits an HTSUS subheading (7318.15.5060) originally included in the scope language from the *Initiation Notice,* because Commerce determined that the HTSUS subheading does not exist. *Id.* at 15.

[8] *Id.* at 4–5.

[9] With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sale values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). As complete publicly ranged sales data was available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, *see* Memorandum, ''Less-Than-Fair-Value Investigation of Certain Steel Nails from India: Calculation of the Preliminary All-Others Rate,'' dated concurrently with this notice.

| Exporter/producer | Estimated weighted-average dumping margin (percent) | Cash deposit rate adjusted for subsidy offset (percent) [10] |
|---|---|---|
| Astrotech Steels Private Limited | 2.91 | 0.00 |
| Geekay Wires Limited | 3.97 | 1.24 |
| All Others | 3.31 | 0.46 |

**Suspension of Liquidation**

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate CVD rate. Any such adjusted cash deposit rate may be found in the ''Preliminary Determination'' section above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

**Disclosure**

Commerce intends to disclose its calculations and related analysis to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

**Verification**

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

**Public Comment**

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance.[11] Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

**Postponement of Final Determination and Extension of Provisional Measures**

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by Mid Continent Steel & Wire, Inc. (the petitioner). Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

Pursuant to 19 CFR 351.210(e), Geekay and Astrotech requested on July 8 and 11, 2022, respectively, that, in the event of an affirmative preliminary determination in this investigation,

[10] In the preliminary determination of the companion CVD proceeding, Commerce found that all of the programs conferring a benefit to the two mandatory respondents, Astrotech and Geekay, were export contingent subsidies. In accordance with section 772(c)(1)(C) of the Act, we have preliminarily relied on the entire CVD rates of 2.93 and 2.73 percent calculated for Astrotech and Geekay, respectively, as well as the CVD all others rate of 2.85 percent, for purposes of determining the preliminary AD cash deposit rate. *See Certain Steel Nails from India: Preliminary Affirmative Countervailing Duty Determination,* 87 FR 34654 (June 7, 2022), and accompanying Preliminary Decision Memorandum.

[11] Case briefs, other written comments, and rebuttal briefs submitted by parties in response to this preliminary LTFV determination should not include scope-related issues. The scope case briefs deadline was July 19, 2022. *See* Preliminary Scope Decision Memorandum at 4.

[12] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[13] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[14] On July 14, 2022, the petitioner similarly requested Commerce to postpone the final determination for a period not to exceed 135 days after the date of the publication of the preliminary determination in this proceeding in the event that it issued a negative preliminary determination.[15] The petitioner stated further that it supports the respondents' requests to extend any provisional measures from a four-month period not to exceed a six-month period in the investigation, should Commerce reach an affirmative preliminary determination and should the deadline for a final determination be fully extended.[16]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

## U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of steel nails from India are materially injuring, or threaten material injury to, the U.S. industry.

## Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

[14] *See* Geekay's Letter, ''Request to Extend the Deadline for the Final Determination,'' dated July 8, 2022; *see also* Astrotech's Letter, ''Astrotech's Request to Postpone Final Determination,'' dated July 11, 2022.

[15] *See* Petitioner's Letter, ''Petitioner's Request for Postponement Final Determination,'' dated July 14, 2022.

[16] *Id.*

Dated: July 28, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix I—Scope of the Investigation

The merchandise covered by this investigation is certain steel nails having a nominal shaft or shank length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel or long-rolled flat steel bars. Certain steel nails may be of one piece construction or constructed of two or more pieces. Examples of nails constructed of two or more pieces include, but are not limited to, anchors comprised of an anchor body made of zinc or nylon and a steel pin or a steel nail; crimp drive anchors; split-drive anchors, and strike pin anchors. Also included in the scope are anchors of one piece construction.

Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank or shaft styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted.

Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft or shank length of one inch or less that are a component of an unassembled article, where the total number of nails is sixty (60) or less, and the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.2000 and 7317.00.3000.

Also excluded from the scope of this investigation are nails suitable for use in gas-actuated hand tools. These nails have a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS subheading 7317.00.1000.

Also excluded from the scope are decorative or upholstery tacks.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.5501, 7317.00.5502, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5508, 7317.00.5511, 7317.00.5518, 7317.00.5519, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560, and 7317.00.7500. Certain steel nails subject to this investigation also may be classified under HTSUS subheadings 7318.15.5090, 7907.00.6000, 8206.00.0000, or other HTSUS subheadings. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

## Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum



[FR Doc. 2022–16723 Filed 8–3–22; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XC198]**

### Marine Mammals; File No. 26614

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Craig Matkin, Director, North Gulf Oceanic Society, 3430 Main St. Suite B1, Homer, Alaska 99603, has applied in due form for a permit to conduct research on marine mammals.

**DATES:** Written, telefaxed, or email comments must be received on or before September 6, 2022.

**ADDRESSES:** The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 26614 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 26614 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Courtney Smith, Ph.D., or Shasta McClenahan, Ph.D., (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to continue a long-term research study of killer whales (*Orcinus orca*) in Alaskan waters, focusing on their population status, health, and ecosystem interactions. Research methods include vessel and aerial (small unmanned aircraft system) surveys to conduct photo-identification, photogrammetry, diet sampling (prey remain and fecal sample collection), passive acoustic recording, and breath and biopsy sampling. Up to 3,000 killer whales may be photographed annually, with up to 35 whales biopsy sampled. Prey remains may be collected from endangered salmonid species (*Oncorhynchus* spp.) and up to 25 each of the following species minke whales (*Balaenoptera acutorostrata*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), harbor seals (*Phoca vitulina*), Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), northern fur seals (*Callorhinus ursinus*), and other unidentified cetaceans or pinnipeds. Prey remains and other samples may be imported and/or exported. The permit would be valid for 5 years from the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 1, 2022.

**Julia M. Harrison,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2022–16735 Filed 8–3–22; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XB497]**

### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Naval Magazine Indian Island Ammunition Wharf Maintenance and Pile Replacement Project

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

**ACTION:** Notice; receipt of application for letter of authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from the United States Department of the Navy (Navy) for authorization to take marine mammals incidental to replacement and maintenance of the Ammunition Wharf marine structure at Naval Magazine (NAVMAG) Indian Island in Puget Sound, Washington, over the course of five years. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the Navy's application and request.

**DATES:** Comments and information must be received no later than September 6, 2022.

**ADDRESSES:** Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to *ITP.Pauline@noaa.gov.*

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

#### Availability

Electronic copies of the Navy's application and separate monitoring plan may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

#### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct

the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

**Summary of Request**

On May 14, 2021, NMFS received an application from the Navy requesting authorization for take of marine mammals incidental to construction related to replacement and maintenance activities at the Ammunition Wharf marine structure at NAVMAG Indian Island. NMFS sent initial questions regarding the application to the Navy on October 5, 2021. The Navy addressed the questions and submitted a revised Letter of Authorization (LOA) application on March 24, 2022. After additional questions were sent by NMFS the Navy submitted another revised application on June 12, 2022. The requested regulations would be valid for 5 years, from October 1, 2023 through September 30, 2028. The Navy plans to conduct necessary work, including impact and vibratory pile driving, to replace and maintain the wharf structure. The proposed action may incidentally expose marine mammals occurring in the vicinity of in-water construction activities to elevated levels of underwater sound, thereby resulting in incidental take, by Level A and Level B harassment. Therefore, the Navy requests authorization to incidentally take marine mammals.

**Specified Activities**

Maintaining the structural integrity of the Ammunition Wharf is vital to sustaining the Navy's mission and ensuring military readiness. The Navy proposes to replace up to 118 structural concrete piles or fender piles, conduct maintenance, and repair activities over a 7-year period on the Ammunition Wharf at NAVMAG Indian Island. Under the 5-year LOA, up to 110 structurally unsound structural piles or fender piles would be replaced. Structural concrete piles would be replaced with 24-in concrete piles or old fender piles would be replaced with 14-in steel H piles or 18.75-in composite piles. Up to eight steel piles may also be installed in addition to the structural concrete piles if necessary. To minimize underwater noise impacts on marine species, water jetting would be primary method to install concrete piles and vibratory pile driving would be the primary method to install steel piles. An impact hammer may be used if substrate conditions prevent the advancement of piles to the required depth or to verify the load-bearing capacity for both concrete and steel piles. An air bubble curtain or other noise attenuating device would be used to reduce noise levels during impact driving of 36-in steel piles but would not be used for concrete piles. All pile driving will be conducted during the prescribed in-water work window for the NAVMAG Indian Island facility (October 1 to January 15). Activity occurring during the 2 years following the 5 year LOA would consist only of removal and installation of concrete piles, and maintenance and repair work, with no steel pile installation. Additional incidental take authorizations will be requested as needed for these activities.

**Information Solicited**

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the Navy, if appropriate.

Dated: August 1, 2022.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2022–16745 Filed 8–3–22; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XC216]**

### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council (Pacific Council) will convene two half-day webinar meetings of its Groundfish Management Team (GMT) to initiate discussions and analyses on groundfish items on the Pacific Council's September 2022 meeting agenda. These meetings are open to the public.

**DATES:** The online meetings will be held on Thursday, August 25 and Tuesday, August 30, 2022, starting each day at 8:30 a.m. Pacific Time and ending at 12 p.m. Pacific Time, or when business has been completed for each day.

**ADDRESSES:** This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Todd Phillips, Staff Officer, Pacific Council; telephone: (503) 820–2426.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the GMT webinar is to prepare for the Pacific Council's September 2022 agenda items. The GMT will discuss items related to groundfish management, ecosystem management, and administrative matters on the Pacific Council's September agenda. The GMT may also address other

assignments relating to groundfish management. No management actions will be decided by the GMT. A detailed agenda for the webinar will be available on the Pacific Council's website prior to the meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

### Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: August 1, 2022.

**Rey Israel Marquez,**

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

[FR Doc. 2022–16733 Filed 8–3–22; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XC225]**

### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Ecosystem Workgroup (EWG) will hold an online meeting.

**DATES:** The online meeting will be held Friday, August 26, 2022, from 10 a.m. to 3 p.m.; Monday, August 29, 2022, from 2 p.m. to 4 p.m.; and Tuesday, August 30, 2022, from 2 p.m. to 4 p.m. All times are Pacific Daylight Time. If necessary, meetings may continue past the noticed end time on each day in order to complete the business of the EWG.

**ADDRESSES:** This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to (1) provide information to Council advisory bodies and the public on ecosystem-related items on the Pacific Council's September 2022 meeting agenda, and (2) discuss and draft EWG reports for the Pacific Council's September 2022 meeting. The informational briefings will be held beginning at 10 a.m. Pacific Time on Friday, August 26, 2022. The topics to be covered are the Draft Western Regional Action Plan to Implement the NOAA Fisheries Climate Science Strategy in 2022–24, which the Pacific Council has been invited to submit comments on, and the draft Fishery Ecosystem Plan Initiatives Appendix to be adopted by the Council at its September meeting. Once these briefings are complete, and for the remainder of the meeting, the EWG will discuss the contents of reports it may draft for the September Pacific Council meeting and other business related to the work of the EWG. In addition to the two ecosystem agenda items described above, the EWG may consider and draft reports on other items of interest on the Pacific Council's September meeting agenda.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

### Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: August 1, 2022.

**Rey Israel Marquez,**

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

[FR Doc. 2022–16734 Filed 8–3–22; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID: 0648–XC177]**

### Endangered and Threatened Species; Take of Anadromous Fish

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

**ACTION:** Notice; determination on a tribal resource management plan.

**SUMMARY:** Notice is hereby given that NMFS has made a final determination on the Hoopa Valley Tribe's Tribal Resource Management Plan (TRMP). The determination is pursuant to the limitation on take prohibitions for actions conducted under Tribal Resource Management Plans promulgated under the 4(d) Rule of the Endangered Species Act (ESA) (Tribal 4(d) Rule). The TRMP specifies harvest, research, and monitoring activities for tribal fisheries affecting ESA-listed Southern Oregon/Northern California Coast Coho Salmon in the portion of the Trinity River within the Hoopa Valley Reservation. As required by the Tribal 4(d) Rule, NMFS sought public comment on its pending determination prior to making a final determination.

**FOR FURTHER INFORMATION CONTACT:** Anthony Siniscal at 971–322–8407, or via email: *Anthony.siniscal@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

### ESA Listed Species Covered in This Notice

Southern Oregon/Northern California Coast Coho salmon (*Oncorhynchus kisutch*)

*Evolutionarily Significant Unit:* threatened, naturally produced, and artificially propagated.

### Background

The Hoopa Valley Tribe submitted a TRMP for review under the ESA Tribal 4(d) Rule. Under section 4 of the ESA, the Secretary of Commerce (Secretary) is required to adopt such regulations as deemed necessary and advisable for the conservation of species listed as threatened. The ESA salmon and

steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005) specifies categories of activities that contribute to the conservation of listed salmonids and sets criteria for such activities to qualify as limits on take prohibitions. The ESA Tribal 4(d) Rule (65 FR 42481, July 10, 2000) states that the take prohibitions of ESA Section 9 will not apply to a TRMP provided that the Secretary has determined that the TRMP will not appreciably reduce the likelihood of survival and recovery for the listed species (50 CFR 223.204(a)).

The Hoopa Valley Tribe's TRMP provides a framework through which Tribal salmon fisheries can be implemented while meeting requirements specified under the ESA. The TRMP describes the proposed fisheries, establishes limits for harvest, and describes monitoring, evaluation, and reporting provisions associated with the fisheries. The TRMP management objective is for the Tribe to conduct fisheries in a manner that does not appreciably reduce the likelihood of survival and recovery of ESA-listed coho salmon.

NMFS has analyzed the effects of the TRMP on ESA-listed salmon and steelhead species and has concluded that the TRMP would not appreciable reduce the likelihood of survival and recovery of ESA-listed species, while providing for the proposed tribal harvest opportunities. Our determination depends upon implementation of all of the monitoring, evaluation, reporting tasks or assignments, and enforcement activities included in the TRMP, and that the fisheries stay within the impact limits described in the TRMP.

*Summary of Comments Received on the Proposed Evaluation and Pending Determination*

Prior to making a final determination on Tribal Plans, NMFS must take comments on its pending determination as to whether or not implementation of the plan will appreciably reduce the likelihood of survival and recovery of ESA-listed salmonids (50 CFR 223.204(b)(3)). NMFS assessed the TRMP and prepared a Proposed Evaluation and Pending Determination (PEPD). The PEPD was posted on the NMFS website and a notice of availability was posted in the **Federal Register** on February 23, 2022 (87 FR 10174). The public comment period expired on March 25, 2022. No comments were received on the PEPD. The PEPD and an Evaluation and Recommended Determination are available at: *https://www.fisheries.noaa.gov/action/tribal-resource-management-plan-trmp-hoopa-valley-tribe.*

*Authority:* 16 U.S.C. 1531 *et seq.;* 16 U.S.C. 742a *et seq.*

Dated: July 29, 2022.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2022–16729 Filed 8–3–22; 8:45 am]

**BILLING CODE 3510–22–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; Pacific Coast Groundfish Fishery Rationalization Social Study

**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 (PRA), 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 OMB.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before October 3, 2022.

**ADDRESSES:** Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0606 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 Suzanne Russell, Human Dimensions Team, Northwest Fisheries Science Center, NOAA Fisheries, 2725 Montlake Boulevard East, Seattle, WA 98112, (206) 860–3274, *Suzanne.russell@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This is a request for extension of an approved information collection.

The Human Dimensions Team of the Conservation Biology Division at the Northwest Fisheries Science Center (NWFSC), Seattle, WA, is requesting a renewal of its currently approved voluntary information collection 0648–0606. The data collected under this authorization supports the National Environmental Policy Act (NEPA), the current Magnuson Stevens Fishery Conservation Act (MSA), contributes information to the Endangered Species Act requirements, and the Regulatory Flexibility Act. Information from this data collection has supported National Marine Fisheries Service (NMFS) and Pacific Fisheries Management Council (PFMC) fisheries management actions. Data from this study has been included in broad resources to include the MSA mandated 5-year review of the West Coast Groundfish Trawl Catch Shares Program, in peer-reviewed documents, websites, and white papers. The collection of this data not only informs legal requirements for existing management actions, but provides information for future management actions requiring equivalent information.

Literature indicates fisheries rationalization programs have an impact on those individuals participating in the affected fishery. The PFMC implemented a rationalization program for the West Coast Groundfish limited entry trawl fishery in January 2011. This research aims to continue to study the individuals in the affected fishery over the long term. It aims to collect data on a five-year cycle, post initial data collection efforts. Prior data collection was related to program design elements. A baseline data collection occurred in 2010, followed by a second post-implementation collection in 2012, and a post quota-share trading collection in 2015/2016. The data collected has contributed to the five-year review of the program and highlighted several areas for continued research. Efforts have also identified the need for long term data collection as species recover and external factors affect fishermen in this fishery. Such challenges include underutilization, high costs of participation, difficulty finding qualified crew, COVID challenges, and other challenges. The study has been able to highlight several issues such as 'graying of the fleet' in smaller communities, changing women's roles in commercial fishing, and fishermen's adaptations under the new regulations. Continued research is needed to

understand continued and long-term social impacts. Combined with the ongoing mandatory Economic Data Collection (EDC) and biological data collection, this research provides the PFMC extensive information on concerns and impacts to fishing communities.

This data collection not only supports the requirements of NEPA and NSA, but supports the NWFSC's Vivid Description of the Future (VDOF) priorities to include Healthy Coastal Communities. This research project also supports NOAA's 2022–2026 Strategic Plan contributing information to Strategic Objective 2.2: Support Underserved and Vulnerable Communities, and Strategic Objective 3.3: Improve Resilience of Coastal Communities and Economies.

This study collects a broad swath of information from community members through a questionnaire and semi-structured interviews. Questionnaire sections include Demographic Information, Individual Participation Information, Connections, Catch Shares Perspectives, Quota Owners & Vessel Account Manager Section, Fishermen Section, and a Processors Section. The questionnaire is primarily administered in person in communities where respondents live. Study participants include anyone who has a connection to the West Coast Groundfish Trawl Fishery. This includes fishermen, fishermen's wives, processing personnel, suppliers (ice, net, drydock, etc.), and others linked to the fishery.

As previously indicated information from this study has broad applications. To date, this project has informed concerns of graying of the fleet—age disparities in some fisheries, has highlighted changing women's roles, has supported management to open Yelloweye fisheries, has reported on crew disparities, aims to understand processing challenges, and is contributing to Ecosystem Science Studies. Ongoing studies include infrastructure changes, vessel typology studies, and is contributing to fishing diversity knowledge as well as climate studies. Continued research will inform resilience and adaptation studies, will further inform infrastructure studies, and contribute to and further support efforts to understand underserved communities and build strong and healthy coastal communities.

At this time there are no changes to the questionnaire, no changes to the frequency of the data collection, and no changes to the target population. It is critical to maintain consistent study parameters for the longitudinal and time series study of this fishery to result in accurate and consistent data and results.

**II. Method of Collection**

The questionnaire is primarily administered in person in the communities where study participants live, work, and travel through. The questionnaire is also available to be downloaded on our study website in a fillable MSWord or PDF format, may be emailed to any individual, or a hard copy can be hand delivered or mailed to any individual to participate in the study. Interviews are conducted in-person at the time the questionnaires are administered in person. They may be used in lieu of a questionnaire if a study participant prefers an interview. Interview data supplements the survey and fills in any data holes and provides the participant the opportunity to voice any additional information they wish to have recorded.

**III. Data**

*OMB Control Number:* 0648–0606.

*Form Number(s):* None.

*Type of Review:* Regular (Extension of a current information collection).

*Affected Public:* Individuals or households; Business or other for-profit organizations; Not-for-profit institutions; State or Local government.

*Estimated Number of Respondents:* 350.

*Estimated Time per Response:* 45 minutes.

*Estimated Total Annual Burden Hours:* 191.

*Estimated Total Annual Cost to Public:* 0.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* MSA, NEPA.

**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 ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2022–16705 Filed 8–3–22; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XC230]**

### South Atlantic Fishery Management Council; Public Hearings

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

**ACTION:** Notice of a public hearing.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a public hearing to obtain input on the Comprehensive Acceptable Biological Catch (ABC) Control Rule Amendment, which affects the Fishery Management Plan (FMP) for the Dolphin Wahoo Fishery of the Atlantic (Dolphin Wahoo FMP), the FMP for the Golden Crab Fishery of the South Atlantic Region (Golden Crab FMP), and the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region.

**DATES:** The public hearing will be held via webinar on August 24, 2022, beginning at 6 p.m., EDT. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:**

*Meeting address:* The public hearing will be held via webinar. Information, including a link to webinar registration will be posted on the Council's website at: *https://safmc.net/public-hearings-scoping-2/* as it becomes available.

*Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll

free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

**SUPPLEMENTARY INFORMATION:** A public hearing document, an online public comment form, and other materials will be posted to the Council's website at *https://safmc.net/public-hearings-scoping-2/* by August 10, 2022. Comments will be accepted through 5 p.m. on August 26, 2022. During the hearing, Council staff will provide an overview of actions being considered in the amendment. Staff will answer clarifying questions on the presented information and the proposed actions. Following the presentation and questions, the public will have the opportunity to provide comments on the amendment.

The ABC Control Rule Amendment considers revisions to the ABC control rule for the Dolphin Wahoo, Golden Crab, and Snapper Grouper Fishery Management Plans. These revisions include changes to the structure of the control rule in how risk and uncertainty components are addressed, allowance of phasing in ABC changes over multiple years, and allowance for unharvested portions of annual catch limits (ACL) to be carried over to increase ACL in the following year.

### Special Accommodations

The hearing is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

*Note:* The times and sequence specified in this agenda are subject to change.

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

Dated: August 1, 2022.

**Rey Israel Marquez,**

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

[FR Doc. 2022–16737 Filed 8–3–22; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XC111]**

### Notice of Availability of the Deepwater Horizon Oil Spill Louisiana Trustee Implementation Group Final Restoration Plan/Environmental Assessment #8: Wetlands, Coastal, and Nearshore Habitats and Finding of No Significant Impact

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

**ACTION:** Announcement of availability of Environmental Assessment.

**SUMMARY:** In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act of 1969 (NEPA), the Deepwater Horizon Oil Spill Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS), and Consent Decree, the Federal and State natural resource trustee agencies for the Louisiana Trustee Implementation Group (Louisiana TIG) have approved the Final Restoration Plan/Environmental Assessment #8: Wetlands, Coastal, and Nearshore Habitats (RP/EA #8) and Finding of No Significant Impact (FONSI). In the Final RP/EA #8, the Louisiana TIG selects for implementation four restoration projects to partially restore for injuries to wetlands, coastal and nearshore habitats in the Louisiana Restoration Area. The Federal Trustees of the Louisiana TIG have determined that the implementation of the Final RP/EA #8 is not a major Federal action significantly affecting the quality of the human environment within the context of the NEPA. They have concluded a FONSI is appropriate, and, therefore, an Environmental Impact Statement will not be prepared.

**ADDRESSES:** *Obtaining Documents:* You may access the Final RP/EA #8 from the ''News'' section of the Louisiana TIG website at: *http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana.* Alternatively, you may request a CD of the Final RP/EA #8 (see **FOR FURTHER INFORMATION CONTACT** below).

**FOR FURTHER INFORMATION CONTACT:** Mel Landry, NOAA Restoration Center, 225–425–0583, *mel.landry@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Introduction

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon,* which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The DWH oil spill is the largest off shore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over one million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill.

The DWH Federal and State natural resource trustees (DWH Trustees) conducted the natural resource damage assessment for the DWH oil spill under OPA (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the time of restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete.

The DWH Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

The Trustees reached and finalized a settlement of their natural resource damage claims with BP in an April 4, 2016, Consent Decree approved by the United States District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in the Louisiana Restoration Area are now selected and implemented by the Louisiana TIG. The Louisiana

TIG is composed of the following Federal Trustees: NOAA; DOI; EPA; and USDA.

**Background**

Notice of Availability of the *Deepwater Horizon* Oil Spill Louisiana Trustee Implementation Group Draft Restoration Plan/Environmental Assessment #8: Wetlands, Coastal, and Nearshore Habitats (RP/EA #8) was published in the **Federal Register** at 87 FR 15385 on March 18, 2022. The public comment period for the Draft RP/EA #8 closed on April 18, 2022. Six public comments were received during the comment period. All comments were reviewed and taken into consideration in the preparation of the Final RP/EA #8.

**Overview of the Louisiana TIG Final RP/EA #8**

In developing the RP/EA #8, the Louisiana TIG assembled a list of 697 project alternatives for the restoration of wetlands, coastal, and nearshore habitat. These alternatives were based on proposals from the public as well as agencies, including projects submitted to the DWH Trustee or Louisiana TIG portals and projects submitted by individual state and Federal Trustees, including projects submitted on behalf of non-Trustee agencies. All alternatives underwent a step-wise screening process based on criteria established by OPA and the Louisiana TIG, whereby projects that did not meet the criteria were eliminated, and duplicative alternatives were combined. This resulted in six action alternatives for wetlands, coastal, and nearshore habitats, each of which are evaluated in the RP/EA #8. Alternatives that meet the criteria but are not carried forward as preferred alternatives may be considered in future restoration plans.

Of the six alternatives evaluated, four are selected as preferred alternatives for the restoration of wetlands, coastal, and nearshore habitats. Three of the alternatives evaluated consider projects for Engineering and Design (E&D), and three of the alternatives evaluated consider projects for full implementation. The alternatives selected for implementation include the following:

- East Orleans Landbridge Restoration (E&D): Preferred, $4,900,000.
- Raccoon Island Barrier Island Restoration (E&D): Preferred, $8,200,000.
- Bayou Dularge Ridge and Marsh Restoration: Preferred, $57,500,000.
- Bayou La Loutre Ridge Restoration and Marsh Creation (PO–0178): Preferred, $32,000,000.

The RP/EA #8 also evaluates a No Action Alternative, under which no project would be constructed and no additional costs would be incurred at this time.

The Louisiana TIG has examined the injuries assessed by the DWH Trustees and evaluated restoration alternatives to address the injuries. In Final RP/EA #8, the Louisiana TIG presents to the public its restoration plan for providing partial compensation to the public for injured natural resources and ecological services in the Louisiana Restoration Area. By selecting the preferred alternatives, the proposed action is intended to continue the process of using DWH restoration funding to restore natural resources injured or lost as a result of the DWH oil spill. Additional restoration planning for the Louisiana Restoration Area will continue.

**Additional Access to Materials**

You may request a CD of the Final RP/EA #8 (see **FOR FURTHER INFORMATION CONTACT** above). Copies of the Final RP/EA #8 are also available at the following locations:

| Library | Address | City | Zip code |
|---|---|---|---|
| St. Tammany Parish Library | 310 W. 21st Avenue | Covington | 70433 |
| New Orleans Public Library, Louisiana Division | 219 Loyola Avenue | New Orleans | 70112 |
| St. Bernard Parish Library | 1125 E St. Bernard Highway | Chalmette | 70043 |
| Plaquemines Parish Library | 8442 Highway 23 | Belle Chasse | 70037 |
| Jefferson Parish Library, East Bank Regional Library | 4747 W Napoleon Avenue | Metairie | 70001 |
| Jefferson Parish Library, West Bank Regional Library | 2751 Manhattan Boulevard | Harvey | 70058 |
| Terrebonne Parish Library | 151 Library Drive | Houma | 70360 |
| Martha Sowell Utley Memorial Library | 314 St. Mary Street | Thibodaux | 70301 |
| South Lafourche Public Library | 16241 E Main Street | Cut Off | 70345 |
| East Baton Rouge Parish Library | 7711 Goodwood Boulevard | Baton Rouge | 70806 |
| Alex P. Allain Library | 206 Iberia Street | Franklin | 70538 |
| St. Martin Parish Library | 201 Porter Street | St. Martinville | 70582 |
| Iberia Parish Library | 445 E Main Street | New Iberia | 70560 |
| Vermilion Parish Library | 405 E St. Victor Street | Abbeville | 70510 |
| Mark Shirley, LSU AgCenter | 1105 West Port Street | Abbeville | 70510 |
| Calcasieu Parish Public Library Central Branch | 301 W Claude Street | Lake Charles | 70605 |

**Translation Opportunities**

Vietnamese translated materials including the Executive Summary and project fact sheets are posted in the ''News'' section of the Louisiana TIG's website: *http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana.*

**Administrative Record**

The documents comprising the Administrative Record for the Final RP/EA #8 can be viewed electronically at *http://www.doi.gov/deepwaterhorizon/adminrecord.*

**Authority**

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*) and its implementing Oil Pollution Act Natural Resource Damage Assessment regulations found at 15 CFR part 990 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Dated: July 29, 2022.

**Carrie Diane Robinson,**

*Director, Office of Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 2022–16709 Filed 8–3–22; 8:45 am]

**BILLING CODE 3510–22–P**

## CONSUMER PRODUCT SAFETY COMMISSION

**[Docket No. CPSC–2019–0014]**

## Notice of Availability and Request for Comment: Revision to the Voluntary Standard for Gates and Enclosures

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of availability and request for comment.

**SUMMARY:** The U.S. Consumer Product Safety Commission's (Commission or CPSC) mandatory rule, Safety Standard for Gates and Enclosures, incorporates by reference ASTM F1004–21, Standard Consumer Safety Specification for Expansion Gates and Expandable Enclosures. The Commission has received notice of a revision to this incorporated voluntary standard. CPSC seeks comment on whether the revision improves the safety of the consumer products covered by the standard.

**DATES:** Comments must be received by August 18, 2022.

**ADDRESSES:** Submit comments, identified by Docket No. CPSC–2019–0014, by any of the following methods:

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

*Mail/hand delivery/courier/confidential Written Submissions:* CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479.

*Instructions:* All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

*Docket:* For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2019–0014, into the ''Search'' box, and follow the prompts.

**FOR FURTHER INFORMATION CONTACT:** Carlos Torres, Project Manager, Division of Mechanical and Combustion Engineering, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987–2504; email: *ctorres@cpsc.gov.*

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

Pursuant to section 104(b)(4)(B) of the CPSIA, if a voluntary standards organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under CPSIA section 104, it must notify the Commission. The revised voluntary standard then shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or a later date specified by the Commission in the **Federal Register**) unless, within 90 days after receiving that notice, the Commission responds to the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard, and therefore the Commission is retaining its existing mandatory consumer product safety standard. 15 U.S.C. 2056a(b)(4)(B).

Under this authority, in 2020 the Commission issued a mandatory safety rule for gates and enclosures. The rulemaking created 16 CFR part 1239, which incorporated by reference ASTM F1004–19, Standard Consumer Safety Specification for Expansion Gates and Expandable Enclosures. 85 FR 40100 (July 6, 2020). The mandatory standard included performance requirements and test methods, as well as requirements for warning labels and instructions, to address hazards to children. In 2021, ASTM revised the voluntary standard for gates and enclosures. On September 28, 2021, the Commission issued a direct final rule to update the mandatory standard for gates and enclosures to incorporate by reference that revision known as ASTM F1004–21 (86 FR 53535).

In July 2022, ASTM published a further revised version of the incorporated voluntary standard. On July 25, 2022, ASTM notified the Commission that it had approved and published the revised version of the voluntary standard. CPSC staff is assessing the revised voluntary standard to determine, consistent with section 104(b)(4)(B) of the CPSIA, its effect on the safety of consumer products covered by the standard. The Commission invites public comment on that question to inform staff's assessment and any subsequent Commission consideration of the revisions in ASTM F1004–22.[1]

The existing voluntary standard and the revised voluntary standard are available for review in several ways. ASTM has provided on its website (*https://www.astm.org/CPSC.htm*), at no cost, a read-only copy of ASTM F1004–22 and a red-lined version that identifies the changes made to ASTM F1004–21. Likewise, a read-only copy of the existing, incorporated standard is available for viewing, at no cost, on the ASTM website at: *https://www.astm.org/READINGLIBRARY/.* Interested parties can also download copies of the standards by purchasing them from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: 610–832–9585; *https://www.astm.org.* Alternatively, interested parties can schedule an appointment to inspect copies of the standards at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

Comments must be received by August 18, 2022. Because of the short statutory time frame Congress established for the Commission to consider revised voluntary standards under section 104(b)(4) of the CPSIA,

[1] The Commission voted unanimously (5–0) to approve this notice.

CPSC will not consider comments received after this date.

**Alberta E. Mills,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2022–16693 Filed 8–3–22; 8:45 am]

**BILLING CODE 6355–01–P**

## U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

### Notice of Public Hearing

**AGENCY:** U.S. International Development Finance Corporation.

**ACTION:** Announcement of public hearing.

**SUMMARY:** The Board of Directors of the U.S. International Development Finance Corporation (''DFC'') will hold a public hearing on September 8, 2022. This hearing will afford an opportunity for any person to present views in accordance with Section 1413(c) of the BUILD Act of 2018. Those wishing to present at the hearing must provide advance notice to the agency as detailed below.

**DATES:** Public hearing: 2:00 p.m., Thursday, September 8, 2022. Deadline for notifying agency of an intent to attend or present at the public hearing: 5:00 p.m., Wednesday, August 31, 2022. Deadline for submitting a written statement: 5:00 p.m., Wednesday, August 31, 2022.

**ADDRESSES:** *Public hearing:* Virtual; Access information provided at the time of attendance registration.

You may send notices of intent to attend, present, or submit a written statement to Catherine F.I. Andrade, DFC Corporate Secretary, via email at *candrade@dfc.gov.*

*Instructions:* A notice of intent to attend the public hearing or to present at the public hearing must include the individual's name, title, organization, address, email, telephone number, and a concise summary of the subject matter to be presented. Oral presentations may not exceed five (5) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Submission of written statements must include the individual's name, title, organization, address, email, and telephone number. The statement must be typewritten, double-spaced, and may not exceed ten (10) pages.

**FOR FURTHER INFORMATION CONTACT:** Catherine F.I. Andrade, DFC Corporate Secretary, (202) 336–8768, or *candrade@dfc.gov.*

**SUPPLEMENTARY INFORMATION:** The public hearing will take place via video- and teleconference. Upon registering, participants and observers will be provided instructions on accessing the hearing. DFC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the time of the hearing.

*Authority:* 22 U.S.C. 9613(c).

**Catherine F.I. Andrade,**

*DFC Corporate Secretary.*

[FR Doc. 2022–16739 Filed 8–3–22; 8:45 am]

**BILLING CODE 3210–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DoD–2022–OS–0036]**

### Submission for OMB Review; Comment Request

**AGENCY:** The Office of the Director of Administration and Management, Department of Defense (DoD).

**ACTION:** 30-day information collection notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by September 6, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

*Title; Associated Form; and OMB Number*: Pentagon Facilities Access Control System; DD Form 2249; OMB Control Number 0704–AAFV.

*Type of Request*: Collection in use without an OMB Control Number.

**DD Form 2249**

*Number of Respondents*: 47,200.
*Responses per Respondent*: 1.
*Annual Responses*: 47,200.
*Average Burden per Response*: 10 minutes.
*Annual Burden Hours*: 7,866.67.

**VMS Registration Portal**

*Number of Respondents*: 211,000.
*Responses per Respondent*: 1.
*Annual Responses*: 211,000.
*Average Burden per Response*: 7 minutes.
*Annual Burden Hours*: 24,616.67.
*Needs and Uses*: The information will be used by the Pentagon Pass Office to conduct a National Crime Information Center check of all members of the public 18 years and older that request access to the Pentagon or a Pentagon facility. The method for collecting the required information depends on the status of the individual making the request and the length of time that they require access. There are two collection methods, the DD Form 2249 and the Visitor Management System (VMS) Registration Portal. The DD Form 2249 is used for individuals who already have a Personal Identity Verification (PIV) Card or Common Access Card (CAC). Individuals who do not meet the criteria for a PIV or CAC and require access into the Pentagon or a Pentagon facility can also fill out the DD Form 2249 to request a Pentagon Facility Alternate Credential. The VMS Registration Portal is filled out by individuals who are deemed visitors and do not have swipe access into the Pentagon or Pentagon facilities. These individuals must be registered by a sponsor and their visits must also be initiated by a sponsor.

*Affected Public*: Individuals or households.
*Frequency*: On occasion.
*Respondent's Obligation*: Voluntary.
*OMB Desk Officer*: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions*: All submissions received must include the agency name, Docket ID number, and/title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DoD Clearance Officer*: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 1, 2022.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2022–16759 Filed 8–3–22; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DoD–2022–OS–0052]**

### Submission for OMB Review; Comment Request

**AGENCY:** Cost Assessment and Program Evaluation (CAPE), Department of Defense (DoD).

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by September 6, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Software Resource Data Reports; DD Forms 3026–1, 3026–2, 3026–3; OMB Control Number 0704–SRDR.

*Type of Request:* New request.

**DD 3026–1**

*Number of Respondents:* 12.
*Responses per Respondent:* 12.
*Annual Responses:* 144.
*Average Burden per Response:* 16 hours.
*Annual Burden Hours:* 2,304.

**DD 3026–2**

*Number of Respondents:* 11.
*Responses per Respondent:* 14.
*Annual Responses:* 154.
*Average Burden per Response:* 16 hours.
*Annual Burden Hours:* 2,464.

**DD 3026–3**

*Number of Respondents:* 12.
*Responses per Respondent:* 11.
*Annual Responses:* 132.
*Average Burden per Response:* 16 hours.
*Annual Burden Hours:* 2,112.

*Needs and Uses:* The intent of the Software Resource Date Reports is to capture software resource and effort data, at the Software Release and Computer Software Configuration Item levels that are significant either for a current program, or when a similar effort may be required for a future program. The collected data is the primary data source utilized when completing cost estimates. Respondents are any weapon system contractor or government entity with contracts, subcontracts, or agreements that are required to provide Cost and Software Data Reports based on all anticipated costs that individually or collectively surpass the corresponding dollar thresholds established in DoDI 5000.73.

*Affected Public:* Business or other for-profit.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 1, 2022.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2022–16761 Filed 8–3–22; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Extension of the Comprehensive Autism Care Demonstration for TRICARE Eligible Beneficiaries Diagnosed With Autism Spectrum Disorder

**AGENCY:** Department of Defense.

**ACTION:** Notice of an extension of the Comprehensive Autism Care Demonstration (ACD) for all Applied Behavior Analysis (ABA) services for all TRICARE eligible beneficiaries diagnosed with Autism Spectrum Disorder (ASD).

**SUMMARY:** This notice provides a five-year extension to the Military Health System's (MHS) demonstration project entitled Comprehensive ACD (the ''Demonstration''), which is authorized to render clinically necessary and appropriate ABA services for the core symptoms of ASD. The purpose of the Demonstration is to analyze and evaluate the appropriateness of the ABA services tiered delivery model under TRICARE (the medical benefit) in light of current and anticipated practice guidelines. In addition to a pending independent research study and a Congressionally-required independent National Academies of Sciences, Engineering, and Medicine analysis, based on the agency's experience in administering ABA services under the Demonstration (including engagements with beneficiaries, providers, advocates, associations, and other payers), more data collection and analysis is required to determine the appropriate structure of implementing ABA services as either a medical treatment or other modality, under the TRICARE program coverage requirements.

**DATES:** The Demonstration will continue through December 31, 2028.

**ADDRESSES:** Defense Health Agency, Health Plan Operations, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042.

**FOR FURTHER INFORMATION CONTACT:** For questions pertaining to this demonstration project, please contact Ms. Valerie Palmer at (303) 676–3557.

**SUPPLEMENTARY INFORMATION:** On June 16, 2014, Department of Defense published a Notice in the **Federal Register** (FR) (79 FR 34291), as amended by 80 FR 30664 (May 29, 2015), of a TRICARE demonstration to further analyze and evaluate the appropriateness of the ABA tiered delivery model under TRICARE. The purpose of the Demonstration was to

determine the appropriate provider qualifications for the proper diagnosis of ASD and for the provision of ABA services, assess the feasibility and advisability of establishing a beneficiary cost share for ABA services for the treatment of ASD, and develop more efficient and appropriate means of increasing access to and delivery of ABA services under TRICARE while creating a viable economic model and maintaining administrative simplicity. The Demonstration was implemented on July 25, 2014, with the original authority set to expire on December 31, 2018; however, an extension of the authority for the Demonstration until December 31, 2023, was granted, as documented via a FR notice published on December 11, 2017 (82 FR 58186). The notice stated that additional analysis and experience were required to determine the appropriate characterization of ABA services as a medical treatment, or other modality, under the TRICARE program coverage requirements. While much has been learned about ABA services administration under the TRICARE program, additional data are required to support a final determination regarding the appropriate provider qualifications for the proper diagnosis of ASD and for the provision of ABA services, the individual characteristics for patient/beneficiary improvement, and the appropriate clinical ABA services under the TRICARE benefit.

ABA services are currently provided through the Demonstration and managed by existing TRICARE regional Managed Care Support Contractors (MCSCs). Under the Demonstration, the Department implemented a provider model that allows reimbursement for ABA services rendered by providers who are not otherwise eligible for reimbursement. Approximately 16,000 beneficiaries diagnosed with ASD participate in the program annually with Demonstration enrollment continually fluctuating with new and terminating participants. Unlike the TRICARE Basic medical benefit, many TRICARE standards had to be modified and exceptions to policy made due to the unique and evolving nature of ABA service provision or Congressional direction, such as: diagnosis and referral procedures; ABA provider qualifications and credentialing/certification; utilization management reviews; and reimbursement rate methodology. Since implementation of the Demonstration, Congress directed the agency to add outcome measures as a requirement to the program. Outcome measures were implemented on January 1, 2017, and are aimed at assessing individual progress for each beneficiary, as well as evaluating program effectiveness with the beneficiary population participating in the Demonstration. Preliminary outcome findings for one of three outcome measures were first reported in Quarter 1, Fiscal Year (FY) 2019. Subsequent quarterly and annual reports continued to highlight findings based on only one outcome measure. Inconsistencies in data collection methods and reporting from participating providers limited the Department's ability to analyze the other two outcome measures.

In addition to the Demonstration's outcome measures, a grant was awarded under the Congressionally Directed Medical Research Program (CDMRP) to the University of Rochester in September 2018 that is evaluating traditional intensive ABA services compared to a modified ABA service delivery model (*https://clinicaltrials.gov/ct2/show/study/NCT04078061*). Early intensive behavioral intervention (EIBI) for toddlers and preschoolers diagnosed with ASD typically involves 20 or more hours per week of individualized instruction based on ABA principles. Although research to date does not yet meet TRICARE's hierarchy of reliable evidence standards for proven medical care, research suggests that EIBI accelerates development of cognitive and adaptive skills in many children diagnosed with ASD. However, the evidence base has significant gaps, notably a shortage of randomized controlled trials (RCTs), limited data on whether EIBI reduces ASD symptoms, and few studies on outcomes of EIBI in community settings such as private agencies where most children with ASD receive services. Recently, research suggests that less intensive, time limited ABA interventions can effectively target specific core and associated features of ASD. The investigators in the CDMRP study are evaluating if combining targeted interventions via an individualized, adaptive, and modular ABA (MABA) approach (10 hours per week) could be at least as effective as EIBI (20 hours per week) over the course of a 24-week RCT at follow-ups conducted 24 weeks after intervention and 90 weeks after intervention.

It is anticipated that the results of the CDMRP study will not only further the Department's understanding of the impact of ABA services delivered to the Demonstration participants, but also that findings from this study may benefit the larger community of individuals diagnosed with ASD and their families. The findings will leverage clinical outcomes while informing program development, structure, and long term impacts. Additionally, the findings may offer more clinical program choices to families, potentially identifying variables beneficial to clinical success. Findings may also lead to lowering costs to families and payers while also increasing access to effective and targeted ABA services. This study is scheduled to conclude at the end of 2023.

Further impacting the Demonstration, Congress directed that, via enactment of the National Defense Authorization Act for FY 2022, Department of Defense enter into an agreement with the National Academies of Sciences, Engineering, and Medicine (''National Academies'') to conduct an analysis on the effectiveness of the ACD and develop recommendations for the Department based on such analysis. The analysis would include, among other goals, a review of the expected health outcomes for an individual who has received ABA services over time, and other analyses to measure the effectiveness of the Demonstration. At the conclusion of the study, the National Academies will develop and provide the Department a list of findings and recommendations related to the measurement, effectiveness, and increased understanding of the Demonstration and its effect on beneficiaries under the TRICARE program. The National Academies study will take significant time to complete, and the Department will then require additional time to evaluate the National Academies' recommendations and make any appropriate and authorized changes.

Experience from administering the Demonstration to date informed the Department's ability to publish a significant policy update (March 23, 2021) to address the clinical needs of the beneficiary population as well as revise program oversight requirements. This policy update focused on providing enhanced beneficiary and family support; improving clinical outcomes; encouraging parental involvement; and improving utilization management controls. These revisions are anticipated to improve the quality of, and access to, clinically necessary and appropriate care and services, and will also improve management and accountability of both the MCSCs and ABA providers.

Based on the above factors, at this time, making any determination regarding the efficacy of ABA services as a medical benefit, or other coverage options, under TRICARE is premature, and it is necessary for the Department

to extend the Demonstration beyond its expiration on December 31, 2023. While much information has been learned about ABA while administering services under the Demonstration authority, the Department needs time to further evaluate the goals of the Demonstration, collect and evaluate outcome measures, incorporate the results of the CDMRP study award, and address recommendations from the National Academies. In addition, by extending the Demonstration, the Department will not only be able to fully implement the program improvements, but also will continue to gain greater insight and understanding of the effectiveness of ABA services being delivered to TRICARE beneficiaries based on outcome data.

As the Department is pending a benefit determination, this extension will determine whether the Demonstration meets its stated purpose and will provide the Department with consistent and reliable information necessary to make a formal decision regarding the provision of the ABA services benefit. The Demonstration continues to be authorized by Title 10, United States Code, Section 1092.

Dated: July 29, 2022.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2022–16742 Filed 8–3–22; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID USN–2022–HQ–0013]**

### Submission for OMB Review; Comment Request

**AGENCY:** Department of the Navy, Department of Defense (DoD).

**ACTION:** 30-day information collection notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by September 6, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:** *Title; Associated Form; And OMB Number*: United States Marine Corps Suicide Prevention Stakeholder Survey; OMB Control Number 0703–SPSS.

*Type of Request:* New collection.

*Number of Respondents:* 7,215.

*Responses per Respondent*: 1.

*Annual Responses*: 7,215.

*Average Burden per Response*: 15 minutes.

*Annual Burden Hours*: 1,803.75.

*Needs and Uses:* Marine and Reserve Affairs, Marine and Family Programs is evaluating its suicide prevention capability. One component of this effort involves gathering information from various stakeholders who contribute directly or indirectly to suicide prevention efforts in the U.S. Marine Corps (USMC). Stakeholders will be asked about priorities in suicide prevention, job duties related to suicide prevention, communication with other stakeholders, and perceived successes and perceived barriers in suicide prevention. The USMC Suicide Prevention Stakeholder Survey will provide information vital for continuous process improvement. Information collected from this effort will be used to support Marines experiencing critical stressors, identify gaps in the suicide prevention system, and identify best practices and collaboration efforts between suicide prevention stakeholders.

*Affected Public*: Individuals or households.

*Frequency:* Once.

*Respondent's Obligation*: Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions*: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 1, 2022.

**Aaron T. Siegel,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 2022–16760 Filed 8–3–22; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2022–SCC–0098]**

### Agency Information Collection Activities; Comment Request; GEPA Section 427 Guidance for All Grant Applications

**AGENCY:** Office of the Secretary (OS), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved information collection.

**DATES:** Interested persons are invited to submit comments on or before OCTOBER 3, 2022.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0098. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–8240.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection

activities, please contact Cleveland Knight, 202–987–0064.

**SUPPLEMENTARY INFORMATION:** The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* GEPA Section 427 Guidance for All Grant Applications.

*OMB Control Number:* 1894–0005.

*Type of Review:* A revision of a currently approved collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 18,550.

*Total Estimated Number of Annual Burden Hours:* 55,650.

*Abstract:* On October 20, 1994, the Improving America's Schools Act, Public Law 103–382 (The Act), became law. The Act added a provision to the General Education Provisions Act (GEPA). Section 427 of GEPA requires an applicant for assistance under Department programs to develop and describe in the grant application the steps it proposes to take to ensure equitable access to, and equitable participation in, its proposed project for students, teachers, and other program beneficiaries. Applicants have responded to the GEPA 427 requirements for approximately the last 27 years, and the current form expires in June 2023. In response to the Agency's Equity Plan resulting from the President's Executive Order 13985, we now propose we now propose to update that form by expanding the number of questions from one to four.

These four questions are intended to help applicants for Department grant funds to be more intentional and specific as to identifying barriers to equitable access and how they will address those barriers consistent with the requirements of section 427 of GEPA. As with the existing form, applicants retain the flexibility to determine and define for themselves the barriers to ''equitable access'' and ''equitable participation'' based on the design of their proposed grant projects and the participants and community the project proposes to serve.

Dated: August 1, 2022.

**Juliana Pearson,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2022–16741 Filed 8–3–22; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2022–SCC–0101]**

## Agency Information Collection Activities; Comment Request; Application To Participate in Federal Student Financial Aid Programs (PEPS)

**AGENCY:** Federal Student Aid (FSA), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new collection.

**DATES:** Interested persons are invited to submit comments on or before October 3, 2022.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0101. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Application to Participate in Federal Student Financial Aid Programs (PEPS).

*OMB Control Number:* 1845–NEW.

*Type of Review:* A new collection.

*Respondents/Affected Public:* Private Sector; State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 7,286.

*Total Estimated Number of Annual Burden Hours:* 24,352.

*Abstract:* The Department of Education (the Department) developed the Application for Approval to Participate in the Federal Student Financial Aid Programs to comply with

statutory requirements of collecting necessary information under the Higher Education Act of 1965, as amended. This new collection is a request to continue use of the version of the application that was last approved in 2019 under 1845–0012. That information collection is undergoing clearance to reflect the revision of the information collection as the Department transitions to an electronic webform housed on the FSA Partner Connect system. The revision may not be ready for implementation by the current form expiration date of November 30, 2022. The Department is therefore requesting approval of the currently approved form/format in this new collection.

Dated: August 1, 2022.

**Kun Mullan,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2022–16738 Filed 8–3–22; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP22–491–000]**

## Natural Gas Pipeline Company of America LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on July 19, 2022, Natural Gas Pipeline Company of America LLC (Natural), 3250 Lacey Road, Suite 700, Downers Grove, Illinois 60515, filed a prior notice request for authorization, in accordance with 18 CFR Sections 157.205, 157.206, 157.208(b), and 157.216(b) of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act and Natural's blanket certificate issued in Docket No. CP82–402–000, to modify, construct, replace, and abandon certain facilities on a portion of its Crawford Line #3 located in Cook County, Illinois to allow Natural to use in-line inspection (ILI) tools, commonly referred to as ''pigs,'' on such portion of the line in order to perform diagnostic inspections using such ILI tools (Crawford Line #3 Make Piggable Project or Project). Natural states that the Project is required to comply with Pipeline and Hazardous Materials Safety Administration pipeline safety regulations and requirements while minimizing disruptions in service to its customers. Natural states that the cost of the Project will be $12,600,000, all as more fully set forth in the application 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://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application should be directed to each of the following: David K. Dewey, Vice President of Regulatory Affairs for Natural Gas Pipeline Company of America LLC, at 2 North Nevada Avenue, Colorado Springs, Colorado 80903, at (719) 520–4227, or *david_dewey@kindermorgan.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

### 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 September 27, 2022. How to file protests, motions to intervene, and comments is explained below.

*Protests*

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is September 27, 2022. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

*Interventions*

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is September 27, 2022. 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

[1] 18 CFR (Code of Federal Regulations) 157.9.

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

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 September 27, 2022. 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 CP22–491–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [7]

(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 CP22–491–000.

To mail via USPS, use the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To mail via any other courier, use the following address:

Kimberly D. Bose, 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 or email (with a link to the document) at: David K. Dewey, Vice President of Regulatory Affairs for Natural Gas Pipeline Company of America LLC, at 2 North Nevada Avenue, Colorado Springs, Colorado 80903 or *david_dewey@kindermorgan.com.*

Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

**Tracking the Proceeding**

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: July 29, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–16712 Filed 8–3–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP22–493–000; PF22–2–000]**

### Tennessee Gas Pipeline Company, L.L.C.; Notice of Application and Establishing Intervention Deadline

Take notice that on July 22, 2022 Tennessee Gas Pipeline Company, L.L.C. (TGP or Applicant), 569 Brookwood Village, Suite 749, Birmingham, AL 35209 filed an application under sections 7(c) of the Natural Gas Act (NGA), and Part 157, of the Commission's regulations authorizing TGP to construct, install, modify, operate, and maintain certain pipeline lateral and appurtenant facilities located in Dickson, Houston and Stewart Counties, Tennessee all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Specifically, TGP is requesting approval to: (1) Construct approximately 32 miles of a new 30-inch-diameter pipeline lateral, connecting to TGP's existing Lines 100–3 and 100–4 and extending to a delivery point in Stewart County, Tennessee (Cumberland Pipeline); (2) install new bi-directional back pressure regulation facilities near TGP's Lines 100–3 and 100–4 (''Pressure Regulation Station''), located at the origin of the proposed Cumberland Pipeline in Dickson County, Tennessee; (3) install a new meter station (''Cumberland Meter Station''), located at the terminus of the proposed Cumberland Pipeline on TVA property in Stewart County, Tennessee; and (4) install appurtenant facilities, including in-line inspection traps at each end of the proposed Cumberland Pipeline and three new mainline valves. The total estimated cost of this project is approximately $184.8 million.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended

[7] 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.

access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the proposed project should be directed to Tina S. Hardy, Director, Regulatory Affairs, Tennessee Gas Pipeline Company, L.L.C., 569 Brookwood Village, Suite 749, Birmingham, AL 35209 by phone at (205) 325–3668 or by email to *tina_hardy@kindermorgan.com.*

On November 5, 2021 the Commission granted the Applicant's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF22–2–000 to staff activities involved in the Project. Now, as of the filing of the July 22, 2022 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP22–493–000 as noted in the caption of this Notice.

Also, Applicant stated that a water quality certificate under section 401 of the Clean Water Act is required for the project from the Tennessee Department of Environmental Conservation. The request for certification must be submitted to the certifying agency and to the Commission concurrently. Proof of the certifying agency's receipt date must be filed no later than five (5) days after the request is submitted to the certifying agency.

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

**Public Participation**

There are two ways to become involved in the Commission's review of this project: you can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5 p.m. Eastern Time on August 19, 2022.

*Comments*

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before August 19, 2022.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP22–493–000 in your submission.

(1) 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;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. 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 ''Comment on a Filing''; or

(3) You may file a paper copy of your comments by mailing them to the following address below.[2] Your written comments must reference the Project docket number (CP22–493–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, 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. For instructions on how to intervene, see below.

*Interventions*

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is August 19, 2022. 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.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP22–493–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*)

[1] 18 CFR (Code of Federal Regulations) 157.9.

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

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 ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.*; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number CP22–493–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Motions to intervene must be served on the applicant either by mail or email at: Tina S. Hardy, Director, Regulatory Affairs, Tennessee Gas Pipeline Company, L.L.C. 569 Brookwood Village, Suite 749, Birmingham, AL 35209 or by email at *tina_hardy@kindermorgan.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. Service can be via email with a link to the document.

All timely, unopposed[7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] 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.[9] 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.

**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 *http://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.*

*Intervention Deadline:* 5:00 p.m. Eastern Time on August 19, 2022.

Dated: July 29, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–16710 Filed 8–3–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2715–026]**

### Kaukauna Utilities; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2715–026.

c. *Date filed:* July 22, 2022.

d. *Applicant:* Kaukauna Utilities.

e. *Name of Project:* Combined Locks Hydroelectric Project (Combined Locks Project).

f. *Location:* On the Lower Fox River in the Village of Combined Locks and the Village of Little Chute, Outagamie County, Wisconsin. The project does not include any federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Zachary Moureau, Environmental & Compliance Manager, Kaukauna Utilities, 777 Island Street, Kaukauna, WI 54130–7077; (920) 462–0238; *zmoureau@ku-wi.org.*

i. *FERC Contact:* Patrick Ely at *patrick.ely@ferc.gov* or (202) 502–8570.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: September 20, 2022.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2715–026.

m. The application is not ready for environmental analysis at this time.

n. *The Combined Locks Project consists of:* (1) a concrete and cyclopean stone dam approximately 654 feet long and 27 feet high with additional 24 inch nominal flashboards mounted upon the

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

spillway crest at elevation 674.6 feet International Great Lakes Datum of 1985 (IGLD85); (2) a 126.9-acre reservoir at normal full pool elevation 676.7 feet IGLD85; (3) a powerhouse approximately 65 feet wide by 130 feet long housing two 3.1-megawatt (MW) generators, for a total authorized capacity of 6.2 MW; (4) a tailrace channel; (5) a 265-foot-long, 4.16-kilovolt (kV) interconnection line from the powerhouse to transformer and 1,442-foot-long, 12.47-kV interconnection line from the transformer to the substation; and (6) appurtenant facilities.

o. A copy of the application may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)—September 2022

Request Additional Information (if necessary)—September 2022

Issue Scoping Document 1 for comments—March 2023

Issue Scoping Document 2 (if necessary)—July 2023

Issue Notice of Ready for Environmental Analysis—July 2023

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: July 29, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–16713 Filed 8–3–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1451–006.
*Applicants:* Jersey Central Power & Light.
*Description:* Notice of Non-Material Change in Status of Jersey Central Power & Light Company.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5213.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER10–1467–007.
*Applicants:* Ohio Edison Company.
*Description:* Notice of Non-Material Change in Status of Ohio Edison Company.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5215.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER10–1468–007.
*Applicants:* The Toledo Edison Company.
*Description:* Notice of Non-Material Change in Status of The Toledo Edison Company.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5222.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER10–1469–007.
*Applicants:* The Cleveland Electric Illuminating Company.
*Description:* Notice of Non-Material Change in Status of The Cleveland Electric Illuminating Company.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5218.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER10–1473–006.
*Applicants:* Pennsylvania Power Company.
*Description:* Notice of Non-Material Change in Status of Pennsylvania Power Company.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5217.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER10–1474–006.
*Applicants:* Metropolitan Edison Company.
*Description:* Notice of Non-Material Change in Status of Metropolitan Edison Company.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5214.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER10–1478–008.
*Applicants:* Pennsylvania Electric Company.
*Description:* Notice of Non-Material Change in Status of Pennsylvania Electric Company.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5216.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER10–1511–009; ER10–1512–002; ER10–2010–007; ER10–2691–001.
*Applicants:* The Narragansett Electric Company, PPL Electric Utilities Corporation, Kentucky Utilities Company, Louisville Gas and Electric Company.
*Description:* Notice of Change in Status of Louisville Gas and Electric Company, et al.
*Filed Date:* 7/28/22.
*Accession Number:* 20220728–5230.
*Comment Date:* 5 p.m. ET 8/18/22.

*Docket Numbers:* ER10–2688–009.
*Applicants:* The Potomac Edison Company.
*Description:* Notice of Non-Material Change in Status of The Potomac Edison Company.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5219.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER10–2728–008.
*Applicants:* Green Valley Hydro, LLC.
*Description:* Notice of Non-Material Change in Status of Green Valley Hydro, LLC.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5209.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER10–310–004; ER10–2414–016; ER11–113–014; ER11–4694–010; ER12–1680–011; ER17–2084–004; ER20–967–002; ER21–44–004; ER22–937–001; ER22–938–001.
*Applicants:* New Market Solar ProjectCo 2, LLC, New Market Solar ProjectCo 1, LLC, Altavista Solar, LLC, Great Bay Solar II, LLC, Great Bay Solar 1, LLC, Minonk Wind, LLC, GSG 6, LLC, Sandy Ridge Wind, LLC, Old Trail Wind Farm, LLC, Algonquin Energy Services Inc.
*Description:* Notice of Non-Material Change in Status of Algonquin Energy Services Inc.
*Filed Date:* 7/28/22.
*Accession Number:* 20220728–5232.
*Comment Date:* 5 p.m. ET 8/18/22.

*Docket Numbers:* ER10–3297–017.
*Applicants:* Powerex Corporation.
*Description:* Notice of Change in Status of Powerex Corp.
*Filed Date:* 7/28/22.
*Accession Number:* 20220728–5228.
*Comment Date:* 5 p.m. ET 8/18/22.

*Docket Numbers:* ER12–273–002.
*Applicants:* Allegheny Energy Supply Company, LLC.
*Description:* Notice of Non-Material Change in Status of Allegheny Energy Supply Company, LLC.
*Filed Date:* 7/29/22.

*Accession Number:* 20220729–5207.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER13–2387–010; ER15–190–020; ER18–1343–013.
*Applicants:* Carolina Solar Power, LLC, Duke Energy Renewable Services, LLC, Duke Energy Florida, Inc.
*Description:* Notice of Non-Material Change in Status of Duke Energy Florida, LLC, et al.
*Filed Date:* 7/28/22.
*Accession Number:* 20220728–5225.
*Comment Date:* 5 p.m. ET 8/18/22.

*Docket Numbers:* ER21–1297–004.
*Applicants:* BigBeau Solar, LLC.
*Description:* Notice of Change in Status of BigBeau Solar, LLC.
*Filed Date:* 7/28/22.
*Accession Number:* 20220728–5231.
*Comment Date:* 5 p.m. ET 8/18/22.

*Docket Numbers:* ER22–874–002.
*Applicants:* Graphite Solar 1, LLC.
*Description:* Notice of Non-Material Change in Status of Graphite Solar 1, LLC.
*Filed Date:* 7/28/22.
*Accession Number:* 20220728–5226.
*Comment Date:* 5 p.m. ET 8/18/22.

*Docket Numbers:* ER22–1820–001.
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company, Southern Power Company.
*Description:* Compliance filing: Alabama Power Company submits tariff filing per 35: Amended and Restated IIC Compliance Filing (Gulf Exit) to be effective 7/13/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5119.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–1822–001.
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.
*Description:* Compliance filing: Alabama Power Company submits tariff filing per 35: FP&L NITSA Compliance Filing (Gulf Exit) to be effective 7/13/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5129.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–1823–001.
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.
*Description:* Compliance filing: Alabama Power Company submits tariff filing per 35: FPL (885 MW) Long-Term Firm PTP Agreement Compliance Filing (Gulf Exit) to be effective 6/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5132.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–1824–001.
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.
*Description:* Compliance filing: Alabama Power Company submits tariff filing per 35: FPL (Daniel 1&2) Long-Term Firm PTP Agreement Compliance Filing (Gulf Exit) to be effective 7/13/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5141.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–1825–001.
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.
*Description:* Compliance filing: Alabama Power Company submits tariff filing per 35: FPL (Scherer 3) Long-Term Firm PTP Agreement Compliance Filing (Gulf Exit) to be effective 7/13/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5145.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–1826–001.
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company
*Description:* Compliance filing: Alabama Power Company submits tariff filing per 35: FPL (Kingfisher I) Long-Term Firm PTP Agreement Compliance Filing (Gulf Exit) to be effective 7/13/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5150.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–1827–001.
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.
*Description:* Compliance filing: Alabama Power Company submits tariff filing per 35: FPL (Kingfisher II) Long-Term Firm PTP Agreement Compliance Filing (Gulf Exit) to be effective 7/13/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5155.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–1835–001.
*Applicants:* Alabama Power Company, Mississippi Power Company, Georgia Power Company.
*Description:* Compliance filing: Alabama Power Company submits tariff filing per 35: OATT Attachment V Amendment Compliance Filing (Gulf Exit) to be effective 7/13/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5162.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2522–000.
*Applicants:* Ledyard Windpower, LLC.
*Description:* § 205(d) Rate Filing: Rate Schedule FERC No. 1—Reactive Power Compensation to be effective 9/27/2022.
*Filed Date:* 7/28/22.
*Accession Number:* 20220728–5164.
*Comment Date:* 5 p.m. ET 8/18/22.

*Docket Numbers:* ER22–2523–000.
*Applicants:* Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
*Description:* § 205(d) Rate Filing: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii: 205: CRA between Niagara Mohawk and RG&E for Hook Road Station 127 Substation to be effective 6/30/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5032.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2524–000.
*Applicants:* Southern California Edison Company.
*Description:* § 205(d) Rate Filing: Solar Star 3, LLC 1st Amendment to the LGIA (TOT795–SA235) to be effective 7/30/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5065.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2525–000.
*Applicants:* Gridmatic Inc.
*Description:* Baseline eTariff Filing: MBR Tariff Application to be effective 7/30/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5070.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2526–000.
*Applicants:* Avista Corporation.
*Description:* § 205(d) Rate Filing: Avista Corp Tariff 12 Revision to be effective 10/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5073.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2528–000.
*Applicants:* Southern California Edison Company.
*Description:* § 205(d) Rate Filing: Solar Star 4 1st Amendment to the LGIA (TOT821/SA236) to be effective 7/30/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5089.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2529–000.
*Applicants:* AM Wind Repower LLC.
*Description:* § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 7/30/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5093.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2530–000.
*Applicants:* Powell River Energy Inc.
*Description:* § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 7/30/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5094.
*Comment Date:* 5 p.m. ET 8/19/22.

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 or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 29, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–16731 Filed 8–3–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP21–94–000]**

### Transcontinental Gas Pipe Line Company, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Regional Energy Access Expansion

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Regional Energy Access Expansion (Project), proposed by Transcontinental Gas Pipe Line Company, LLC (Transco) in the above-referenced docket. Transco requests authorization to construct and operate approximately 36.0 miles of pipeline loop [1] and one new compressor station, abandon and replace certain existing compression facilities, and modify existing compressor stations and facilities in Pennsylvania and New Jersey to provide about 829 million standard cubic feet of natural gas per day to multiple delivery points along Transco's existing system in Pennsylvania, New Jersey, and Maryland, providing customers with enhanced access to Marcellus and Utica Shale natural gas supplies.

The final EIS assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Project, with the mitigation measures recommended in the EIS, would result in some adverse environmental impacts; however, with the exception of climate change impacts, those impacts would not be significant. Construction and operation of the Project would increase the atmospheric concentration of greenhouse gases (GHG), in combination with past, current, and future emissions from all other sources globally and would contribute incrementally to future climate change impacts. The EIS does not characterize the Project's GHG emissions as significant or insignificant because the Commission is conducting a generic proceeding to determine whether and how the Commission will conduct climate change significance determinations going forward.

The U.S. Environmental Protection Agency and U.S. Army Corps of Engineers participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The EIS is intended to fulfill the cooperating federal agencies' NEPA obligations, as applicable, and to support subsequent conclusions and decisions made by the cooperating agencies. Although cooperating agencies provide input to the conclusions and recommendations presented in the final EIS, the agencies may present their own conclusions and recommendations in any applicable Records of Decision for the Project.

The final EIS addresses the potential environmental effects of the construction and operation of the following Project facilities:

- installation of 22.2 miles of 30-inch-diameter pipeline loop in Luzerne County, Pennsylvania (Regional Energy Lateral);
- installation of 13.8 miles of 42-inch-diameter pipeline loop in Monroe County, Pennsylvania (Effort Loop);
- installation of the new electric-motor driven Compressor Station 201 (9,000 nominal horsepower [hp] at International Organization of Standardization [ISO] conditions) in Gloucester County, New Jersey);
- installation of two gas turbine driven compressor units (31,800 nominal hp at ISO conditions) at existing Compressor Station 505 in Somerset County, New Jersey to accommodate the abandonment and replacement of approximately 16,000 hp from eight existing internal combustion engine-driven compressor units and increase the certificated station compression by 15,800 hp;
- installation of a gas turbine compressor unit (63,742 nominal hp at ISO conditions) and modifications to three existing compressors at existing Compressor Station 515 in Luzerne County, Pennsylvania to accommodate the abandonment and replacement of approximately 17,000 hp from five existing gas-fired reciprocating engine driven compressors and increase the certificated station compression by 46,742 hp;
- uprate and rewheel two existing electric motor-driven compressor units at existing Compressor Station 195 in York County, Pennsylvania to increase the certificated station compression by 5,000 hp and accommodate the abandonment of two existing gas-fired reciprocating engine driven compressors, which total approximately 8,000 hp;
- installation of piping modifications at existing Compressor Station 200 in Chester County, Pennsylvania to support south flow of natural gas;
- uprate one existing electric motor-driven compressor unit at existing Compressor Station 207 in Middlesex County, New Jersey to increase the certificated station compression by 4,100 hp;
- modifications at existing compressor stations, meter stations, interconnects, and ancillary facilities in Pennsylvania, New Jersey, and Maryland; and
- installation of ancillary facilities such as mainline valves, communication facilities, and pig launchers [2] and receivers.

The Commission mailed a copy of the *Notice of Availability* of the final EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. The final EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the final EIS may be accessed by using

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*) select ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP21–94). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The final EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. 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 that 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. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: July 29, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–16708 Filed 8–3–22; 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:* RP22–1069–000.

*Applicants:* Big Sandy Pipeline, LLC.

*Description:* Compliance filing: Big Sandy Fuel Filing effective 9/1/2022 to be effective N/A.

*Filed Date:* 7/28/22.

*Accession Number:* 20220728–5053.

*Comment Date:* 5 p.m. ET 8/9/22.

*Docket Numbers:* RP22–1070–000.

*Applicants:* Granite State Gas Transmission, Inc.

*Description:* § 4(d) Rate Filing: A Limited Section 4 Rate Change to be effective 9/1/2022.

*Filed Date:* 7/28/22.

*Accession Number:* 20220728–5080.

*Comment Date:* 5 p.m. ET 8/9/22.

*Docket Numbers:* RP22–1071–000.

*Applicants:* Equitrans, L.P.

*Description:* § 4(d) Rate Filing: Negotiated Rate Agreement Amendment—8/1/2022 to be effective 8/1/2022.

*Filed Date:* 7/29/22.

*Accession Number:* 20220729–5008.

*Comment Date:* 5 p.m. ET 8/10/22.

*Docket Numbers:* RP22–1072–000.

*Applicants:* Tuscarora Gas Transmission Company.

*Description:* § 4(d) Rate Filing: Tuscarora Section 4 Rate Case (1 of 3) to be effective 9/1/2022.

*Filed Date:* 7/29/22.

*Accession Number:* 20220729–5021.

*Comment Date:* 5 p.m. ET 8/10/22.

*Docket Numbers:* RP22–1073–000.

*Applicants:* Midcontinent Express Pipeline LLC.

*Description:* § 4(d) Rate Filing: Timeline for Sale of Capacity to be effective 9/1/2022.

*Filed Date:* 7/29/22.

*Accession Number:* 20220729–5024.

*Comment Date:* 5 p.m. ET 8/10/22.

*Docket Numbers:* RP22–1074–000.

*Applicants:* Sierrita Gas Pipeline LLC.

*Description:* § 4(d) Rate Filing: Qtrly Fuel_LU Update Filing to be effective 9/1/2022.

*Filed Date:* 7/29/22.

*Accession Number:* 20220729–5034.

*Comment Date:* 5 p.m. ET 8/10/22.

*Docket Numbers:* RP22–1075–000.

*Applicants:* Florida Gas Transmission Company, LLC.

*Description:* § 4(d) Rate Filing: Negotiated Rates Filing—7/29/22 to be effective 8/1/2022.

*Filed Date:* 7/29/22.

*Accession Number:* 20220729–5049.

*Comment Date:* 5 p.m. ET 8/10/22.

*Docket Numbers:* RP22–1076–000.

*Applicants:* ETC Tiger Pipeline, LLC.

*Description:* § 4(d) Rate Filing: Negotiated Rate Filing—BP Energy to be effective 8/1/2022.

*Filed Date:* 7/29/22.

*Accession Number:* 20220729–5050.

*Comment Date:* 5 p.m. ET 8/10/22.

*Docket Numbers:* RP22–1077–000.

*Applicants:* Trunkline Gas Company, LLC.

*Description:* § 4(d) Rate Filing: Negotiated Rate Filing—16 to be effective 8/1/2022.

*Filed Date:* 7/29/22.

*Accession Number:* 20220729–5051.

*Comment Date:* 5 p.m. ET 8/10/22.

*Docket Numbers:* RP22–1078–000.

*Applicants:* Eastern Gas Transmission and Storage, Inc.

*Description:* § 4(d) Rate Filing: EGTS—July 29, 2022 Negotiated Rate and Nonconforming Service Agreement to be effective 9/1/2022.

*Filed Date:* 7/29/22.

*Accession Number:* 20220729–5054.

*Comment Date:* 5 p.m. ET 8/10/22.

*Docket Numbers:* RP22–1079–000.

*Applicants:* Transcontinental Gas Pipe Line Company, LLC.

*Description:* § 4(d) Rate Filing: Rate Schedule S–2 Tracker FIling eff 8/1/2022 to be effective 8/1/2022.

*Filed Date:* 7/29/22.

*Accession Number:* 20220729–5069.

*Comment Date:* 5 p.m. ET 8/10/22.

*Docket Numbers:* RP22–1080–000.

*Applicants:* Wyoming Interstate Company, L.L.C.

*Description:* § 4(d) Rate Filing: Fuel_LU Quarterly Update Filing to be effective 9/1/2022.

*Filed Date:* 7/29/22.

*Accession Number:* 20220729–5074.

*Comment Date:* 5 p.m. ET 8/10/22.

*Docket Numbers:* RP22–1081–000.

*Applicants:* Ruby Pipeline, L.L.C.

*Description:* § 4(d) Rate Filing: FLU_EPC Recomputation Update Filing to be effective 9/1/2022.

*Filed Date:* 7/29/22.

*Accession Number:* 20220729–5082.

*Comment Date:* 5 p.m. ET 8/10/22.

*Docket Numbers:* RP22–501–000.

*Applicants:* ANR Pipeline Company.

*Description:* Motion Filing: ANR Section 4 Rate Case Motion to Place in Effect RP22–501 to be effective 8/1/2022.

*Filed Date:* 7/29/22.

*Accession Number:* 20220729–5022.

*Comment Date:* 5 p.m. ET 8/10/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP21–778–000.

*Applicants:* Southern Star Central Gas Pipeline, Inc.

*Description:* Refund Report: Rate Case (RP21–778) Refund Report Filing to be effective N/A.

*Filed Date:* 7/29/22.

*Accession Number:* 20220729–5061.

*Comment Date:* 5 p.m. ET 8/10/22.

*Docket Numbers:* RP22–501–002.
*Applicants:* ANR Pipeline Company.
*Description:* Compliance filing: ANR Section 4 Rate Case Compliance RP22–501 to be effective 8/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5023.
*Comment Date:* 5 p.m. ET 8/10/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 29, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–16732 Filed 8–3–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER22–2531–000.
*Applicants:* TerraForm IWG Acquisition Holdings II, LLC.
*Description:* § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 7/30/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5098.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2532–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* § 205(d) Rate Filing: Q2 2022 Quarterly Filing of City and County of San Francisco's WDT SA (SA 275) to be effective 6/30/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5099.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2533–000.
*Applicants:* American Electric Power Service Corporation, Ohio Power Company, PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii: AEP submits one Facilities Agreement Deshler re: ILDSA SA No. 1422 to be effective 9/28/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5110.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2534–000.
*Applicants:* Jersey Central Power & Light Company, PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Jersey Central Power & Light Company submits tariff filing per 35.13(a)(2)(iii: JCP&L Submits IA No. 6409 to be effective 10/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5113.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2535–000.
*Applicants:* Tri-State Generation and Transmission Association, Inc.
*Description:* § 205(d) Rate Filing: Initial Filing of Service Agreement No. 109 and Service Agreement No. 209 to be effective 6/30/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5114.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2536–000.
*Applicants:* Kossuth County Wind, LLC.
*Description:* Baseline eTariff Filing: Kossuth County Wind, LLC Application for Market-Based Rate Authorization to be effective 9/28/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5118.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2537–000.
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.
*Description:* § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: FP&L (Exxon/Blackjack) NITSA Filing to be effective 7/13/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5124.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2538–000.
*Applicants:* Metropolitan Edison Company, PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Metropolitan Edison Company submits tariff filing per 35.13(a)(2)(iii: Met-Ed revisions to Tariff, Attachment H–5A to be effective 10/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5126.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2539–000.
*Applicants:* Tri-State Generation and Transmission Association, Inc.
*Description:* Tariff Amendment: Notice of Cancellation of Service Agreement Nos. 105 and 205 to be effective 6/30/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5135.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2540–000.
*Applicants:* Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Mid-Atlantic Interstate Transmission, LLC submits tariff filing per 35.13(a)(2)(iii: MAIT Submits IA No. 6410 to be effective 10/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5149.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2541–000.
*Applicants:* Metropolitan Edison Company.
*Description:* § 205(d) Rate Filing: Amended Load Serving Entity Agreement-Revised MetEd Rate Schedule FERC No. 84 to be effective 10/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5157.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2542–000.
*Applicants:* Pennsylvania Electric Company, PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Pennsylvania Electric Company submits tariff filing per 35.13(a)(2)(iii: Penelec revisions to Tariff, Attachment H–6A to be effective 10/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5164.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2543–000.
*Applicants:* Metropolitan Edison Company.
*Description:* § 205(d) Rate Filing: FirstEnergy Filing of Met-Ed 2022 Consolidated Agreement to be effective 10/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5165.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2544–000.
*Applicants:* Pennsylvania Electric Company.
*Description:* § 205(d) Rate Filing: FirstEnergy Filing of Penelec 2022 Consolidated Agreement to be effective 10/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5167.
*Comment Date:* 5 p.m. ET 8/19/22.

*Docket Numbers:* ER22–2545–000.
*Applicants:* Metropolitan Edison Company, PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Metropolitan Edison Company submits tariff filing per 35.13(a)(2)(iii: Met-Ed Submits IA No. 6411 to be effective 10/1/2022.

*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5168.
*Comment Date:* 5 p.m. ET 8/19/22.
*Docket Numbers:* ER22–2546–000.
*Applicants:* ISO New England Inc., New England Power Pool Participants Committee.
*Description:* § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: ISO–NE/NEPOOL; Revisions Related to Continuous Storage Facility Model to be effective 10/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5169.
*Comment Date:* 5 p.m. ET 8/19/22.
*Docket Numbers:* ER22–2547–000.
*Applicants:* West Penn Power Company.
*Description:* § 205(d) Rate Filing: FirstEnergy Filing of West Penn 2022 Consolidated Agreement to be effective 10/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5170.
*Comment Date:* 5 p.m. ET 8/19/22.
*Docket Numbers:* ER22–2548–000.
*Applicants:* Mid-Atlantic Interstate Transmission, LLC.
*Description:* § 205(d) Rate Filing: FirstEnergy Filing of MAIT 2022 Consolidated Agreement to be effective 10/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5174.
*Comment Date:* 5 p.m. ET 8/19/22.
*Docket Numbers:* ER22–2549–000.
*Applicants:* Red Lake Falls Community Hybrid LLC.
*Description:* Tariff Amendment: Cancellation of Complete Tariff to be effective 7/30/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5178.
*Comment Date:* 5 p.m. ET 8/19/22.
*Docket Numbers:* ER22–2550–000.
*Applicants:* Midway-Sunset Cogeneration Company.
*Description:* § 205(d) Rate Filing: Midway Sunset Cogeneration Request for Daily Surcharge Payment to be effective 8/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5182.
*Comment Date:* 5 p.m. ET 8/19/22.
*Docket Numbers:* ER22–2551–000.
*Applicants:* Tucson Electric Power Company.
*Description:* § 205(d) Rate Filing: OATT Service Agreement Nos. 498 and 502 to be effective 7/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5185.
*Comment Date:* 5 p.m. ET 8/19/22.
*Docket Numbers:* ER22–2552–000.
*Applicants:* Java Solar, LLC.
*Description:* Baseline eTariff Filing: Java Solar, LLC Application for Market-Based Rate Authorization to be effective 9/15/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5186.
*Comment Date:* 5 p.m. ET 8/19/22.
*Docket Numbers:* ER22–2553–000.
*Applicants:* Public Service Company of Colorado.
*Description:* § 205(d) Rate Filing: 2022–07–29 PSCo Subentity Agrmt-538–0.1.0 to be effective 8/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5190.
*Comment Date:* 5 p.m. ET 8/19/22.
*Docket Numbers:* ER22–2554–000.
*Applicants:* Duke Energy Carolinas, LLC.
*Description:* § 205(d) Rate Filing: DEC–NCMPA1 Revised NITSA SA No. 212 to be effective 7/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5191.
*Comment Date:* 5 p.m. ET 8/19/22.
*Docket Numbers:* ER22–2555–000.
*Applicants:* Pennsylvania Electric Company, PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Pennsylvania Electric Company submits tariff filing per 35.13(a)(2)(iii: Penelec Submits IA No. 6412 to be effective 10/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5205.
*Comment Date:* 5 p.m. ET 8/19/22.
*Docket Numbers:* ER22–2556–000.
*Applicants:* Rainbow Energy Marketing Corporation.
*Description:* Compliance filing: Rainbow Energy Marketing Corp Change in Status Notice to be effective 7/30/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5206.
*Comment Date:* 5 p.m. ET 8/19/22.
*Docket Numbers:* ER22–2557–000.
*Applicants:* Basin Electric Power Cooperative.
*Description:* Tariff Amendment: Basin Electric Notice of Cancellation of Service Agreements to be effective 6/28/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5210.
*Comment Date:* 5 p.m. ET 8/19/22.
*Docket Numbers:* ER22–2558–000.
*Applicants:* Great Pathfinder Wind, LLC.
*Description:* Baseline eTariff Filing: Application for Market Base Rate to be effective 10/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5220.
*Comment Date:* 5 p.m. ET 8/19/22.
*Docket Numbers:* ER22–2559–000.
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.
*Description:* § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Cooperative Energy NITSA Amendment Filing (adding Cumbest Bluff DP) to be effective 7/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5221.
*Comment Date:* 5 p.m. ET 8/19/22.
*Docket Numbers:* ER22–2560–000.
*Applicants:* PacifiCorp.
*Description:* § 205(d) Rate Filing: Amendments to FERC Volume No. 13 to be effective 10/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5238.
*Comment Date:* 5 p.m. ET 8/19/22.
*Docket Numbers:* ER22–2561–000.
*Applicants:* Black Hills Colorado Electric, LLC.
*Description:* § 205(d) Rate Filing: Certificate of Concurrence to PSCO Subentity Sharing Agreement to be effective 8/1/2022.
*Filed Date:* 7/29/22.
*Accession Number:* 20220729–5240.
*Comment Date:* 5 p.m. ET 8/19/22.

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 or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 29, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–16730 Filed 8–3–22; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2022–0624; FRL–10087–01–OCSPP]**

## Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

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

**ACTION:** Notice.

**SUMMARY:** EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions were granted during the period July 1, 2021, to June 30, 2022, to control unforeseen pest outbreaks.

**FOR FURTHER INFORMATION CONTACT:** Marietta Echeverria, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

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

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

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the emergency exemption.

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0624, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

## II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific.

Under FIFRA section 18 (7 U.S.C. 136p), EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests for a specific crop/site on a limited acreage, or other unit for treatment (*e.g.,* square footage, cartons of produce in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are emergency exemptions issued for quarantine or public health purposes. These are requested less frequently than specific exemptions.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is concurred upon by EPA) when there is insufficient time to request and obtain EPA permission for emergency use of a pesticide under one of the other types of emergency exemptions.

EPA may deny an emergency exemption request: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of infants and children to residues of the pesticide.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption, the type of exemption, the pesticide authorized, the pests, the crop or use for which authorized, number of acres or other unit for treatment (if applicable), and the effective date of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any, and notes when a Notice of Receipt (if required under 40 CFR 166.24) was published in the **Federal Register**.

## III. Emergency Exemptions

*A. U.S. States and Territories*

Alabama

Department of Agriculture and Industries

*Specific exemption:* EPA authorized the use of fluridone on a maximum of 10,000 acres of peanut to control herbicide-resistant Palmer amaranth. Time-limited tolerances in connection with a previous action support this emergency use and are established in 40 CFR 180.420(b). The authorization was effective April 15, 2022.

Arkansas

Department of Agriculture

*Crisis exemptions:* EPA concurred upon a crisis exemption declared by the Arkansas Department of Agriculture for the use of methoxyfenozide to control fall armyworm in rice. Time-limited tolerances in connection with a previous action support this use and are established in 40 CFR 180.544(b). The crisis exemption was effective July 28, 2021.

EPA concurred upon a crisis exemption declared by the Arkansas Department of Agriculture for the use of thiamethoxam to control severe infestations of rice stinkbug. Time-limited tolerances in connection with a previous action support this use and are established in 40 CFR 180.565(b). The crisis exemption was effective August 13, 2021.

*Specific exemptions:* EPA authorized the use of methoxyfenozide on a maximum of 250,000 acres of rice to control fall armyworm. Time-limited tolerances in connection with a previous action support this emergency use and are established in 40 CFR 180.544(b). The authorization was effective September 29, 2021.

EPA authorized the use of thiamethoxam on a maximum of 300,000 acres of rice to control rice stink bug. Time-limited tolerances in connection with a previous action support this emergency use and are established in 40 CFR 180.565(b). The authorization was effective October 15, 2021.

EPA authorized the use of fluridone on a maximum of 5,000 acres of peanut to control herbicide-resistant Palmer amaranth. Time-limited tolerances in connection with a previous action support this emergency use and are established in 40 CFR 180.420(b). The authorization was effective April 15, 2022.

California

Department of Pesticide Regulation

*Specific exemptions:* EPA authorized the use of kasugamycin on a maximum of 100,000 acres of almond trees to control bacterial blast. Time-limited tolerances in connection with a previous action support this emergency use and are established in 40 CFR 180.614(b). The authorization was effective February 1, 2022.

EPA authorized the use of methoxyfenozide on a maximum of 102,000 acres of rice to control armyworm and Western Yellowstriped Armyworm. Time-limited tolerances in connection with a previous action support this emergency use and are established in 40 CFR 180.544(b). The authorization was effective May 1, 2022.

Georgia

Department of Agriculture

*Public Health Exemption:* EPA authorized the use of triethylene glycol formulated as Grignard Pure, an unregistered product for air treatment in indoor spaces, (occupied and unoccupied) to help control the spread of Severe Acute Respiratory Syndrome Coronavirus 2 or SARS–CoV–2. The authorization was effective February 15, 2022.

Hawaii

Department of Agriculture

*Specific exemption:* EPA authorized the use of fluxapyroxad and pyraclostrobin (co-formulated in Priaxor™ Xemium® Brand Fungicide) on a maximum of 8,000 acres of coffee to control coffee leaf rust. Import tolerances in connection with prior registration actions are established in 40 CFR 180.166 for fluxapyroxad and 40 CFR 180.582 for pyraclostrobin and are sufficient to support this use. The authorization was effective May 19, 2022.

Louisiana

Department of Agriculture and Forestry

*Specific exemption:* EPA authorized the use of triclopyr on a maximum of 450,000 acres of sugarcane to control divine nightshade. A time-limited tolerance in connection with a previous action supports this emergency use and is established in 40 CFR 180.417(b). The authorization was effective October 1, 2021.

Maryland

Department of Agriculture

*Public Health Exemptions:* EPA authorized the use of triethylene glycol formulated as Grignard Pure, an unregistered product for air treatment in indoor spaces, (occupied and unoccupied) to help control the spread of Severe Acute Respiratory Syndrome Coronavirus 2 or SARS–CoV–2. The authorization was effective July 1, 2021.

EPA authorized the use of triethylene glycol formulated as Grignard Pure, an unregistered product for air treatment in indoor spaces, (occupied and unoccupied) to help control the spread of Severe Acute Respiratory Syndrome Coronavirus 2 or SARS–CoV–2. The authorization was effective February 15, 2022.

*Specific Exemption:* EPA authorized the use of bifenthrin on a maximum of 3,570 acres of apples, nectarines and peaches to control brown marmorated stinkbug. Time-limited tolerances in connection with previous actions supported this emergency use and were established in 40 CFR 180.442(b). Permanent tolerances have since been established for these commodities at 40 CFR 180.442(a). The authorization was effective August 5, 2021.

Massachusetts

Department of Agriculture and Resource

*Specific exemption:* EPA authorized the use of propyzamide on a maximum of 5,000 acres of cranberries to control dodder. A time-limited tolerance in connection with a previous action supports this emergency use and is established in 40 CFR 180.317(b). The authorization was effective March 4, 2022.

Michigan

Department of Agriculture and Rural Development

*Specific Exemption:* EPA authorized the use of acifluorfen on a maximum of 48,000 acres of sugar beets for postemergence control of invasive *Amaranthus* (pigweed) spp., waterhemp, and Palmer amaranth. Time-limited tolerances in connection with a previous action support this emergency use and are established in 40 CFR 180.383(b). The authorization was effective April 28, 2022.

*Quarantine Exemption:* EPA authorized the use of imidacloprid on a maximum of 1,566 acres of Eastern Hemlock trees to control Hemlock Wooly Adelgid. The authorization was effective August 12, 2021.

Minnesota

Department of Agriculture

*Specific exemption:* EPA authorized the use of acifluorfen on a maximum of 96,000 acres of sugar beets for postemergence control of glyphosate-resistant waterhemp. Time-limited tolerances in connection with a previous action support this emergency use and are established in 40 CFR 180.383(b). The authorization was effective May 16, 2022.

Mississippi

Department of Agriculture and Commerce

*Crisis exemption:* EPA concurred upon a crisis exemption declared by the Mississippi Department of Agriculture and Commerce for the use of methoxyfenozide to control fall armyworm in rice. Time-limited tolerances in connection with a previous action support this use and are established in 40 CFR 180.544(b). The crisis exemption was effective July 28, 2021.

*Specific exemptions:* EPA authorized the use of methoxyfenozide on a maximum of 60,000 acres of rice to fall armyworm. Time-limited tolerances in connection with a previous action support this emergency use and are established in 40 CFR 180.544(b). The authorization was effective September 29, 2021.

EPA authorized the use of fluridone on a maximum of 4,000 acres of peanut to control herbicide-resistant Palmer amaranth. Time-limited tolerances in connection with a previous action support this emergency use and are established in 40 CFR 180.420(b). The authorization was effective April 15, 2022.

Missouri

Department of Agriculture

*Specific exemption:* EPA authorized the use of fluridone on a maximum of 4,000 acres of peanut to control herbicide-resistant Palmer amaranth. Time-limited tolerances in connection with a previous action support this emergency use and are established in 40 CFR 180.420(b). This authorization was effective April 15, 2022.

Nevada

Department of Agriculture

*Public Health Exemptions:* EPA authorized the use of triethylene glycol formulated as Grignard Pure, an unregistered product for air treatment in indoor spaces, (occupied and unoccupied) to help control the spread of Severe Acute Respiratory Syndrome Coronavirus 2 or SARS–CoV–2. The authorization was effective July 1, 2021.

EPA authorized the use of triethylene glycol formulated as Grignard Pure, an unregistered product for air treatment in indoor spaces, (occupied and unoccupied) to help control the spread of Severe Acute Respiratory Syndrome

Coronavirus 2 or SARS–CoV–2. The authorization was effective February 15, 2022.

New York

Department of Environmental Conservation

*Specific Exemption:* EPA authorized the use of bifenthrin on a maximum of 7,521 acres of apples, nectarines and peaches to control brown marmorated stinkbug. Time-limited tolerances in connection with previous actions supported this emergency use and were established in 40 CFR 180.442(b). Permanent tolerances have since been established for these commodities at 40 CFR 180.442(a). The authorization was effective August 5, 2021.

North Carolina

Department of Agriculture and Consumer Services

*Specific exemption:* EPA authorized the postharvest use of thiabendazole on a maximum of 95,000 acres of sweet potatoes to control black rot. A time-limited tolerance in connection with a previous action supported this emergency use and was established in 40 CFR 180.242(b). The authorization was effective July 2, 2021.

North Dakota

Department of Agriculture

*Specific exemption:* EPA authorized the use of acifluorfen on a maximum of 34,000 acres of sugar beets for postemergence control of glyphosate resistant waterhemp. Time-limited tolerances in connection with a previous action support this emergency use and are established in 40 CFR 180.383(b). The authorization was effective May 16, 2022.

Pennsylvania

Department of Agriculture

*Public Health Exemptions:* EPA authorized the use of triethylene glycol formulated as Grignard Pure, an unregistered product for air treatment in indoor spaces, (occupied and unoccupied) to help control the spread of Severe Acute Respiratory Syndrome Coronavirus 2 or SARS–CoV–2. The authorization was effective July 1, 2021.

EPA authorized the use of triethylene glycol formulated as Grignard Pure, an unregistered product for air treatment in indoor spaces, (occupied and unoccupied) to help control the spread of Severe Acute Respiratory Syndrome Coronavirus 2 or SARS–CoV–2. The authorization was effective January 14, 2022.

*Specific Exemption:* EPA authorized the use of bifenthrin on a maximum of 24,973 acres of apples, nectarines and peaches to control the brown marmorated stinkbug. Time-limited tolerances in connection with previous actions supported this emergency use and were established in 40 CFR 180.442(b). Permanent tolerances have since been established for these commodities at 40 CFR 180.442(a). The authorization was effective August 5, 2021.

Tennessee

Department of Agriculture

*Public Health Exemption:* EPA authorized the use of triethylene glycol formulated as Grignard Pure, an unregistered product for air treatment in indoor spaces, (occupied and unoccupied) to help control the spread of Severe Acute Respiratory Syndrome Coronavirus 2 or SARS–CoV–2. The authorization was effective January 14, 2022.

Texas

Department of Agriculture

*Public Health Exemptions:* EPA authorized the use of triethylene glycol formulated as Grignard Pure, an unregistered product for air treatment in indoor spaces, (occupied and unoccupied) to help control the spread of Severe Acute Respiratory Syndrome Coronavirus 2 or SARS–CoV–2. The authorization was effective July 1, 2021.

EPA authorized the use of triethylene glycol formulated as Grignard Pure, an unregistered product for air treatment in indoor spaces, (occupied and unoccupied) to help control the spread of Severe Acute Respiratory Syndrome Coronavirus 2 or SARS–CoV–2. The authorization was effective January 14, 2022.

Virginia

Department of Agriculture and Consumer Services

*Public Health Exemption:* EPA authorized the use of triethylene glycol formulated as Grignard Pure, an unregistered product for air treatment in indoor spaces, (occupied and unoccupied) to help control the spread of Severe Acute Respiratory Syndrome Coronavirus 2 or SARS–CoV–2. The authorization was effective January 14, 2022.

*Specific Exemption:* EPA authorized the use of bifenthrin on a maximum of 29,000 acres of apples, nectarines and peaches to control the brown marmorated stinkbug. Time-limited tolerances in connection with previous actions supported this emergency use and were established in 40 CFR 180.442(b). Permanent tolerances have been established for these commodities at 40 CFR 180.442(a). The authorization was effective August 5, 2021.

West Virginia

Department of Agriculture

*Specific Exemption:* EPA authorized the use of bifenthrin on a maximum of 5,986 acres of apples, nectarines and peaches to control the brown marmorated stinkbug. Time-limited tolerances in connection with previous actions supported this emergency use and were established in 40 CFR 180.442(b). Permanent tolerances have since been established for these commodities at 40 CFR 180.442(a). The authorization was effective August 5, 2021.

*B. Federal Departments and Agencies*

United States Department of Agriculture

Animal and Plant Health Inspector Service

*Quarantine Exemptions:* EPA authorized the use of sodium hypochlorite on porous and nonporous surfaces to decontaminate from viruses of foot and mouth disease, classical swine fever, and African swine fever. The authorization was effective September 10, 2021.

EPA authorized the use of sodium hydroxide on nonporous surfaces to control prions. The authorization was effective September 24, 2021.

EPA authorized the use of sodium hypochlorite on nonporous surfaces to control prions. The authorization was effective September 24, 2021.

EPA authorized the use of citric acid to treat for disinfection of porous and nonporous surfaces contaminated with foot-and-mouth disease virus, African swine fever virus, low pathogenic avian influenza virus, and highly pathogenic avian flu influenza virus. The authorization was effective March 2, 2022.

EPA authorized the use of a mixture of potassium peroxymonosulfate and propylene glycol for disinfection of nonporous surfaces associated with poultry facilities infected with highly pathogenic avian influenza virus. The authorization was effective March 23, 2022.

National Aeronautics and Space Administration

*Specific exemption:* EPA authorized the use of ortho-phthaldehyde, immobilized to a porous resin, to treat the International Space Station internal active thermal control system (IATCS) coolant for control of aerobic and microaerophilic water bacteria and unidentified gram-negative rods. This

request was granted because, without this use, the ISS would have no means to control organisms in the IATCS since there are no registered alternatives available which meet the required criteria. The emergency request proposed a use of a new (unregistered) chemical and in accordance with the requirements at 40 CFR 166.24(a)(1), a notice of receipt published in the **Federal Register** on September 15, 2021, to allow a public comment period, which closed on September 30, 2021. The authorization was effective October 7, 2021.

(Authority: 7 U.S.C. 136 *et seq.*)

Dated: July 28, 2022.

**Marietta Echeverria,**

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

[FR Doc. 2022–16646 Filed 8–3–22; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[FR ID 99193]**

## Open Commission Meeting Friday, August 5, 2022

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, August 5, 2022, which is scheduled to commence at 10:30 a.m. in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC.

While attendance at the Open Meeting is available to the public, the FCC headquarters building is not open access, and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees at the Open Meeting will not be required to have an appointment but must otherwise comply with protocols outlined at: *www.fcc.gov/visit.* Open Meetings are streamed live at: *www.fcc.gov/live* and on the FCC's YouTube channel.

| Item No. | Bureau | Subject |
|---|---|---|
| 1 | WIRELINE COMPETITION | *Title:* Affordable Connectivity Outreach Grant Program (WC Docket No. 21–450). *Summary:* The Commission will consider a Second Report and Order which would establish the Affordable Connectivity Outreach Grant Program to provide eligible governmental and non-governmental entities funding to conduct outreach to increase awareness of and encourage participation in the Affordable Connectivity Program among eligible low-income households. |
| 2 | WIRELINE COMPETITION | *Title:* 'Your Home, Your Internet' Pilot Program (WC Docket No. 21–450). *Summary:* The Commission will consider a Third Report and Order which would establish the one-year Your Home, Your Internet Pilot Program with the goal of increasing awareness of the Affordable Connectivity Program among recipients of federal housing assistance and facilitating enrollment in the ACP by providing targeted assistance with the ACP application. |
| 3 | INTERNATIONAL | *Title:* Space Innovation (IB Docket No 22–271); Facilitating Capabilities for In-Space Servicing, Assembly, and Manufacturing (IB Docket No. 22–272). *Summary:* The Commission will consider a Notice of Inquiry (NOI) that would examine opportunities and challenges of in-space servicing, assembly, and manufacturing—or ''ISAM''—that can support sustained economic activity in space. This NOI would develop an up-to-date record on current ISAM activities and seek input on steps the Commission might take to facilitate ISAM missions, including through updates to Commission rules and processes. |
| 4 | INTERNATIONAL | *Title:* Amendment of Parts 2 and 25 of the Commission's Rules to Enable GSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3–17.8 GHz Band, to Modernize Certain Rules Applicable to 17/24 GHz BSS Space Stations, and to Establish Off-Axis Uplink Power Limits for Extended Ka-Band FSS Operations (IB Docket No. 20–330); and to Enable NGSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3–17.8 GHz Band (IB Docket No. 22–273). *Summary*: The Commission will consider a Report and Order and a Notice of Proposed Rulemaking that would adopt a coprimary allocation for geostationary satellite orbit (GSO) fixed-satellite service (FSS) operations in the space-to-Earth (downlink) direction in the 17.3–17.8 GHz band, while protecting incumbent services, and inquire into whether the Commission should expand this FSS allocation in the 17.3–17.8 GHz band to include non-geostationary orbit (NGSO) FSS operations also in the downlink direction. |
| 5 | MEDIA | *Title:* Restricted Adjudicatory Matter *Summary:* The Commission will consider a restricted adjudicatory matter. |
| 6 | ENFORCEMENT | *Title:* Enforcement Bureau Action. *Summary:* The Commission will consider an enforcement action. |

* * * * *

The meeting will be webcast at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

*Press Access*—Members of the news media are welcome to attend the meeting and will be provided reserved seating on a first-come, first-served basis. Following the meeting, the Chairwoman may hold a news conference in which she will take questions from credentialed members of the press in attendance. Also, senior policy and legal staff will be made available to the press in attendance for questions related to the items on the meeting agenda. Commissioners may also choose to hold press conferences. Press may also direct questions to the Office of Media Relations (OMR): *MediaRelations@fcc.gov.* Questions

about credentialing should be directed to OMR.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Dated: July 29, 2022.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2022–16719 Filed 8–3–22; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Tuesday, August 9, 2022 at 10:00 a.m. and its continuation at the conclusion of the open meeting on August 11, 2022.

**PLACE:** 1050 First Street NE, Washington, DC and virtual (this meeting will be a hybrid meeting).

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:**

Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

**CONTACT PERSON FOR MORE INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

*Authority:* Government in the Sunshine Act, 5 U.S.C. 552b.

**Vicktoria J. Allen,**

*Acting Deputy Secretary of the Commission.*

[FR Doc. 2022–16857 Filed 8–2–22; 4:15 p.m.]

**BILLING CODE 6715–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifiers CMS–10305 and CMS–10440]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by September 6, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing*

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786–4669.

**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. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Part C and Part D Data Validation (42 CFR 422.516(g) and 423.514(j)); *Use:* Sections 1857(e) and 1860D–12 of the Social Security Act (''the Act'') authorize CMS to establish information collection requirements with respect to MAOs and Part D sponsors. Section 1857(e)(1) of the Act requires MAOs to provide the Secretary of the Department of Health and Human Services (DHHS) with such information as the Secretary may find necessary and appropriate. Section 1857(e)(1) of the Act applies to Prescription Drug Plans (PDPs) as indicated in section1860D–12. Pursuant to statutory authority, CMS codified these information collection requirements in regulation at §§ 422.516(g) Validation of Part C Reporting Requirements, and 423.514(j) Validation of Part D Reporting Requirements respectively.

Data collected via Medicare Part C and Part D reporting requirements are an integral resource for oversight, monitoring, compliance and auditing activities necessary to ensure quality provision of Medicare benefits to beneficiaries. CMS uses the findings collected through the data validation process to substantiate the data reported via Medicare Part C and Part D reporting requirements. Data validation provides CMS with assurance that plan-reported data are credible and consistently collected and reported by Part C and D

SOs. CMS uses validated data to respond to inquiries from Congress, oversight agencies, and the public about Part C and D SOs. The validated data also allows CMS to effectively monitor and compare the performance of SOs over time. Validated plan-reported data may be used for Star Ratings, Display measures and other performance measures. Additionally, SOs can take advantage of the DV process to effectively assess their own performance and make improvements to their internal operations and reporting processes. *Form Number:* CMS–10305 (OMB control number: 0938–1115); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 793; *Total Annual Responses:* 793; *Total Annual Hours:* 21,535. (For policy questions regarding this collection contact Chanelle Jones at 410–786–8008.)

2. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Health Insurance Marketplaces, Medicaid and Children's Health Insurance Program Agencies; *Use:* Section 1413 of the Affordable Care Act directs the Secretary of Health and Human Services to develop and provide to each state a single, streamlined application form that may be used to apply for coverage through a Marketplace and for APTC/CSR, Medicaid, and CHIP (which we refer to collectively as insurance affordability programs). The application must be structured to maximize an applicant's ability to complete the form satisfactorily, taking into account the characteristics of individuals who may qualify for the programs by developing materials at appropriate literacy levels and ensuring accessibility.

45 CFR 155.405(a) provides more detail about the application that must be used by Marketplaces to determine eligibility and to collect information necessary for enrollment. Eligibility standards for the Marketplace are set forth in 45 CFR 155.305. The information will be required of each applicant upon initial application, with some subsequent information collections for the purposes of confirming accuracy of previous submissions and for changes in an applicant's circumstances. 42 CFR 435.907 and § 457.330 establish the standards for state Medicaid and CHIP agencies related to the use of the application. CMS has designed a dynamic electronic application that will tailor the amount of data required from an applicant based on the applicant's circumstances and responses to particular questions in the FFM (please note SBM implementations may vary but the essence of the data collection must adhere to the same parameters). The paper version of the application will not be tailored in the same way but will require only the data necessary to determine eligibility.

Information collected by the Marketplace, Medicaid or CHIP agency will be used to determine eligibility for coverage through the Marketplace and insurance affordability programs (*i.e.,* Medicaid, CHIP, and APTC), and assist consumers in enrolling in a QHP if eligible. Applicants include anyone who may be eligible for coverage through any of these programs. *Form Number:* CMS–10440 (OMB control number: 0938–1191); *Frequency:* Annually; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 4,884,000; *Total Annual Responses:* 4,884,000; *Total Annual Hours:* 2,205,614. (For policy questions regarding this collection contact Anne Pesto at 410–786–3492.)

Dated: July 29, 2022.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2022–16682 Filed 8–3–22; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifiers: CMS–10079 and CMS–10510]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by October 3, 2022.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

**FOR FURTHER INFORMATION CONTACT:** William N. Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:**

**Contents**

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10079 Hospital Wage Index Occupational Mix Survey

CMS–10510 Basic Health Program (BHP) Supporting Regulations

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain

approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

**Information Collection**

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title:* Hospital Wage Index Occupational Mix Survey; *Use:* Section 304(c) of Public Law 106–554 amended section 1886(d)(3)(E) of the Social Security Act to require CMS to collect data every 3 years on the occupational mix of employees for each short-term, acute care hospital participating in the Medicare program, in order to construct an occupational mix adjustment to the wage index, for application beginning October 1, 2004 (the FY 2005 wage index). The purpose of the occupational mix adjustment is to control for the effect of hospitals' employment choices on the wage index. For example, hospitals may choose to employ different combinations of registered nurses, licensed practical nurses, nursing aides, and medical assistants for the purpose of providing nursing care to their patients. The varying labor costs associated with these choices reflect hospital management decisions rather than geographic differences in the costs of labor.

CMS takes the data collected from the approximately 3,200 IPPS providers participating in the Medicare program and runs the data through mathematical formulas to create the occupational mix adjustment to the wage index. CMS informs hospitals of the occupational mix adjusted wage indexes through notice and comment rulemaking each year. *Form Number:* CMS–10079 (OMB Control Number: 0938–0907); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 3,200; *Number of Responses:* 3,200; *Total Annual Hours:* 1,536,000. (For policy questions regarding this collection contact Noel Manlove at 410–786–5161.)

*2. Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title:* Basic Health Program (BHP) Supporting Regulations; *Use:* In accordance with Section 1331 of the Patient Protection and Affordability Care Act, Public Law 111–148 (ACA), BHP is federally funded by determining the amount of payments that the federal government would have made through premium tax credits and cost-sharing reductions for people enrolled in BHP had they instead been enrolled in an Exchange. States must submit a BHP Blueprint to CMS for certification prior to the state implementing a BHP and must submit a revised Blueprint in the event that a state seeks to make significant changes that alter program operations; the BHP benefit package; or enrollment, disenrollment, and verification policies described in the Blueprint. Such States must also submit a BHP annual report. In addition to the reinstatement, this 2022 iteration proposes changes that are associated with the March 12, 2014 (79 FR 14112) BHP final rule that have not previously received PRA approval; *Form Number:* CMS–10510 (OMB Control Number: 0938–1218); *Frequency:* Monthly and annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 2; *Number of Responses:* 27; *Total Annual Hours:* 2,568. (For policy questions regarding this collection contact Cassie Lagorio at 443–721–8022.)

Dated: July 29, 2022.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2022–16681 Filed 8–3–22; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–9137–N]**

### Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April Through June 2022

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This quarterly notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from April through June 2022, relating to the Medicare and Medicaid programs and other programs administered by CMS.

**FOR FURTHER INFORMATION CONTACT:** It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning each of the addenda published in this notice.

| Addenda | Contact | Phone No. |
|---|---|---|
| I CMS Manual Instructions | Ismael Torres | (410) 786–1864 |
| II Regulation Documents Published in the **Federal Register** | Terri Plumb | (410) 786–4481 |
| III CMS Rulings | Tiffany Lafferty | (410)786–7548 |
| IV Medicare National Coverage Determinations | Wanda Belle, MPA | (410) 786–7491 |
| V FDA-Approved Category B IDEs | John Manlove | (410) 786–6877 |
| VI Collections of Information | William Parham | (410) 786–4669 |
| VII Medicare-Approved Carotid Stent Facilities | Sarah Fulton, MHS | (410) 786–2749 |
| VIII American College of Cardiology—National Cardiovascular Data Registry Sites. | Sarah Fulton, MHS | (410) 786–2749 |
| IX Medicare's Active Coverage-Related Guidance Documents | JoAnna Baldwin, MS | (410) 786–7205 |
| X One-time Notices Regarding National Coverage Provisions | JoAnna Baldwin, MS | (410) 786–7205 |
| XI National Oncologic Positron Emission Tomography Registry Sites | David Dolan, MBA | (410) 786–3365 |
| XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities. | David Dolan, MBA | (410) 786–3365 |
| XIII Medicare-Approved Lung Volume Reduction Surgery Facilities | Sarah Fulton, MHS | (410) 786–2749 |
| XIV Medicare-Approved Bariatric Surgery Facilities | Sarah Fulton, MHS | (410) 786–2749 |
| XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials | David Dolan, MBA | (410) 786–3365 |

| Addenda | Contact | Phone No. |
|---|---|---|
| All Other Information | Annette Brewer | (410) 786–6580 |

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, state governments, state Medicaid agencies, state survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners (NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

## II. Format for the Quarterly Issuance Notices

This quarterly notice provides only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS website or the appropriate data registries that are used as our resources. This is the most current up-to-date information and will be available earlier than we publish our quarterly notice. We believe the website list provides more timely access for beneficiaries, providers, and suppliers. We also believe the website offers a more convenient tool for the public to find the full list of qualified providers for these specific services and offers more flexibility and ''real time'' accessibility. In addition, many of the websites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the website. These listservs avoid the need to check the website, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a website proves to be difficult, the contact person listed can provide information.

## III. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at *http://www.cms.gov/manuals.*

The Director of the Office of Strategic Operations and Regulatory Affairs of the Centers for Medicare & Medicaid Services (CMS), Kathleen Cantwell, having reviewed and approved this document, authorizes Trenesha Fultz-Mimms, who is the **Federal Register** Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: July 28, 2022.

**Trenesha Fultz-Mimms,**

*Federal Register Liaison, Department of Health and Human Services.*

**BILLING CODE 4120–01–P**

**Publication Dates for the Previous Four Quarterly Notices**

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: August 17, 2021 (86 FR 45986), November 18, 2021 (86 FR 64492), February 9, 2022 (87 FR 7458) and May 13, 2022 (87 FR 29327). We are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the website to access this information and a contact person for questions or additional information.

## Addendum I: Medicare and Medicaid Manual Instructions (April through June 2022)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: http://cms.gov/manuals.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at http://www.gpo.gov/libraries/

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the manual for Revisions to Medicare Part B Coverage of Pneumococcal Vaccinations for the Medicare Benefit Policy Manual Chapter 15, Section 50.4.4.2 (CMS-Pub. 100-02) Transmittal No. 11399.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual.

Fee-For Service Transmittal Numbers

Please Note: Beginning Friday, March 20, 2020, there will be the following change regarding the Advance Notice of Instructions due to a CMS internal process change. Fee-For Service Transmittal Numbers will no longer be determined by Publication. The Transmittal numbers will be issued by a single numerical sequence beginning with Transmittal Number 10000.

For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our website at www.cms.gov/Manuals.

| Transmittal Number | Manual/Subject/Publication Number |
|---|---|
| | **Medicare General Information (CMS-Pub. 100-01)** |
| 11395 | Updated Instructions for the Change Request Implementation Report (CRIR) and Technical Direction Letter (TDL) Compliance Report (TCR) |
| 11438 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| | **Medicare Benefit Policy (CMS-Pub. 100-02)** |
| 11355 | Update to Publication 100-04, Chapter 18 and Publication 100-02, Chapter 15, Section to Add Data Regarding Novel Coronavirus (COVID-19) and its Administration to Current Claims Processing Requirements and Other General Updates<br>Supplementary Medical Insurance (SMI) Provisions<br>Immunizations<br>Services and Supplies Furnished Incident To a Physician's/NPP's Professional Service<br>Preventive and Screening Services |
| 11386 | Update to Chapter 7, "Home Health Services," of the Medicare Benefit Policy Manual (Pub 100-02)<br>Submission of the Notice of Admission (NOA)<br>Requirements for Submission of NOA<br>Definition of an Allowed Practitioner |

| | |
|---|---|
| 11399 | Revisions to Medicare Part B Coverage of Pneumococcal Vaccinations for the Medicare Benefit Policy Manual Chapter 15, Section 50.4.4.2 |
| 11426 | An Omnibus CR Covering: (1) Removal of Two National Coverage Determination (NCDs), (2) Updates to the Medical Nutrition Therapy (MNT) Policy, and (3) Updates to the Pulmonary Rehabilitation (PR), Cardiac Rehabilitation (CR), and Intensive Cardiac Rehabilitation (ICR) Conditions of Coverage<br>Pulmonary Rehabilitation (PR) Program Services Furnished On or After January 1, 2010<br>Cardiac Rehabilitation (CR) and Intensive Cardiac Rehabilitation (ICR) Services Furnished On or After January 1, 2010 |
| 11447 | Update to Chapter 7, "Home Health Services," of the Medicare Benefit Policy Manual (Pub 100-02)<br>Submission of the Notice of Admission (NOA<br>Requirements for Submission of NOA |
| 11448 | Revisions to Medicare Part B Coverage of Pneumococcal Vaccinations for the Medicare Benefit Policy Manual Chapter 15, Section 50.4.4.2 |
| **Medicare National Coverage Determination (CMS-Pub. 100-03)** | |
| 11263 | Revisions to National Coverage Determination (NCD) 240.2 (Home Use of Oxygen) and 240.2.2 (Home Oxygen Use for Cluster Headache |
| 11272 | An Omnibus CR Covering: (1) Removal of Two National Coverage Determination (NCDs), (2) Updates to the Medical Nutrition Therapy (MNT) Policy, and (3) Updates to the Pulmonary Rehabilitation (PR), Cardiac Rehabilitation (CR), and Intensive Cardiac Rehabilitation (ICR) Conditions of Coverage<br>Medical Nutrition Therapy<br>Enteral and Parenteral Nutritional Therapy<br>Positron Emission Tomography (PET) Scans |
| 11388 | National Coverage Determination (NCD) 210.14 Reconsideration – Screening for Lung Cancer with Low Dose Computed Tomography (LDCT Lung Cancer Screening with Low Dose Computed Tomography (LDCT) |
| 11426 | An Omnibus CR Covering: (1) Removal of Two National Coverage Determination (NCDs), (2) Updates to the Medical Nutrition Therapy (MNT) Policy, and (3) Updates to the Pulmonary Rehabilitation (PR), Cardiac Rehabilitation (CR), and Intensive Cardiac Rehabilitation (ICR) Conditions of Coverage<br>Medical Nutrition Therapy<br>Enteral and Parenteral Nutritional Therapy<br>Positron Emission Tomography (PET) Scans |
| 11429 | Revisions to National Coverage Determination (NCD) 240.2 (Home Use of Oxygen) and 240.2.2 (Home Oxygen Use for Cluster Headache)<br>Home Use of Oxygen<br>Home Oxygen Use to Treat Cluster Headache (CH) |
| **Medicare Claims Processing (CMS-Pub. 100-04)** | |
| 11341 | Corrections to Home Health Billing for Denial Notices and Calculation of 60-Day Gaps in Services |
| 11344 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11348 | Revisions to Chapters 3, "Inpatient Hospital Billing" of the Medicare Claims Processing Manual (Pub 100-04), 18, "Preventive and Screening Services" of the Medicare Claims Processing Manual (Pub 100-04), and 32 "Billing Requirements for Special Services" of the Medicare Claims Processing Manual (Pub 100-04) to Update Coding<br>Stem Cell Transplantation<br>Autologous Stem Cell Transplantation (AuSCT)<br>HCPCS and Diagnosis Codes for Mammography Services<br>Screening Pap Smears: Diagnoses Codes<br>Diagnoses Codes<br>Stem Cell Transplantation<br>IICPCS and Diagnosis Coding for Stem Cell Transplantation -ICD-10-CM Applicable<br>Suggested MSN and RA Messages<br>Clinical Trials for Allogeneic Hematopoietic Stem Cell Transplantation (HSCT) for Myelodysplastic Syndrome (MDS)<br>General<br>ICD-10 Diagnosis Codes for Vagus Nerve Stimulation (Covered since DOS on and after July 1, 1999)<br>Vagus Nerve Stimulation for TRD for Battery Replacement<br>Professional Billing Requirements<br>Institutional Billing Requirements<br>Medicare Summary Notice (MSN), Remittance Advice Remark Code (RARC) and Claim Adjustment Reason Code (CARC) Messages<br>Advance Beneficiary Notice and HINN Information<br>Other<br>Claims Processing Requirements for Percutaneous Image-guided Lumbar Decompression (PILD) for Lumbar Spinal Stenosis (LSS) on Professional Claims<br>Claims Processing Requirements for PILD for Outpatient Facilities<br>A/B MAC (A) Revenue Code<br>A/B MAC Billing HCPCS Codes<br>A/B MAC Diagnosis and Procedure Code Requirements<br>Payment Requirements<br>Claim Adjustment Reason Codes (CARCs), Remittance Advice Remark Codes (RARCs), Group Codes, and Medicare Summary Notice (MSN) Messages<br>Claims Processing General Information<br>Institutional Claims Bill Type and Revenue Coding Information<br>Common Working File (CWF) FISS, and Multi-Carrier System (MCS) Editing |
| 11355 | Update to Publication 100-04, Chapter 18 and Publication 100-02, Chapter 15, Section to Add Data Regarding Novel Coronavirus (COVID-19) and its Administration to Current Claims Processing Requirements and Other General Updates<br>Table of Contents<br>Table of Preventive and Screening Services<br>Pneumococcal Pneumonia, Influenza Virus, Hepatitis B, and Coronavirus Disease (COVID-19) Vaccines and Administration Coverage Requirements<br>COVID-19 Vaccine Billing Requirements<br>Healthcare Common Procedure Coding System (HCPCS) and Diagnosis Codes<br>Claims Received with Missing Data<br>Claims Submitted to MACs Using Institutional Formats<br>Payment for Pneumococcal Pneumonia Virus, Influenza Virus, Hepatitis B Virus and, COVID-19 Vaccines and Their Administration on Institutional Claims<br>Special Instructions for Independent and Provider-Based Rural Health Clinics/Federally Qualified Health Center (RHCs/FQHCs)<br>Institutional Claims Submitted by Home Health Agencies and Hospices<br>Payment Procedures for Renal Dialysis Facilities (RDF)<br>Hepatitis B Vaccine Furnished to ESRD Patients<br>Claims Submitted to MACs (Part B)<br>MAC (Part B) Indicators for the Common Working File (CWF)<br>MAC (Part B) Payment Requirements |

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| | Simplified Roster Claims for Mass Immunizers<br>Roster Claims Submitted to MACs (Part B) for Mass Immunization<br>Centralized Billing for Influenza, Pneumococcal and COVID-19 Virus Vaccinations to MACs (Part B)<br>Claims Submitted to MACs (Part A) for Mass Immunizations of Influenza, Pneumococcal, and/or COVID-19 Virus Vaccinations<br>Simplified Billing for Influenza, Pneumococcal and COVID-19 Virus Vaccination Services by HHAs<br>Hospital Inpatient Roster Billing<br>Electronic Roster Claims<br>CWF Edits on MAC (Part A) Claims<br>CWF Edits on MAC (Part B) Claims<br>CWF Crossover Edits for MAC (Part B) Claims Medicare Summary Notice (MSN) |
| 11360 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11362 | Claims Processing Instructions for the New Hepatitis B Vaccine Code 90759 |
| 11363 | New Waived Tests |
| 11365 | Update of Internet Only Manual (IOM), Pub. 100-04, Chapter 15 – Ambulance Fiscal Intermediary Shared System (FISS) Guidelines Confidentiality of Instruction |
| 11370 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11371 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11372 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11375 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11382 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11384 | Update to the Payment for Grandfathered Tribal Federally Qualified Health Centers (FQHCs) for Calendar Year (CY) 2022 |
| 11387 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11388 | National Coverage Determination (NCD) 210.14 Reconsideration – Screening for Lung Cancer with Low Dose Computed Tomography (LDCT)<br>Claim Adjustment Reason Codes (CARCs), Remittance Advice Remark Codes (RARCs), Group Codes, and Medicare Summary Notice (MSN) Messages<br>Common Working File (CWF) Edits |
| 11389 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11392 | Revisions to Chapters 3, "Inpatient Hospital Billing" of the Medicare Claims Processing Manual (Pub 100-04), 18, "Preventive and Screening Services" of the Medicare Claims Processing Manual (Pub 100-04), and 32 "Billing Requirements for Special Services" of the Medicare Claims Processing Manual (Pub 100-04) to Update Coding<br>Stem Cell Transplantation<br>Autologous Stem Cell Transplantation (AuSCT)<br>HCPCS and Diagnosis Codes for Mammography Services Screening Pap Smears: Diagnoses Codes<br>Diagnoses Codes<br>Stem Cell Transplantation<br>HCPCS and Diagnosis Coding for Stem Cell Transplantation -ICD-10-CM Applicable |
| | Suggested MSN and RA Messages<br>Clinical Trials for Allogeneic Hematopoietic Stem Cell Transplantation (HSCT) for Myelodysplastic Syndrome (MDS)<br>General<br>ICD-10 Diagnosis Codes for Vagus Nerve Stimulation (Covered since DOS on and after July 1, 1999)<br>Vagus Nerve Stimulation for TRD for Battery Replacement Professional Billing Requirements<br>Medicare Summary Notice (MSN), Remittance Advice Remark Code (RARC) and Claim Adjustment Reason Code (CARC) Messages<br>Advance Beneficiary Notice and HINN Information<br>Other<br>Claims Processing Requirements for Percutaneous Image-guided Lumbar Decompression (PILD) for Lumbar Spinal Stenosis (LSS) on Professional Claims<br>Claims Processing Requirements for PILD for Outpatient Facilities<br>A/B MAC (A) Revenue Code<br>A/B MAC Billing HCPCS Codes<br>A/B MAC Diagnosis and Procedure Code Requirements<br>Payment Requirements<br>Claim Adjustment Reason Codes (CARCs), Remittance Advice Remark Codes (RARCs), Group Codes, and Medicare Summary Notice (MSN) Messages<br>Claims Processing General Information<br>Institutional Claims Bill Type and Revenue Coding Information<br>Common Working File (CWF) FISS, and Multi-Carrier System (MCS) Editing |
| 11396 | Update to Chapters 3, 4, 27 and 37 of Publication (Pub.) 100-04 Medicare Claims Processing Manual to Remove Reference to the Term "OSCAR"<br>Swing-Bed Services<br>Affected Medicare Providers<br>Affected Medicare Providers<br>Inputs/Outputs to PRICER<br>Addendum A - Provider Specific File<br>Outpatient Provider Specific File<br>Consolidated Claims Crossover Process<br>Use of Legacy Provider Numbers After National Provider Identifiers (NPIs) Are Fully Implemented |
| 11397 | Indian Health Services (IHS) Hospital Payment Rates for Calendar Year 2022 |
| 11398 | Quarterly Update for Clinical Laboratory Fee Schedule (CLFS) and Laboratory Services Subject to Reasonable Charge Payment |
| 11401 | Quarterly Update to the End-Stage Renal Disease Prospective Payment System (ESRD PPS) |
| 11402 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11403 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11405 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11406 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11407 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11408 | Quarterly Update to the Medicare Physician Fee Schedule Database (MPFSDB) - July 2022 Update |
| 11410 | Issued to a specific audience, not posted to Internet/Intranet due to a |

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| | Confidentiality of Instruction |
| 11414 | Claims Processing Manual Update - Pub. 100-04 for Elimination of Certificates of Medical Necessity (CMNs) and Durable Medical Equipment Forms (DIFs)<br>Claims Processing Requirements - General<br>DME General Information<br>Where to Bill DMEPOS and PEN Items and Services<br>General Payment Rules<br>Payment for Replacement of Equipment<br>General Documentation Requirements<br>Remittance Advice Codes<br>Technical Requirements<br>Common Working File (CWF) Operations<br>Special Billing Instructions for the DMEPOS Competitive Bidding Program Requirements for Processing VA Durable Medical Equipment Prosthetics Orthotics and Supplies (DMEPOS) Claims |
| 11415 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11417 | Quarterly Update to Home Health (HH) Grouper |
| 11420 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11423 | Annual Updates to the Prior Authorization/Pre-Claim Review Federal Holiday Schedule Tables for Generating Reports |
| 11424 | Quarterly Update to the End-Stage Renal Disease Prospective Payment System (ESRD PPS) |
| 11425 | Update to the Payment for Grandfathered Tribal Federally Qualified Health Centers (FQHCs) for Calendar Year (CY) 2022 |
| 11426 | An Omnibus CR Covering: (1) Removal of Two National Coverage Determination (NCDs), (2) Updates to the Medical Nutrition Therapy (MNT) Policy, and (3) Updates to the Pulmonary Rehabilitation (PR), Cardiac Rehabilitation (CR), and Intensive Cardiac Rehabilitation (ICR) Conditions of Coverage<br>Cardiac Rehabilitation (CR) Programs, Intensive Cardiac Rehabilitation (ICR) Programs, and Pulmonary Rehabilitation (PR) Programs<br>CR Program Services Furnished On or Before December 31, 2009<br>Coding Requirements for CR Services Furnished On or Before Dec. 31, 2009<br>CR Program Services Furnished On or After January 1, 2010<br>Coding Requirements for CR Services Furnished On or After January 1, 2010<br>Claims Processing Requirements for CR and ICR Services Furnished On or After January 1, 2010<br>Frequency Edits for CR and ICR Claims<br>ICR Program Services Furnished On or After January 1, 2010<br>Coding Requirements for ICR Services Furnished On or After January 1, 2010<br>PR Program Services Furnished On or After January 1, 2010<br>Coding Requirements for PR Services Furnished On or After January 1, 2010<br>Edits for PR Services Exceeding 72 Sessions<br>General Conditions and Limitations on Coverage<br>Referrals for MNT Services<br>Payment for MNT Services<br>Edits for CR Services Exceeding 36 Sessions<br>Medical Nutrition Therapy (MNT) Services<br>Dieticians and Nutritionists Performing MNT Services<br>General Claims Processing Information |

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| | Rural Health Centers (RHCs)/Federally Qualified Health Centers (FQHCs) Special Billing Instructions<br>Common Working File (CWF) Edits |
| 11427 | Claims Processing Manual Update - Pub. 100.04 for Elimination of Certificates of Medical Necessity (CMNs) and Durable Medical Equipment Forms (DIFs)<br>Claims Processing Requirements - General<br>DME General Information<br>Where to Bill DMEPOS and PEN Items and Services<br>General Payment Rules<br>Payment for Replacement of Equipment<br>General Documentation Requirements<br>Remittance Advice Codes<br>Technical Requirements<br>Common Working File (CWF) Operations<br>Special Billing Instructions for the DMEPOS Competitive Bidding Program<br>Requirements for Processing VA Durable Medical Equipment Prosthetics Orthotics and Supplies (DMEPOS) Claims |
| 11429 | Oxygen and Oxygen Equipment |
| 11430 | Claims Processing Requirements - General<br>Home Infusion Drugs: Healthcare Common Procedural Coding System (HCPCS) Drug Codes |
| 11434 | July 2022 Integrated Outpatient Code Editor (I/OCE) Specifications Version 23.2 |
| 11435 | July 2022 Update of the Hospital Outpatient Prospective Payment System (OPPS) Comprehensive APCs |
| 11436 | October 2022 Healthcare Common Procedure Coding System (HCPCS) Quarterly Update Reminder |
| 11437 | New/Modifications to the Place of Service (POS) Codes for Telehealth |
| 11439 | Shared System Support Hours for Application Programming Interfaces (APIs) Place of Service Codes (POS) and Definitions |
| 11440 | Annual (2023) Update of the International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) |
| 11443 | File Conversions Related to the Spanish Translation of the Healthcare Common Procedure Coding System (HCPCS) Descriptions |
| 11445 | Revisions to Chapters 3, "Inpatient Hospital Billing" of the Medicare Claims Processing Manual (Pub 100-04), 18, "Preventive and Screening Services" of the Medicare Claims Processing Manual (Pub 100-04), and 32 "Billing Requirements for Special Services" of the Medicare Claims Processing Manual (Pub 100-04) to Update Coding |
| 11446 | Modifications to the National Coordination of Benefits Agreement (COBA) Medicare Claims Crossover Process |
| 11451 | July Quarterly Update for 2022 Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule |
| 11452 | July 2022 Update of the Ambulatory Surgical Center (ASC) Payment System |
| 11457 | July 2022 Update of the Hospital Outpatient Prospective Payment System (OPPS) |
| 11463 | Internet Only Manual Update to Publication 100-04, Chapter 16, Sections 70.5, 70.8, and 70.9 to Remove References to the Clinical Laboratory Improvement Amendments (CLIA) Files<br>CLIA Categories and Subcategories<br>Certificate of Waiver<br>HCPCS Subject to and Excluded from CLIA Edits |
| 11464 | Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction |
| 11465 | Changes to the Laboratory National Coverage Determination (NCD) Edit |

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| | Software for October 2022 |
| 11466 | Remittance Advice Remark Code (RARC), Claims Adjustment Reason Code (CARC), Medicare Remit Easy Print (MREP) and PC Print Update |
| 11467 | Implement Operating Rules - Phase III Electronic Remittance Advice (ERA) Electronic Funds Transfer (EFT): Committee on Operating Rules for Information Exchange (CORE) 360 Uniform Use of Claim Adjustment Reason Codes (CARC), Remittance Advice Remark Codes (RARC) and Claim Adjustment Group Code (CAGC) Rule - Update from Council for Affordable Quality Healthcare (CAQH) CORE |
| 11468 | Combined Common Edits/Enhancements Modules (CCEM) Code Set Update |
| 11469 | Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction |
| 11470 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11471 | Quarterly Update to the National Correct Coding Initiative (NCCI) Procedure-to-Procedure (PTP) Edits, Version 28.3, Effective October 1, 2022 |
| 11472 | July 2022 Update of the Ambulatory Surgical Center (ASC) Payment System |
| **Medicare Secondary Payer (CMS-Pub. 100-05)** | |
| 11381 | Updating the Common Working File (CWF) Logic Tied to Medicare Secondary Payer (MSP) Investigational Records to Match Newly Revised Development Timeframes<br>Overview of CWF MSP Processing<br>Medicare Secondary Payer (MSP) Maintenance Transaction<br>Record/Medicare Contractor MSP Auxiliary File Update Responsibility |
| 11411 | Automation of the Medicare Duplicate Primary Payment (DPP) Process |
| 11419 | Update the International Classification of Diseases, Tenth Revision (ICD-10) 2023 Tables in the Common Working File (CWF) for Purposes of Processing Non-Group Health Plan (NGHP) Medicare Secondary Payer (MSP) Records and Claims |
| **Medicare Financial Management (CMS-Pub. 100-06)** | |
| 11335 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11349 | Notice of New Interest Rate for Medicare Overpayments and Underpayments 3rd Qtr Notification for FY 2022 |
| 11462 | Federal Paper Tax Levy Federal Payment Levy Program – IRS Tax Levy Requests |
| **Medicare State Operations Manual (CMS-Pub. 100-07)** | |
| 206 | Revisions to the State Operations Manual (SOM) Appendix L - Ambulatory Surgical Centers and Chapter 9 Exhibits – Exhibit 351. |
| **Medicare Program Integrity (CMS-Pub. 100-08)** | |
| 11338 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11351 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11352 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11353 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11354 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11357 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11358 | Updates of Chapter 4 in Publication (Pub.) 100-08, Including Update to Medicare Program Integrity Contractor Investigative Timeliness Requirement, and Updates to Exhibit 5 - Background Information for Contractor Staff When Incentive Reward Program (IRP) is Questioned in Pub. 100-08<br>Investigations<br>Medical Review for Program Integrity Purposes<br>Requests for Information From Outside Organizations<br>Guidelines for Incentive Reward Program Complaint Tracking<br>Reward Payment Audit |
| 11359 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11379 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11380 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11404 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11422 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11428 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11431 | Publication (Pub.) 100-08, Chapter 5 Update - Planned Elimination of Certificates of Medical Necessity (CMN) and Durable Medical Equipment Information (DIF) Forms |
| 11432 | Transition of Enrollment and Certification Activities for Various Certified Provider and Supplier Types and Transactions<br>Community Mental Health Centers (CMHCs)<br>Comprehensive Outpatient Rehabilitation Facilities (CORFs)<br>Federally Qualified Health Centers (FQHCs<br>Home Health Agencies (HHAs)<br>HHA Ownership Changes<br>HHA Capitalization<br>Outpatient Physical Therapy/Outpatient Speech Pathology Services (OPT<br>Skilled Nursing Facilities (SNFs)<br>Ambulatory Surgical Centers (ASCs)<br>Portable X-Ray Suppliers (PXRSs)<br>Changes of Ownership (CHOWs) – Transitioned |
| 11441 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11444 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11449 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11454 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| **Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)** | |
| | None |
| **Medicare Quality Improvement Organization (CMS- Pub. 100-10)** | |
| | None |
| **Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14)** | |
| | None |
| **Medicaid Program Integrity Disease Network Organizations (CMS Pub 100-15)** | |
| | None |
| **Medicare Managed Care (CMS-Pub. 100-16)** | |
| | None |
| **Medicare Business Partners Systems Security (CMS-Pub. 100-17)** | |
| 11394 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |

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| 11450 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11458 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| | **Medicare Prescription Drug Benefit (CMS-Pub. 100-18)** |
| | None |
| | **Demonstrations (CMS-Pub. 100-19)** |
| 11383 | Calendar Year 2023 Modifications/Improvements to Value-Based Insurance Design (VBID) Model – Implementation |
| 11385 | Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions |
| | **One Time Notification (CMS-Pub. 100-20)** |
| 11333 | User Change Request (UCR): Fiscal Intermediary Shared System (FISS) – Claim Page 2 Adjustment Document Control Number (AD DCN) to Match the Claim Page 6 Cross Reference DCN (XREF DCN) |
| 11336 | Request for Read-Only Access to the CMS Shared Systems for the Comprehensive Error Rate Testing (CERT) Review Contractor (RC) |
| 11337 | Electronic Transmission of Medicare Administrative Contractor Provider Enrollment Recommendations of Approval |
| 11339 | Payment for Critical Access Hospitals (CAHs) Ancillary Services Submitted on 12X Type of Bill (TOB) Claim |
| 11340 | Updates to Current Inpatient Claim Edits |
| 11342 | International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determinations (NCDs) -- July 2022 |
| 11343 | System Limitation Update for Centralized Flu Billers (CFB), Pneumococcal and Covid-19 Vaccinations |
| 11345 | Instruction to the Multi-Carrier System Maintainer to Remove Edits 055D and 179D from the II99RBEA1 and II99RBEA2 Reports |
| 11346 | Updates For Medical Severity Diagnosis Related Groups (MS-DRG) Subject to Inpatient Prospective Payment System (IPPS) Replaced Devices Offered Without Cost or With a Credit Policy- Fiscal Years (FYs) 2021-2022 |
| 11347 | Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions |
| 11350 | Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions |
| 11356 | New State Codes for California |
| 11361 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11364 | Common Working File (CWF) Editing - National Coverage Determination (NCD) 270.3 Blood-Derived Products for Chronic, Non-Healing Wounds |
| 11367 | Section 127 of the Consolidated Appropriations Act: Graduate Medical Education (GME) Payment for Rural Track Programs (RTPs) |
| 11368 | User CR: ViPS Medicare System (VMS) - Allow Updates to the Submitted Medicare Beneficiary Identifier (MBI) |
| 11369 | User CR: MCS - SCF Claim Field Update for Rendering Provider Number |
| 11373 | Update the Common Working File Utilization Reject 86x7 and 86x6 |
| 11374 | Changes to Beneficiary Coinsurance for Additional Procedures Furnished During the Same Clinical Encounter As Certain Colorectal Cancer Screening Tests |
| 11376 | Medicare Summary Notice (MSN) Created with Wrong Beneficiary Data – Update Beneficiary Data Streamlining Logic |
| 11377 | Updating Reason Code 32287 Edit in the Fiscal Intermediary Shared System (FISS) to Allow Processing of Claims Containing COVID-19 Vaccine and Other Vaccines When Billed on the Same Claim |
| 11378 | Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions |
| 11390 | Implementation of the Award for the Jurisdiction K (J-K) Part A and Part B Medicare Administrative Contractor (JK A/B MAC) |
| 11391 | International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determinations (NCDs) -- July 2022 |
| 11393 | Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions |
| 11400 | International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determination (NCDs)--October 2022 Update |
| 11409 | User Enhancement - Update the Multi-Carrier System (MCS) to Display the Full History of a Claims' Audit Trail Location |
| 11412 | User Enhancement Multi-Carrier System (MCS) - Update the Procedure Code File Maintenance Screen Movement Functionality |
| 11413 | User CR: ViPS Medicare System (VMS) - Improve Transportation within VMS Subsystems |
| 11416 | User Change Request (UCR): Fiscal Intermediary Shared System (FISS) - Off-line History Retrieval of Canceled Claims |
| 11418 | Interns and Residents Information System (IRIS) XML Format |
| 11421 | Updates to Current Inpatient Claim Edits |
| 11433 | Update to Addition of Disposition Category "U" to Recovery Audit Contractor Data Warehouse (RACDW) Appeals Layout File - This CR Rescinds and Fully Replaces CR 12528. |
| 11442 | Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions |
| 11453 | International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determination (NCDs)--July 2021 |
| 11460 | International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determination (NCDs)--October 2022 Update |
| 11461 | National Coverage Determination (NCD) 90.2, Next Generation Sequencing (NGS) |
| | **Medicare Quality Reporting Incentive Programs (CMS- Pub. 100-22)** |
| | None |
| | **State Payment of Medicare Premiums (CMS-Pub.100-24)** |
| | None |
| | **Information Security Acceptable Risk Safeguards (CMS-Pub. 100-25)** |
| | None |

## Addendum II: Regulation Documents Published in the Federal Register (January through March 2022)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal Register,** contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at http://www.gpoaccess.gov/fr/index.html. The

following website http://www.archives.gov/federal-register/ provides information on how to access electronic editions, printed editions, and reference copies.

This information is available on our website at: https://www.cms.gov/files/document/regs2q22qpu.pdf

For questions or additional information, contact Terri Plumb (410-786-4481).

### Addendum III: CMS Rulings (April through June 2022)

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters.

The rulings can be accessed at http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings. For questions or additional information, contact Tiffany Lafferty (410-786-7548).

### Addendum IV: Medicare National Coverage Determinations (April through June 2022)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS website. For the purposes of this quarterly notice, we are providing only the specific updates to national coverage determinations (NCDs), or reconsiderations of completed NCDs published in the 3-month period. This information is available at: www.cms.gov/medicare-coverage-database/. For questions or additional information, contact Wanda Belle, MPA (410-786-7491).

| Title | NCDM Section | Transmittal Number | Issue Date | Effective Date |
|---|---|---|---|---|
| Screening for Lung Cancer with Low Dose Computed Tomography (LDCT) | NCD 210.14 | R11388 | 04/29/2022 | 02/10/2022 |

### Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (April through June 2022)

(Inclusion of this addenda is under discussion internally.)

### Addendum VI: Approval Numbers for Collections of Information (April through June 2022)

All approval numbers are available to the public at Reginfo.gov. Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain. For questions or additional information, contact William Parham (410-786-4669).

### Addendum VII: Medicare-Approved Carotid Stent Facilities (April through June 2022)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available at: http://www.cms.gov/MedicareApprovedFacilitie/CASF/list.asp#TopOfPage For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

| Facility | Provider Number | Date Approved | State |
|---|---|---|---|
| **The following facilities are new listings for this quarter.** | | | |
| Paoli Hospital<br>255 W. Lancaster Avenue<br>Paoli, PA 19301 | 390153 | 05/03/2022 | PA |
| French Hospital Medical Center<br>1911 Johnson Avenue<br>San Luis Obispo, CA 93401 | 050323 | 03/01/2022 | CA |

| Facility | Provider Number | Date Approved | State |
|---|---|---|---|
| Medical City Heart Hospital<br>11970 North Central Expressway<br>Dallas TX 75243 | 450647 | 05/02/2022 | TX |
| Stafford Hospital<br>101 Hospital Center Boulevard<br>Stafford, VA 22554 | 490140 | 07/11/2021 | VA |
| Merit Health River Oaks<br>1030 River Oaks Drive<br>Flowood, MS 39232 | 150138 | 05/24/2022 | MS |
| Ascension Saint Thomas Hospital West 4220 Harding Road<br>Nashville, TN 37202 | 440082 | 03/10/2022 | TN |
| Metropolitan Methodist Hospital<br>1310 McCullough Avenue<br>San Antonio, TX 78212 | 1124074273 | 05/24/2022 | TX |
| Baylor Medical Center at Waxahachie d/b/a Baylor Scott & White Medical Center – Waxahachie<br>2400 N lnterstate Highway 35 E<br>Waxahachie, TX 75165 | 450372 | 05/31/2022 | TX |
| Adventist Health Simi Valley<br>2975 Sycamore Drive<br>Simi Valley, CA 93065 | 050236 | 01/24/2022 | CA |
| Northbay Healthcare<br>1200 B. Gale Wilson Boulevard<br>Fairfield, CA 94533 | 1780736736 | 10/24/2021 | CA |
| Murray Calloway County Hospital<br>803 Poplar Street<br>Murray, KY 42071 | 180027 | 06/28/2022 | KY |
| Mount Auburn Hospital<br>330 Mount Auburn Street<br>Cambridge, MA 02138 | 220002 | 06/28/2022 | MA |
| Spotsylvania Regional Medical Center<br>4600 Spotsylvania Parkway<br>Fredericksburg, VA 22408 | 490141 | 06/28/2022 | VA |
| Three Crosses Regional Hospital<br>2560 Samaritan Drive<br>Las Cruces, NM 88001 | 1487248050 | 06/28/2022 | NM |
| HCA Florida Sarasota Doctors Hospital<br>5731 Bee Ridge Road<br>Sarasota, FL 34233 | 122515044 | 06/28/2022 | FL |
| **The following facilities have editorial changes (in bold).** | | | |
| **FROM: Middle Tennessee Medical Center**<br>**TO: Ascension Saint Thomas Rutherford Hospital**<br>**400 North Highland Avenue**<br>**Murfreesboro, TN 37133-1178** | 44-0053 | 05/09/2006 | TN |
| Ascension Saint Thomas Hospital Rutherford<br>**FROM: 400 North Highland Avenue**<br>**TO: 1700 Medical Center Parkway**<br>Murfreesboro, TN 37129 | 440053 | 05/09/2006 | TN |
| **FROM:** Saint Thomas Midtown Hospital<br>**TO: Ascension Saint Thomas Midtown**<br>2000 Church Street<br>Nashville, TN 37236 | **440082** | 02/08/2018 | TN |
| Ascension Saint Thomas Hospital<br>4220 Harding Road<br>Nashville, TN 37202 | 440082 | **03/10/2022** | TN |
| **FROM: Memorial Hospital of Tampa**<br>**TO: HCA Florida South Tampa Hospital**<br>2901 Swann Avenue<br>Tampa FL, 33609 | 1871935072 | 07/15/2011 | FL |
| **FROM: South Bay Hospital**<br>**TO: HCA Florida South Shore Hospital**<br>4016 Sun City Center Boulevard<br>Sun City Center, FL 33573 | 100259 | 03/05/2013 | FL |
| **FROM: Carilion New River Valley Medical Center**<br>**TO: New River Valley Medical Center**<br>2900 Lamb Circle<br>Christianburg, VA 24073 | 1295868792 | 06/15/2021 | VA |

## Addendum VIII: American College of Cardiology's National Cardiovascular Data Registry Sites (April through June 2022)

The initial data collection requirement through the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) has served to develop and improve the evidence base for the use of ICDs in certain Medicare beneficiaries. The data collection requirement ended with the posting of the final decision memo for Implantable Cardioverter Defibrillators on February 15, 2018.

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

## Addendum IX: Active CMS Coverage-Related Guidance Documents (April through June 2022)

CMS issued a guidance document on November 20, 2014 titled "Guidance for the Public, Industry, and CMS Staff: Coverage with Evidence Development Document". Although CMS has several policy vehicles relating to evidence development activities including the investigational device exemption (IDE), the clinical trial policy, national coverage determinations and local coverage determinations, this guidance document is principally intended to help the public understand CMS's implementation of coverage with evidence development (CED) through the

national coverage determination process. The document is available at http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=27. There are no additional Active CMS Coverage-Related Guidance Documents for the 3-month period. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

## Addendum X: List of Special One-Time Notices Regarding National Coverage Provisions (April through June 2022)

There were no special one-time notices regarding national coverage provisions published in the 3-month period. This information is available at http://www.cms.gov . For questions or additional information, contact JoAnna Baldwin, MS (410-786 7205).

## Addendum XI: National Oncologic PET Registry (NOPR) (April through June 2022)

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry. There were no additions, deletions, or editorial changes to the listing of National Oncologic Positron Emission Tomography Registry (NOPR) in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/NOPR/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA (410-786-3365).

## Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (April through June 2022)

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates to the list of Medicare-approved facilities that meet our standards that have occurred in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/VAD/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA, (410-786-3365).

| Facility | Provider Number | Date of Initial Certification | Date of Re-certification | State |
|---|---|---|---|---|
| **The following facility is new for this quarter.** | | | | |
| Orlando Health Heart and Vascular Institute<br>52 W Underwood St<br>Orlando, FL, 32806<br><br>Other information:<br>DNV certificate #:<br>10000497866-MSC-DNV-USA | 100006 | 04/15/2022 | N/A | FL |
| **The following facilities have editorial changes (in bold).** | | | | |
| University of Washington Medical Center<br>1959 Northeast Pacific Street, Box 356151<br>Seattle, WA 98195-6151<br><br>Other information:<br>Joint Commission ID # 9626<br><br>Previous Re-certification Dates: 02/10/2009; 10/18/2011; 11/22/2013; 12/08/2015; 12/05/2017; 11/20/2019 | 500008 | 02/10/2009 | **01/26/2022** | WA |
| Pitt County Memorial Hospital, Incorporated DBA Vidant Medical Center<br>2100 Stantonsburg Road<br>Greenville, NC 27835-6028<br><br>Other information:<br>Joint Commission ID # 6506<br><br>Previous Re-certification Dates: 09/26/2017; 12/17/2019 | 340040 | 09/26/2017 | **02/09/2022** | NC |
| University of Chicago Medical Center<br>5841 South Maryland Avenue | 140088 | 02/24/2009 | **01/22/2022** | IL |

| | | | | |
|---|---|---|---|---|
| Chicago, IL 60637<br><br>Other information:<br>Joint Commission ID # 7315<br><br>Previous Re-certification Dates: 02/24/2009; 08/17/2011; 09/04/2013; 09/15/2015; 10/24/2017; 12/17/2019 | | | | |
| Texas Heart Hospital of the Southwest, LLP<br>1100 Allied Drive<br>Plano, TX 75093<br><br>Other information:<br>Joint Commission ID # 440319<br><br>Previous Re-certification Dates: 06/15/2011; 07/09/2013; 07/14/2015; 08/22/2017; 09/07/2019 | 670025 | 06/15/2011 | **01/28/2022** | TX |
| Emory University Hospital<br>1364 Clifton Road NE<br>Atlanta, GA 30322<br><br>Other information:<br>Joint Commission ID # 6689<br><br>Previous Re-certification Dates: 08/18/2009; 09/09/2011; 08/29/2013; 08/11/2015; 09/26/2017; 11/20/2019 | 110010 | 08/18/2019 | **02/12/2022** | GA |
| Keck Hospital of USC<br>1500 San Pablo Street<br>Los Angeles, CA 90033<br><br>Other information:<br>Joint Commission ID # 5033<br><br>Previous Re-certification Dates: 03/13/2009; 08/16/2011; 09/10/2013; 10/06/2015; 10/20/2017; 12/04/2019 | 050696 | 03/13/2009 | **02/03/2022** | CA |
| **FROM: Jewish Hospital and St. Mary's Healthcare; TO: UofL Health - Louisville, Inc.**<br>200 Abraham Flexner Way<br>Louisville, KY 40202<br><br>Other information:<br>Joint Commission ID # 7765<br><br>Previous Re-certification Dates: 11/14/2008; 03/22/2011; 02/26/2013; 03/24/2015; 05/23/2017; 08/06/2019 | 180040 | 11/14/2008 | **02/23/2022** | KY |
| Banner-University Medical Center Tucson Campus<br>1625 North Campbell<br>Tucson, AZ 85719<br><br>Other information:<br>Joint Commission ID # 9514<br><br>Previous Re-certification Dates: 02/04/2009; 04/27/2011; 03/15/2013; 02/24/2015; 04/18/2017; 07/12/2019 | 030064 | 02/04/2009 | **03/05/2022** | AZ |
| Riverside Methodist Hospital<br>3535 Olentangy River Road<br>Columbus, OH 43214-3998<br><br>Other information:<br>Joint Commission ID # 7030<br><br>Previous Re-certification Dates: 07/14/2015; 08/29/2017; 10/23/2019 | 360006 | 07/14/2015 | **02/26/2022** | OH |
| Baptist Memorial Hospital - Memphis<br>6019 Walnut Grove Road<br>Memphis, TN 38120<br><br>Other information:<br>Joint Commission ID # 7869<br><br>Previous Re-certification Dates: 01/27/2009; 05/20/2011; 04/17/2013; 06/02/2015; 07/25/2017; 09/17/2019 | 440048 | 01/27/2009 | **02/19/2022** | TN |
| Ochsner Clinic Foundation<br>1516 Jefferson Highway<br>New Orleans, LA 70121<br><br>Other information:<br>Joint Commission ID # 8777 | 190036 | 05/28/2009 | **03/10/2022** | LA |

| | | | | |
|---|---|---|---|---|
| Previous Re-certification Dates: 05/28/2009; 11/09/2011; 12/12/2013; 01/05/2016; 12/12/2017; 03/12/2020 | | | | |
| **FROM: Largo Medical Center**<br>**TO: HCA Florida Largo Hospital**<br>201 14th Street SW<br>Largo, FL 33770<br><br>Other information:<br>DNV certificate #: C533100<br><br>Previous Re-certification Dates: 04/04/2019 | 100248 | 04/04/2019 | **05/05/2022** | FL |
| Banner - University Medical Center Phoenix<br>1111 East McDowell Road<br>Phoenix, AZ 85006<br><br>Other information:<br>Joint Commission ID # 9489<br><br>Previous Re-certification Dates: 05/19/2011; 05/07/2013; 06/09/2015; 07/25/2017; 07/10/2019 | 030002 | 05/19/2011 | **03/03/2022** | AZ |
| Cedars-Sinai Health System<br>8700 Beverly Blvd.<br>Los Angeles, CA 90048<br><br>Other information:<br>Joint Commission ID # 9792<br><br>Previous Re-certification Dates: 12/11/2008; 06/21/2011; 06/11/2013; 05/29/2015; 07/11/2017; 09/11/2019 | 050625 | 12/11/2008 | **02/26/2022** | CA |
| OHSU<br>3181 SW Sam Jackson Park Road MBS 2012M<br>Portland, OR, 97239<br><br>Other information:<br>DNV Certificate #: 10000477450-MSC-DNV-USA<br><br>Previous Re-certification Dates: 11/11/2008; 02/15/2011; 02/12/2013; 03/03/2015; 04/18/2017; 05/17/2019 | 100248 | 11/11/2008 | **04/22/2022** | OR |
| Florida Health Sciences Center Inc.<br>1 Tampa General Circle<br>Tampa, FL 33606<br><br>Other information:<br>Joint Commission ID # 6934<br><br>Previous Re-certification Dates: 12/19/2008; 04/05/2011; 04/09/2013; 04/21/2015; 06/06/2017; 07/24/2019 | 100128 | 12/19/2008 | **01/20/2022** | FL |
| Northwestern Memorial Hospital<br>251 E. Huron Street<br>Chicago, IL 60611<br><br>Other information:<br>Joint Commission ID # 7267<br><br>Previous Re-certification Dates: 01/30/2009; 06/17/2011; 05/31/2013; 06/09/2015; 08/18/2017; 11/06/2019 | 140281 | 01/30/2022 | **03/26/2022** | IL |
| Baylor University Medical Center (BUMC)<br>3500 Gaston Avenue<br>Dallas, TX 75246<br><br>Other information:<br>Joint Commission ID # 8993<br><br>Previous Re-certification Dates: 08/21/2007; 08/27/2009; 10/07/2011; 11/20/2013; 11/10/2015; 10/31/2017; 12/18/2019 | 450021 | 08/21/2007 | **03/24/2022** | TX |
| **FROM: New York-Presbyterian/Weill Cornell Medical Center**<br>**TO: New York-Presbyterian Hospital**<br>525 East 68th Street<br>New York, NY 10065<br><br>Other information:<br>Joint Commission ID # 5838<br><br>Previous Re-certification Dates: 03/03/2009; 07/14/2011; 08/21/2013; 09/23/2015; 10/25/2017; 01/24/2020 | 330101 | 03/03/2009 | **03/31/2022** | NY |

| | | | | |
|---|---|---|---|---|
| Providence Sacred Heart Medical Center & Children's Hospital<br>101 West 8th Avenue<br>Spokane, WA 99204<br><br>Other information:<br>Joint commission ID #: 9638<br>Previous Re-certification Dates: 03/10/2009; 08/17/2011; 08/06/2013; 07/14/2015; 09/12/2017; 11/05/2019 | 500054 | 03/10/2009 | **04/20/2022** | WA |
| Spectrum Health Hospitals<br>100 Michigan Street, NE<br>Grand Rapids, MI 49503<br><br>Other information:<br>Joint Commission ID # 277668<br><br>Previous Re-certification Dates: 04/26/2011; 06/18/2013; 05/19/2015; 06/20/2017; 09/25/2019 | 230038 | 04/26/2011 | **04/07/2022** | MI |

**Addendum XIII: Lung Volume Reduction Surgery (LVRS) (April through June 2022)**

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. There were no updates to the listing of facilities for lung volume reduction surgery published in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/LVRS/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

**Addendum XIV: Medicare-Approved Bariatric Surgery Facilities (April through June 2022)**

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

There were no additions, deletions, or editorial changes to Medicare-approved facilities that meet CMS' minimum facility standards for bariatric surgery that have been certified by ACS and/or ASMBS in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/BSF/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

**Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (April through June 2022)**

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the 3-month period.

This information is available on our website at www.cms.gov/MedicareApprovedFacilitie/PETDT/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA (410-786-3365).

[FR Doc. 2022–16717 Filed 8–3–22; 8:45 am]
BILLING CODE 4120–01–C

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0297]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Production, Storage and Transportation of Shell Eggs (Preventing Salmonella Enteritidis (SE))

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments (including recommendations) on the collection of information by September 6, 2022.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0660. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Production, Storage and Transportation of Shell Eggs (Preventing Salmonella Enteritidis (SE))

*OMB Control Number 0910–0660—Extension—21 CFR 118.10 and 118.11*

This information collection supports Agency regulations in part 118 (21 CFR part 118), Production, Storage, and Transportation of Shell Eggs, and Form FDA 3733, Shell Egg Producer Registration Form. The Public Health Service Act (PHS Act) (42 U.S.C. 264) authorizes the Secretary of Health and Human Services to make and enforce such regulations as ''are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States . . . or from one State . . . into any other State'' (section 361(a) of the PHS Act (42 U.S.C. 264(a))). This authority has been delegated to the Commissioner of Food and Drugs. Under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 342(a)(4)), a food is adulterated if it is prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth or rendered injurious to health. Under section 701(a) of the FD&C Act (21 U.S.C. 371(a)), FDA is authorized to issue regulations for the efficient enforcement of the FD&C Act.

Under part 118, shell egg producers are required to implement measures to prevent SE from contaminating eggs on the farm and from further growth during storage and transportation. Shell egg producers also are required to maintain records concerning their compliance with part 118 and to register with FDA. As described in more detail about each information collection provision of part 118, each farm site with 3,000 or more egg laying hens that sells raw shell eggs to the table egg market, other than directly to the consumer, must refrigerate, register, and keep certain records. Farms that do not send all their eggs to treatment are also required to have an SE prevention plan and to test for SE.

Section 118.10 of FDA's regulations requires recordkeeping for all measures the farm takes to prevent SE in its flocks. Since many existing farms participate in voluntary egg quality assurance programs, those respondents may not have to collect any additional information. Records are maintained on file at each farm site and examined there periodically by FDA inspectors.

Section 118.10 also requires each farm site with 3,000 or more egg laying hens that sells raw shell eggs to the table egg market, other than directly to the consumer, and does not have all of the shell eggs treated, to design and implement an SE prevention plan.

Section 118.10 requires recordkeeping for each of the provisions included in the plan and for plan review and modifications if corrective actions are taken.

Finally, § 118.11 of FDA's regulations requires that each farm covered by § 118.1(a) register with FDA using Form FDA 3733. The term ''Form FDA 3733'' refers to both the paper version of the form and the electronic system known as the Shell Egg Producer Registration Module, which is available at *https://www.access.fda.gov.* We strongly encourage electronic registration because it is faster and more convenient. The system can accept electronic registrations 24 hours a day, 7 days a week. A registering shell egg producer receives confirmation of electronic registration instantaneously once all the required fields on the registration screen are completed. However, paper registrations will also be accepted. Form FDA 3733 is available for download for registration by mail, fax, or CD–ROM. For more information, we invite you to visit our websites at: *https://www.fda.gov/food/registration-food-facilities-and-other-submissions/shell-egg-producer-registration* and *http://www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/ShellEggProducerRegistration/ucm217952.htm.*

Recordkeeping and registration are necessary for the success of the SE prevention measures. Written SE prevention plans and records of actions taken due to each provision are essential for farms to implement SE prevention plans effectively. Further, they are essential for us to be able to determine compliance. Information provided under these regulations helps us to quickly notify the facilities that might be affected by a deliberate or accidental contamination of the food supply. In addition, data collected through registration is used to support our enforcement activities.

*Description of Respondents:* Respondents to this information collection include farm sites with 3,000 or more egg laying hens that sell raw eggs to the table egg market, other than directly to the consumer.

In the **Federal Register** of January 19, 2022 (87 FR 2797), FDA published a 60-day notice requesting public comment on the proposed collection of information. Two comments were received, however only one was responsive to the four information collection topics solicited.

The comment suggested that farms could save money by pooling samples while conducting environmental testing, proffering a 2015 research article. FDA reviewed the 2015 research article by Kinde et al. and had additional questions about the equivalency of pooled versus non-pooled samples. This

led to a subsequent 2020 study conducted and published by Jones et al., which found that analysis of pooled samples was not equivalent to that of single samples. In environmental samples, the level of background microflora plays a role in the ability to detect SE, if present. When samples are pooled, the amount of background microflora is amplified, potentially causing the inability to detect SE by masking its presence. This is further exacerbated based on the number of pooled samples (*e.g.,* two vs. four samples per collection bag) and could result in false negative test results. After consideration of the science, FDA determined that at this time, there is not sufficient data to consider pooled samples equivalent to single samples, as required by the reference methods cited in § 118.8. While we understand cost considerations are important, the primary concern should always be the ability to detect SE if it is present.

The comment also suggested adjusting the egg testing protocol to two 1,000-egg samples instead of four 1,000-egg samples. Testing four 1,000-egg samples over an 8-week period results in approximately a 95 percent probability that a positive egg will be detected from a flock that is producing SE-contaminated eggs with a prevalence of 1 in 1,400. Testing fewer than 4,000 eggs over a period of 8 weeks, as required by § 118.7, would result in less than a 95 percent probability that a positive egg would be detected from a flock that is producing SE-contaminated eggs at that rate.

We find that the required testing established under 21 CFR 118.7 and 118.8 best protects the public health and that relaxing the current testing requirements, whether or not in an effort to reduce costs, would not provide the same level of protection necessary to ensure the public health.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| Activity; 21 CFR section | Number of record-keepers [2] | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| Refrigeration Records; § 118.10(a)(3)(iv) | 2,600 | 52 | 135,200 | 0.5 (30 minutes) | 67,600 |
| Testing, Diversion, and Treatment Records; § 118.10(a)(3)(v) through (viii) (positive) [3]. | 343 | 52 | 17,836 | 0.5 (30 minutes) | 8,918 |
| Egg Testing; § 118.10(a)(3)(vii) | 331 | 7 | 2,317 | 8.3 | 19,231 |
| Environmental Testing; § 118.10(a)(3)(v) [3] | 6,308 | 23 | 145,084 | 0.25 (15 minutes) | 36,271 |
| Testing, Diversion, and Treatment Records; § 118.10(a)(3)(v) through (viii) (negative) [3]. | 5,965 | 1 | 5,965 | 0.5 (30 minutes) | 2,983 |
| Prevention Plan Review and Modifications; § 118.10(a)(4). | 331 | 1 | 331 | 10 | 3,310 |
| Chick and Pullet Procurement Records; § 118.10(a)(2) | 4,731 | 1 | 4,731 | 0.5 (30 minutes) | 2,366 |
| Rodent and Other Pest Control; § 118.10(a)(3)(ii), and Biosecurity Records, § 118.10(a)(3)(i). | 9,462 | 52 | 492,024 | 0.5 (30 minutes) | 246,012 |
| Prevention Plan Design; § 118.10(a)(1) | 350 | 1 | 350 | 20 | 7,000 |
| Cleaning and Disinfection Records; § 118.10(a)(3)(iii) | 331 | 1 | 331 | 0.5 (30 minutes) | 166 |
| Total | | | | | 393,857 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Some records are kept on a by-farm basis and others are kept on a by-house basis.
[3] Calculations include requirements for pullet and layer houses.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity; 21 CFR section | Form | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|---|
| Registrations or Updates; § 118.11 | FDA 3733 [2] | 350 | 1 | 350 | 2.3 | 805 |
| Cancellations; § 118.11 | FDA 3733 | 30 | 1 | 30 | 1 | 30 |
| Total | | | | | | 835 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The term "Form FDA 3733" refers to both the paper version of the form and the electronic system known as the Shell Egg Producer Registration Module, which is available at *http://www.access.fda.gov* per § 118.11(b)(1).

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate. Our estimates for the recordkeeping burden and the reporting burden are based on our experience with similar recordkeeping activities and the number of registrations and cancellations received in the past 3 years.

Dated: July 29, 2022.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2022–16686 Filed 8–3–22; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Meeting of the Advisory Committee on Heritable Disorders in Newborns and Children

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Advisory Committee Act and the Public Health Service Act, this notice announces a public meeting of the Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC or Committee). Information about the ACHDNC and the agenda for this meeting can be found on the ACHDNC website at *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.*

**DATES:** Tuesday, August 30, 2022, from 10:00 a.m. to 2:00 p.m. Eastern Time (ET) and Wednesday, August 31, 2022, from 10:00 a.m. to 1:00 p.m. ET.

**ADDRESSES:** This meeting will be held via webinar. While this meeting is open to the public, advance registration is required.

Please register online at *https://www.achdncmeetings.org/registration/* by the deadline of 12:00 p.m. ET on August 29, 2022. Instructions on how to access the meeting via webcast will be provided upon registration.

**FOR FURTHER INFORMATION CONTACT:** Alaina Harris, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18W66, Rockville, Maryland 20857; 301–443–0721; or *ACHDNC@hrsa.gov.*

**SUPPLEMENTARY INFORMATION:** ACHDNC provides advice and recommendations to the Secretary of HHS (Secretary) on the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. ACHDNC reviews and reports regularly on newborn and childhood screening practices, recommends improvements in the national newborn and childhood screening programs, and fulfills requirements stated in the authorizing legislation. In addition, ACHDNC's recommendations regarding inclusion of additional conditions for screening on the Recommended Uniform Screening Panel, following adoption by the Secretary, are evidence-informed preventive health services provided for in the comprehensive guidelines supported by HRSA, pursuant to section 2713 of the Public Health Service Act (42 U.S.C. 300gg–13). Under this provision, non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance are required to provide insurance coverage without cost-sharing (a co-payment, co-insurance, or deductible) for preventive services for plan years (*i.e.,* policy years) beginning on or after the date that is one year from the Secretary's adoption of the condition for screening.

During the August 30–31, 2022, meeting, ACHDNC will hear from experts in the fields of public health, medicine, heritable disorders, rare disorders, and newborn screening. Agenda items include the following:

(1) A presentation on phase one of the Krabbe disease evidence review;

(2) A presentation and Committee discussion on the infant formula shortage;

(3) A presentation and Committee discussion on advancing the newborn screening system;

(4) A presentation on the Long-term Follow-up for Severe Combined Immunodeficiency and Other Newborn Screening Conditions Program; and

(5) Workgroup updates.

The agenda for this meeting does not include any vote or decision to recommend a condition for inclusion in the Recommended Uniform Screening Panel. As noted in the agenda items, the Committee will hear presentation on evidence review of Krabbe disease, which may lead to such a recommendation at a future time.

Agenda items are subject to change as priorities dictate. Information about ACHDNC, including a roster of members and past meeting summaries, is also available on the ACHDNC website.

Members of the public also will have the opportunity to provide comments. Public participants may request to provide general oral comments and may submit written statements in advance of the scheduled meeting. The Committee will honor oral comments in the order they are requested and may be limited as time allows. Participants who wish to provide a written statement or make oral comments to ACHDNC must submit their request via the registration website by 12:00 p.m. ET on Wednesday, August 24, 2022.

Individuals who need special assistance or another reasonable accommodation should notify Alaina Harris at the address and phone number listed above at least 10 business days prior to the meeting.

**Maria G. Button,**

*Director, Executive Secretariat.*

[FR Doc. 2022–16654 Filed 8–3–22; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel Role of FSH—II.

*Date:* August 30, 2022.

*Time:* 12:30 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* NIJAGUNA PRASAD, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Bldg, Suite 2W200, Bethesda, MD 20892, (301) 496–9667, *prasadnb@nia.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 1, 2022.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2022–16716 Filed 8–3–22; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fellowships in Digestive Diseases and Nutrition.

*Date:* October 13–14, 2022.

*Time:* 10:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

*Contact Person:* Jian Yang, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 28, 2022.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2022–16648 Filed 8–3–22; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2260]**

### 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 November 2, 2022.

**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–2260, 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.'')

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.*

| Community | Community map repository address |
|---|---|
| **Yavapai County, Arizona and Incorporated Areas<br>Project: 17–09–1408S Preliminary Dates: June 30, 2020 and March 01, 2022** | |
| City of Cottonwood | Public Works, 1490 West Mingus Avenue, Cottonwood, AZ 86326. |
| Town of Camp Verde | Town Hall, 473 South Main Street, Room 108, Camp Verde, AZ 86322. |
| Yavapai County Unincorporated Areas | Yavapai County Flood Control District, 1120 Commerce Drive, Prescott, AZ 86305. |
| **Alpine County, California Unincorporated Areas<br>Project: 20–09–0023S Preliminary Date: April 28, 2022** | |
| Alpine County Unincorporated Areas | Alpine County Public Works Community Development, 50 Diamond Valley Road, Markleeville, CA 96120. |

[FR Doc. 2022–16748 Filed 8–3–22; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2257]**

### 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 November 2, 2022.

**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–2257, 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.'')

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.*

| Community | Community map repository address |
|---|---|
| **Allen County, Indiana and Incorporated Areas<br>Project: 14–05–4448S Preliminary Date: December 09, 2021** | |
| City of Woodburn | Allen County Department of Planning Services, 200 East Berry Street, Suite 150, Fort Wayne, IN 46802. |
| Town of Monroeville | Town Hall, 104 Allen Street, Monroeville, IN 46773. |
| Unincorporated Areas of Allen County | Allen County Department of Planning Services, 200 East Berry Street, Suite 150, Fort Wayne, IN 46802. |
| **Athens County, Ohio and Incorporated Areas<br>Project: 12–05–3508S Revised Preliminary Date: November 30, 2021** | |
| City of Athens | City Hall, 8 East Washington Street, Athens, OH 45701. |
| City of Nelsonville | City Hall, 211 Lake Hope Drive, Nelsonville, OH 45764. |
| Unincorporated Areas of Athens County | Athens Code Enforcement Office, 28 Curran Drive, Athens, OH 45701. |
| Village of Buchtel | Buchtel Village Mayor's Office, 17710 North Akron Avenue, Buchtel, OH 45716. |
| Village of Chauncey | Chauncey City Building, 42 Converse Street, Chauncey, OH 45719. |

[FR Doc. 2022–16753 Filed 8–3–22; 8:45 am]
**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2254]**

### 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 November 2, 2022.

**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–2254, 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.'')

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.*

| Community | Community map repository address |
|---|---|
| **Cass County, Nebraska and Incorporated Areas Project: 17–07–0403S Preliminary Date: February 17, 2022** | |
| City of Plattsmouth | City Hall, 136 North 5th Street, Plattsmouth, NE 68048. |
| Unincorporated Areas of Cass County | Cass County Courthouse, 346 Main Street, Plattsmouth, NE 68048. |
| **Sarpy County, Nebraska and Incorporated Areas Project: 17–07–0403S Preliminary Date: February 17, 2022** | |
| City of Bellevue | Planning Department, 1510 Wall Street, Bellevue, NE 68005. |
| City of Gretna | City Hall, 204 North McKenna Avenue, Gretna, NE 68028. |
| City of La Vista | City Hall, 8116 Park View Boulevard, La Vista, NE 68128. |
| City of Papillion | City Hall, 122 East 3rd Street, Papillion, NE 68046. |
| City of Springfield | City Hall, 170 North 3rd Street, Springfield, NE 68059. |
| Unincorporated Areas of Sarpy County | Sarpy County Administration Building, Planning and Building Department, 1210 Golden Gate Drive, Papillion, NE 68046. |

[FR Doc. 2022–16755 Filed 8–3–22; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2022–0002]**

### 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 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 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.'')

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.*

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Date of modification | Community No. |
|---|---|---|---|---|---|
| Colorado: Arapahoe (FEMA Docket No.: B–2232) | City of Greenwood Village (21–08–0598P) | The Honorable George Lantz, Mayor, City of Greenwood Village, 6060 South Quebec Street, Greenwood Village, CO 80111. | City Hall, 6060 South Quebec Street, Greenwood Village, CO 80111. | Jul. 15, 2022 | 080195 |
| Florida: | | | | | |
| Lake (FEMA Docket No.: 2231). | City of Leesburg (22–04–1150P). | Al Minner, Manager, City of Leesburg, P.O. Box 490630, Leesburg, FL 34749. | Planning and Zoning Department, 204 North 5th Street, Leesburg, FL 34748. | Jul. 13, 2022 | 120136 |
| Lake (FEMA Docket No.: B–2231). | Unincorporated areas of Lake County (22–04–1150P). | Jennifer Barker, Lake County Interim Manager, P.O. Box 7800, Tavares, FL 32778. | Lake County Public Works Department, 323 North Sinclair Avenue, Tavares, FL 32778. | Jul. 13, 2022 | 120421 |
| Manatee (FEMA Docket No.: B–2231). | Unincorporated areas of Manatee County (21–04–0488P). | The Honorable Kevin Van Ostenbridge, Chair, Manatee County Board of Commissioners, 1112 Manatee Avenue West, Bradenton, FL 34205. | Manatee County Building and Development Services Department, 1112 Manatee Avenue West, Bradenton, FL 34205. | Jul. 12, 2022 | 120153 |
| Marion (FEMA Docket No.: B–2231). | City of Ocala (21–04–4034P). | Sandra R. Wilson, Manager, City of Ocala, 110 Southeast Watula Avenue, Ocala, FL 34471. | Stormwater Engineering Department, 1805 Northeast 30th Avenue, Building 300, Ocala, FL 34470. | Jul. 7, 2022 | 120330 |
| Monroe (FEMA Docket No.: B–2231). | Unincorporated areas of Monroe County (22–04–1070P). | The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050. | Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050. | Jul. 11, 2022 | 125129 |
| Palm Beach (FEMA Docket No.: B–2232). | Unincorporated areas of Palm Beach County (21–04–3850P). | Verdenia C. Baker, Palm Beach County Administrator, 301 North Olive Avenue, West Palm Beach, FL 33401. | Palm Beach County Building Division, 2300 North Jog Road, West Palm Beach, FL 33411. | Jul. 13, 2022 | 120192 |
| Walton (FEMA Docket No.: B–2231). | Unincorporated areas of Walton County (20–04–4412P). | The Honorable Michael Barker, Chair, Walton County Board of Commissioners, 552 Walton Road, DeFuniak Springs, FL 32433. | Walton County Administration Building, 76 North 6th Street, DeFuniak Springs, FL 32433. | Jul. 12, 2022 | 120317 |
| Maine: York (FEMA Docket No.: B–2231). | Town of Kennebunk (21–01–1064P). | Michael W. Pardue, Manager, Town of Kennebunk, 1 Summer Street, Kennebunk, ME 04043. | Town Hall, 1 Summer Street, Kennebunk, ME 04043. | Jul. 11, 2022 | 230151 |
| North Carolina: | | | | | |
| Cabarrus (FEMA Docket No.: B–2251). | Unincorporated areas of Cabarrus County (21–04–2265P). | The Honorable Steve Morris, Chair, Cabarrus County Board of Commissioners, P.O. Box 707, Concord, NC 28026. | Cabarrus County Planning Services Department, 65 Church Street Southeast, Concord, NC 28025. | Jul. 11, 2022 | 370036 |
| Harnett (FEMA Docket No.: B–2251). | Unincorporated areas of Harnett County (21–04–4957P). | The Honorable Lewis Weatherspoon, Chair, Harnett County, Board of Commissioners, 455 McKinney Parkway, Lillington, NC 27546. | Harnett County, Planning Services Department, 102 East Front Street, Lillington, NC 27546. | Jul. 20, 2022 | 370328 |
| Mecklenburg (FEMA Docket No.: B–2231). | Town of Mint Hill (21–04–4211P). | The Honorable Brad Simmons, Mayor, Town of Mint Hill, 4430 Mint Hill Village Lane, Mint Hill, NC 28227. | Planning Department, 4430 Mint Hill Village Lane, Mint Hill, NC 28227. | Jul. 13, 2022 | 370539 |
| North Dakota: Burleigh (FEMA Docket No.: B–2231). | City of Bismarck (21–08–1104P). | The Honorable Steven Bakken, Mayor, City of Bismarck, P.O. Box 5503, Bismarck, ND 58506. | Community Development Department, 221 North 5th Street, Bismarck, ND 58501. | Jul. 13, 2022 | 380149 |
| Texas: | | | | | |
| Bexar (FEMA Docket No.: B–2232). | City of San Antonio (21–06–2757P). | The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283. | Transportation and Capital Improvements Department, Stormwater Division, 1901 South Alamo Street, San Antonio, TX 78204. | Jul. 11, 2022 | 480045 |
| Harris (FEMA Docket No.: B–2232). | Unincorporated areas of Harris County (21–06–1709P). | The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002. | Harris County Engineering Department, Permit Division, 10555 Northwest Freeway, Suite 120, Houston, TX 77002. | Jul. 18, 2022 | 480287 |
| Harris (FEMA Docket No.: B–2232). | Unincorporated areas of Harris County (21–06–3108P). | The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002. | Harris County Engineering Department, Permit Division, 10555 Northwest Freeway, Suite 120, Houston, TX 77002. | Jul. 18, 2022 | 480287 |
| McLennan (FEMA Docket No.: B–2231). | City of Hewitt (21–06–1238P). | The Honorable Steve Fortenberry, Mayor, City of Hewitt, 200 Patriot Court, Hewitt, TX 76643. | Community Services Department, 103 North Hewitt Drive, Hewitt, TX 76643. | Jul. 12, 2022 | 480458 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Date of modification | Community No. |
|---|---|---|---|---|---|
| McLennan (FEMA Docket No.: B–2231). | City of Waco (21–06–1238P). | The Honorable Dillon Meek, Mayor, City of Waco, 300 Austin Avenue, Waco, TX 76702. | City Hall, 300 Austin Avenue, Waco, TX 76702. | Jul. 12, 2022 | 480461 |
| Montgomery (FEMA Docket No.: B–2232). | Unincorporated areas of Montgomery County (21–06–1709P). | The Honorable Mark J. Keough, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301. | Montgomery County Engineering Department, 501 North Thompson Street, Suite 103, Conroe, TX 77301. | Jul. 18, 2022 | 480483 |
| Tarrant (FEMA Docket No.: B–2231). | City of Fort Worth (21–06–1533P). | The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102. | Department of Transportation and Public Works, 200 Texas Street, Fort Worth, TX 76102. | Jul. 11, 2022 | 480596 |
| Webb (FEMA Docket No.: B–2232). | City of Laredo (21–06–1751P). | The Honorable Pete Saenz, Mayor, City of Laredo, 1110 Houston Street, 3rd Floor, Laredo, TX 78040. | Planning and Zoning Department, 1413 Houston Street, Laredo, TX 78040. | Jul. 7, 2022 | 480651 |
| Williamson (FEMA Docket No.: B–2231). | Unincorporated areas of Williamson County (21–06–2883P). | The Honorable Bill Gravell, Jr., Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626. | Williamson County Engineering Department, 3151 Southeast Inner Loop, Georgetown, TX 78626. | Jul. 7, 2022 | 481079 |
| Utah: | | | | | |
| Wasatch (FEMA Docket No.: B–2232). | Town of Wallsburg (21–08–0901P). | The Honorable Celeni Richins, Mayor, Town of Wallsburg, 70 West Main Canyon Road, Wallsburg, UT 84082. | Town Hall, 70 West Main Canyon Road, Wallsburg, UT 84082. | Jul. 14, 2022 | 490168 |
| Wasatch (FEMA Docket No.: B–2232). | Unincorporated areas of Wasatch County (21–08–0901P). | Dustin Grabau, Wasatch County Manager, 25 North Main Street, Heber City, UT 84032. | Wasatch County Planning Department, 55 South 500 Street East, Heber City, UT 84032. | Jul. 14, 2022 | 490164 |
| Virginia: Albemarle (FEMA Docket No.: B–2231). | Unincorporated areas of Albemarle County (21–03–1458P). | Jeff Richardson, Albemarle County Executive, 401 McIntire Road, Suite 228, Charlottesville, VA 22902. | Albemarle County Community Development Department, 401 McIntire Road, Charlottesville, VA 22902. | Jul. 13, 2022 | 510006 |

[FR Doc. 2022–16756 Filed 8–3–22; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2261]**

### 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 November 2, 2022.

**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–2261, 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.'')

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.*

| Community | Community map repository address |
|---|---|
| **Benton County, Iowa and Incorporated Areas<br>Project: 19–07–0013S Preliminary Date: April 29, 2022** | |
| City of Vinton | City Hall, 110 West 3rd Street, Vinton, IA 52349. |
| Unincorporated Areas of Benton County | Benton County Courthouse, 111 East 4th Street, Vinton, IA 52349. |
| **Douglas County, Nebraska and Incorporated Areas<br>Project: 17–07–0403S Preliminary Date: February 17, 2022** | |
| City of Bennington | City Office, 15505 Warehouse Street, Bennington, NE 68007. |
| City of Omaha | Omaha-Douglas Civic Center, 1819 Farnam Street, Omaha, NE 68183. |
| City of Ralston | City Hall, 5500 South 77th Street, Ralston, NE 68127. |
| City of Valley | City Hall, 203 North Spruce Street, Valley, NE 68064. |
| Unincorporated Areas of Douglas County | Douglas County Environmental Services, 15335 West Maple Road, Suite 201, Omaha, NE 68116. |
| Village of Boys Town | Village Hall, 14100 Crawford Street, Boys Town, NE 68010. |
| Village of Waterloo | Village Office, 509 South Front Street, Waterloo, NE 68069. |

[FR Doc. 2022–16749 Filed 8–3–22; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2259]**

### 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.'')

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.*

| 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. |
|---|---|---|---|---|---|---|
| Arizona: | | | | | | |
| Yavapai | Town of Chino Valley (21–09–0899P). | The Honorable Jack W. Miller, Mayor, Town of Chino Valley, 202 North State Route 89, Chino Valley, AZ 86323. | Development Services and Planning Department, 1982 Voss Drive, Suite 203, Chino Valley, AZ 86323. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 28, 2022 | 040094 |
| Yavapai | Unincorporated areas of Yavapai County (21–09–0899P). | The Honorable Mary L. Mallory, Chair, Yavapai County, Board of Supervisors, 1015 Fair Street, Prescott, AZ 86305. | Yavapai County Flood Control District, 1120 Commerce Drive, Prescott, AZ 86305. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 28, 2022 | 040093 |
| Colorado: Arapahoe. | Unincorporated areas of Arapahoe County (21–08–0286P). | The Honorable Nancy Jackson, Chair, Arapahoe County, Board of Commissioners, 5334 South Prince Street, Littleton, CO 80120. | Arapahoe County Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 14, 2022 | 080011 |
| Delaware: Sussex | Unincorporated areas of Sussex County (22–03–0052P). | The Honorable Michael H. Vincent, President, Sussex County Council, P.O. Box 589, Georgetown, DE 19947. | Sussex County Planning and Zoning Department, 2 The Circle, Georgetown, DE 19947. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 13, 2022 | 100029 |
| Florida: | | | | | | |
| Alachua | Unincorporated areas of Alachua County (22–04–1999P). | The Honorable Marihelen Wheeler, Chair, Alachua County, Board of Commissioners, 12 Southeast 1st Street, Gainesville, FL 32601. | Alachua County Public Works Department, 5620 Northwest 120th Lane, Gainesville, FL 32653. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 2, 2022 | 120001 |
| Broward | City of Lighthouse Point (22–04–0733P). | The Honorable Kyle Van Buskirk, Mayor, City of Lighthouse Point, 2200 Northeast 38th Street, Lighthouse Point, FL 33064. | Building Department, 3701 Northeast 22nd Avenue, Lighthouse Point, FL 33064. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 2, 2022 | 125125 |
| Collier | City of Naples (22–04–3060P). | The Honorable Teresa Heitmann, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102. | Building Department, 295 Riverside Circle, Naples, FL 34102. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 7, 2022 | 125130 |
| Lee | Unincorporated areas of Lee County (22–04–1388P). | Roger Desjarlais, Manager, Lee County, 2115 2nd Street, Fort Myers, FL 33901. | Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 4, 2022 | 125124 |
| Osceola | City of St. Cloud (21–04–4346P). | Bill Sturgeon, Manager, City of St. Cloud, 1300 9th Street, St. Cloud, FL 34769. | Building Department, 1300 9th Street, St. Cloud, FL 34769. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 4, 2022 | 120191 |
| Osceola | Unincorporated areas of Osceola County (21–04–4346P). | Don Fisher, Manager, Osceola County, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741. | Osceola County Public Works Department, 1 Courthouse Square, Suite 3100, Kissimmee, FL 34741. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 4, 2022 | 120189 |

| 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. |
|---|---|---|---|---|---|---|
| St. Johns | Unincorporated areas of St. Johns County (21–04–4854P). | Hunter Conrad, St. Johns County Administrator, 500 San Sebastian View, St. Augustine, FL 32084. | St. Johns County Planning Department, 4040 Lewis Speedway, St. Augustine, FL 32084. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 31, 2022 | 125147 |
| New Hampshire: Carroll. | Town of Jackson (22–01–0604P). | The Honorable Barbara Campbell, Chair, Town of Jackson, Board of Selectmen, 54 Main Street, Jackson, NH 03846. | Building Department, 54 Main Street, Jackson, NH 03846. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 11, 2022 | 330014 |
| North Carolina: | | | | | | |
| Durham | City of Durham (21–04–3214P). | The Honorable Elaine O'Neal, Mayor, City of Durham, 101 City Hall Plaza, Durham, NC 27701. | Durham City-County Hall, 101 City Hall Plaza, Durham, NC 27701. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 28, 2022 | 370086 |
| Forsyth | City of Winston-Salem (21–04–4302P). | The Honorable Allen Joines, Mayor, City of Winston-Salem, P.O. Box 2511, Winston-Salem, NC 27102. | Winston-Salem Planning and Development Services Department, 100 East 1st Street, Winston-Salem, NC 27101. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 21, 2022 | 375360 |
| North Dakota: Cass | City of Arthur (21–08–1023P). | The Honorable Greg Nelson, Mayor, City of Arthur, P.O. Box 161, Arthur, ND 58006. | City Hall, 325 1st Street, Arthur, ND 58006. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 6, 2022 | 380156 |
| Pennsylvania: Chester. | Borough of Downingtown (22–03–0225P). | Stephen T. Sullins, Manager, Borough of Downingtown, 4-10 West Lancaster Avenue, Downingtown, PA 19335. | Borough Hall, 4-10 West Lancaster Avenue, Downingtown, PA 19335. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 31, 2022 | 420275 |
| Rhode Island: Newport. | Town of Little Compton (22–01–0157P). | Antonio A. Teixeira, Town of Little Compton Administrator, P.O. Box 226, Little Compton, RI 02837. | Building Department, 40 Commons, Little Compton, RI 02837. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 24, 2022 | 440035 |
| Texas: | | | | | | |
| Bell | City of Killeen (21–06–3142P). | The Honorable Debbie Nash-King, Mayor, City of Killeen, P.O. Box 1329, Killeen, TX 76541. | City Hall, 101 North College Street, Killeen, TX 76541. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 28, 2022 | 480031 |
| Dallas | City of Carrollton (22–06–0338P). | The Honorable Steve Babick, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, TX 75011. | Engineering Department, 1945 East Jackson Road, Carrollton, TX 75006. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 31, 2022 | 480167 |
| Tarrant | City of Arlington (22–06–0336P). | The Honorable Jim Ross, Mayor, City of Arlington, P.O. Box 90231, Arlington, TX 76004. | Public Works and Transportation Department, 101 West Abram Street, Arlington, TX 76010. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 7, 2022 | 485454 |
| Tarrant | City of Fort Worth (22–06–0336P). | 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.* | Nov. 7, 2022 | 480596 |
| Tarrant | City of Fort Worth (22–06–0844P). | 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.* | Nov. 7, 2022 | 480596 |
| Tarrant | City of Grand Prairie (21–06–2937P). | The Honorable Ron Jensen, Mayor, City of Grand Prairie, P.O. Box 534045, Grand Prairie, TX 75053. | City Hall, 205 West Church Street, Grand Prairie, TX 75050. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 14, 2022 | 485472 |
| Tarrant | Unincorporated areas of Tarrant County (22–06–0844P). | The Honorable B. Glen Whitley, Tarrant County Judge, 100 East Weatherford Street, Fort Worth, TX 76196. | Tarrant County, Administration Building, 100 East Weatherford Street, Fort Worth, TX 76196. | *https://msc.fema.gov/portal/advanceSearch.* | Nov. 7, 2022 | 480582 |
| Travis | City of Pflugerville (21–06–2969P). | The Honorable Victor Gonzales, Mayor, City of Pflugerville, 100 East Main Street, Suite 300, Pflugerville, TX 78660. | Development Services Center, 100 West Main Street, Pflugerville, TX 78660. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 31, 2022 | 481028 |

| 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. |
|---|---|---|---|---|---|---|
| Travis | Unincorporated areas of Travis County (21–06–2969P). | The Honorable Andy Brown, Travis County Judge, P.O. Box 1448, Austin, TX 78767. | Travis County, Transportation and Natural Resources Department, 700 Lavaca Street, 5th Floor, Austin, TX 78701. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 31, 2022 | 481026 |
| Williamson | City of Hutto (21–06–3058P). | The Honorable Mike Snyder, Mayor, City of Hutto, 500 West Live Oak Street, Hutto, TX 78634. | City Hall, 500 West Live Oak Street, Hutto, TX 78634. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 31, 2022 | 481047 |
| Williamson | Unincorporated areas of Williamson County (21–06–3058P). | The Honorable Bill Gravell, Jr., Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626. | Williamson County, Engineering Department, 3151 Southeast Inner Loop, Georgetown, TX 78626. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 31, 2022 | 481079 |
| Wyoming: | | | | | | |
| Big Horn | Town of Greybull (22–08–0396P). | The Honorable Myles Foley, Mayor, Town of Greybull, 24 South 5th Street, Greybull, WY 82426. | Town Hall, 24 South 5th Street, Greybull, WY 82426. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 21, 2022 | 560005 |
| Big Horn | Unincorporated areas of Big Horn County (22–08–0396P). | The Honorable Dave Neves, Chair, Big Horn County Commissioners, P.O. Box 7, Emblem, WY 82422. | Big Horn County, Engineering Department, 425 Murphy Street, Basin, WY 82410. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 21, 2022 | 560004 |

[FR Doc. 2022–16758 Filed 8–3–22; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Notice on the Addition of Entities to the Uyghur Forced Labor Prevention Act Entity List

**AGENCY:** Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Homeland Security (DHS), as the Chair of the Forced Labor Enforcement Task Force (FLETF), announces the publication and availability of the Uyghur Forced Labor Prevention Act (UFLPA) Entity List, a consolidated register of the four lists required to be developed and maintained pursuant to Section 2(d)(2)(B) of the UFLPA, on the DHS UFLPA website. The UFLPA Entity List is also published as an appendix to this notice. Details related to the process for revising the UFLPA Entity List are included in this **Federal Register** notice.

**DATES:** This notice announces the publication and availability of the UFLPA Entity List as of June 17, 2022, included as an appendix to this notice.

**ADDRESSES:** Persons seeking additional information on the UFLPA Entity List should email the FLETF at *FLETF.UFLPA.EntityList@hq.dhs.gov*.

**FOR FURTHER INFORMATION CONTACT:** John Pickel Jr., Principal Director, Trade and Economic Security, Office of Strategy, Policy, and Plans, DHS. Phone: (202) 923–6060, Email: *FLETF.UFLPA.EntityList@hq.dhs.gov*.

**SUPPLEMENTARY INFORMATION:** The U.S. Department of Homeland Security (DHS), on behalf of the Forced Labor Enforcement Task Force (FLETF), is announcing the publication of the UFLPA Entity List, a consolidated register of the four lists required to be developed and maintained pursuant to Section 2(d)(2)(B) of the Uyghur Forced Labor Prevention Act (Pub. L. 117–78) (UFLPA), to *https://www.dhs.gov/uflpa-entity-list*. The UFLPA Entity List is available as an appendix to this notice. Future revisions to the UFLPA Entity List, which may include additions, removals, or technical corrections, will be published to *https://www.dhs.gov/uflpa-entitylist* and in the appendices of future **Federal Register** notices. *See* Appendix 1.

Beginning on June 21, 2022, the UFLPA requires the Commissioner of U.S. Customs and Border Protection to apply a rebuttable presumption that goods mined, produced, or manufactured by entities on the UFLPA Entity List are made with forced labor, and therefore, prohibited from importation into the United States under 19 U.S.C. 1307. *See* Section 3(a) of the UFLPA. As the FLETF revises the UFLPA Entity List, including by making additions, removals, or technical corrections, DHS, on its behalf, will post such revisions to the DHS UFLPA website (*https://www.dhs.gov/uflpa-entity-list*) and also publish the revised UFLPA Entity List as an appendix to a **Federal Register** notice.

### Background

#### *A. The Forced Labor Enforcement Task Force*

Section 741 of the United States-Mexico-Canada Agreement Implementation Act established the FLETF to monitor United States enforcement of the prohibition under section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307). *See* 19 U.S.C. 4681. Pursuant to DHS Delegation Order No. 23034, the DHS Under Secretary for Strategy, Policy, and Plans serves as Chair of the FLETF, an interagency task force that includes the Department of Homeland Security, the Office of the U.S. Trade Representative, and the Departments of Labor, State, Justice, the Treasury, and Commerce (member agencies).[1] *See* 19 U.S.C. 4681; Executive Order 13923 (May 15, 2020). In addition, the FLETF includes six observer agencies: the Departments of Energy and Agriculture, the U.S. Agency for International Development, the National Security Council, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement Homeland Security Investigations.

[1] The U.S. Department of Homeland Security, as the FLETF Chair, has the authority to invite representatives from other executive departments and agencies, as appropriate. *See* Executive Order 13923 (May 15, 2020). The U.S. Department of Commerce is a member of the FLETF as invited by the Chair.

*B. The Uyghur Forced Labor Prevention Act: Preventing Goods Made With Forced Labor in the People's Republic of China From Being Imported Into the United States*

The UFLPA requires, among other things, that the FLETF, in consultation with the Secretary of Commerce and the Director of National Intelligence, develop a strategy (UFLPA Section 2(c)) for supporting enforcement of section 307 of the Tariff Act of 1930, to prevent the importation into the United States of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part with forced labor in the People's Republic of China. As required by the UFLPA, the *Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China,* which was published on the DHS website on June 17, 2022 (*see https://www.dhs.gov/uflpa-strategy*), includes the initial UFLPA Entity List, a consolidated register of the four lists required to be developed and maintained pursuant to the UFLPA. *See* UFLPA Section 2(d)(2)(B).

*C. UFLPA Entity List*

The UFLPA Entity List addresses distinct requirements set forth in clauses (i), (ii), (iv), and (v) of Section 2(d)(2)(B) of the UFLPA that the FLETF identify and publish the following four lists:

(1) a list of entities in Xinjiang that mine, produce, or manufacture wholly or in part any goods, wares, articles, and merchandise with forced labor;

(2) a list of entities working with the government of Xinjiang to recruit, transport, transfer, harbor, or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of Xinjiang;

(3) a list of entities that exported products made by entities in lists 1 and 2 from the PRC into the United States; and

(4) a list of facilities and entities, including the Xinjiang Production and Construction Corps, that source material from Xinjiang or from persons working with the government of Xinjiang or the Xinjiang Production and Construction Corps for purposes of the ''poverty alleviation'' program or the ''pairing-assistance'' program or any other government-labor scheme that uses forced labor.

The UFLPA Entity List is a consolidated register of the above four lists. In accordance with Section 3(e) of the UFLPA, effective June 21, 2022, entities on the UFLPA Entity List (listed entities) are subject to the UFLPA's rebuttable presumption, and products they produce, wholly or in part, are prohibited from entry into the United States under 19 U.S.C. 1307. The UFLPA Entity List is described in Appendix 1 to this notice. The UFLPA Entity List should not be interpreted as an exhaustive list of entities engaged in the practices described in clauses (i), (ii), (iv), or (v) of Section 2(d)(2)(B) of the UFLPA.

Revisions to the UFLPA Entity List, including all additions, removals, and technical corrections, will be published on the DHS UFLPA website (*https://www.dhs.gov/uflpa-entity-list*) and as an Appendix to a notice that will be published in the **Federal Register**. *See* Appendix 1. The FLETF will consider future additions to, or removals from, the UFLPA Entity List based on criteria described in clauses (i), (ii), (iv), or (v) of Section 2(d)(2)(B) of the UFLPA. Any FLETF member agency may submit a recommendation(s) to add, remove, or make technical corrections to an entry on the UFLPA Entity List. FLETF member agencies will review and vote on revisions to the UFLPA Entity List accordingly.

*Additions to the Entity List*

The FLETF will consider future additions to the UFLPA Entity List based on the criteria described in clauses (i), (ii), (iv), or (v) of Section 2(d)(2)(B) of the UFLPA. Any FLETF member agency may submit a recommendation to the FLETF Chair to add an entity to the UFLPA Entity List. Following review of the recommendation by the FLETF member agencies, the decision to add an entity to the UFLPA Entity List will be made by majority vote of the FLETF member agencies.

*Requests for Removal From the Entity List*

Any listed entity may submit a request for removal (removal request) from the UFLPA Entity List along with supporting information to the FLETF Chair at *FLETF.UFLPA.EntityList@hq.dhs.gov.* In the removal request, the entity (or its designated representative) should provide information that demonstrates that the entity no longer meets or does not meet the criteria described in the applicable clause ((i), (ii), (iv), or (v)) of Section 2(d)(B) of the UFLPA. The FLETF Chair will refer all such removal requests and supporting information to FLETF member agencies. Upon receipt of the removal request, the FLETF Chair or the Chair's designated representative may contact the entity on behalf of the FLETF regarding questions on the removal request and may request additional information. Following review of the removal request by the FLETF member agencies, the decision to remove an entity from the UFLPA Entity List will be made by majority vote of the FLETF member agencies.

Listed entities may request a meeting with the FLETF after submitting a removal request in writing to the FLETF Chair at *FLETF.UFLPA.EntityList@hq.dhs.gov*. Following its review of a removal request, the FLETF may accept the meeting request at the conclusion of the review period and, if accepted, will hold the meeting prior to voting on the entity's removal request. The FLETF Chair will advise the entity in writing of the FLETF's decision on its removal request. While the FLETF's decision on a removal request is not appealable, the FLETF will consider new removal requests if accompanied by new information.

**Robert Silvers,**

*Under Secretary, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security.*

## Appendix 1

The UFLPA Entity List was approved by the FLETF and published on *https://www.dhs.gov/uflpa-entity-list* on June 17, 2022. There are two sources for the listed entities identified on the UFLPA Entity List as published on June 17, 2022. One is U.S. Customs and Border Protection's Withhold Release Orders for goods produced by entities where information reasonably indicates that such goods were produced with forced labor of Uyghur and other ethnic and religious minorities in or from Xinjiang. The second is the Entity List maintained by the Department of Commerce's Bureau of Industry and Security (BIS), 15 CFR Supp. 4 to part 744 (the BIS Entity List)) under the Export Administration Regulations, 15 CFR parts 730–774. Specifically, the UFLPA Entity List includes certain entities that were added to the BIS Entity List for their implication in human rights violations and abuses in connection with the practice of forced labor involving Uyghurs, Kazakhs, and other members of Muslim minority groups in Xinjiang.

The UFPLA Entity List is a consolidated register of the four lists that are required to be developed and maintained pursuant to Section 2(d)(2)(B) of the UFLPA. Twenty entities that meet the criteria set forth in the four required lists (*see* Sections 2(d)(2)(B)(i), (ii), (iv), and (v) of the UFLPA) are specified on the UFLPA Entity List.

**UFLPA Entity List [June 17, 2022]**

**UFLPA Section 2 (d)(2)(B)(i) A List of Entities in Xinjiang That Mine, Produce, or Manufacture Wholly or in Part any Goods, Wares, Articles, and Merchandise With Forced Labor**

Baoding LYSZD Trade and Business Co., Ltd.
Changji Esquel Textile Co. Ltd. (and one alias: Changji Yida Textile)

Hetian Haolin Hair Accessories Co. Ltd. (and two aliases: Hotan Haolin Hair Accessories; and Hollin Hair Accessories)
Hetian Taida Apparel Co., Ltd (and one alias: Hetian TEDA Garment)
Hoshine Silicon Industry (Shanshan) Co., Ltd (including one alias: Hesheng Silicon Industry (Shanshan) Co.) and subsidiaries
Xinjiang Daqo New Energy, Co. Ltd (including three aliases: Xinjiang Great New Energy Co., Ltd.; Xinjiang Daxin Energy Co., Ltd.; and Xinjiang Daqin Energy Co., Ltd.)
Xinjiang East Hope Nonferrous Metals Co. Ltd. (including one alias: Xinjiang Nonferrous)
Xinjiang GCL New Energy Material Technology, Co. Ltd (including one alias: Xinjiang GCL New Energy Materials Technology Co.)
Xinjiang Junggar Cotton and Linen Co., Ltd.
Xinjiang Production and Construction Corps (including three aliases: XPCC; Xinjiang Corps; and Bingtuan) and its subordinate and affiliated entities

**UFLPA Section 2 (d)(2)(B)(ii) A List of Entities Working With the Government of Xinjiang To Recruit, Transport, Transfer, Harbor or Receive Forced Labor of Uyghurs, Kazakhs, Kyrgyz, or Members of Other Persecuted Groups Out of Xinjiang**

*Aksu Huafu Textiles Co.—(including two aliases: Akesu Huafu and Aksu Huafu Dyed Melange Yarn)*

Hefei Bitland Information Technology Co., Ltd. (including three aliases: Anhui Hefei Baolongda Information Technology; Hefei Baolongda Information Technology Co., Ltd.; and Hefei Bitland Optoelectronic Technology Co., Ltd.)
Hefei Meiling Co. Ltd. (including one alias: Hefei Meiling Group Holdings Limited).
KTK Group (including three aliases: Jiangsu Jinchuang Group; Jiangsu Jinchuang Holding Group; and KTK Holding).
Lop County Hair Product Industrial Park
Lop County Meixin Hair Products Co., Ltd.
Nanjing Synergy Textiles Co., Ltd. (including two aliases: Nanjing Xinyi Cotton Textile Printing and Dyeing; and Nanjing Xinyi Cotton Textile).
No. 4 Vocation Skills Education Training Center (VSETC)
Tanyuan Technology Co. Ltd. (including five aliases: Carbon Yuan Technology; Changzhou Carbon Yuan Technology Development; Carbon Element Technology; Jiangsu Carbon Element Technology; and Tanyuan Technology Development).
Xinjiang Production and Construction Corps (XPCC) and its subordinate and affiliated entities

**UFLPA Section 2 (d)(2)(B)(iv) A List of Entities That Exported Products Described in Clause (iii) From the PRC Into the United States**

Entities identified in sections (i) and (ii) above may serve as both manufacturers and exporters. The FLETF has not identified additional exporters at this time but will continue to investigate and gather information about additional entities that meet the specified criteria.

**UFLPA Section 2 (d)(2)(B)(v) A List of Facilities and Entities, Including the Xinjiang Production and Construction Corps, That Source Material From Xinjiang or From Persons Working With the Government of Xinjiang or the Xinjiang Production and Construction Corps for Purposes of the ''Poverty Alleviation'' Program or the ''Pairing-Assistance'' Program or any Other Government Labor Scheme That Uses Forced Labor**

Baoding LYSZD Trade and Business Co., Ltd.
Hefei Bitland Information Technology Co. Ltd.
Hetian Haolin Hair Accessories Co. Ltd.
Hetian Taida Apparel Co., Ltd.
Hoshine Silicon Industry (Shanshan) Co., Ltd., and Subsidiaries
Xinjiang Junggar Cotton and Linen Co., Ltd.
Lop County Hair Product Industrial Park
Lop County Meixin Hair Products Co., Ltd.
No. 4 Vocation Skills Education Training Center (VSETC)
Xinjiang Production and Construction Corps (XPCC) and its subordinate and affiliated entities
Yili Zhuowan Garment Manufacturing Co., Ltd.

[FR Doc. 2022–16754 Filed 8–3–22; 8:45 am]

**BILLING CODE 9110–9M–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0087]**

### Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Citizenship and Issuance of Certificate Under Section 322

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** Comments are encouraged and will be accepted until September 6, 2022.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0019. All submissions received must include the OMB Control Number 1615–0087 in the body of the letter, the agency name and Docket ID USCIS–2007–0019.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

**SUPPLEMENTARY INFORMATION:**

#### Comments

The information collection notice was previously published in the **Federal Register** on May 16, 2022, at 87 FR 29759, allowing for a 60-day public comment period. USCIS did receive 3 comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–2019 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Citizenship and Issuance of Certificate Under Section 322.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–600K; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form N–600K is used by children who regularly reside in a foreign country to claim U.S. citizenship based on eligibility criteria met by their U.S. citizen parent(s) or grandparent(s). The form may be used by both biological and adopted children under age 18. USCIS uses information collected on this form to determine that the child has met all of the eligibility requirements for naturalization under section 322 of the Immigration and Nationality Act (INA). If determined eligible, USCIS will naturalize and issue the child a Certificate of Citizenship before the child reaches age 18.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–600K (Paper filed) is 1,300 and the estimated hour burden per response is 2.08 hours; the estimated total number of respondents for the information collection N–600K (online filing) is 1,700 and the estimated hour burden per response is 1.50 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 5,254 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $386,250.00.

Dated: July 29, 2022.

**Samantha L Deshommes,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2022–16690 Filed 8–3–22; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0052]**

### Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Naturalization

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** Comments are encouraged and will be accepted until September 6, 2022.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2008–0025. All submissions received must include the OMB Control Number 1615–0052 in the body of the letter, the agency name and Docket ID USCIS–2008–0025.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

**SUPPLEMENTARY INFORMATION:**

**Comments**

The information collection notice was previously published in the **Federal Register** on May 16, 2022, at, allowing for a 60-day public comment period. USCIS did receive 11 comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0025 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov* 87 FR 29758, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Naturalization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–400; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form N–400, Application for Naturalization, allows USCIS to fulfill its mission of fairly adjudicating naturalization applications and only naturalizing statutorily eligible individuals. Naturalization is the process by which U.S. citizenship is granted to a foreign citizen or national after he or she fulfills the requirements established by Congress in the INA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–400 (paper) is 567,314 and the estimated hour burden per response is 9.17 hours; the estimated total number of respondents for the information collection N–400 (electronic) is 214,186 and the estimated hour burden per response is 3.5 hours; and the estimated total number of respondents for the information collection biometrics is 778,000 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 6,862,180 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $346,768,928.

Dated: July 29, 2022.

**Samantha L. Deshommes,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2022–16689 Filed 8–3–22; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7050–N–44]**

## 30-Day Notice of Proposed Information Collection: Continuation of Interest Reduction Payments After Refinancing Section 236 Projects; OMB Control No.: 2502–0572

**AGENCY:** Office of Policy Development and Research, Chief Data Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* September 6, 2022.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *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:** Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 4, 2022 at 87 FR 19521.

**A. Overview of Information Collection**

*Title of Information Collection:* Continuation of Interest Reduction Payments after Refinancing Section 236 Projects.

*OMB Approval Number:* 2502–0572.

*Type of Request:* Reinstatement, without change, of previously approved collection for which approval has expired.

*Form Number:*

- HUD–93173 Agreement for Interest Reduction Payments (§ 236(e)(2))
- HUD–93175 Agreement for Interest Reduction Payments (§ 236(b))
- HUD–93174 Use Agreement (§ 236(e)(2))
- HUD–93176 Use Agreement (§ 236(b))

*Description of the need for the information and proposed use:* The purpose of this information collection is to preserve low-income housing units. HUD uses the information to ensure that owners, mortgagees and or public entities enter into binding agreements for the continuation of Interest Reduction Payments (IRP) after refinancing eligible Section 236 projects. HUD has created an electronic application for eligible projects to retain the IRP benefits after refinancing.

*Respondents:* Profit Motivated or Non-Profit Owners of Section 236 projects.

| Form No. | Form | Number of respondents | Frequency of response | Total annual responses | Hours per response | Total annual burden hours |
|---|---|---|---|---|---|---|
| Form HUD–93173 .... | Agreement for Interest Reduction Payments (§ 236(e)(2)). | 870 | 1 | 870 | 0.5 | 435 |
| Form HUD–93175 .... | Agreement for Interest Reduction Payments (§ 236(b)) | 870 | 1 | 870 | 0.5 | 435 |
| Form HUD–93174 .... | Use Agreement (§ 236(e)(2)) | 5 | 1 | 5 | 0.5 | 3 |
| Form HUD–93176 .... | Use Agreement (§ 236(b)) | 5 | 1 | 5 | 0.5 | 3 |
| Total | | 875 | | 1,750 | 1 | 875 |

*Estimated Number of Respondents:* 875.

*Estimated Number of Responses:* 1,750.

*Frequency of Response:* 2.

*Average Hours per Response:* 0.50 hour.

*Total Estimated Burdens:* 875.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

**C. Authority**

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

**Colette Pollard,**

*Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.*

[FR Doc. 2022–16644 Filed 8–3–22; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7050–N–22]**

## 30-Day Notice of Proposed Information Collection: Neighborhood Stabilization Program 2; OMB Control No.: 2506–0185

**AGENCY:** Office of Policy Development and Research, Chief Data Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* September 6, 2022.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on February 8, 2022, at 87 FR 7200.

**A. Overview of Information Collection**

*Title of Information Collection:* Manufactured Housing Survey.

*OMB Approval Number:* 2506–0185.

*Type of Request:* Reinstatement with change.

*Form Number:* NA.

*Description of the need for the information and proposed use:* This information describes the reporting and recordkeeping requirements of the Neighborhood Stabilization Program 2 (NSP2). The data required includes program level, project level and beneficiary level information collected and reported on by NSP2 grantees. The data identifies who benefits from the NSP2 program and how statutory requirement are satisfied. The respondents are State, local government, non-profit and consortium applicants.

NEIGHBORHOOD STABILIZATION PROGRAM

| Description of information collection | Number of respondents | Number of responses | Total number of responses | Hours per response | Total hours | Cost per response | Total cost |
|---|---|---|---|---|---|---|---|
| **(Year 1)** | | | | | | | |
| Online Quarterly Reporting via DRGR | 42.00 | 4.00 | 168.00 | 4.00 | 672.00 | 38.92 | $26,154.24 |
| DRGR voucher submissions | 42.00 | 38.00 | 1,596.00 | 0.18 | 287.28 | 38.92 | 11,180.94 |
| Annual Reporting via DRGR | 14.00 | 1.00 | 14.00 | 3.00 | 42.00 | 38.92 | 1,634.64 |
| Annual Income Certification Reporting | 14.00 | 1.00 | 14.00 | 3.00 | 42.00 | 38.92 | 1,634.64 |
| Total Paperwork Burden | 112.00 | | | | 1,043.28 | 38.92 | 40,604.46 |
| **(Year 2)** | | | | | | | |
| Online Quarterly Reporting via DRGR | 32.00 | 4.00 | 128.00 | 4.00 | 512.00 | 38.92 | 19,927.04 |
| Quarterly Voucher Submissions | 32.00 | 38.00 | 1,216.00 | 0.18 | 218.88 | 38.92 | 8,518.81 |
| Annual Reporting via DRGR | 24.00 | 1.00 | 24.00 | 3.00 | 72.00 | 38.92 | 2,802.24 |
| Annual Income Certification Reporting | 24.00 | 1.00 | 24.00 | 3.00 | 72.00 | 38.92 | 2,802.24 |
| Total Paperwork Burden | 112.00 | | | | 874.88 | 38.92 | 34,050.33 |
| **(Year 3)** | | | | | | | |
| Online Quarterly Reporting via DRGR | 22.00 | 4.00 | 88.00 | 4.00 | 352.00 | 38.92 | 13,699.84 |
| Annual Reporting via DRGR | 34.00 | 1.00 | 34.00 | 4.00 | 136.00 | 38.92 | 5,293.12 |

NEIGHBORHOOD STABILIZATION PROGRAM—Continued

| Description of information collection | Number of respondents | Number of responses | Total number of responses | Hours per response | Total hours | Cost per response | Total cost |
|---|---|---|---|---|---|---|---|
| Quarterly Voucher Submissions | 22.00 | 4.00 | 88.00 | 0.20 | 17.60 | 38.92 | 684.99 |
| Annual Income Certification Reporting | 34.00 | 1.00 | 34.00 | 3.00 | 102.00 | 38.92 | 3,969.84 |
| Total Paperwork Burden | 112.00 | | | | 607.60 | 38.92 | 23,647.79 |

### B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

### C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Data Officer.*

[FR Doc. 2022–16666 Filed 8–3–22; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R3–ES–2022–N038; FXES11130300000–223–FF03E00000]**

### Endangered and Threatened Species; Receipt of Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

**DATES:** We must receive your written comments on or before SEPTEMBER 6, 2022.

**ADDRESSES:** *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* TEXXXXXX; see table in **SUPPLEMENTARY INFORMATION**):

- *Email: permitsR3ES@fws.gov.* Please refer to the respective application number (*e.g.,* Application No. TEXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

**FOR FURTHER INFORMATION CONTACT:** Nathan Rathbun, 612–713–5343 (phone); *permitsR3ES@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

#### Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies; Tribes; and the public to comment on the following applications:

| Application No. | Applicant | Species | Location | Activity | Type of take | Permit action |
|---|---|---|---|---|---|---|
| TE07358A ..... | Ryan Slack, Indianapolis, IN. | Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*) Ozark big-eared bat (*Corynorhinus townsendii ingens*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*). | AL, AR, CT, DC, DE, GA, IL, IN, IA, KS, KY, LA, MA, ME, MD, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, VA, VT, WI, WV, WY. | Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts. | Capture with mist-nets, handle, identify, radio-tag, band, collect non-intrusive measurements, and release. | Renew. |
| TE85228B ..... | Eric Schroder, Maidsville, WV. | Indiana bat (*Myotis sodalis*), northern long-eared bat (*M. septentrionalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*). | AL, AR, CT, DC, DE, GA, IL, IN, IA, KS, KY, LA, MA, MD, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, VA, VT, WI, WV, WY. | Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts. | Capture with mist-nets, handle, identify, radio-tag, band, collect non-intrusive measurements, and release. | Renew. |
| ES64080B ..... | Michigan Natural Features Inventory, Michigan State University, Lansing, MI. | American burying beetle (Nicrophorus americanus), clubshell (*Pleurobema clava*), copperbelly water snake (*Nerodia erythrogaster neglecta*), Hine's emerald dragonfly (*Somatochlora hineana*), Indiana bat (*Myotis sodalis*), Karner blue butterfly (*Lycaeides melissa samuelis*), Mitchell's satyr butterfly (*Neonympha mitchellii mitchellii*), Northern long-eared bat (*Myotis septentrionalis*), northern riffleshell (*Epioblasma rangiana*), Poweshiek skipperling (*Oarisma poweshiek*), rayed bean (*Villosa fabalis*), rusty patched bumble bee (*Bombus affinis*), snuffbox (*Epioblasma triquetra*), white catspaw (*Epioblasma obliquata perobliqua*), and eight plant species. | Add: new States—IL, IN, MA, MN, WI—to existing authorized State MI. | Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate potential impacts. | Capture, handle, identify, mark, light-tag, PIT-tag, salvage, collect bio-sample, collect pollen samples, collect voucher specimens, and release. | Amend. |
| ES88224B ..... | Joe Snavely, Chambersburg, PA. | Add: New species—dwarf wedgemussel (*Alasmidonta heterodon*), James spinymussel (*Parvaspina collina*), yellow lance (*Elliptio lanceolata*), and Atlantic pigtoe (*Fusconaia masoni*)—to existing authorized 14 freshwater mussel species. | Add: new States—CT, MA, MD, NH, NJ, NY, PA, VI, VT, WV—to existing authorized States IA, IL, IN, MI, MN, MO, OH, WI. | Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate potential impacts. | Capture, handle, and release. | Amend. |
| ES86150B ..... | Geoffrey Palmer, Liberty Township, OH. | Add: New species—Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*)—to existing authorized species northern long-eared bat (*Myotis septentrionalis*). | AL, AR, CT, DE, DC, IA, GA, KS, LA, MA, MD, MI, MN, MT, MS, NC, ND, NE, NH, NJ, OK, RI, SC, SD, VA, VT, WI, WY. | Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts. | Capture with mist-nets, handle, identify, band, collect nonintrusive measurements, and release. | Renew and amend. |
| ES81973B ..... | Brian Heeringa, Rhinelander, WI. | Add: New species—Indiana bat (*Myotis sodalis*)—to existing authorized species northern long-eared bat (*Myotis septentrionalis*). | MI, MN, WI ..... | Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts. | Capture with mist nets and harp traps, handle, identify, enter hibernacula, PIT-tag, radio-tag, band, collect bio-sample, collect nonintrusive measurements, and release. | Renew and amend. |

**Public Availability of Comments**

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

**Next Steps**

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

**Authority**

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**Lori Nordstrom,**

*Assistant Regional Director, Ecological Services.*

[FR Doc. 2022–16762 Filed 8–3–22; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[L14400000/LLAZ920000/ET0000/AZA–38386]**

### Notice of Withdrawal Application and Opportunity for a Public Meeting for the Tonto National Forest/Town of Superior, Arizona; Correction

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice; correction.

**SUMMARY:** The Bureau of Land Management (BLM) published a notice in the **Federal Register** on July 20, 2022, regarding a United States Forest Service application with the BLM requesting that the Secretary of the Interior withdraw 276 acres of National Forest System lands located within the Tonto National Forest from location and entry under the U.S. mining laws for a 20-year term, subject to valid existing rights. The document cited an incorrect date for the termination of the segregation.

**FOR FURTHER INFORMATION CONTACT:** Michael Ouellett, Realty Specialist, BLM Arizona State Office, telephone (602) 417–9561, email at *mouellett@blm.gov;* or you may contact the BLM office at the address noted above. 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:**

**Correction**

In the **Federal Register** published on July 20, 2022, FR Doc. 2022–15405, on page 43294, in the third column, correct the date to read:

For a period until July 19, 2024, the lands will be segregated as specified above unless the application is denied or canceled.

(Authority: 43 U.S.C. 1714(b)(1) and 43 CFR 2300)

**Raymond Suazo,**

*State Director.*

[FR Doc. 2022–16736 Filed 8–3–22; 8:45 am]

**BILLING CODE 4310–32–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLAZP00000.L122000000.DD0000.LXSSA3610000]**

### Notice of Temporary Closure of Selected Public Lands in Maricopa and Pinal Counties, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of temporary closure.

**SUMMARY:** Notice is hereby given that the Bureau of Land Management (BLM) will temporarily close certain public lands administered by the Hassayampa and Lower Sonoran Field Offices to all public entry. This temporary closure is needed to ensure public and worker safety during construction of the Baldy Mountain, Box Canyon, Church Camp Road, Narramore Road, and Saddleback Mountain recreational shooting sports sites.

**DATES:** The subject lands will be closed until, August 4, 2023, or until construction is complete, whichever is sooner.

**ADDRESSES:** This closure order will be posted in the Phoenix District Office. Maps of the affected area and other documents associated with this closure are available at the Phoenix District Office, 21605 North 7th Avenue, Phoenix, Arizona 85027 and on the project website at: *https://go.usa.gov/xmfVv.*

**FOR FURTHER INFORMATION CONTACT:** Irina Ford, Hassayampa Field Office Manager at email: *iford@blm.gov;* or Katie White Bull, Lower Sonoran Field Office at email: *kwhitebull@blm.gov;* Phoenix District Office, 21605 North 7th Avenue, Phoenix, Arizona 85027; or at (623) 580–5500. 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 Baldy Mountain, Church Camp Road, Narramore Road, and Saddleback Mountain sites are in Maricopa County. Box Canyon is in Pinal County. The temporary closure for construction would apply to all five sites. The legal description of the affected public lands are:

**Baldy Mountain (Approximately 399 Acres)**

*Gila and Salt River Meridian, Arizona*

T. 6 N., R. 1 W.,
Sec. 10, SE¼NE¼, NE¼SE¼ (portions of);
Sec. 11, SW¼NE¼, S½NW¼, SW¼, NW¼SE¼ (portions of).

**Box Canyon (Approximately 478 Acres)**

*Gila and Salt River Meridian, Arizona*

T. 5 S., R. 2 E.,
Sec. 9, N½, N½SW¼, N½SE¼ (portions of).

**Church Camp Road (Approximately 495 Acres)**

*Gila and Salt River Meridian, Arizona*

T. 6 N., R. 1 W.,
Sec. 23, SW¼, NW¼SE¼, S½SE¼.
Sec. 26, N½ N½, S½ N½ (portions)

**Narramore Road (Approximately 163 Acre)**

*Gila and Salt River Meridian, Arizona*

T. 1 S., R. 5 W.,
Sec. 17, S½SW¼, S½SE¼.

**Saddleback Mountain (Approximately 502 Acres)**

*Gila and Salt River Meridian, Arizona*

T. 6 N., R. 1 W.,
Sec. 26, S½; S½ N½ (portions)
Sec. 35, NW¼NE¼, NE¼NW¼.

This temporary closure order is necessary to ensure public and worker

safety during construction of the recreational shooting sports sites. The BLM will post closure signs at main entry points to this area. This closure order will be posted in the Phoenix District Office. Maps of the affected area and other documents associated with this closure are available at the Phoenix District Office, 21605 North 7th Avenue, Phoenix, Arizona 85027 and on the project website at: *https://go.usa.gov/xmfVv.* The temporary closure for construction and operation were analyzed under the Recreational Shooting Sports Project Final Environmental Assessment (January 2020) and in consultation with the Arizona Game and Fish Department. Under the authority of Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7, and 43 CFR 8364.1, the BLM will enforce the following closure within the affected areas described earlier.

This temporary closure order closes all the affected areas and in the time period as described earlier to public entry.

*Exemptions:* These persons would be exempt from the temporary closure order: Federal, state, and local officers and employees in the performance of their official duties; members of organized rescue or firefighting forces in the performance of their official duties; and persons with written authorization from the BLM.

*Enforcement:* Any person who violates this closure may be tried before a United States magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Arizona law.

(Authority: 43 CFR 8364.1)

**Leon Thomas,**

*District Manager.*

[FR Doc. 2022–16665 Filed 8–3–22; 8:45 am]

**BILLING CODE 4310–32–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Safety and Environmental Enforcement

**[Docket ID BSEE–2022–0013; EEEE500000 223E1700D2 ET1SF0000.EAQ000 OMB Control Number 1014–0012]**

### Agency Information Collection Activities; Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act

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

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before October 3, 2022.

**ADDRESSES:** Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2022–0013 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0012 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov* or by telephone at (703) 787–1607. 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 PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency 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. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* This authority and responsibility are among those delegated to BSEE. The regulations at 30 CFR 291 concern open and nondiscriminatory access to pipelines and are the subject of this collection. This request also covers any related

Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the submitted information to initiate a more detailed review into the specific circumstances associated with a complainant's allegation of denial of access or discriminatory access to pipelines on the OCS. The complaint information will be provided to the alleged offending party. Alternative dispute resolution may be used either before or after a complaint has been filed to informally resolve the dispute. The BSEE may request additional information upon completion of the initial review.

*Title of Collection:* 30 CFR part 291, *Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act.*

*OMB Control Number:* 1014–0012.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

*Total Estimated Number of Annual Respondents:* Currently there are approximately 550 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

*Total Estimated Number of Annual Responses:* 2.

*Estimated Completion Time per Response:* Varies from 1 hour to 50 hours, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 51.

*Respondent's Obligation:* Responses are voluntary but are required to obtain or retain benefits.

*Frequency of Collection:* Submissions are generally on occasion.

*Total Estimated Annual Nonhour Burden Cost:* $7,500.

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Kirk Malstrom,**

*Chief, Regulations and Standards Branch.*

[FR Doc. 2022–16703 Filed 8–3–22; 8:45 am]

**BILLING CODE 4310–VH–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Safety and Environmental Enforcement

**[Docket ID BSEE–2022–0011; EEEE500000 223E1700D2 ET1SF0000.EAQ000**

**OMB Control Number 1014–0025]**

### Agency Information Collection Activities; Application for Permit To Drill (APD, Revised APD), Supplemental APD Information Sheet, and All Supporting Documentation

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

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before October 3, 2022.

**ADDRESSES:** Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2022–0011 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0025 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov* or by telephone at (703) 787–1607. 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 PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency 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. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* The regulations at 30 CFR part 250 pertain to Application for Permit to Drill (APD, Revised APD), Supplemental APD Information Sheet, and all supporting documentation and are the subject of this collection. This request also covers the related Notices

to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the information to ensure safe drilling operations and to protect the human, marine, and coastal environment. Among other things, BSEE specifically uses the information to ensure: the drilling unit is fit for the intended purpose; the lessee or operator will not encounter geologic conditions that present a hazard to operations; equipment is maintained in a state of readiness and meets safety standards; each drilling crew is properly trained and able to promptly perform well-control activities at any time during well operations; compliance with safety standards; and the current regulations will provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether drilling operations have encountered hydrocarbons or H2S and to ensure that H2S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H2S and zones where the presence of H2S is unknown.

This ICR includes forms BSEE–0123 (APD) and BSEE–0123S (Supplemental APD Information Sheet). The BSEE uses the information from these forms to determine the conditions of a drilling site to avoid hazards inherent in drilling operations. Specifically, we use the information to evaluate the adequacy of a lessee's or operator's plan and equipment for drilling, sidetracking, or deepening operations. This includes the adequacy of the proposed casing design, casing setting depths, drilling fluid (mud) programs, cementing programs, and blowout preventer (BOP) systems to ascertain that the proposed operations will be conducted in an operationally safe manner that provides adequate protection for the environment. BSEE also reviews the information to ensure conformance with specific provisions of the lease. In addition, except for proprietary data, BSEE is required by the OCSLA to make available to the public certain information submitted on Forms BSEE–0123 and –0123S.

The forms use and information consist of the following:

**BSEE–0123**

*Heading:* BSEE uses the information to identify the type of proposed drilling activity for which approval is requested.

*Well at Total Depth/Surface:* Information utilized to identify the location (area, block, lease, latitude and longitude) of the proposed drilling activity.

*Significant Markers Anticipated:* Identification of significant geologic formations, structures and/or horizons that the lessee or operator expects to encounter. This information, in conjunction with seismic data, is needed to correlate with other wells drilled in the area to assess the risks and hazards inherent in drilling operations.

*Question/Information:* The information is used to ascertain the adequacy of the drilling fluids (mud) program to ensure control of the well, the adequacy of the surface casing compliance with EPA offshore pollutant discharge requirements and the shut in of adjacent wells to ensure safety while moving a rig on and off a drilling location, as well that the worst case discharge scenario information reflects the well and is updated if applicable. This information is also provided in the course of electronically requesting approval of drilling operations via eWell.

**BSEE–0123S**

*Heading:* BSEE uses this information to identify the lease operator, rig name, rig elevation, water depth, type well (exploratory, development), and the presence of H2S and other data which is needed to assess operational risks and safety.

*Well Design Information:* This engineering data identifies casing size, pressure rating, setting depth and current volume, hole size, mud weight, BOP and well bore designs, formation and BOP test data, and other criteria. The information is utilized by BSEE engineers to verify operational safety and ensure well control to prevent blowouts and other hazards to personnel and the environment. This form accommodates requested data collection for successive sections of the borehole as drilling proceeds toward total depth below each intermediate casing point.

*Title of Collection:* 30 CFR part 250, Application for Permit to Drill (APD, Revised APD), Supplemental APD Information Sheet, and all supporting documentation.

*OMB Control Number:* 1014–0025.

*Form Number:* Forms BSEE–0123 and BSEE–0123S.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

*Total Estimated Number of Annual Respondents:* Currently there are approximately 550 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

*Total Estimated Number of Annual Responses:* 11,327.

*Estimated Completion Time per Response:* Varies from .5 hour to 125 hours, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 77,937.

*Respondent's Obligation:* Most responses are mandatory while others are to obtain and/or retain a benefit.

*Frequency of Collection:* Submitted generally on occasion and as required in the regulations.

*Total Estimated Annual Nonhour Burden Cost:* $4,400,470.

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Kirk Malstrom,**

*Chief, Regulations and Standards Branch.*

[FR Doc. 2022–16701 Filed 8–3–22; 8:45 am]

**BILLING CODE 4310–VH–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Safety and Environmental Enforcement

**[Docket ID BSEE–2022–0010; EEEE500000 223E1700D2 ET1SF0000.EAQ000; OMB Control Number 1014–0004]**

### Agency Information Collection Activities; Oil and Gas Well-Completion Operations

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

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before October 3, 2022.

**ADDRESSES:** Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov.* In the Search box,

enter BSEE–2022–0010 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.

• Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0004 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov* or by telephone at (703) 787–1607. 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 PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency 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. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* The regulations at 30 CFR 250, Subpart E, pertain to Oil and Gas Well-Completion Operations and are the subject of this collection. This request also covers the related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the information collected under Subpart E to ensure that planned well-completion operations will protect personnel and natural resources. They use the analysis and evaluation results in the decision to approve, disapprove, or require modification to the proposed well-completion operations. Specifically, BSEE uses the information to ensure:

• compliance with personnel safety training requirements;

• crown block safety device is operating and can be expected to function to avoid accidents;

• proposed operation of the annular preventer is technically correct and provides adequate protection for personnel, property, and natural resources;

• blowout prevention (BOP) equipment complies with the most recent WCR and API Standard 53;

• well-completion operations are conducted on well casings that are structurally competent; and

• sustained casing pressures are within acceptable limits.

*Title of Collection:* 30 CFR 250, Subpart E, Oil and Gas Well-Completion Operations.

*OMB Control Number:* 1014–0004.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

*Total Estimated Number of Annual Respondents:* Currently there are approximately 550 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

*Total Estimated Number of Annual Responses:* 5,898.

*Estimated Completion Time per Response:* Varies from 1.5 hours to 13 hours, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 17,985.

*Respondent's Obligation:* Mandatory.

*Frequency of Collection:* Generally submitted weekly, biennially, and on occasion, depending on the requirement.

*Total Estimated Annual Nonhour Burden Cost:* We have identified no non-hour cost burdens associated with this collection of information.

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Kirk Malstrom,**

*Chief, Regulations and Standards Branch.*

[FR Doc. 2022–16698 Filed 8–3–22; 8:45 am]

**BILLING CODE 4310–VH–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Safety and Environmental Enforcement

**[Docket ID BSEE–2022–0012; EEEE500000 223E1700D2 ET1SF0000.EAQ000; OMB Control Number 1014–0011]**

### Agency Information Collection Activities; Platforms and Structures

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

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before October 3, 2022.

**ADDRESSES:** Send your comments on this information collection request (ICR) by either of the following methods listed below:

• Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2022–0012 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.

• Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0011 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov* or by telephone at (703) 787–1607. 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 PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency 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. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* The regulations at 30 CFR 250, Subpart I, pertain to Platforms and Structures and are the subject of this collection. This request also covers the related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the information submitted under Subpart I to determine the structural integrity of all OCS platforms and floating production facilities and to ensure that such integrity will be maintained throughout the useful life of these structures. We use the information to ascertain, on a case-by-case basis, that the fixed and floating platforms and structures are structurally sound and safe for their intended use to ensure safety of personnel and prevent pollution. More specifically, we use the information to:

• Review data concerning damage to a platform to assess the adequacy of proposed repairs.

• Review applications for platform construction (construction is divided into three phases–design, fabrication, and installation) to ensure the structural integrity of the platform.

• Review verification plans and third-party reports for unique platforms to ensure that all nonstandard situations are given proper consideration during the platform design, fabrication, and installation.

• Review platform design, fabrication, and installation records to ensure that the platform is constructed according to approved applications.

• Review inspection reports to ensure that platform integrity is maintained for the life of the platform.

*Title of Collection:* 30 CFR 250, Subpart I, *Platforms and Structures.*

*OMB Control Number:* 1014–0011.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

*Total Estimated Number of Annual Respondents:* Currently there are approximately 550 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

*Total Estimated Number of Annual Responses:* 362.

*Estimated Completion Time per Response:* Varies from 5 hours to 552 hours, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 92,786.

*Respondent's Obligation:* Some responses are mandatory, and some are required to obtain or retain a benefit.

*Frequency of Collection:* Submissions are generally on occasion, as a result of situations encountered, and annually.

*Total Estimated Annual Nonhour Burden Cost:* $988,210.

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Kirk Malstrom,**

*Chief, Regulations and Standards Branch.*

[FR Doc. 2022–16697 Filed 8–3–22; 8:45 am]

**BILLING CODE 4310–VH–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Safety and Environmental Enforcement

**[Docket ID BSEE–2022–0014; EEEE500000 223E1700D2 ET1SF0000.EAQ000 OMB Control Number 1014–0026]**

### Agency Information Collection Activities; Application for Permit To Modify (APM) and Supporting Documentation

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

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before October 3, 2022.

**ADDRESSES:** Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2022–0014 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0026 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov* or by telephone at (703) 787–1607. 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 PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency 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. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* The regulations at 30 CFR 250 stipulate the various requirements that must be submitted with an APM. The form and the numerous submittals that are included and/or attached to the form are the subject of this collection. This request also covers related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the information to ensure safe well control, completion, workover, and decommissioning operations and to protect the human, marine, and coastal environment. Among other things, BSEE specifically uses the information to ensure: the well control, completion, workover, and decommissioning unit (drilling/well operations) is fit for the intended purpose; equipment is maintained in a state of readiness and meets safety standards; each drilling/well operation crew is properly trained and able to promptly perform well-control activities at any time during well operations; compliance with safety standards; and the current regulations will provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether the operations have encountered hydrocarbons or H2S and to ensure that H2S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H2S and zones where the presence of H2S is unknown.

*Title of Collection:* 30 CFR part 250, Application for Permit to Modify (APM) and supporting documentation.

*OMB Control Number:* 1014–0026.

*Form Number:* BSEE–0124

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

*Total Estimated Number of Annual Respondents:* Currently there are approximately 550 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

*Total Estimated Number of Annual Responses:* 12,202.

*Estimated Completion Time per Response:* Varies from 10 minutes to 154 hours, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 17,311.

*Respondent's Obligation:* Mandatory.

*Frequency of Collection:* Generally, on occasion and varies by section.

*Total Estimated Annual Nonhour Burden Cost:* $6,451,500.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information

unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Kirk Malstrom,**

*Chief, Regulations and Standards Branch.*

[FR Doc. 2022–16702 Filed 8–3–22; 8:45 am]

**BILLING CODE 4310–VH–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 731–TA–1567–1569 (Final)]**

### Acrylonitrile-Butadiene Rubber (NBR) From France, Mexico, and South Korea: Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is not materially injured or threatened with material injury by reason of imports of acrylonitrile-butadiene rubber from France, Mexico, and South Korea, provided for in subheading 4002.59.00 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2]

**Background**

The Commission instituted these investigations effective June 30, 2021, following receipt of petitions filed with the Commission and Commerce by Zeon Chemicals L.P. and Zeon GP, LLC (collectively, ''Zeon''), Louisville, Kentucky. The Commission scheduled the final phase of the investigations following notification of preliminary determinations by Commerce that imports of acrylonitrile-butadiene rubber from France, Mexico, and South Korea were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 1, 2022, (87 FR 11481). The Commission conducted its hearing on June 1, 2022. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to § 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on August 1, 2022. The views of the Commission are contained in USITC Publication 5336 (August 2022), entitled *Acrylonitrile-Butadiene Rubber (NBR) from France, Mexico, and South Korea: Investigation Nos. 731–TA–1567–1569 (Final).*

By order of the Commission.

Issued: August 1, 2022.

**Katherine Hiner,**

*Acting Secretary to the Commission.*

[FR Doc. 2022–16752 Filed 8–3–22; 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 Solar Power Optimizers, Inverters, and Components Thereof, DN 3630;* 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:** Katherine M. Hiner, Acting 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 Ampt, LLC on July 28, 2022. 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 solar power optimizers, inverters, and components thereof. The complainant names as respondents: SolarEdge Technologies, Inc. of Milpitas, CA and SolarEdge Technologies, Ltd. of Israel. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders and impose a bond upon respondents alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public 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

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 87 FR 37825, 87 FR 37829, and 87 FR 37833, June 24, 2022.

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. 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. 3630'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 29, 2022.

**Katherine Hiner,**

*Acting Secretary to the Commission.*

[FR Doc. 2022–16679 Filed 8–3–22; 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:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Robotic Pool Cleaners, Products Containing the Same, and Components Thereof, DN 3631;* 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:** Katherine M. Hiner, Acting 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 Zodiac Pool Systems LLC and Zodiac Pool Care Europe on July 29, 2022. 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 robotic pool cleaners, products containing the same, and components thereof. The complainant names as respondents: Wybotics Co. Ltd. d/b/a Winny Pool Cleaner, f/k/a Tianjin Wangyuan Environmental Protection and Technology Co, Ltd. of China; Tianjin Pool & Spa Corporation of Commerce, CA; Shenzhen Aiper Intelligent Co., Ltd. of China; Aiper Intelligent, LLC of Roswell, GA; and Aiper, Inc. of Los Angeles, CA. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders; and impose a bond upon respondents alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public 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;

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

(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. 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. 3631'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures.[1]) Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel[2], solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS[3].

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: August 1, 2022.

**Katherine Hiner,**

*Acting Secretary to the Commission.*

[FR Doc. 2022–16746 Filed 8–3–22; 8:45 am]

**BILLING CODE 7020–02–P**

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

**[Docket No. FBI]**

### FBI's Criminal Justice Information Services Division User Fee Schedule

**AGENCY:** Federal Bureau of Investigation (FBI), Department of Justice.

**ACTION:** Notice.

**SUMMARY:** The FBI is authorized to establish and collect fees for providing fingerprint-based and name-based criminal history record information (CHRI) checks submitted by authorized users for noncriminal justice purposes including employment and licensing. A portion of the fee is intended to reimburse the FBI for the cost of providing fingerprint-based and name-based CHRI checks (''cost reimbursement portion'' of the fee). The FBI is also authorized to charge an additional amount to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs (''automation portion'' of the fee). Although the fee study determined that the allocation of costs changed, the overall fees for fingerprint-based and name-based CHRI checks will remain the same as the current user fees.

**DATES:** This revised fee schedule is effective October 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Mr. Timothy R. Wiles, Unit Chief, Fee Programs Unit, Resources Management Section, Criminal Justice Information Services (CJIS) Division, FBI, 1000 Custer Hollow Road, Module D–3, Clarksburg, WV 26306. Telephone number 304–625–4685.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority in Public Law (Pub. L.) 101–515, as amended and codified at Title 34, United States Code (U.S.C.) Section (§ ) 41104, the FBI has established user fees for authorized agencies requesting noncriminal justice, fingerprint-based and name-based CHRI checks. These noncriminal justice, fingerprint-based CHRI checks are performed for noncriminal justice, non-law enforcement employment and licensing purposes, and for certain employees of private sector contractors with classified government contracts. The noncriminal justice, name-based CHRI checks are biographic checks of the biometric system limited to those agencies authorized via 5 U.S.C. 9101, Security Clearance Information Act of 1985.

In accordance with the requirements of Title 28, Code of Federal Regulations (CFR), § 20.31(e), the FBI periodically reviews the process of providing fingerprint-based and name-based CHRI checks to determine the proper fee amounts which should be collected, and the FBI publishes any resulting fee adjustments in the **Federal Register**.

A fee study was conducted in keeping with 28 CFR 20.31(e)(2). The fee study determined that although the cost reimbursement portion of the expenses decreased by $1, the automation portion of the expenses increased by a similar amount. Accordingly, the fee study results recommend no overall change in the fingerprint-based and name-based CHRI checks from the current user fees published in the **Federal Register** on September 24, 2018 (83 FR 48335), which have been in effect since January 1, 2019. The FBI reviewed the results of the independently conducted User Fee Study, compared the recommendations to the current fee schedule, and determined the revised fee recommendation amounts for both the cost reimbursement portion and

automation portion of the fee were reasonable and in consonance with the underlying legal authorities.

Pursuant to the recommendations of the study, the fees for fingerprint-based CHRI checks will be unchanged overall, and the fee for name-based CHRI checks will remain the same for federal agencies specifically authorized by statute (*e.g.,* pursuant to the Security Clearance Information Act, 5 U.S.C. 9101).

The following tables detail the fee amounts for authorized users requesting fingerprint-based and name-based CHRI checks for noncriminal justice purposes, including the difference from the fee schedule currently in effect.

FINGERPRINT-BASED CHRI CHECKS

| Service | Fee currently in effect | Fee currently in effect for CBSPs [1] | Change in fee amount | Revised fee (no change) | Revised fee for CBSPs (no change) |
|---|---|---|---|---|---|
| Fingerprint-based Submission | $13.25 | $11.25 | $0.00 | $13.25 | [2] $11.25 |
| Fingerprint-based Volunteer Submission [3] | 11.25 | 9.25 | 0.00 | 11.25 | [4] 9.25 |

[1] Centralized Billing Service Providers, see 75 *FR* 18753.
[2] Cost Recovery = $4.25; Automation = $7.00.
[3] *See e.g.,* 75 FR 18752.
[4] Cost Recovery = $4.25; Automation = $5.00.

NAME-BASED CHRI CHECKS

| Service | Fee currently in effect | Change in fee amount | Revised fee (no change) |
|---|---|---|---|
| Name-based Submission | $2.00 | $0.00 | $2.00 |

Dated: July 28, 2022.

**Christopher A. Wray,**

*Director.*

[FR Doc. 2022–16668 Filed 8–3–22; 8:45 am]

**BILLING CODE 4410–02–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Senior Executive Service-Performance Review Board

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the appointment of members of the OPM Performance Review Board.

**FOR FURTHER INFORMATION CONTACT:** Carmen Garcia, OPM Human Resources, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, (202) 606–1048.

**SUPPLEMENTARY INFORMATION:** Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor and considers recommendations to the appointing authority regarding the performance of the senior executive.

Office of Personnel Management.

**Stephen Hickman,**

*Federal Register Liaison.*

The following have been designated as members of the Fiscal Year 2022 Performance Review Board of the U.S. Office of Personnel Management:

Anne Harkavy, Chief of Staff, Chair
Laurie Bodenheimer, Associate Director, Healthcare and Insurance
Dennis Coleman, Chief Management Officer
Doug Glenn, Chief Financial Officer
Lisa Loss, Director, Suitability Executive Agent Programs
Benjamin Mizer, General Counsel
David Padrino, Director for Human Capital Data Management & Modernization
Margaret Pearson, Associate Director, Retirement Services
Rob Shriver, Associate Director, Employee Services
Tyshawn Thomas, Chief Human Capital Officer

[FR Doc. 2022–16664 Filed 8–3–22; 8:45 am]

**BILLING CODE 6325–45–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express 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:* August 4, 2022.

**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 July 19, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express Contract 96 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–89, CP2022–93.

**Sarah Sullivan,**

*Attorney, Ethics & Legal Compliance.*

[FR Doc. 2022–16651 Filed 8–3–22; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—First-Class Package Service 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:* August 4, 2022.

**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 July 28, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add First-Class Package Service Contract 120 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–91, CP2022–95.

**Sarah Sullivan,**

*Attorney, Ethics & Legal Compliance.*

[FR Doc. 2022–16650 Filed 8–3–22; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express and Priority Mail 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:* August 4, 2022.

**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 July 28, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 134 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–92, CP2022–96.

**Sarah Sullivan,**

*Attorney, Ethics & Legal Compliance.*

[FR Doc. 2022–16652 Filed 8–3–22; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service 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:* August 4, 2022.

**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 July 18, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 18 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–88, CP2022–92.

**Sarah Sullivan,**

*Attorney, Ethics & Legal Compliance.*

[FR Doc. 2022–16649 Filed 8–3–22; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–287, OMB Control No. 3235–0324]**

### Proposed Collection; Comment Request: Extension: Form S–4

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form S–4 (17 CFR 239.25) is the form used for registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) of securities issued in business combinations transactions. The information collected is intended to ensure the adequacy of information available to investors in connection with business combination transactions. Form S–4 takes approximately 3,820.592 hours per response to prepare and is filed by 588 registrants annually. We estimate that 25% of the 3,820.592 hours per response (955.148 hours) is prepared by the registrant for an annual reporting burden of 561,627 hours (955.148 hours per response × 588 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by October 3, 2022.

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

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 29, 2022.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022–16675 Filed 8–3–22; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–288, OMB Control No. 3235–0325]**

### Proposed Collection; Comment Request: Extension: Form F–4

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F–4 (17 CFR 239.34) is used by foreign issuers to register securities in business combinations, reorganizations and exchange offers pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information collected is

intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. Form F–4 takes approximately 1,437.948 hours per response and is filed by approximately 39 respondents. We estimate that 25% of the 1,437.948 hours per response (359.487 hours) is prepared by the registrant for a total annual reporting burden of 14,020 hours (359.487 hours per response × 39 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by October 3, 2022.

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

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 29, 2022.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022–16676 Filed 8–3–22; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–95391; File No. SR–Phlx–2022–22]**

## Self-Regulatory Organizations; Nasdaq PHLX LLC; Order Granting Approval of a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index Options That Expire on Tuesday or Thursday Under Its Nonstandard Expirations Pilot Program

July 29, 2022.

### I. Introduction

On June 2, 2022, Nasdaq PHLX LLC (''Phlx'' or the Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to add P.M.-settled Nasdaq-100 Index (''NDX'') options that expire on Tuesday or Thursday to the Exchange's Nonstandard Expirations Pilot Program (''Pilot Program'') and make certain technical amendments to the rules of the Exchange. The proposed rule change was published for comment in the **Federal Register** on June 21, 2022.[3] No comments were received. The Commission is approving the proposed rule change.

### II. Description of the Proposal

The Exchange proposes to amend Options 4A, Section 12(b)(5), which governs its Pilot Program, to permit P.M.-settled Nasdaq-100 Index (''NDXP'') options that expire on Tuesday or Thursday. Under the existing Pilot Program, the Exchange is permitted to list P.M.-settled options on broad-based indexes that expire on: (1) any Monday, Wednesday, or Friday (''Weekly Expirations'') and (2) the last trading day of the month (''End of Month Expirations'' or ''EOMs'').[4]

Specifically, the proposed rule change amends Options 4A, Section 12(b)(5)(A) to add NDXP options (P.M.-settled) that expire on Tuesday or Thursday (''Tuesday and Thursday NDXP Expirations'') as permissible Weekly Expirations under the Pilot Program (currently set to expire on November 4, 2022).[5] The Exchange notes that permitting Tuesday and Thursday NDXP Expirations, as proposed, is in addition to the NDXP options with Monday, Wednesday and Friday expirations that the Exchange may (and does) already list pursuant to Options 4A, Section 12(b)(5)(A).[6] The Pilot Program for Weekly Expirations will apply to Tuesday and Thursday NDXP Expirations in the same manner as it currently applies to P.M.-settled broad-based index options with Monday, Wednesday and Friday expirations.[7] As proposed, Options 4A, Section 12(b)(5)(A) provides that the Exchange may open for trading Weekly Expirations on NDX options to expire on any Tuesday or Thursday (other than days that coincide with the third Friday-of-the-month or an EOM expiration).[8]

The proposed weekly Tuesday and Thursday NDXP Expirations will be subject to all provisions of Options 4A, Section 12(b)(5)(A) in the same manner as existing Monday, Wednesday, and Friday expirations.[9] The maximum number of expirations that may be listed for each Weekly Expiration (*i.e.,* a Monday expiration, Tuesday expiration, Wednesday expiration, Thursday expiration, or Friday expiration, as applicable) in a given class is the same as the maximum number of expirations permitted in Options 4A, Section 12(a)(4) for standard options on the same broad-based index (which is 12 for NDXP options).[10] Further, other expirations in the same class are not counted as part of the maximum number of Weekly Expirations for an applicable broad-based index class.[11] Weekly Expirations need not be for consecutive Monday, Tuesday, Wednesday, Thursday, or Friday expirations as applicable; however, the expiration date of a non-consecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively.[12] Weekly Expirations that are initially listed in a given class may expire up to four weeks from the actual listing date.[13] Additionally, the Tuesday and Thursday NDXP Expirations will be treated the same as options on the same underlying index that expire on the third Friday of the expiration month, except that they will be P.M.-settled and new series in Weekly Expirations may be added up to and including on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95100 (June 14, 2022), 87 FR 36902 (''Notice'').

[4] *See* Options 4A, Section 12(b)(5).

[5] *See* Notice, *supra* note 3, at 36903.

[6] *See id.*

[7] *See id.*

[8] *See id.*

[9] *See id.*

[10] *See* proposed Options 4A, Section 12(b)(5)(A). *See also* Notice, *supra* note 3, at 36903.

[11] *See* proposed Options 4A, Section 12(b)(5)(A).

[12] *See id.*

[13] *See* Options 4A, Section 12(b)(5)(A).

expiration date for an expiring Weekly Expiration.[14]

If the Exchange is not open for business on a Tuesday or Thursday, the normally Tuesday- or Thursday-expiring NDXP options will expire on the previous business day.[15] The proposed rule change also adds that, if two different Weekly Expirations on NDX would expire on the same day because the Exchange is not open for business on a certain weekday, the Exchange will list only one of such Weekly Expirations.[16] Transactions in Weekly Expirations may be effected on the Exchange between the hours of 9:30 a.m. (Eastern Time) and 4:15 p.m. (Eastern Time), except that on the last trading day, transactions in expiring Weekly Expirations may be effected on the Exchange between the hours of 9:30 a.m. (Eastern time) and 4:00 p.m. (Eastern time).[17]

Pilot Report

The Exchange proposes to abide by the same reporting requirements for the trading of Tuesday and Thursday NDXP Expirations that it does for the trading of P.M.-settled options on broad-based indexes that expire on any Monday, Wednesday, or Friday pursuant to the Pilot Program.[18] The Exchange represented that it will continue to provide the Commission with ongoing data regarding Tuesday and Thursday NDXP Expirations unless and until the Nonstandard Pilot is made permanent or discontinued.[19] As provided in the Pilot Program Approval Order,[20] the annual report will contain an analysis of volume, open interest and trading patterns. In addition, for series that exceed certain minimum open interest parameters, the annual report will provide analysis of index price volatility and, if needed, share trading activity.[21] Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Pilot Program, including Tuesday and Thursday NDXP Expirations as proposed, is consistent with the Exchange Act.[22] As it does for current Pilot Program products, the Exchange will make public on its website all data and analyses in connection with Tuesday and Thursday NDXP Expirations it submits to the Commission under the Pilot Program.[23] Going forward, the Exchange states that it will include the same areas of analysis for Tuesday and Thursday NDXP Expirations.[24] The Exchange also proposes to include the following market quality data, over sample periods determined by the Exchange and the Commission, for NDXP options (NDXP and standard NDX options) as part of the annual reports going forward: (1) time-weighted relative quoted spreads; (2) relative effective spreads; and (3) time-weighted bid and offer sizes.[25]

Technical Amendments

The Exchange also proposes to amend Options 5, Section 2, Order Protection. The Exchange proposes to remove a citation to paragraph (c) within Options 5, Section 2(a) because this rule has no paragraph (c).[26] The Exchange proposes to amend Options 8, Section 2, Definitions, to update an incorrect citation to Rule 1(z). The proper citation is to General 1, Section 1(23).[27] Finally, the Exchange proposes to amend Options 8, Section 30, Crossing, Facilitation and Solicited Orders to remove the stray word ''Rule.'' [28]

Implementation

The Exchange proposes to implement this rule change on or before August 1, 2022. The Exchange will issue an Options Trader Alert to notify members and member organizations of the implementation date.[29]

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.[30] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[31] which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As the Commission noted in its recent order approving the listing and trading of P.M.-settled options on the S&P 500 Index that expire on Tuesday or Thursday, the Commission has had concerns about the potential adverse effects and impact of P.M. settlement upon market volatility and the operation of fair and orderly markets on the underlying cash markets at or near the close of trading, including for cash-settled derivatives contracts based on a broad-based index.[32] The potential impact today remains unclear, given the significant changes in the closing procedures of the primary markets in recent decades. The Commission is mindful of the historical experience with the impact of P.M. settlement of cash-settled index derivatives on the underlying cash markets, but recognizes that these risks may be mitigated today by the enhanced closing procedures that are now in use at the primary equity markets.

The Exchange's proposal to add Tuesday and Thursday NDXP Expirations to the existing Pilot Program would offer additional investment options to investors and may be useful for their investment or hedging objectives while providing the Commission with data to monitor the effects of Tuesday and Thursday NDXP Expirations and the impact of P.M. settlement on the markets. To assist the Commission in assessing any potential impact of Tuesday and Thursday NDXP Expirations on the options markets as well as the underlying cash equities markets, the Exchange will be required to submit data to the Commission in connection with the Pilot Program.[33] Further, including the proposed Tuesday and Thursday NDXP

[14] *See also* Notice, *supra* note 3, at 36903.

[15] *See id.*

[16] *See id.* The Exchange believes it is appropriate to clarify in the rule text that the Exchange will list just one Weekly Expiration in such a case, as the two Weekly Expirations would essentially be the same options contract. *Id.*

[17] *See id.*

[18] *See id.*

[19] *See id.* at 36904.

[20] *See* Securities Exchange Act Release No. 82341 (December 15, 2017), 82 FR 60651 (December 21, 2017) (approving SR–Phlx–2017–79) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 and Granting Accelerated Approval of Amendment No. 2, of a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

[21] *See* Notice, *supra* note 3, at 36904.

[22] *See id.*

[23] *See id.*

[24] *See id.*

[25] *See id.*

[26] *See id.* at 36904–36905.

[27] *See id.* at 36905.

[28] *See id.*

[29] *See id.*

[30] 15 U.S.C. 78f(b). 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).

[31] 15 U.S.C. 78f(b)(5).

[32] *See* Securities Exchange Act Release No. 94682 (April 12, 2022), 87 FR 22993 (April 18, 2022) (CBOE–2022–005).

[33] *See* Notice, *supra* note 3, at 36905.

Expirations in the Pilot Program, together with the data and analysis that the Exchange will provide to the Commission, will allow the Exchange and the Commission to monitor for and assess any potential for adverse market effects of allowing Tuesday and Thursday NDXP Expirations, including on the underlying component stocks. In particular, the data collected from the Pilot Program will help inform the Commission's consideration of whether the Pilot Program, as amended to include Tuesday and Thursday NDXP Expirations, should be modified, discontinued, extended, or permanently approved. Furthermore, the Exchange's ongoing analysis of the Pilot Program should help it monitor any potential risks from large P.M.-settled positions and take appropriate action if warranted.

Finally, the Commission believes that the proposed non-substantive technical amendments would remove or correct obsolete text and ensure internal consistency within the Exchange's rules.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Ac t.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–Phlx–2022–22), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022–16658 Filed 8–3–22; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–95395; File No. SR–MEMX–2022–20]**

## Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Exchange Rule 13.4(a) Regarding the Exchange's Usage of Data Feeds

July 29, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 26, 2022, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) 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 is filing with the Commission a proposed rule change to update Exchange Rule 13.4(a) regarding the sources of data that the Exchange utilizes for the handling, execution and routing of orders, as well as for surveillance necessary to monitor compliance with applicable securities laws and Exchange rules, with respect to certain market centers. The text of the proposed rule change is provided in Exhibit 5.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to update Exchange Rule 13.4(a) regarding the sources of data that the Exchange utilizes for the handling, execution and routing of orders, as well as for surveillance necessary to monitor compliance with applicable securities laws and Exchange rules, with respect to certain market centers. Specifically, the Exchange proposes to amend Exchange Rule 13.4(a) to reflect that it will no longer utilize direct data feeds and instead will utilize market data from the Consolidated Quotation System (''CQS'')/UTP Quotation Data Feed (''UQDF'') for such purposes with respect to the following markets centers: Cboe BYX, Cboe EDGA, Nasdaq BX, Nasdaq PSX, NYSE American, NYSE Chicago, and NYSE National. The Exchange will not have a secondary source for data for these market centers.

The Exchange proposes for this proposed rule change to become operative on August 1, 2022, which is the date that the Exchange intends to switch data sources with respect to these market centers, as described above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that its proposal to update Exchange Rule 13.4(a) to reflect that it will utilize market data from the CQS/UQDF with respect to Cboe BYX, Cboe EDGA, Nasdaq BX, Nasdaq PSX, NYSE American, NYSE Chicago, and NYSE National is consistent with the Act because it will ensure that the Rule correctly identifies and publicly states on a market-by-market basis all of the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. In particular, the Exchange receives and processes data feeds to facilitate compliance with the applicable requirements of Regulation NMS, including SEC Rule 611 (*i.e.,* the Order Protection Rule).[7] The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity, clarity and transparency.

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[34] 15 U.S.C. 78s(b)(2).

[35] 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)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 242.611.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposal would enhance competition because disclosing the primary and secondary data sources utilized by the Exchange with respect to all of the exchanges enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay.

The Exchange believes that waiver of the operative delay is appropriate because the Commission previously approved MEMX Rule 13.4 to permit the Exchange to disclose via its rules the data feeds it utilizes for order handling, routing and execution, and related compliance processes, and the proposed changes merely provide necessary updates to such disclosure. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues and does not alter the Exchange's functionality. Rather, the proposal memorializes that MEMX has chosen not to subscribe to the direct proprietary market data feeds of several exchanges, most of which currently have relatively low market share (*e.g.,* below 1%), and will instead utilize the applicable consolidated market data source for those exchanges. MEMX's proposal is not novel, as other exchanges also use the consolidated data feeds to receive data from certain other exchanges.[12] Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[13]

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 shall institute proceedings under Section 19(b)(2)(B) [14] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2022–20 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MEMX–2022–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2022–20 and should be submitted on or before August 25, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022–16659 Filed 8–3–22; 8:45 am]

**BILLING CODE 8011–01–P**

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See, e.g.,* NYSE American Rule 7.37E(d) (showing that NYSE American uses the consolidated data for several exchanges, including MEMX).

[13] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–116, OMB Control No. 3235–0109]**

## Proposed Collection; Comment Request: Extension: Rule 12d1–3

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services,

100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Exchange Act Rule 12d1–3 (17 CFR 240.12d1–3) requires a certification that a security has been approved by an exchange for listing and registration pursuant to Section 12(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(d)) to be filed with the Commission. The information required under Rule 12d1–3 must be filed with the Commission and is publicly available. We estimate that it takes approximately one-half hour per response to provide the information required under Rule 12d1–3 and that the information is filed by approximately 688 respondents for a total annual reporting burden of 344 hours (0.5 hours per response x 688 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by October 3, 2022.

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

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 29, 2022.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022–16674 Filed 8–3–22; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–069, OMB Control No. 3235–0069]**

### Proposed Collection; Comment Request: Extension: Industry Guides

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Industry Guides are used by registrants in certain industries as disclosure guidelines to be followed in presenting information to investors in Securities Act (15 U.S.C. 77a *et seq.*) and Exchange Act (15 U.S.C. 78a *et seq.*) registration statements and certain other Exchange Act filings. The paperwork burden from the Industry Guides is imposed through the forms that are subject to the disclosure requirements in the Industry Guides and is reflected in the analysis of these documents. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience the Commission estimates the total annual burden imposed by the Industry Guides to be one hour.

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by October 3, 2022.

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

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 29, 2022.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022–16672 Filed 8–3–22; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 34656]**

### Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

July 29, 2022.

**AGENCY:** Securities and Exchange Commission (''Commission'' or ''SEC'').

**ACTION:** Notice.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July 2022. A copy of each application may be obtained via the Commission's website by searching for the applicable file number listed below, or for an applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on August 23, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov.*

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov*.

**FOR FURTHER INFORMATION CONTACT:** Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

**Infinity Long/Short Equity Fund, LLC [File No. 811–23297]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 31, 2021, and March 28, 2022, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $20,000 incurred in connection with the liquidation were paid by the applicant's investment adviser.

*Filing Dates:* The application was filed on May 12, 2022, and amended on July 12, 2022.

*Applicant's Address: joshua.deringer@faegredrinker.com*.

**PFM Funds [File No. 811–04933]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Government Obligations Fund, a series of First American Funds, Inc., and on December 20, 2021 made a final distribution to its shareholders based on net asset value. Expenses of $538,205 incurred connection with the reorganization were paid by the applicant, the applicant's investment adviser, and the acquiring fund.

*Filing Date:* The application was filed on June 28, 2022.

*Applicant's Address: HESSD@pfmam.com*.

**PIMCO Dynamic Credit & Mortgage Income Fund [File No. 811–22758]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to PIMCO Dynamic Income Fund, and on December 10, 2021 made a final distribution to its shareholders based on net asset value. Expenses of $2,990,379 incurred in connection with the reorganization were paid by the applicant's investment adviser.

*Filing Date:* The application was filed on January 3, 2021.

*Applicant's Address: david.sullivan@ropesgray.com*.

**PIMCO Income Opportunity Fund [File No. 811–22121]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to PIMCO Dynamic Income Fund, and on December 10, 2021 made a final distribution to its shareholders based on net asset value. Expenses of $482,768 incurred in connection with the reorganization were paid by the applicant's investment adviser.

*Filing Date:* The application was filed on January 3, 2021.

*Applicant's Address: david.sullivan@ropesgray.com*.

**Pioneer Income Opportunities Trust [File No. 811–23486]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Dates:* The application was filed on February 9, 2022, and amended on June 10, 2022.

*Applicant's Address: jeremy.kantrowitz@morganlewis.com*.

**Value Line Tax Exempt Fund, Inc. [File No. 811–03904]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On October 25, 2021, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $139,000 incurred in connection with the liquidation were paid by the applicant and the applicant's investment advisor.

*Filing Dates:* The application was filed on April 20, 2022, and amended on June 29, 2022.

*Applicant's Address: info@vlfunds.com*.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022–16653 Filed 8–3–22; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–249, OMB Control No. 3235–0258]**

## Proposed Collection; Comment Request: Extension: Form F–1

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F–1 (17 CFR 239.31) is used by certain foreign private issuers to register securities pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. Form F–1 takes approximately 1,615.57 hours per response and is filed by approximately 66 respondents. We estimate that 25% of the 1,615.57 hours per response (403.89 hours) is prepared by the registrant for a total annual reporting burden of 26,657 hours (403.89 hours per response × 66 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by October 3, 2022.

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

Please direct your written comment to David Bottom, Director/Chief

Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 29, 2022.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022–16671 Filed 8–3–22; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–156, OMB Control No. 3235–0288]**

### Proposed Collection; Comment Request: Extension: Form 20–F

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 20–F (17 CFR 249.220f) is used to register securities of foreign private issuers pursuant to Section 12 of the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78*l*) or as annual and transitional reports pursuant to Sections 13 and 15(d) of the Exchange Act (15 U.S.C. 78m(a) and 78o(d)). The information required in the Form 20–F is used by investors in making investment decisions with respect to the securities of such foreign private issuers. We estimate that Form 20–F takes approximately 2,629.689 hours per response and is filed by approximately 729 respondents. We estimate that 25% of the 2,629.689 hours per response (657.422 hours) is prepared by the issuer for a total reporting burden of 479,261 (657.422 hours per response × 729 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by October 3, 2022.

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

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 29, 2022.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022–16678 Filed 8–3–22; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–95392; File No. SR–CBOE–2022–039]**

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend Rule 4.13

July 29, 2022.

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 July 21, 2022, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 4.13. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

**Rule 4.13. Series of Index Options**

* * * * *

(e) Nonstandard Expirations Pilot Program.

(1) Weekly Expirations. The Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). In addition, the Exchange may also open for trading Weekly Expirations on S&P 500 Index *and Mini-S&P 500 Index* options to expire on any Tuesday or Thursday (other than days that coincide with an EOM expiration). Weekly Expirations shall be subject to all provisions of this Rule and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that Weekly Expirations shall be P.M.-settled and new series in Weekly Expirations may be added up to and including on the expiration date for an expiring Weekly Expiration.

The maximum number of expirations that may be listed for each Weekly Expiration (*i.e.,* a Monday expiration, Tuesday expiration, Wednesday expiration, Thursday expiration, or Friday expiration, as applicable) in a given class is the same as the maximum number of expirations permitted in Rule 4.13(a)(2) for standard options on the same broad-based index. Weekly Expirations need not be for consecutive Monday, Tuesday, Wednesday, Thursday, or Friday expirations as applicable; however, the expiration date of a non-consecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively. Weekly Expirations that are first listed in a given class may expire up to four weeks from the actual listing date. If the Exchange lists EOMs and Weekly Expirations as applicable in a given class, the Exchange will list an EOM instead of a Weekly Expiration that expires on the same day in the given class. Other expirations in the same class are not counted as part of the maximum number of Weekly Expirations for an applicable broad-based index class. If the Exchange is not open for business on a respective Monday, the normally Monday expiring Weekly Expirations will expire on the following business day. If the Exchange is not open for business on a respective Tuesday, Wednesday, Thursday, or Friday, the normally Tuesday, Wednesday, Thursday, or Friday expiring Weekly Expirations will expire on the previous business day. If two different Weekly Expirations on S&P 500 Index *or Mini-S&P 500 Index* options would expire on the same day because the Exchange is not open for business on a certain weekday, the Exchange will list only one of such Weekly Expirations.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 4.13(e), which governs its Nonstandard Expirations Pilot Program (''Pilot Program''), to permit P.M.-settled options on the Mini-S&P 500 Index (''XSP options'') that expire on Tuesday or Thursday. Under the existing Pilot Program, the Exchange is permitted to list P.M.-settled options on broad-based indexes that expire on: (1) any Monday, Wednesday, or Friday and, with respect to options on the S&P 500 Index (''SPX options'') any Tuesday or Thursday (''Weekly Expirations'' or ''EOWs'') and (2) the last trading day of the month (''End of Month Expirations'' or ''EOMs'').[3] The proposed XSP options that expire on Tuesday or Thursday would be listed under the Pilot Program, which is currently set to expire on November 7, 2022. The Exchange notes that permitting XSP options with Tuesday and Thursday expirations, as proposed, would be in addition to the XSP options with Monday, Wednesday and Friday expirations that the Exchange may (and does) already list, as they are permissible Weekly Expirations for options on a broad-based index (*e.g.,* the Mini-S&P 500 Index) pursuant to Rule 4.13(e)(1).

The Pilot Program for Weekly Expirations will apply to XSP options with Tuesday and Thursday expirations in the same manner as it currently applies to all other P.M.-settled broad-based index options with Monday, Wednesday, and Friday expirations and to SPX options with Tuesday and Thursday expirations. Specifically, as set forth in Rule 4.13(e), Weekly Expirations, including the proposed XSP options with Tuesday and Thursday expirations, are subject to all provisions of Rule 4.13 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that Weekly Expirations are P.M.-settled, and new series in Weekly Expirations may be added up to and including on the expiration date for an expiring Weekly Expiration. The maximum number of expirations that may be listed for each Weekly Expiration (*i.e.,* a Monday expiration, Tuesday expiration, Wednesday expiration, Thursday expiration, or Friday expiration, as applicable) in a given class (including XSP) is the same as the maximum number of expirations permitted in Rule 4.13(a)(2) for standard options on the same broad-based index (which is 12 for XSP options). Weekly Expirations need not be for consecutive Monday, Tuesday, Wednesday, Thursday, or Friday expirations as applicable; however, the expiration date of a nonconsecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively. Weekly Expirations that are first listed in a given class may expire up to four weeks from the actual listing date. If the Exchange lists EOMs and Weekly Expirations as applicable in a given class, the Exchange will list an EOM instead of a Weekly Expiration that expires on the same day in the given class. Other expirations in the same class are not counted as part of the maximum number of Weekly Expirations for an applicable broad-based index class. If the Exchange is not open for business on a respective Monday, the normally Monday expiring Weekly Expirations will expire on the following business day. If the Exchange is not open for business on a respective Tuesday, Wednesday, Thursday, or Friday, the normally Tuesday, Wednesday, Thursday, or Friday expiring Weekly Expirations will expire on the previous business day.

The proposed rule change also adds that if two different Weekly Expirations on Mini-S&P 500 Index options (as is the case of S&P 500 Index options) would expire on the same day because the Exchange is not open for business on a certain weekday, the Exchange will list only one of such Weekly Expirations. The Exchange believes it is appropriate to clarify in the rule text that the Exchange will list just one Weekly Expiration in such a case, as the two Weekly Expirations would essentially be the same options contract. For example, if the Exchange listed XSP options with proposed Thursday expirations and Friday expirations and the Exchange was closed for business on a Friday then, pursuant to current Rule 4.13(e)(1), the normally expiring Friday expiration would expire on the previous business day—essentially making it an XSP option with a Thursday expiration. Thus, expiring XSP options in this case will always have the same weekday expiration (per the example, it is an XSP option with a Thursday expiration, whether it was listed as an XSP with a Thursday expiration or a Friday expiration). As such, for the sake of clarity in the rules and to mitigate any confusion regarding the listing of Weekly XSP options when the Exchange is closed for business, the proposed rule change provides that the Exchange will list just one Weekly Expiration if two Weekly Expirations would expire on the same day due to the Exchange being closed for business. In addition, like all Weekly Expirations listed pursuant to Rule 4.13(e)(4), transactions in expiring XSP options with Tuesday and Thursday expirations may be effected on the Exchange between the hours of 9:30 a.m. and 4:00 p.m. on their last trading day (Eastern Time).

The Exchange believes that that the introduction of XSP options with Tuesday and Thursday expirations will expand hedging tools available to market participants while also providing greater trading opportunities. By offering XSP options with Tuesday and Thursday expirations along with the current Monday, Wednesday and Friday expirations, the proposed rule change will allow market participants to purchase XSP options in a manner more aligned with specific timing needs and more effectively tailor their investment and hedging strategies and manage their portfolios. In particular, the proposed rule change will allow market participants to roll their positions on more trading days, thus with more precision, spread risk across more trading days and incorporate daily changes in the markets, which may reduce the premium cost of buying protection.

The Exchange proposes to abide by the same reporting requirements for the trading of XSP options that expire on any Tuesday or Thursday that it does for the trading of P.M.-settled options on broad-based indexes that expire on any Monday, Wednesday, or Friday and for SPX options that expire on Tuesday or Thursday pursuant to the Pilot Program. The Exchange proposes to include data regarding XSP options that expire on Tuesdays or Thursdays as it does for all other Weekly Expirations in the Pilot Program annual report that it submits to the Securities and Exchange Commission (''Commission'') at least

[3] *See* Rule 4.13(e).

two months prior to the expiration date of the Pilot Program.[4] The Exchange is required to submit an annual report at least yearly. The annual report to the Commission addresses the following areas: Analysis of Volume & Open Interest, Monthly Analysis of Weekly Expirations & EOM Trading Patterns and Provisional Analysis of Index Price Volatility. Going forward, the Exchange will include the same areas of analysis for XSP options with Tuesday and Thursday expirations in the annual reports. The Exchange also proposes to include the following market quality data, over sample periods determined by the Exchange and the Commission, for XSP options as part of the annual report, as it does for SPX options:

- time-weighted relative quoted spreads;
- relative effective spreads; and
- time-weighted bid and offer sizes.

The Exchange also will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Pilot Program, including XSP options with Tuesday and Thursday expirations as proposed, is consistent with the Exchange Act. As it does for current Pilot Program products, the Exchange will make public on its website all data and analyses in connection with XSP options with Tuesday and Thursday expirations it submits to the Commission under the Pilot Program.

The Exchange believes there is sufficient investor interest and demand in XSP options with Tuesday and Thursday expirations to warrant inclusion in the Pilot Program and that the Pilot Program, as amended, will continue to provide investors with additional means of managing their risk exposures and carrying out their investment objectives.[5] The Exchange notes that during the Pilot Program's approximately 12-year tenure, the Exchange has not observed any significant adverse market effects or identified any regulatory concerns as a result of the Pilot Program, nor does it believe that additional expirations listed under the Pilot Program would result in any such impact or regulatory concerns. Based on a study conducted by Commission staff on the pilot data (including quarterly, weekly, EOM and third Friday expirations for P.M.-settled XSP options),[6] there is no evidence of any significant adverse economic impact to the futures, index, or underlying index component securities markets as a result of the quantity of P.M.-settled XSP options that settle at the close or the amount of expiring open interest in P.M.-settled XSP options.[7]

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it believes that the Exchange and OPRA have the necessary systems capacity to handle any potential additional traffic associated with trading of XSP options with Tuesday and Thursday expirations. The Exchange does not believe that its Trading Permit Holders (''TPHs'') will experience any capacity issues as a result of this proposal and represents that it will monitor the trading volume associated with any possible additional options series listed as a result of this proposal and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change will 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 by providing investors with greater trading and hedging opportunities and flexibility, allowing them to transact in XSP options in a manner more aligned with specific timing needs and more effectively tailor their investment and hedging objectives by listing XSP options that expire each trading day of the week. The Exchange does not believe that the addition of XSP options with Tuesday and Thursday expirations to the Pilot Program will raise any prohibitive regulatory concerns or adversely impact fair and orderly markets on expiration days. The Exchange has not observed any meaningful regulatory concerns or adverse impact on fair and orderly markets in connection with the listing and trading of XSP options with Monday, Wednesday and Friday expirations or with the recent listing and trading SPX options with expirations on Monday through. Particularly, the Exchange does not believe an increase in the number of P.M.-settled XSP options series will have any significant adverse economic impact on the futures, index, or underlying index component securities markets.

The Exchange will include analysis in connection with XSP options that expire on Tuesdays and Thursdays in the same manner that it currently does for other Pilot Program products, as described above, in the annual reports it submits to the Commission. The Exchange also will provide the Commission with any additional data or analyses that it may request if it deems such data or analyses necessary to determine whether the

[4] *See* Nonstandard Expirations Pilot Approval Order.

[5] The Exchange currently lists Tuesday and Thursday expirations in SPX options. The Exchange also already allows XSP options to expire on Tuesdays for normally Monday or Wednesday expiring XSP options when the Exchange is not open for business on a respective Monday or Wednesday (as applicable), and already allows XSP options to expire on Thursdays for normally Friday expiring XSP options when the Exchange is not open for business on a respective Friday. Also, EOM options in XSP (and other broad-based indexes) may currently be listed to expire on a Tuesday or Thursday.

[6] *See* Securities and Exchange Commission, Division of Economic Risk and Analysis, Memorandum, Cornerstone Analysis of PM Cash-Settled Index Option Pilots (February 2, 2021) (''SEC PM Pilot Memo'') at 13, available at: *https://www.sec.gov/files/Analysis_of_PM_Cash_Settled_Index_Option_Pilots.pdf* (''Option settlement quantity data for a.m.- and p.m.-settled options were obtained from the Cboe, including the number of contracts that settled in-the-money for each exchange-traded option series on the S&P 500 index . . . on expiration days from January 20, 2006 through December 31, 2018. Daily open interest and volume data for [XSP] option series were also obtained from Cboe, including open interest data from January 3, 2006 through December 31, 2018 and trading volume data from January 3, 2006 through December 31, 2018.'')

[7] *See id.* at 3. For example, the largest settlement event that occurred during the time period of the study (a settlement of $100.4 billion of notional on December 29, 2017) had an estimated impact on the futures price of only approximately 0.02% (a predicted impact of $0.54 relative to a closing futures price of $2,677).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

Pilot Program, including XSP options with Tuesday and Thursday expirations as proposed, is consistent with the Exchange Act. The Exchange represents that it believes that it has the necessary systems capacity to support any additional traffic associated with trading of XSP options with Tuesday and Thursday expirations and does not believe that its TPHs will experience any capacity issues as a result of this proposal. The Exchange will monitor the trading volume associated with any possible additional options series listed and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because XSP options with Tuesday and Thursday expirations will be available to all market participants. By listing XSP options that expire Tuesdays and Thursdays, the proposed rule change will provide all investors that participate in the XSP options market greater trading and hedging opportunities and flexibility to meet their investment and hedging needs. Additionally, Tuesday and Thursday expiring XSP options will trade in the same manner as Weekly Expirations currently trade.

The Exchange does not believe that the proposal to list XSP options with Tuesday and Thursday expirations will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because XSP options are proprietary Exchange products. Other exchanges offer nonstandard expiration programs for index options as well as short-term options programs for certain equity options and are welcome to similarly propose to list Tuesday and Thursday options on those indexes or equity products. To the extent that the addition of XSP options that expire on Tuesdays and Thursdays available for trading on the Exchange makes the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2022–039 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2022–039. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2022–039, and should be submitted on or before August 25, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022–16657 Filed 8–3–22; 8:45 am]

**BILLING CODE P**

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–331, OMB Control No. 3235–0383]**

## Proposed Collection; Comment Request: Extension: Form F–7

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F–7 (17 CFR 239.37) is a registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) used to register securities that are offered for cash upon the exercise of rights granted to a registrant's existing security holders to purchase or subscribe such securities. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with

[11] 17 CFR 200.30–3(a)(12).

securities law requirements and assures the public availability of such information. Form F–7 takes approximately 4 hours per response to prepare and is filed by approximately 3 respondents. We estimate that 25% of 4 hours per response (one hour) is prepared by the company for a total annual reporting burden of 3 hours (1 hour per response × 3 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by October 3, 2022.

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

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 29, 2022.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022–16677 Filed 8–3–22; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–95393; File No. SR–ISE–2022–13]**

## Self-Regulatory Organizations; Nasdaq ISE, LLC; Order Granting Approval of a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index Options That Expire on Tuesday or Thursday Under Its Nonstandard Expirations Pilot Program

July 29, 2022.

### I. Introduction

On June 1, 2022, Nasdaq ISE, LLC (''ISE'' or the Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to add P.M.-settled Nasdaq-100 Index (''NDX'') options that expire on Tuesday or Thursday to the Exchange's Nonstandard Expirations Pilot Program (''Pilot Program''). The proposed rule change was published for comment in the **Federal Register** on June 21, 2022.[3] No comments were received. The Commission is approving the proposed rule change.

### II. Description of the Proposal

The Exchange proposes to amend Supplementary Material .07 to Options 4A, Section 12, which governs its Pilot Program, to permit P.M.-settled Nasdaq-100 Index (''NDXP'') options that expire on Tuesday or Thursday. Under the existing Pilot Program, the Exchange is permitted to list P.M.-settled options on broad-based indexes that expire on: (1) any Monday, Wednesday, or Friday (''Weekly Expirations'') and (2) the last trading day of the month (''End of Month Expirations'' or ''EOMs'').[4]

Specifically, the proposed rule change amends Supplementary Material .07(a) Options 4A, Section 12 to add NDXP options (P.M.-settled) that expire on Tuesday or Thursday (''Tuesday and Thursday NDXP Expirations'') as permissible Weekly Expirations under the Pilot Program (currently set to expire on November 4, 2022).[5] The Exchange notes that permitting Tuesday and Thursday NDXP Expirations, as proposed, is in addition to the NDXP options with Monday, Wednesday and Friday expirations that the Exchange may (and does) already list pursuant to Supplementary Material .07(a) to Options 4A, Section 12.[6] The Pilot Program for Weekly Expirations will apply to Tuesday and Thursday NDXP Expirations in the same manner as it currently applies to P.M.-settled broad-based index options with Monday, Wednesday and Friday expirations.[7] As proposed, Supplementary Material .07(a) to Options 4A, Section 12 provides that the Exchange may open for trading Weekly Expirations on NDX options to expire on any Tuesday or Thursday (other than days that coincide with the third Friday-of-the-month or an EOM expiration).[8]

The proposed weekly Tuesday and Thursday NDXP Expirations will be subject to all provisions of Supplementary Material .07(a) to Options 4A, Section 12 in the same manner as existing Monday, Wednesday, and Friday expirations.[9] The maximum number of expirations that may be listed for each Weekly Expiration (*i.e.,* a Monday expiration, Tuesday expiration, Wednesday expiration, Thursday expiration, or Friday expiration, as applicable) in a given class is the same as the maximum number of expirations permitted in Options 4A, Section 12(a)(3) for standard options on the same broad-based index (which is 12 for NDXP options).[10] Further, other expirations in the same class are not counted as part of the maximum number of Weekly Expirations for an applicable broad-based index class.[11] Weekly Expirations need not be for consecutive Monday, Tuesday, Wednesday, Thursday, or Friday expirations as applicable; however, the expiration date of a non-consecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively.[12] Weekly Expirations that are initially listed in a given class may expire up to four weeks from the actual listing date.[13] Additionally, the Tuesday and Thursday NDXP Expirations will be treated the same as options on the same underlying index that expire on the third Friday of the expiration month, except that they will be P.M.-settled and new series in Weekly Expirations may be added up to and including on the expiration date for an expiring Weekly Expiration.[14]

If the Exchange is not open for business on a Tuesday or Thursday, the normally Tuesday- or Thursday-expiring NDXP options will expire on the previous business day.[15] The proposed rule change also adds that, if two different Weekly Expirations on NDX would expire on the same day because the Exchange is not open for business on a certain weekday, the Exchange will list only one of such

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95101 (June 14, 2022), 87 FR 36894 (''Notice'').

[4] *See* Supplementary Material .07 to Options 4A, Section 12.

[5] *See* Notice, *supra* note 3, at 36894.

[6] *See id.*

[7] *See id.*

[8] *See id.*

[9] *See id.*

[10] *See* proposed Supplementary Material .07(a) to Options 4A, Section 12. *See also* Notice, *supra* note 3, at 36895.

[11] *See* proposed Supplementary Material .07(a) to Options 4A, Section 12.

[12] *See id.*

[13] *See id.*

[14] *See also* Notice, *supra* note 3, at 36894.

[15] *See id.* at 36895.

Weekly Expirations.[16] Transactions in Weekly Expirations may be effected on the Exchange between the hours of 9:30 a.m. (Eastern Time) and 4:15 p.m. (Eastern Time), except that on the last trading day, transactions in expiring Weekly Expirations may be effected on the Exchange between the hours of 9:30 a.m. (Eastern time) and 4:00 p.m. (Eastern time).[17]

Pilot Report

The Exchange proposes to abide by the same reporting requirements for the trading of Tuesday and Thursday NDXP Expirations that it does for the trading of P.M.-settled options on broad-based indexes that expire on any Monday, Wednesday, or Friday pursuant to the Pilot Program.[18] The Exchange represented that it will continue to provide the Commission with ongoing data regarding Tuesday and Thursday NDXP Expirations unless and until the Nonstandard Pilot is made permanent or discontinued.[19] As provided in the Pilot Program Approval Order,[20] the annual report will contain an analysis of volume, open interest and trading patterns. In addition, for series that exceed certain minimum open interest parameters, the annual report will provide analysis of index price volatility and, if needed, share trading activity.[21] Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Pilot Program, including Tuesday and Thursday NDXP Expirations as proposed, is consistent with the Exchange Act.[22] As it does for current Pilot Program products, the Exchange will make public on its website all data and analyses in connection with Tuesday and Thursday NDXP Expirations it submits to the Commission under the Pilot Program.[23] Going forward, the Exchange states that it will include the same areas of analysis for Tuesday and Thursday NDXP Expirations.[24] The Exchange also proposes to include the following market quality data, over sample periods determined by the Exchange and the Commission, for NDXP options (NDXP and standard NDX options) as part of the annual reports going forward: (1) time-weighted relative quoted spreads; (2) relative effective spreads; and (3) time-weighted bid and offer sizes.[25]

Implementation

The Exchange proposes to implement this rule change on or before August 1, 2022. The Exchange will issue an Options Trader Alert to notify members and member organizations of the implementation date.[26]

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.[27] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, [28] which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As the Commission noted in its recent order approving the listing and trading of P.M.-settled options on the S&P 500 Index that expire on Tuesday or Thursday, the Commission has had concerns about the potential adverse effects and impact of P.M. settlement upon market volatility and the operation of fair and orderly markets on the underlying cash markets at or near the close of trading, including for cash-settled derivatives contracts based on a broad-based index.[29] The potential impact today remains unclear, given the significant changes in the closing procedures of the primary markets in recent decades. The Commission is mindful of the historical experience with the impact of P.M. settlement of cash-settled index derivatives on the underlying cash markets, but recognizes that these risks may be mitigated today by the enhanced closing procedures that are now in use at the primary equity markets.

The Exchange's proposal to add Tuesday and Thursday NDXP Expirations to the existing Pilot Program would offer additional investment options to investors and may be useful for their investment or hedging objectives while providing the Commission with data to monitor the effects of Tuesday and Thursday NDXP Expirations and the impact of P.M. settlement on the markets. To assist the Commission in assessing any potential impact of Tuesday and Thursday NDXP Expirations on the options markets as well as the underlying cash equities markets, the Exchange will be required to submit data to the Commission in connection with the Pilot Program.[30] Further, including the proposed Tuesday and Thursday NDXP Expirations in the Pilot Program, together with the data and analysis that the Exchange will provide to the Commission, will allow the Exchange and the Commission to monitor for and assess any potential for adverse market effects of allowing Tuesday and Thursday NDXP Expirations, including on the underlying component stocks. In particular, the data collected from the Pilot Program will help inform the Commission's consideration of whether the Pilot Program, as amended to include Tuesday and Thursday NDXP Expirations, should be modified, discontinued, extended, or permanently approved. Furthermore, the Exchange's ongoing analysis of the Pilot Program should help it monitor any potential risks from large P.M.-settled positions and take appropriate action if warranted.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Ac t.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–ISE–2022–13), be, and hereby is, approved.

[16] *See id.* The Exchange believes it is appropriate to clarify in the rule text that the Exchange will list just one Weekly Expiration in such a case, as the two Weekly Expirations would essentially be the same options contract. *Id.*

[17] *See id.*

[18] *See id.*

[19] *See id.*

[20] *See* Securities Exchange Act Release No. 82612 (February 1, 2018), 83 FR 5470 (February 7, 2018) (approving SR–ISE–2017–111) (Order Approving a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

[21] *See* Notice, *supra* note 3, at 36895.

[22] *See id.*

[23] *See id.*

[24] *See id.*

[25] *See id.* at 36895–96.

[26] *See id.* at 36896.

[27] 15 U.S.C. 78f(b). 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).

[28] 15 U.S.C. 78f(b)(5).

[29] *See* Securities Exchange Act Release No. 94682 (April 12, 2022), 87 FR 22993 (April 18, 2022) (CBOE–2022–005).

[30] *See* Notice, *supra* note 3, at 36895–96.

[31] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022–16660 Filed 8–3–22; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–95394; File No. SR–ICEEU–2022–014]**

## Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Europe Outsourcing Policy

July 29, 2022.

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 July 19, 2022, ICE Clear Europe Limited filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. 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

ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') is submitting its Outsourcing Policy (''Outsourcing Policy'' or ''Policy''), which would set out in a consolidated document how the Clearing House manages outsourcing arrangements with third party providers and affiliates of the Clearing House, as well as how the ICE Clear Europe Board maintains oversight of its outsourcing arrangements. A copy of the proposed Outsourcing Policy is set forth in Exhibit 5[sic].[3]

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Purpose

ICE Clear Europe is submitting its Outsourcing Policy which would describe, in a consolidated document, the Clearing House's procedures for management of its outsourcing arrangements. The Outsourcing Policy would complement the existing ICE Clear Europe Vendor Management Policy (''VMP''), which describes certain group-wide policies of the Clearing House's ultimate parent, Intercontinental Exchange, Inc., with respect to its outsourcing arrangements with third parties. The Outsourcing Policy also references ICE Clear Europe's Outsourcing Operating Manual (''OOM''), which sets out additional details concerning the steps it follows in order to introduce, amend and/or maintain outsourcing arrangements.

The purpose of the Outsourcing Policy would be to set out, in a consolidated document, how the Clearing House manages its outsourcing arrangements, both with third party providers and its affiliates, and how the Clearing House's Board maintains oversight of the outsourcing arrangements. Together with the VMP, the Outsourcing Policy is intended to document how the Clearing House assesses the risks of outsourcing certain functions. The Policy is not expected to represent a change in the Clearing House's current practices, but rather to more clearly document those practices in a Clearing House level policy.

The Outsourcing Policy would include an introduction section which describes the differences between outsourcing and purchasing services, the former being the Clearing House's use of a service provider to perform an ongoing activity that would usually be performed by the Clearing House and which often involves transferring or sharing related non-public proprietary information, and the latter being the Clearing House's purchases of services, goods and facilities and which would typically not include any transfer of non-public proprietary information.

The Outsourcing Policy would also differentiate the Clearing House's outsourcing practices and purchasing arrangements in respect of third-party providers, which would be managed through the VMP, from outsourcing through its affiliates, which would typically have a lower risk profile for the Clearing House because such affiliates tend to be regulated entities with the same or similar systems, risk appetites, standards and processes, among other commonalities, as the Clearing House.

The Policy would set out the Clearing House's overall objectives when considering outsourcing.

The Policy would include a discussion of outsourcing to third parties and outsourcing to the Clearing House's affiliates. As mentioned, outsourcing to third parties is covered under the VMP, which covers due diligence, risk assessment, suitability, and performance management, among other topics. Outsourcing to affiliates of the Clearing House would follow the same process and standards as under the VMP; however, assessment would be performed by ICE Clear Europe's senior management rather than the Clearing House's Vendor Management Office. In all cases, the Clearing House would look to ensure that all service provider related incidents (such as service interruptions) are recorded and monitored and escalated to the Clearing House's senior management in a consistent manner.

The Policy would provide the Clearing House would consider in its assessment of service providers that there can be lower risk in outsourcing functions to third parties that are also regulated or authorized. The Clearing House would consider in its assessment of a service provider how the service provider's jurisdiction impacts the risks associated with outsourcing functions to that service providers.

ICE Clear Europe proposes to include in the Policy that it looks to manage any potential or actual conflicts of interest resulting from its outsourcing arrangements, particularly in respect of outsourcing arrangements it has with its affiliates.

Additionally, ICE Clear Europe proposes to include in the Policy that it looks to reserve independent audit rights to check compliance with legal and regulatory requirements and policies in its outsourcing agreements with third party and affiliate service providers, as required.

ICE Clear Europe also proposes to include in the Policy information about its cloud-based outsourcing arrangements. Outsourcing to the cloud is generally covered under the existing VMP. Relevant ICE Clear Europe and ICE Group policies, such as the Corporate Information Security Policy would also be considered when

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules and the Outsourcing Policy.

engaging in cloud outsourcing arrangements. Adding a new or significantly change an existing cloud outsource arrangement would be covered under the OOM.

The Policy would include a section describing the Clearing House's considerations when deciding whether to outsource a function considered ''critical or important''. A function is considered by the Clearing House to be ''critical or important'' where a defect or failure in its performance would materially impair the Clearing House's continuing compliance with the conditions and obligations or its authorizations or other obligations, financial performance or the soundness or continuity of its services and activities.

The Policy would include an acknowledgment by the Clearing House that outsourcing ''critical or important'' functions could impact the Clearing House's risk profile, ability to oversee the service provider and manage risks, business continuity measures and performance of its business activities, to name a few. The Clearing House would ensure that such matters would be considered in the decision-making processes in respect of outsourcing. Additionally, ''critical or important'' functions would impact how the Clearing House would assess how an outsourcing arrangement is assessed, documented and managed by the Clearing House (including by having an exit plan, if practical). Also, if a function to be outsourced is or would be a dependency to the delivery of one or more of the Clearing House's important business services under its operational resilience framework, such function would be mapped accordingly with appropriate consideration given to potential vulnerabilities, resiliency and impact to the relevant impact tolerances.

The Policy would include a discussion of additional considerations of particular importance to the Clearing House in light of its position as a systemically important financial market infrastructure and in alignment with its regulatory oversight. The Clearing House places particular importance on the following additional considerations when considering its outsourcing arrangements, each described in further detail in the proposed Policy: (i) business continuity arrangements, (ii) incident management responsiveness and reporting, (iii) independent assurances, and (iv) redundancies, notice periods and exit strategies. Regarding business continuity arrangements, during the onboarding process and through periodic reviews and testing the Clearing House would assess the service provider's business continuity plans to ensure that they are fit for the relevant purposes. Next, the Policy would state that incident management and responsiveness and timely reporting are important factors in the Clearing House's outsourcing arrangements, given the services that the Clearing House operates. Accordingly, the Clearing House would require that outsourcing providers have appropriate mechanisms for timely response and incident management. Regarding independent assurances, the Clearing House would, where possible and practicable, look to collect independent assurances of the outsourcing providers' services, which may include but are not limited to SOC2 audits, Regulation SCI audits and enterprise technology risk assessments. Finally, where possible and practicable, the Clearing House would look to mitigate the risk of disruption to its services from outsourcing providers ceasing to provide their services to the Clearing Houses, through redundancies (the use of multiple providers), sufficient notice periods, or exit strategies.

The Policy would also include a section describing ICE Clear Europe's Board oversight of outsourcing arrangements. The Board oversees the Clearing House's outsourcing arrangement through risk appetite metrics that include service and incident reporting, operational risk reporting that covers typically Priority 3 incidents or higher, observed in the relevant period, their resolution and other performance metrics, and an Annual Outsourcing Assessment Report.

The COO or its delegate would prepare the Annual Outsourcing Assessment Report, which would be reviewed by the Board each year directly or via its committees. The Annual Outsourcing Assessment Report would cover the following topics: (i) the activities and services that are outsourced, (ii) the identities of the outsource providers (iii) the performance of the outsourcing providers and their adherence to agreed service levels, (iv) where relevant, the security measures of the outsourcing providers, (v) risk reviews of the outsourcing providers, particularly those providing critical or important cloud outsourcing arrangements, (vi) exit strategies and contingency arrangements associated with outsourcing critical or important functions and (vii) results and conclusions of additional assurance mechanisms (for example, SOC2 audits) where applicable.

Finally, the Policy would describe governance and exception handling. The document owner would be responsible for ensuring that it remains up-to-date and reviewed in accordance with the Clearing House's governance processes. Exceptions to the Policy would also be approved in accordance with such governance processes. Any deviations from the Policy would have to be appropriately escalated and reported in a timely manner by the document owner, and the document owner would also be responsible for reporting any material breaches or deviations to the President of ICE Clear Europe and the Risk Oversight Department in order to determine the appropriate governance escalation and notification requirements.

(b) Statutory Basis

ICE Clear Europe believes that the Outsourcing Policy is consistent with the requirements of Section 17A of the Act [4] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act [5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The Outsourcing Policy is designed to consolidate and document ICE Clear Europe's existing procedures for considering whether to outsourcing functions and managing related risks. The Policy would, among other matters, document the objectives of the Clearing House in outsourcing responsibilities to various third parties (including affiliates) and managing related risks, including conflict of interest risks and legal and regulatory requirements. The Policy would also set out in detail certain key considerations of the Clearing House in outsourcing ''critical or important'' functions. In ICE Clear Europe's view, the Policy will thus facilitate management of the risks related to outsourcing functions, and thereby promote the efficient operation and stability of the Clearing House and the prompt and accurate clearance and settlement of cleared contracts. The enhanced risk management for outsourcing is therefore also generally consistent with the protection of investors and the public interest in the

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

safe operation of the Clearing House. (ICE Clear Europe would not expect the adoption of the Policy to affect materially the safeguarding of securities and funds in ICE Clear Europe's custody or control or for which it is responsible.) Accordingly, the Policy satisfies the requirements of Section 17A(b)(3)(F).[6]

The Outsourcing Policy is also consistent with relevant provisions of Rule 17Ad–22.[7] Rule 17Ad–22(e)(3)(i) provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] identify, measure, monitor and manage the range of risks that arise in or are borne by the covered clearing agency''.[8] The Outsourcing Policy is intended to document the Clearing House's practices that relate to management of the Clearing House's outsourcing functions and builds on the existing VMP. In ICE Clear Europe's view, as set out above, the Policy would facilitate overall risk management with respect to outsourcing, consistent with the requirements of Rule 17Ad–22(e)(3)(i).[9]

Rule 17Ad–22(e)(2) provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] provide for governance arrangements that are clear and transparent'' [10] and ''[s]pecify clear and direct lines of responsibility''.[11] As discussed, the Outsourcing Policy would clarify certain responsibilities of the Clearing House Board and COO in relation to oversight of the Clearing House's outsourcing arrangements. In line with the Clearing House's other policies and procedures, the Policy would also describe the responsibilities of the document owner and appropriate escalation and notification requirements for responding to exceptions and deviations from the Policy. In ICE Clear Europe's view, the Policy is therefore consistent with the requirements of Rule 17Ad–22(e)(2).[12]

*(B) Clearing Agency's Statement on Burden on Competition*

ICE Clear Europe does not believe the Outsourcing Policy would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The Policy is being adopted to document the Clearing House's practices relating to management of outsourcing arrangements, both with third parties and affiliates. The Policy does not change the rights or obligations of Clearing Members or the Clearing House under the Rules or Procedures. Accordingly, ICE Clear Europe does not believe that adoption of the Policy would adversely affect competition among Clearing Members, materially affect the costs of clearing, adversely the ability of market participants to access clearing or the market for clearing services generally, or otherwise adversely affect competition in clearing services. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2022–014 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2022–014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2022–014 and should be submitted on or before August 25, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022–16661 Filed 8–3–22; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17 Ad–22.

[8] 17 CFR 240.17 Ad–22(e)(3)(i).

[9] 17 CFR 240.17 Ad–22(e)(3)(i).

[10] 17 CFR 240.17 Ad–22(e)(2)(i).

[11] 17 CFR 240.17 Ad–22(e)(2)(v).

[12] 17 CFR 240.17 Ad–22(e)(2).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–051, OMB Control No. 3235–0064]**

### Proposed Collection; Comment Request: Extension: Form 10

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the office of Management and Budget for approval of extensions on the following:

Form 10 (17 CFR 249.210) is used by issuers to register a class of securities pursuant to Section 12(b) or Section 12(g) (15 U.S.C. 78*l*(b) and 78*l*(g)) of the Exchange Act of 1934. Form 10 requires financial and other information about such matters as the issuer's business, properties, identity and remuneration of management, outstanding securities and securities to be registered and financial condition. The information provided by Form 10 is intended to ensure the adequacy of information available to investors about a company. Form 10 takes approximately 215.537 hours per response to prepare and is filed by approximately 216 respondents. We estimated that 25% of the 215.537 hours per response (53.884 hours) is prepared by the company for an annual reporting burden of 11,639 hours (53.8842 hours per response × 216 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by October 3, 2022.

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

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 29, 2022.

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022–16673 Filed 8–3–22; 8:45 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #17545; WASHINGTON Disaster Number WA–00108 Declaration of Economic Injury]**

### Administrative Declaration of an Economic Injury Disaster for the State of Washington

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Washington dated 08/01/2022.

*Incident:* Spring Street Fire.

*Incident Period:* 04/06/2022.

**DATES:** Issued on 08/01/2022.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/01/2023.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations. The following areas have been determined to be adversely affected by the disaster:

*Primary County:* San Juan.

*Contiguous Counties:* None.

*The Interest Rates are:*

| | Percent |
|---|---|
| Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere ..... | 2.940 |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 1.875 |

The number assigned to this disaster for economic injury is 175450.

The State which received an EIDL Declaration #17545 is Washington.

(Catalog of Federal Domestic Assistance Number 59008)

**Isabella Guzman,**

*Administrator.*

[FR Doc. 2022–16757 Filed 8–3–22; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #17440 and #17441; New Mexico Disaster Number NM–00080]**

### Presidential Declaration Amendment of a Major Disaster for the State of New Mexico

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

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–4652–DR), dated 05/04/2022.

*Incident:* Wildfires, Straight-line Winds, Flooding, Mudflows, and Debris Flows directly related to the Wildfires.

*Incident Period:* 04/05/2022 through 07/23/2022.

**DATES:** Issued on 07/27/2022.

*Physical Loan Application Deadline Date:* 08/04/2022.

*Economic Injury (EIDL) Loan Application Deadline Date:* 02/06/2023.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of New Mexico, dated 05/04/2022, is hereby amended to expand the incident for this disaster to include flooding, mudflows, and debris flows directly related to the wildfires. This disaster declaration is also amended to establish the incident period for this disaster as beginning 04/05/2022 and continuing through 07/23/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Joshua Barnes,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2022–16692 Filed 8–3–22; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #17541 and #17542; Alaska Disaster Number AK–00053]**

### Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alaska

**AGENCY:** U.S. 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 Alaska (FEMA–4661–DR), dated 07/26/2022.

*Incident:* Landslide.

*Incident Period:* 05/07/2022.

**DATES:** Issued on 07/26/2022.

*Physical Loan Application Deadline Date:* 09/26/2022.

*Economic Injury (EIDL) Loan Application Deadline Date:* 04/26/2023.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, 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 07/26/2022, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Kenai Peninsula Borough.

*The Interest Rates are:*

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Non-Profit Organizations with Credit Available Elsewhere ... | 1.875 |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 1.875 |
| *For Economic Injury:* | |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 1.875 |

The number assigned to this disaster for physical damage is 17541 9 and for economic injury is 17542 0.

(Catalog of Federal Domestic Assistance Number 59008)

**Joshua Barnes,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2022–16696 Filed 8–3–22; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #17487 and #17488; New Mexico Disaster Number NM–00081]**

### Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of New Mexico

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

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Mexico (FEMA–4652–DR), dated 06/08/2022.

*Incident:* Wildfires, Straight-line Winds, Flooding, Mudflows, and Debris Flows directly related to the Wildfires.

*Incident Period:* 04/05/2022 through 07/23/2022.

**DATES:** Issued on 07/27/2022.

*Physical Loan Application Deadline Date:* 08/08/2022.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/08/2023.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New Mexico, dated 06/08/2022, is hereby amended to expand the incident for this disaster to include flooding, mudflows, and debris flows directly related to the wildfires. This disaster declaration is also amended to establish the incident period for this disaster as beginning 04/05/2022 and continuing through 07/23/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Joshua Barnes,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2022–16691 Filed 8–3–22; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #17543 and #17544; Nebraska Disaster Number NE–00102]**

### Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Nebraska

**AGENCY:** U.S. 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 Nebraska (FEMA–4662–DR), dated 07/27/2022.

*Incident:* Severe Storms and Straight-line Winds.

*Incident Period:* 05/12/2022.

**DATES:** Issued on 07/27/2022.

*Physical Loan Application Deadline Date:* 09/26/2022.

*Economic Injury (EIDL) Loan Application Deadline Date:* 04/27/2023.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, 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 07/27/2022, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Antelope, Boone, Burt, Cedar, Cuming, Custer, Dixon, Garfield, Greeley, Holt, Knox, Logan, Pierce, Polk, Sherman, Thurston, Valley, Wayne, Wheeler, York.

*The Interest Rates are:*

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Non-Profit Organizations with Credit Available Elsewhere ... | 1.875 |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 1.875 |
| *For Economic Injury:* | |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 1.875 |

The number assigned to this disaster for physical damage is 17543 B and for economic injury is 17544 0.

(Catalog of Federal Domestic Assistance Number 59008)

**Joshua Barnes,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2022–16695 Filed 8–3–22; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #17539 and #17540; MISSISSIPPI Disaster Number MS–00144]**

### Administrative Declaration of a Disaster for the State of Mississippi

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of MISSISSIPPI dated 08/01/2022.

*Incident:* Severe Storms, Straight-Line Winds, and Tornadoes.

*Incident Period:* 03/22/2022.

**DATES:** Issued on 08/01/2022.

*Physical Loan Application Deadline Date:* 09/30/2022.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/01/2023.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Holmes.

*Contiguous Counties:*

MISSISSIPPI: Attala, Carroll, Humphreys, Leflore, Madison, Yazoo.

*The Interest Rates are:*

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere ..... | 2.875 |
| Homeowners without Credit Available Elsewhere ..... | 1.438 |
| Businesses with Credit Available Elsewhere ..... | 5.880 |
| Businesses without Credit Available Elsewhere ..... | 2.940 |
| Non-Profit Organizations with Credit Available Elsewhere ..... | 1.875 |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 1.875 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere ..... | 2.940 |
| Non-Profit Organizations without Credit Available Elsewhere ..... | 1.875 |

The number assigned to this disaster for physical damage is 17539 B and for economic injury is 17540 0.

The State which received an EIDL Declaration # is Mississippi.

(Catalog of Federal Domestic Assistance Number 59008)

**Isabella Guzman,**

*Administrator.*

[FR Doc. 2022–16747 Filed 8–3–22; 8:45 am]

**BILLING CODE 8026–09–P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA–2022–0041]**

### Notice of Senior Executive Service Performance Review Board Membership

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Senior Executive Service Performance Review Board Membership.

Title 5, U.S. Code, 4314(c)(4), requires that the appointment of Performance Review Board members be published in the **Federal Register** before service on said Board begins.

The following persons will serve on the Performance Review Board which oversees the evaluation of performance appraisals of Senior Executive Service members of the Social Security Administration:

Florence Felix-Lawson, Chair
Ann Amrhein
Seth Binstock
Jeffrey Buckner
Kathryn Caldwell
Djimy Chapron *
Vikash Chhagan
Doris Diaz *
Joe Lopez
Kristen Medley-Proctor *
Jim Parikh *
Dawn Wiggins *

* New Member

**Darlynda K. Bogle,**

*Deputy Commissioner for Human Resources, Social Security Administration.*

[FR Doc. 2022–16728 Filed 8–3–22; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice: 11805]**

### Notice of Public Meeting: International Digital Economy and Telecommunication (IDET) Advisory Committee

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (FACA), notice is hereby given of a public meeting of the International Digital Economy and Telecommunication (IDET) Advisory Committee via videoconference on Friday, September 9 at 1:00 p.m.–3:00 p.m. (ET). The purpose of the meeting is to discuss the committee's next priorities.

**DATES:** September 9, 2022.

**SUPPLEMENTARY INFORMATION:** Additional information about the IDET is accessible at *https://www.state.gov/international-digital-economy-and-telecommunication-advisory-committee* IDET meetings are open to the public, and we encourage anyone wanting to attend this virtual meeting to contact *IDET@state.gov* to register by COB Wednesday, August 31 with their name, contact information, affiliation, and any request for reasonable accommodation. Requests for reasonable accommodation made after that time will be considered but might not be able to be accommodated. The public may have an opportunity to provide comments at this meeting at the invitation of the chair. Members of the public may also submit a brief comment (less than three pages) to the committee in writing to *IDET@state.gov* for inclusion in the public minutes of the meeting.

**Agenda**

*Friday, September 9 at 1:00 p.m. (ET)*

Roll call
Project Planning
Next Steps and Other Business
Public Comment
Adjournment

**FOR FURTHER INFORMATION CONTACT:** Please contact the Designated Federal Officer (DFO) Daniel Oates or Alternate DFO Brian Mattys at *IDET@state.gov* or (202) 878–2010.

**Kevin E. Bryant,**

*Acting Director, Office of Directives Management, Department of State.*

[FR Doc. 2022–16744 Filed 8–3–22; 8:45 am]

**BILLING CODE 4710–10–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. FD 36610]**

### Burns Harbor Shortline Railroad Company—Operation Exemption—in Porter County, Ind.

Burns Harbor Shortline Railroad Company (BHS), a noncarrier,[1] has filed a verified notice of exemption pursuant to 49 CFR 1150.31 to operate a segment of track owned by the State of Indiana and controlled and managed by Ports within the Port of Indiana-Burns Harbor. The track begins at a connection with Norfolk Southern Railway Company (NSR) near the intersection of South Boundary Drive and Sun Drive and extends in a loop configuration northerly, easterly and then southerly to a second connection with NSR near the intersection of East Boundary Drive and Joe Emig Drive, a distance of approximately 4.15 miles in Portage, Porter County, Ind. (the Line).

This transaction is related to a concurrently filed verified notice of exemption in *Ports of Indiana—Continuance in Control Exemption—Burns Harbor Shortline Railroad,* Docket No. FD 36611, in which Ports and IPR seek to continue in control of BHS upon BHS's becoming a Class III rail carrier.

According to the verified notice, pursuant to an operating agreement between BHS and Ports,[2] BHS will provide common carrier rail service on the Line, as Ports and BHS have determined that BHS's operation of the Line and related ancillary trackage would benefit tenants of the Port of Indiana-Burns Harbor and promote the continued development and success of the Burns Harbor port facility.

BHS states that the operating agreement between BHS and the Ports contains no restriction on BHS interchanging traffic with any rail carriers. BHS certifies that its projected annual revenue will not exceed $5 million and that the proposed transaction will not result in BHS's becoming a Class I or II rail carrier.

The earliest this transaction may be consummated is August 18, 2022, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 11, 2022.

All pleadings, referring to Docket No. FD 36610, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on BHS's representative, Thomas J. Healey, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to BHS, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: July 29, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

**Kenyatta Clay,**

*Clearance Clerk.*

[FR Doc. 2022–16699 Filed 8–3–22; 8:45 am]

**BILLING CODE 4915–01–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. FD 36611]**

### Ports of Indiana and Indiana Ports Railroad Holding Corporation—Continuance in Control Exemption—Burns Harbor Shortline Railroad Company

Ports of Indiana (Ports) and Indiana Ports Railroad Holding Corporation (IPR), both noncarriers, have filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Burns Harbor Shortline Railroad Company (BHS), a noncarrier wholly owned by IPR, which in turn is owned by Ports, upon BHS's becoming a Class III rail carrier.

This transaction is related to a verified notice of exemption filed concurrently in *Burns Harbor Shortline Railroad—Operation Exemption—in Porter County, Ind.,* Docket No. FD 36610, in which BHS seeks to operate an approximately 4.15-mile segment of track owned by the State of Indiana and controlled and managed by Ports within the Port of Indiana-Burns Harbor, in Portage, Porter County, Ind.

According to the verified notice, Ports is a statewide port authority that operates state-owned port facilities at Burns Harbor, Jeffersonville, and Mt. Vernon, Ind. IPR is a noncarrier subsidiary of Ports that directly controls two Class III shortlines that operate on track owned by the State of Indiana and controlled and managed by Ports at the port facilities in Jeffersonville and Mt. Vernon. According to the verified notice, Ports and IPR will continue in control of BHS upon BHS's becoming a railroad common carrier.

*Ports and IPR represent that:* (1) the rail line to be operated by BHS does not connect with the rail lines of any of the rail carriers controlled by Ports or IPR; (2) the transaction is not part of a series of anticipated transactions that would result in such a connection; and (3) the transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

The transaction may be consummated on or after August 18, 2022, the effective date of the exemption (30 days after the verified notice was filed).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 11, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36611, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Ports' and IPR's representative, Thomas J. Healey,

[1] BHS is a wholly owned subsidiary of Indiana Ports Railroad Holding Corporation (IPR) and an indirect subsidiary of Ports of Indiana (Ports).

[2] A confidential copy of the operating agreement between Ports and BHS was filed under seal as an exhibit to the verified notice.

Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to Ports, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: July 29, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

**Kenyatta Clay,**

*Clearance Clerk.*

[FR Doc. 2022–16700 Filed 8–3–22; 8:45 am]

**BILLING CODE 4915–01–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. AB 167 (Sub-No. 1195X)]**

### Consolidated Rail Corporation—Abandonment Exemption—in Schuylkill & Carbon Counties, Pa.

Consolidated Rail Corporation (Conrail) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a railroad line known as the Tresckow Branch, which runs between milepost 0.0 and milepost 7.7 in the Township of Kline in Schuylkill County, Pa., and the Townships of Packer and Banks in Carbon County, Pa. (the Line).[1] The Line traverses U.S. Postal Service Zip Codes 18237 and 18255.

*Conrail has certified that:* (1) no local traffic has moved over the Line in the past two years; (2) any overhead traffic could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic reports), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[2] this exemption will be effective on September 3, 2022, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 15, 2022.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 24, 2022.

All pleadings, referring to Docket No. AB 167 (Sub-No. 1195X), must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Conrail's representative, Michael L. Rosenthal, Covington & Burling, LLP, One CityCenter, 850 Tenth Street NW, Washington, DC 20001–4956.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Conrail has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA served a Draft Environmental Assessment (Draft EA) on December 7, 2021, and solicited public comments. Following the close of the public comment period, OEA issued a Final EA on December 27, 2021, and a Supplemental Final EA on January 19, 2022. The Draft EA, Final EA, and Supplemental Final EA are available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Conrail shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by Conrail's filing of a notice of consummation by August 4, 2023, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: August 1, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

**Eden Besera,**

*Clearance Clerk.*

[FR Doc. 2022–16725 Filed 8–3–22; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Request To Dispose 9.97 Acres of Airport Land at Manchester-Boston Regional Airport, Manchester, NH

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

**ACTION:** Request for public comments.

**SUMMARY:** Notice is being given that the FAA is considering a request from the City of Manchester to dispose of 9.97 acres of land at Manchester-Boston Regional Airport, Manchester, NH. The disposal of the 5 parcels corrects a 100-year lease that produced no revenue stream for the properties over the term of the lease. The 5 parcels are not required for existing or future aviation development and are currently developed as non-aeronautical uses. As such, the disposal will not affect the airport's future development needs. The land disposal proceeds will be deposited in the airport's operation and maintenance account.

**DATES:** Comments must be received on or before September 6, 2022.

**ADDRESSES:** You may send comments using any of the following methods:

[1] Conrail submitted its verified notice of exemption on November 12, 2021. However, by decision served December 2, 2021, the effective date of the notice of exemption was postponed and Conrail was directed to submit supplemental information addressing the status of the Line. Conrail filed supplements on January 18, 2022, and January 27, 2022. Additional information can be found in the decision served on August 4, 2022, in this proceeding.

[2] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* and follow the instructions on providing comments.
• *Fax:* 202–493–2251.
• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W 12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
• *Hand Delivery:* Deliver to mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 1200 District Avenue, Burlington, Massachusetts 01803. Telephone: 781–238–7618.

*Authority:* 49 United States Code 47107(h)(2).

Issued in Burlington, Massachusetts on August 1, 2022.

**Julie Seltsam-Wilps,**

*Deputy Director, ANE–600.*

[FR Doc. 2022–16685 Filed 8–3–22; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Noise Exposure Map Notice: Receipt of Noise Compatibility Program and Request for Review

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

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Duluth Airport Authority (DAA) for Duluth International Airport (DLH) under the provisions of the Aviation Safety and Noise Abatement Act and FAA regulations are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for DLH in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before October 8, 2022.

**DATES:** The FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is effective April 11, 2022. The public comment period originally ended June 10, 2022, but was reopened due to requested DAA amendments and will run from August 1, 2022 to September 29, 2022.

**FOR FURTHER INFORMATION CONTACT:** Josh Fitzpatrick, 6020 South 28th Avenue, Suite 102, Minneapolis, MN 55450, *joshua.fitzpatrick@faa.gov,* (612) 253–4639. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for DLH are in compliance with applicable requirements of 14 CFR part 150, effective April 11, 2022. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before October 8, 2022. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C., section 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The DAA submitted to the FAA on December 13, 2021, noise exposure maps, descriptions and other documentation that were produced during the 2020–2021 DLH part 150 Noise Compatibility Program Update. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the DAA. The specific documentation determined to constitute the noise exposure maps includes: Exhibit 3–1 (Existing (2020) Baseline Noise Exposure Contour) and Exhibit 4–1 (Future (2026) Noise Compatibility Program-Noise Exposure Map). Chapters 3 and 4 of the DLH part 150 update describe the baseline noise exposure maps and noise compatibility program in greater detail. The FAA has determined that these maps for DLH are in compliance with applicable requirements. This determination is effective on April 11, 2022. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for DLH, also effective on April 11, 2022. Preliminary review of the submitted material indicates that it conforms to the

requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. Since initial notification of the NCP on April 11, 2022, DAA has decided to remove language from the NCP Measure M–D that recommended offering avigation easements to single family owner occupied homes within the block rounding area (NMPA #2). DAA has also decided to withdraw NCP Measure M–F which recommended offering avigation easements to single family owner occupied mobile homes within the block rounding area (NMPA #2). The decision to modify and withdraw these measures was based on FAA comments and the desire of the Airport to only recommended and put forth measures that the Airport can commit to implementing in the future, as funding becomes available. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 8, 2022.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program can be viewed online at the DLH website at *https://duluthairport.com/noise-study/#documents.* To review the documents in person, please contact the Airport by phone at (218) 727–2968 to set up a visit in their office at: Duluth Airport Authority, Attn: Tom Werner 4701 Grinden Drive, Duluth, MN 55811.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Originally Issued in Minneapolis, Minnesota, April 11, 2022 and Amended August 1, 2022.

**E. Lindsay Butler,**

*Manager, Dakota-Minnesota Airports District Office.*

[FR Doc. 2022–16750 Filed 8–3–22; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary of Transportation

**[DOT–OST–2022–0076]**

### Update to U.S. DOT FY22 Safe Streets and Roads for All Funding

**AGENCY:** Office of the Secretary of Transportation, U.S. Department of Transportation (DOT).

**ACTION:** Amendment to FY22 Notice of Funding Opportunity (NOFO).

**SUMMARY:** The purpose of this notice is to amend the Fiscal Year 2022 (FY22) NOFO for the Safe Streets and Roads for All (SS4A) discretionary grant program. Amendments are technical corrections as outlined in this **Federal Register** Notice.

**DATES:** Applications still must be submitted by 5:00 p.m. EDT on Thursday, September 15, 2022. Late applications will not be accepted.

**ADDRESSES:** Applications must be submitted through *www.Grants.gov.* Only applicants who comply with all submission requirements described in this notice and submit applications through *www.Grants.gov* on or before the application deadline will be eligible for award.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding this notice, please contact the Office of the Secretary via email at *SS4A@dot.gov,* or call Paul Teicher at (202) 366–4114. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, DOT will periodically post answers to common questions and requests for clarifications on the Department's website at *https://www.transportation.gov/SS4A.*

Signed in Washington, DC, on July 29, 2022.

**Christopher Coes,**

*Assistant Secretary for Transportation Policy.*

**BILLING CODE 4910–9X–P**

Opportunity Number DOT-SS4A-FY22-01
Amendment 1

U.S. Department of Transportation
Amendment 1 to Notice of Funding Opportunity Number DOT-SS4A-FY22-01

"Safe Streets and Roads for All Discretionary Grant Program"

Amendment 1 issued on August 1, 2022

The purpose of this amendment is to edit the Notice of Funding Opportunity (NOFO) to make technical modifications. Accordingly, the NOFO is hereby amended. Except as provided herein, all terms and conditions remain unchanged and are in full force and effect. If a section is not listed below, no text changes apply to that section or paragraph as a result of this amendment.

The application due date remains unchanged as September 15, 2022 at 5:00 pm Eastern Daylight Time through Grants.Gov at https://www.grants.gov/web/grants/view-opportunity.html?oppId=340385.

This amendment revises the text of the NOFO in the sections identified below.

- Deleted text is shown in ~~strikethrough~~.
- Added text is both **underlined and bolded**.

For applications received prior to the amendment, DOT will directly contact the person(s) listed on the *Application for Federal Assistance* Standard Form 424 to address any of the amendments that affect their submission.

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**Definitions**

| Term | Definition |
|---|---|
| Underserved Community | An underserved community as defined for this NOFO is consistent with the Office of Management and Budget's Interim Guidance for the Justice40 Initiative and the Historically Disadvantaged Community designation, which includes:<br>• U.S. Census tracts identified in this table **and corresponding map tool that visualizes the table**:<br>**https://usdot.maps.arcgis.com/apps/dashboards/99f9268777ff4218867ceedfabe58a3a**<br>https://datahub.transportation.gov/stories/s/tsyd-k6ij;<br>• Any Tribal land; or<br>• Any territory or possession of the United States. |

| | |
|---|---|

**Section A.2.i Program Description, Grant Types and Deliverables, Action Plan Grants, Table 1: Action Plan Components**

| Component | Description |
|---|---|
| Equity Considerations | Plan development using inclusive and representative processes. Underserved communities are identified through data and other analyses in collaboration with appropriate partners.[1] Analysis includes both population characteristics and initial equity impact assessments of the proposed projects and strategies. |

**Section D.2.i Application and Submission Information, Key Information Table and Instructions for a), for Action Plan Grant applications.**

a) Key Information Table

| | |
|---|---|
| Lead Applicant | |
| If Multijurisdictional, additional eligible entities jointly applying | |
| Total jurisdiction population | |
| Count of motor-vehicle-involved roadway fatalities from 2016 to 2020 | |
| Fatality rate **per 100,000 persons** | |
| **Action Plan Type** | **New Action Plan**<br>**Complete Action Plan**<br>**Supplemental Planning Activities** |
| Population in Underserved Communities | |
| States(s) in which projects and strategies are located | |
| Costs by State (if project spans more than one State) | |

- Total jurisdiction population is based on ~~2020~~ **2019** U.S. Census **American Community Survey (ACS)** data and includes the total population of all Census tracts where the applicant operates or performs their safety responsibilities.[2]

- The fatality rate, calculated using ~~the~~ **a 5-year annual** average from the total count of fatalities from 2016 to 2020 based on FARS data, an alternative traffic fatality dataset, or a comparable data set with roadway fatality information, which is divided by the population of the applicant's jurisdiction based on ~~2020~~ **2019** ~~U.S. Census~~ **ACS** population data. **The rate should be normalized to per 100,000 persons.**

[1] An underserved community as defined for this NOFO is consistent with the Office of Management and Budget's Interim Guidance for the Justice40 Initiative (https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf) and the Historically Disadvantaged Community designation, which includes U.S. Census tracts identified in this table and corresponding map tool: https://datahub.transportation.gov/stories/s/tsyd-k6ij **https://usdot.maps.arcgis.com/apps/dashboards/99f9268777ff4218867ceedfabe58a3a**; any Tribal land; or any territory or possession of the United States.

[2] **https://www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/2019/**

- The population in underserved communities should be a percentage obtained by dividing the population living in Census tracts with an Underserved Community designation divided by the total population living in the jurisdiction. For multi-jurisdictional groups, provide this information **in aggregate as well as** for each jurisdiction in the group. **The population must be based on 2019 ACS data.**

**Section D.2.ii Application and Submission Information, Instructions for a), for Implementation Grant applications.**

- The population in Underserved Community Census Tracts should be a percentage number obtained by dividing the population living in Underserved Community Census tracts within the jurisdiction divided by the total population living in the jurisdiction. **The population must be based on 2019 ACS data.**[3]

**Section E.1.i Application Review Information, Selection Criteria, Action Plan Grant Selection Criteria, Selection Criteria #1: Safety Impact**

- The fatality rate, which is calculating using ~~the~~ **5-year annual** average from the total count of fatalities from 2016 to 2020 (based on FARS data or an alternative traffic crash dataset) divided by the ~~2020~~ **2019** population of the applicant's jurisdiction based on ~~2020~~ **2019 ACS data** ~~U.S. Census population data~~. **The rate should be normalized to per 100,000 persons.**

**Selection E.1.i Application Review Information, Selection Criteria, Action Plan Grant Selection Criteria, Selection Criteria #2: Equity**

- The percentage of the population in the applicant's jurisdiction that resides in an Underserved Community Census tract.[4] Population of a Census tract, either a tract that is Underserved Community or not, must be based on ~~2020~~ **2019 ACS data** ~~U.S. Census population data~~.

**Section E.2.ii Application Review Information, b) Safety Impact Criterion Rating Methodology**

The implementation costs sub-rating will use the guidelines below:

| | High | Medium | Low | Non-responsive |
|---|---|---|---|---|
| Rating Scale | The costs for the implementation of the projects and strategies | The costs for the implementation of the projects and strategies | The costs for the implementation of the projects and strategies | Cost information is not provided. |

[3] **Use https://usdot.maps.arcgis.com/apps/dashboards/99f9268777ff4218867ceedfabe58a3a to calculate the percentage of population in underserved community. Census data can be found at https://www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/2019/**

[4] ~~https://usdot.maps.arcgis.com/apps/dashboards/d6f90dfcc8b44525b04c7ce748a3674a~~ **https://usdot.maps.arcgis.com/apps/dashboards/99f9268777ff4218867ceedfabe58a3a**

| | | | | |
|---|---|---|---|---|
| | are clearly articulated and summarized. ~~Future costs are well-described.~~ The quantity and quality of the projects and strategies in relation to the cost amounts strongly indicate the costs are reasonable. | are summarized. ~~Future costs are described.~~ The quantity and quality of the projects and strategies in relation to the cost amounts seem to indicate the costs are reasonable. | are not well-articulated or missing key details. ~~Future costs are minimally or not described.~~ Based on the limited quantity and/or quality of the projects and strategies in relation to the cost amounts, the cost reasonableness is uncertain. | |

**Section F.2.v Federal Award Administration Information, Paragraph 4**

SS4A award recipients should demonstrate compliance with civil rights obligations and nondiscrimination laws, including Titles VI of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act, and accompanying regulations. Recipients of Federal transportation funding will also be required to comply fully with regulations and guidance for the ADA, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and all other civil rights requirements. ~~Additionally, to the extent practicable, Implementation Grants must adhere to the proposed Public Rights-of-Way Accessibility Guidelines.~~[5] The Department's and the applicable Operating Administrations' Office**s** of Civil Rights ~~may~~ **will** work with awarded grant recipients **as appropriate** to ensure full compliance with Federal civil rights requirements.

[5] ~~https://www.access-board.gov/prowag/~~

[end of Amendment]

[FR Doc. 2022–16662 Filed 8–3–22; 8:45 am]
BILLING CODE 4910–9X–C


# FEDERAL REGISTER

Vol. 87 Thursday,
No. 149 August 4, 2022

Part II

## Department of Health and Human Services

Centers for Medicare & Medicaid Services
Office of the Secretary

42 CFR Parts 438, 440, et al.
45 CFR Parts 80, 84, 86, et al.
Nondiscrimination in Health Programs and Activities; Proposed Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 438, 440, 457, and 460**

**Office of the Secretary**

**45 CFR Parts 80, 84, 86, 91, 92, 147, 155, and 156**

**[Docket ID: HHS–OS–2022–0012]**

**RIN: 0945–AA17**

## Nondiscrimination in Health Programs and Activities

**AGENCY:** Centers for Medicare and Medicaid Services; Office for Civil Rights (OCR), Office of the Secretary, HHS.

**ACTION:** Notice of proposed rulemaking; notice of Tribal consultation.

**SUMMARY:** The Department of Health and Human Services (HHS or the Department) is issuing this proposed rule on Section 1557 of the Affordable Care Act (ACA) (Section 1557). Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities. Section 1557(c) of the ACA authorizes the Secretary of the Department to promulgate regulations to implement the nondiscrimination requirements of Section 1557. The Department is also proposing to revise its interpretation regarding whether Medicare Part B constitutes Federal financial assistance for purposes of civil rights enforcement and to revise nondiscrimination provisions to prohibit discrimination on the basis of sexual orientation and gender identity in regulations issued by the Centers for Medicare & Medicaid Services (CMS) governing Medicaid and the Children's Health Insurance Program (CHIP); Programs of All-Inclusive Care for the Elderly (PACE); health insurance issuers and their officials, employees, agents, and representatives; States and the Exchanges carrying out Exchange requirements; agents, brokers, or web-brokers that assist with or facilitate enrollment of qualified individuals, qualified employers, or qualified employees; issuers providing essential health benefits; and qualified health plan issuers.

**DATES:**

*Comments:* Submit comments on or before October 3, 2022.

*Meeting:* Pursuant to Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, the Department of Health and Human Services' Tribal Consultation Policy, and the Department's Plan for Implementing Executive Order 13175, the Office for Civil Rights solicits input by tribal officials as we develop the implementing regulations for Section 1557 of the Affordable Care Act at 45 CFR part 92. The Tribal consultation meeting will be held on August 31, 2022, from 2 p.m. to 4 p.m. Eastern Daylight Time.

**ADDRESSES:** You may submit comments, identified by RIN Number 0945–AA17, by any of the following methods. Please do not submit duplicate comments.

To participate in the Tribal consultation meeting, you must register in advance at *https://www.zoomgov.com/meeting/register/vJIsfu-rqzksEl2T8gUp_lDrWBqkU0223CY.*

*Federal Rulemaking Portal:* You may submit electronic comments at *https://www.regulations.gov* by searching for the Docket ID number HHS–OS–2022–0012. Follow the instructions for submitting electronic comments. If you are submitting comments electronically, the Department strongly encourages you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), the Department strongly encourages you to convert the PDF to ''print-to-PDF'' format, or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions to assist in the rulemaking process.

*Regular, Express, or Overnight Mail:* You may mail written comments to the following address only: U.S. Department of Health and Human Services, Office for Civil Rights, Attention: 1557 NPRM (RIN 0945–AA17), Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue SW, Washington, DC 20201.

All comments received by the methods and due date specified above may be posted without change to content to *https://www.regulations.gov,* which may include personal information provided about the commenter, and such posting may occur after the closing of the comment period. However, the Department may redact certain non-substantive content from comments before posting, including threats, hate speech, profanity, graphic images, or individually identifiable information about a third-party individual other than the commenter. In addition, comments or material designated as confidential or not to be disclosed to the public will not be accepted. Comments may be redacted or rejected as described above without notice to the commenter, and the Department will not consider in rulemaking any redacted or rejected content that would not be made available to the public as part of the administrative record.

Because of the large number of public comments normally received on **Federal Register** documents, OCR is not able to provide individual acknowledgments of receipt.

Please allow sufficient time for mailed comments to be received timely in the event of delivery or security delays.

Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.

*Docket:* For complete access to background documents or posted comments, go to *https://www.regulations.gov* and search for Docket ID number HHS–OS–2022–0012.

**FOR FURTHER INFORMATION CONTACT:**

**Office for Civil Rights**

Dylan Nicole de Kervor, (202) 240–3110 or (800) 537–7697 (TDD), or via email at *1557@hhs.gov,* for matters related to Section 1557.

**Centers for Medicare & Medicaid Services**

John Giles, (410) 786–5545, for matters related to Medicaid.

Emily King, 410–786–8537, for matters related to CHIP.

Timothy Roe, (410) 786–2006 for matters related to Programs of All-Inclusive Care for the Elderly.

Becca Bucchieri, (301) 492–4341, Agata Pelka, (667) 290–9979, or Leigha Basini, (301) 492–4380, for matters related to 45 CFR 155.120, 155.220, 156.125, 156.200, and 156.1230.

Lindsey Murtagh, (301) 492–4106, for matters related to 45 CFR 147.104.

Hannah Katch, (202) 578–9581, for general questions related to CMS amendments.

*Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record:* Upon request, the Department will provide an accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please

call (202) 240–3110 or (800) 537–7697 (TDD) for assistance or email *1557@hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

## Table of Contents



## I. Background

### *A. Section 1557 Background and Rulemaking*

In 2010, Congress passed and the President signed into law the Patient Protection and Affordable Care Act (ACA) [1] to reform the country's health insurance system, making health care more affordable and accessible for tens of millions of persons in the United States. Among other things, the ACA provided health care access to many individuals by increasing coverage options and prohibiting discrimination in health care. Section 1557 of the ACA (Section 1557) is one of the government's most powerful tools to ensure access to and coverage of health care in a nondiscriminatory manner. Except as otherwise provided in Title I of the ACA, Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in a health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance. Section 1557 also prohibits discrimination on the basis of race, color, national origin, sex, age, or disability under any program or activity that is administered by an Executive Agency, or any entity established under Title I of the ACA or its amendments. The statute cites Title VI of the Civil Rights Act of 1964 [2] (Title VI), Title IX of the Education Amendments of 1972 [3] (Title IX), the Age Discrimination Act of 1975 [4] (Age Act), and Section 504 of the Rehabilitation Act of 1973 [5] (Section 504) to identify the grounds of discrimination prohibited by Section 1557. The statute further specifies that the enforcement mechanisms provided for and available under Title VI, Title IX, the Age Act, or Section 504 shall apply for purposes of violations of Section 1557.[6] The statute authorizes the Secretary of the U.S. Department of Health and Human Services (HHS or the Department) to promulgate implementing regulations for Section 1557.[7]

Section 1557 was effective upon enactment, and the Department's Office for Civil Rights (OCR) began enforcing the law immediately thereafter while drafting implementing regulations.[8]

#### 1. 2016 Rulemaking

On August 1, 2013, the Department published a Request for Information in the **Federal Register**,[9] followed by issuance of a Notice of Proposed Rulemaking (NPRM) on September 8, 2015 (2015 NPRM).[10] The Department finalized the Section 1557 regulation on

[1] The Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010. The Healthcare and Education Reconciliation Act of 2010, Public Law 111–152, which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this rulemaking, the two statutes are referred to collectively as the ''Patient Protection and Affordable Care Act,'' ''Affordable Care Act,'' or ''ACA.''

[2] 42 U.S.C. 2000d *et seq.*

[3] 20 U.S.C. 1681 *et seq.*

[4] 42 U.S.C. 6101 *et seq.*

[5] 29 U.S.C. 794.

[6] 42 U.S.C. 18116(a).

[7] *Id.* 18116(c).

[8] *See, e.g.,* Bulletin, U.S. Dep't of Health & Human Servs., The Brooklyn Hospital Center Implements Non-Discriminatory Practices to Ensure Equal Care for Transgender Patients (July 14, 2015), *https://www.hhs.gov/sites/default/files/ocr/civilrights/activities/agreements/TBHC/statement.pdf; OCR Enforcement under Section 1557 of the Affordable Care Act Sex Discrimination Cases,* U.S. Dep't of Health & Human Servs., *https://www.hhs.gov/civil-rights/for-individuals/section-1557/ocr-enforcement-section-1557-aca-sex-discrimination/index.html* (last updated Aug. 1, 2016); *see also C.P.* v. *Blue Cross Blue Shield,* 536 F. Supp. 3d 791, 796 (W.D. Wash. 2021) (citing *Tovar* v. *Essentia Health,* 342 F. Supp. 3d 947, 957 (D. Minn. 2018) (stating ''[a] claim of discrimination in violation of Section 1557 does not depend on an HHS rule'' in denying a motion to dismiss a challenge to categorical exclusions for treatment for gender dysphoria in a health insurance plan); *Prescott* v. *Rady Children's Hosp. of San Diego,* 265 F. Supp. 3d 1090, 1098 (S.D. Cal. 2017) (denying defendant hospital's motion to dismiss gender identity discrimination complaint under Section 1557 because Department regulations were not in effect at the time of the alleged discrimination, holding the claim of discrimination was grounded in the plain language of the statute).

[9] 78 FR 46558 (Aug. 1, 2013). Responses are available for public inspection at *https://www.regulations.gov/docket/HHS-OCR-2013-0007/comments.*

[10] 80 FR 54171 (Sept. 8, 2015). The 2015 NPRM received roughly 2,160 comments, which are available for public inspection at *https://www.regulations.gov/docket/HHS-OCR-2015-0006/comments.*

May 18, 2016 (2016 Rule).[11] The 2016 Rule applied to all health programs and activities, any part of which received Federal financial assistance, and all health programs and activities administered by the Department or by an entity established under Title I of the ACA. The 2016 Rule included provisions intended to provide, for covered health programs and activities, consistent requirements across all prohibited forms of discrimination including grievance procedures, designated employees to coordinate compliance with the law, and notice requirements. The 2016 Rule included a detailed definition section. The 2016 Rule also required covered entities to provide, in ''significant communications,'' notice and information regarding the availability of language assistance services in the 15 most common languages spoken by limited English proficient[12] (LEP) persons in each state. Additionally, it required covered entities to take reasonable steps to provide meaningful access to each LEP individual eligible to be served in covered entities' health programs and activities. It further prohibited discrimination on the basis of sex, including gender identity; outlined requirements for equal program access on the basis of sex; and explicitly prohibited discrimination in health-related insurance and other health-related coverage, including a ban on categorical exclusions of gender-transition-related care in health insurance coverage and other health-related coverage. At the time, though the Department supported a prohibition on discrimination based on sexual orientation as a matter of policy, the 2016 Rule did not explicitly prohibit discrimination on the basis of sexual orientation because no Federal appellate court had yet concluded that sex-based discrimination included sexual orientation discrimination.[13] Instead, relying on the Supreme Court's opinion in *Price Waterhouse* v. *Hopkins,*[14] the 2016 Rule explained that Section 1557's prohibition of discrimination on the basis of sex included sex discrimination related to an individual's sexual orientation where the evidence established that the discrimination was based on gender stereotypes.[15] The 2016 Rule explicitly exempted covered entities from complying with any requirements that would violate applicable Federal statutory protections for conscience and religious exercise.[16]

The 2016 Rule had an effective date of July 18, 2016, except to the extent that the rule required changes to health insurance or group health plan benefits or benefit design, in which case the 2016 Rule applied on the first day of the first plan year that began on or after January 1, 2017.[17]

The 2016 Rule was challenged under the Administrative Procedure Act[18] (APA) and the Religious Freedom Restoration Act[19] (RFRA). Before the rule went into effect, the United States (U.S.) District Court for the Northern District of Texas, in *Franciscan Alliance* v. *Burwell,* enjoined the Department from enforcing the 2016 Rule's prohibition against discrimination on the basis of gender identity or termination of pregnancy.[20] Subsequently, on October 15, 2019, the same district court vacated the 2016 Rule insofar as the 2016 Rule defined discrimination on the basis of sex to include gender identity and termination of pregnancy.[21] In 2021, the court in *Franciscan Alliance* issued an order enjoining the Department from interpreting or enforcing Section 1557 against the plaintiffs in that case in a manner that would require them to perform or provide insurance coverage for gender transition services or abortion.[22] In *Religious Sisters of Mercy et al.* v. *Becerra et al.,* the court enjoined the Department from enforcing Section 1557 against the plaintiffs in that case in a manner that would require them to perform or provide insurance coverage for gender transition services.[23] Both decisions have been appealed on standing and ripeness grounds, among other things. As of the publication of this NPRM, appeals are pending in the Fifth and Eighth Circuits. More recently, another district court in the District of North Dakota in *Christian Employers Alliance* v. *U.S. Equal Employment Opportunity Commission et al.* enjoined the Department from enforcing Section 1557 against the plaintiffs in that case in a manner that would require them to perform or provide insurance coverage for gender transition services or restrict or compel their speech on gender identity issues.[24]

2. 2020 Rulemaking

On June 14, 2019, the Department published a new Section 1557 Notice of Proposed Rulemaking (2019 NPRM), proposing to rescind large portions of the 2016 Rule.[25] Citing the *Franciscan Alliance* litigation, the 2019 NPRM proposed to rescind the 2016 Rule's definition of ''on the basis of sex,'' and, given ''the likelihood that the Supreme Court [would] be addressing the issue in the near future [in its *Bostock* v. *Clayton County*[26] ruling],'' the preamble to the 2019 NPRM proposed not to include a new definition for ''on the basis of sex.'' However, the preamble to the 2019 NPRM identified examples of other government entities that referred to ''sex'' in ''binary and biological'' terms and suggested that Section 1557's prohibition on sex discrimination may not extend to gender identity discrimination.[27]

The 2019 NPRM also proposed to replace or rescind significant portions of the 2016 Rule in order to ''relieve billions of dollars in undue regulatory burdens,'' and ''eliminate provisions [of the 2016 Rule] that are inconsistent or redundant with pre-existing civil rights statutes.''[28] The most common cost concern raised regarding the 2016 Rule was the notice requirements at former § 92.8, which required covered entities to include a notice of nondiscrimination and notice of the availability of language assistance services (''taglines'') in a range of communications.[29]

In addition, the 2019 NPRM proposed to eliminate the following provisions of the 2016 Rule: the definitions section, including the definition of ''health program or activity'' to include all of the

[11] 81 FR 31375 (May 18, 2016).

[12] In the Proposed Rule at § 92.4, *infra,* a limited English proficient (LEP) individual means an individual whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English. An LEP individual may be competent in English for certain types of communication (*e.g.,* speaking or understanding), but still be LEP for other purposes (*e.g.,* reading or writing).

[13] 81 FR 31390 (''OCR has decided not to resolve in this rule whether discrimination on the basis of an individual's sexual orientation status alone is a form of sex discrimination.'').

[14] 490 U.S. 228, 250–51 (1989).

[15] 81 FR 31389, 31390.

[16] *See* former 45 CFR 92.2(b)(2). ''Insofar as application of any requirement under this part would violate applicable Federal statutory protections for religious freedom and conscience, such application shall not be required.''

[17] 81 FR 313756, 31378, 31430, 31466.

[18] 5 U.S.C. 551 *et seq.*

[19] 42 U.S.C. 2000bb *et seq.*

[20] *Franciscan All., Inc.* v. *Burwell,* 227 F. Supp. 3d 660 (N.D. Tex. 2016).

[21] *Franciscan All., Inc.* v. *Azar,* 414 F. Supp. 3d 928 (N.D. Tex. 2019).

[22] *Franciscan All., Inc.* v. *Becerra,* 553 F. Supp. 3d 361 (N.D. Tex. 2021), *amended,* No. 7:16–cv–00108–O, 2021 WL 6774686 (N.D. Tex. Oct. 1, 2021), *appeal pending,* No. 21–11174 (5th Cir. Nov. 21, 2021).

[23] *Religious Sisters of Mercy* v. *Azar,* 513 F. Supp. 3d 1113 (D.N.D. 2021), *judgment entered sub nom. Religious Sisters of Mercy* v. *Cochran,* No. 3:16–cv–00386, 2021 WL 1574628 (D.N.D. Feb. 19, 2021), *appeal pending,* No. 21–1890 (8th Cir. April 20, 2021) (oral argument held Dec. 15, 2021).

[24] *Christian Emp'rs All.* v. *EEOC,* No. 21–cv–00195, 2022 WL 1573689 (D.N.D. May 16, 2022).

[25] 84 FR 27846 (June 14, 2019).

[26] 140 S. Ct. 1731 (2020).

[27] 84 FR 27853–55, 27856–57.

[28] 84 FR 27848–49.

[29] *See e.g.,* 84 FR 27857–58.

operations of an entity principally engaged in providing or administering health insurance or health-related coverage (former § 92.4); the requirement to designate a responsible employee to carry out a covered entity's responsibilities under Section 1557 (former § 92.7(a)); the requirement to adopt grievance procedures (former § 92.7(b)); notice and tagline requirements (former § 92.8); the approach to accepting disparate impact claims with respect to allegations of sex discrimination (former § 92.101(b)(3)(ii) and (iii)); the requirement for covered entities to justify sex-specific health programs or activities by demonstrating that the sex-specific health program or activity is substantially related to the achievement of an important health-related or scientific objective (former § 92.101(b)(3)(iv)); the requirement for a covered entity to take reasonable steps to provide meaningful access to *each* LEP individual (former § 92.201(a)) (emphasis added); the prohibition on discrimination in health-related insurance and other health-related coverage, including a prohibition of blanket exclusions of coverage for care related to gender transition (former § 92.207); the coverage of certain employee health benefit programs (former § 92.208); the prohibition of discrimination on the basis of association (former § 92.209); reference to compensatory damages for Section 1557 violations to the extent such damages are available under underlying Federal civil rights statutes (former § 92.301(b)); and the provision regarding the obligation to provide OCR access to review records and sources of information, and to otherwise comply with the Department's investigations (former § 92.303(c)).

On June 12, 2020, the Department publicly posted its second Section 1557 Final Rule (2020 Rule), making no substantive changes from the 2019 NPRM.[30] On June 15, 2020, the U.S. Supreme Court issued its ruling in *Bostock* v. *Clayton County,* holding that discrimination on the basis of sexual orientation and gender identity constitutes prohibited discrimination because of sex under Title VII of the Civil Rights Act of 1964 (Title VII).[31] The 2020 Rule was published in the **Federal Register** on June 19, 2020 with preamble language that was inconsistent with the Supreme Court's *Bostock* opinion.[32]

Following the issuance of the 2020 Rule, which included an effective date of August 18, 2020,[33] litigants in various U.S. District Courts sought to enjoin the rule on the basis that it was, among other allegations, arbitrary and capricious and contrary to law under the APA.[34] While these challenges addressed a range of changes made to the 2016 Rule, they primarily focused on the 2020 Rule's repeal of the definition of ''on the basis of sex''; the incorporation of provisions governing the 2020 Rule's relationship to other laws related to various religious exemptions; the scope of coverage; and the elimination of language access provisions. As a result of these challenges, the Department is currently preliminarily enjoined from enforcing its repeal of certain portions of the 2016 Rule's definition of ''on the basis of sex,'' and of former 45 CFR 92.206, regarding equal program access on the basis of sex, as well as from enforcing the 2020 Rule's incorporation of Title IX's religious exemption.[35] The five pending lawsuits were stayed for the Department's review of the 2020 Rule.

3. May 10, 2021 Notification of Interpretation (''Bostock Notification'')

On May 10, 2021, the Department publicly announced, consistent with the Supreme Court's decision in *Bostock,* that the Department would interpret Section 1557's prohibition on sex discrimination to include (1) discrimination on the basis of sexual orientation and (2) discrimination on the basis of gender identity (''Bostock Notification'').[36] The Department explained that its interpretation will guide OCR's complaint processing and investigations; however, the interpretation did not ''determine the outcome in any particular case or set of facts.'' In addition, the Department explained that its Section 1557 enforcement will comply with RFRA and all other legal requirements, including applicable court orders that have been issued in litigation involving Section 1557 regulations.

There are currently three court challenges to the Department's Bostock Notification, generally alleging violations of the APA and RFRA.[37] As of this writing, two opinions have been issued: (1) the district court in *Neese* v. *Becerra* denied the defendants' motion to dismiss, finding that the plaintiffs plausibly pled that neither Section 1557 nor *Bostock* prohibit health care providers from discriminating on the basis of sexual orientation and gender identity,[38] and (2) the district court in *Christian Employers Alliance* v. *EEOC* has preliminarily enjoined the Department from interpreting or enforcing Section 1557 and its implementing regulations against plaintiffs in a manner that would require them to provide, offer, perform, facilitate, or refer for gender transition services or that prevents, restricts or compels the plaintiffs' speech on gender identity issues.[39] All three cases remain pending.

4. March 2, 2022 Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy

On March 2, 2022, the Department published guidance, consistent with the Bostock Notification, that Section 1557

[30] 85 FR 37160 (June 19, 2020) (''After considering public comments, in this final rule, the Department revises its Section 1557 regulations . . . as proposed, with minor and primarily technical corrections.''). The 2019 NPRM received roughly 155,960 comments, which are available for public inspection at *https://www.regulations.gov/docket/HHS-OCR-2019-0007.*

[31] 140 S. Ct. 1731 (2020).

[32] 85 FR 37178–37180.

[33] *Id.* at 37169.

[34] *Walker* v. *Azar,* No. 20–cv–2834 (E.D.N.Y. June 26, 2020); *Whitman-Walker Clinic* v. *U.S. Dep't of Health & Human Servs.,* No. 1:20–cv–01630 (D.D.C. June 22, 2020); *N.Y.* v. *U.S. Dep't of Health & Human Servs.,* No. 1:20–cv–05583 (S.D.N.Y. July 20, 2020); *BAGLY* v. *U.S. Dep't of Health & Human Servs.,* No. 20–cv11297 (D. Mass. July 9, 2021); *Chinatown Serv. Ctr.* v. *U.S. Dep't of Health & Human Servs.,* No. 1:21–cv–00331 (D.D.C. Oct. 13, 2021).

[35] *Walker* v. *Azar,* 480 F. Supp. 3d 417, 430 (E.D.N.Y. 2020) (enjoining repeal of definition of ''on the basis of sex,'' including sex stereotyping); *Whitman-Walker Clinic* v. *U.S. Dep't of Health & Human Servs.,* 485 F. Supp. 3d 1 (D.D.C. 2020) (enjoining repeal of definition of ''on the basis of sex,'' insofar as it includes ''discrimination on the basis of . . . sex stereotyping'' and enjoining incorporation of Title IX religious exemption); *Walker* v. *Azar,* No. 20–cv–2834, 2020 WL 6363970, at *4 (E.D.N.Y. Oct. 29, 2020) (enjoining repeal of former 45 CFR 92.206). The 2020 Rule provides that ''[i]nosofar as the application of any requirement under this part would violate, depart from, or contradict definitions, exemptions, affirmative rights, or protections provided by'' various statutes including Title IX's religious exemption, ''such application shall not be imposed or required.'' 45 CFR 92.6(b). Relying on language in the 2020 Rule's preamble, the *Whitman-Walker* court preliminarily construed § 92.6(b) to explicitly incorporate Title IX's religious exemption. *Whitman-Walker Clinic,* 485 F. Supp. 3d at 14, 43. These orders did not affect the district court's vacatur of the 2016 Rule insofar as it defined sex discrimination to include gender identity discrimination in *Franciscan All., Inc.* v. *Azar,* 414 F. Supp. 3d 928 (N.D. Tex. 2019).

[36] 86 FR 27984 (May 25, 2021) (U.S. Dep't of Health & Human Srvs.' Notification of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Education Amendments of 1972). *See also Hammons* v. *Univ. of Md. Med. Sys. Corp.,* 551 F. Supp. 3d 567, 590 (D. Md. 2021) (stating that *Bostock* ''made clear that the position stated in HHS' [Bostock Notification] was already binding law.'').

[37] *Neese* v. *Becerra,* No. 2:21–cv–00163–Z (N.D. Tex. Aug. 25, 2021); *Am. Coll. of Pediatricians* v. *Becerra,* No. 1:21–cv–00195 (E.D. Tenn. Aug. 27, 2021); *Christian Emp'rs All.* v. *EEOC,* No. 21–cv–00195 (D.N.D. Oct. 18, 2021).

[38] No. 2:21–cv–00163–Z, 2022 WL 1265925, at *14 (N.D. Tex. Apr. 26, 2022).

[39] No. 21–cv–00195, 2022 WL 1573689, at *9 (D.N.D. May 16, 2022).

prohibits discrimination on the basis of gender identity in access to covered health programs and activities.[40] Specifically, the Department stated that ''[c]ategorically refusing to provide treatment to an individual based on their gender identity is prohibited discrimination. Similarly, federally funded covered entities restricting an individual's ability to receive medically necessary care, including gender-affirming care, from their health care provider solely on the basis of their sex assigned at birth or gender identity likely violates Section 1557.'' [41] On March 31, 2022, the U.S. Department of Justice (DOJ) issued a letter to State Attorneys General addressing protections against unlawful discrimination based on gender identity, including protections afforded by Section 1557.[42]

There is currently one challenge to the Department's gender-affirming care notice alleging violations of the APA.[43] On May 26, 2022, the district court denied Defendants' supplemental motion to dismiss, finding that the March 2, 2022 Notice and Guidance was a final agency action and that Plaintiff had stated a credible threat of enforcement.[44]

*B. Summary of the Proposed Rule*

The Department proposes to revise the 2020 Rule to reinstate regulatory protections from discrimination on the basis of race, color, national origin, sex, age, or disability in covered health programs and activities, consistent with the statutory text of Section 1557 and Congressional intent.

This proposed rule would reflect Section 1557's application to health programs and activities of the Department, which holds the Department accountable to the same standards of compliance with civil rights laws to which it holds recipients of Federal financial assistance. The proposed rule would also reinstate the rule clarifying that Section 1557 generally applies to many health insurance issuers and also prohibits discrimination in health insurance and other health-related coverage,[45] furthering a central goal of the ACA—to increase access to health-related coverage—by ensuring that Section 1557's robust civil rights protections apply to health insurance and other health-related coverage.

The proposed rule also seeks to create consistent procedural requirements for covered health programs and activities by requiring grievance procedures (for employers with 15 or more employees), the designation of a responsible employee (for employers with 15 or more employees), and the affirmative provision of civil rights notices. The absence of such consistency leaves individuals with different procedural protections in covered programs and activities depending on whether their complaint is based on race, color, national origin, sex, age, and/or disability. Further, the Department proposes to require covered entities to have in place a set of policies and procedures to support compliance with Section 1557, and to train relevant staff on their respective policies and procedures. The Department also proposes notice requirements, striking a balance between concerns raised by covered entities in response to the 2016 Rule and the importance of providing the public with information about their civil rights. The rule also proposes to implement robust protections for LEP individuals that ensure each LEP person has meaningful access to covered health programs and activities. The Department also proposes to address nondiscrimination on the basis of sex, including gender identity and sexual orientation, consistent with *Bostock* and related case law, as well as subsequent Federal agency interpretations.[46] Further, the rule proposes to ensure equal program access on the basis of sex and prohibit discrimination on the basis of sex related to marital, family, or parental status. The Department additionally proposes provisions related to nondiscrimination in the use of clinical algorithms in health care decision-making and in telehealth services.

The Department further proposes to apply the provisions applicable to Title VI to administrative enforcement actions against recipients of Federal financial assistance (recipients) and State Exchanges concerning discrimination on the basis of race, color, national origin, sex, and disability, consistent with Section 504 [47] and Title IX [48] regulations. For administrative enforcement actions against recipients and State Exchanges concerning discrimination on the basis of age, the Department proposes to employ the procedural provisions that apply under the Age Act. The Department proposes to apply the federally conducted Section 504 enforcement mechanisms with respect to administrative enforcement actions against the Department, including the Federally-facilitated Exchanges. Additionally, the Department proposes to adopt a process by which recipients may inform the Department of their views that the application of a specific provision or provisions of this part to them would violate Federal conscience or religious freedom laws, so that the Department may, as appropriate, make a determination that recipients are exempt from, or entitled to a modification of the application of, a provision or provisions of this part.

The Department is proposing to revise its position regarding whether Medicare Part B payments constitute Federal financial assistance for purposes of Federal civil rights jurisdiction under Title VI, Section 504, Title IX, the Age Act, and Section 1557. The Department explains that payments made under the Medicare Part B program meet the longstanding definition of ''Federal financial assistance,'' and proposes necessary conforming amendments to the appendices of the implementing regulations for Title VI and Section 504.

Finally, the Department proposes to make limited amendments to the Centers for Medicare & Medicaid Services (CMS) Medicaid, Children's Health Insurance Program (CHIP), and Program of All-Inclusive Care for the Elderly (PACE) nondiscrimination regulatory provisions, as well as nondiscrimination provisions applicable to group and individual health insurance markets and Health Insurance Exchanges to clarify that discrimination on the basis of sex

[40] U.S. Dep't of Health & Human Servs., HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy (Mar. 2, 2022), *https://www.hhs.gov/sites/default/files/hhs-ocr-notice-and-guidance-gender-affirming-care.pdf.*

[41] *Id.* at 2.

[42] Letter from Kristen Clarke, Assistant Att'y Gen., Civil Rights Div., U.S. Dep't of Justice, to State Att'ys Gen. (Mar. 31, 2022), *https://www.justice.gov/opa/press-release/file/1489066/download.*

[43] First Amended Compl., *Tex.* v. *EEOC, et al,* No. 2:21–cv–00194–Z (N.D. Tex. Mar. 9, 2022).

[44] Order, *Tex.* v. *EEOC, et al,* No. 2:21–cv–00194–Z (N.D. Tex. May 26, 2022).

[45] The term ''health coverage'' generally refers to a ''[l]egal entitlement to payment or reimbursement for your health care costs, generally under a contract with a health insurance company, a group health plan offered in connection with employment, or a government program like Medicare, Medicaid, or the Children's Health Insurance Program (CHIP).'' *Glossary: Health coverage, HealthCare.gov, https://www.healthcare.gov/glossary/health-coverage/* (last visited June 15, 2022).

[46] *E.g.,* Memorandum from Pamela S. Karlan, Principal Deputy Assistant Att'y Gen., to Fed. Agency Civil Rights Dirs. & Gen. Counsels (Mar. 26, 2021) [hereinafter Karlan Memo], *https://www.justice.gov/crt/page/file/1383026/download;* 86 FR 32637 (June 22, 2021) (U.S. Dep't of Educ., notice of interpretation).

[47] 45 CFR 84.61 (adopting the procedural provision of Title VI).

[48] *Id.* § 86.71 (adopting the procedural provision of Title VI).

includes discrimination on the basis of sexual orientation and gender identity.

## II. Reasons for the Proposed Rulemaking

The Department is undertaking this rulemaking to better align the Section 1557 regulation with the statutory text of 42 U.S.C. 18116, to reflect recent developments in civil rights case law, to address unnecessary confusion in compliance and enforcement resulting from the 2020 Rule, and to better address issues of discrimination that contribute to negative health interactions and outcomes. Upon further consideration and informed by civil rights issues raised in the context of the coronavirus disease 2019 (COVID–19) pandemic, the Department believes that the 2020 Rule creates substantial obstacles to the Department's ability to address discrimination across the health programs and activities it financially supports or administers, thereby undermining the statutory purpose of Section 1557 and hindering the Department's mission of pursuing health equity and protecting public health.

In developing this NPRM, the Department undertook a significant review of previous rulemaking and developments in civil rights law since the publication of both the 2016 and 2020 Final Rules. The Department also engaged in a series of listening sessions with a diverse range of stakeholder groups.[49]

### *A. The Scope of the 2020 Rule Is Not the Best Reading of the Affordable Care Act and Section 1557's Statutory Text*

In the Department's view, the scope of application in the 2020 Rule is not the best reading of the statutory text of Section 1557 in two significant respects. First, the 2020 Rule applies to ''any program or activity administered by the Department under Title I of the [ACA].'' [50] However, the statutory language provides that Section 1557's discrimination prohibitions apply to covered programs and activities that are ''administered by an Executive Agency *or* any entity established under this title.'' [51] The operative word, ''or,'' distinguishes programs and activities operated by an Executive Agency from those operated by a Title I entity. The 2020 Rule, however, construes this language to cover only programs and activities administered by the Department *under Title I of the ACA,* and programs and activities administered by any entity established under Title I of the ACA.[52] The reading of the statute in the 2020 Rule is strained, and the Department does not believe that the best way to resolve any ambiguity is to construe the phrase ''established under this title'' as modifying the phrase ''administered by an Executive Agency.'' The preamble to the 2020 Rule explained that its construction was ''at least as reasonable'' as the 2016 Rule's resolution of this issue.[53] However, upon further analysis the Department now believes that the reading proposed herein, which does not limit application to only programs and activities administered by the Department under Title I of the ACA, better reflects the statutory language as well as Congress' intent.[54]

Second, the 2020 Rule limits Section 1557's application to health insurance by providing that ''for purposes of this part, an entity principally or otherwise engaged in the business of providing health insurance shall not, by virtue of such provision, be considered to be principally engaged in the business of providing health care.'' [55] The statutory text of Section 1557 demonstrates Congress' intent to apply Section 1557 to health insurance. In the description of Federal financial assistance subject to Section 1557, the statute identifies three examples of Federal financial assistance, all of which pertain to health insurance: ''credits, subsidies, or contracts of insurance.'' It is logical to conclude that the inclusion of credits and subsidies in Section 1557's statutory language refers to the tax credits and cost-sharing subsidies provided for under the same title of the ACA (Title I) to assist people in purchasing health insurance coverage. Additionally, as is discussed in detail in this preamble, in enacting the ACA, Congress demonstrated a clear intent to protect individuals from discrimination in health insurance and other health-related coverage. As a general matter, the fact that Section 1557 is contained within the ACA—a law that predominantly regulates health insurance—indicates that Congress intended Section 1557 to apply to health insurance. Thus, the Department, upon further evaluation, believes the 2020 Rule limits application to health insurance and other health-related coverage in a manner inconsistent with the statute and Congressional intent.

### *B. The 2020 Rule's Preamble Does Not Reflect Recent Developments in Sex Discrimination Law*

The 2020 Rule declined to adopt a definition of ''on the basis of sex,'' but the 2019 NPRM and the preamble to the 2020 Rule suggested that Section 1557's prohibition on sex discrimination may not extend to gender identity discrimination.[56] The Supreme Court has now held that Title VII's prohibition of employment discrimination on the basis of sex encompasses discrimination based on sexual orientation and gender identity.[57] The Court reasoned that, even if Congress understood that ''the term 'sex' in 1964 referred to 'status as either male or female [as] determined by reproductive biology,' '' Title VII prohibits discrimination based on sexual orientation and gender identity.[58] Since *Bostock,* two Federal courts of appeals have held that the plain language of Title IX's prohibition on sex discrimination must be read similarly.[59] The DOJ has also taken this position in Title IX litigation.[60]

On January 20, 2021, President Biden, in Executive Order (E.O.) 13988, directed agencies to review all agency actions, including regulations, that prohibit discrimination on the basis of sex to determine if they were inconsistent with the Court's reasoning in *Bostock*.[61] In response, the Department assessed its Section 1557 regulation and enforcement policies and issued its Bostock Notification. As discussed previously, the Bostock Notification stated that the Department would interpret and enforce Section 1557's sex discrimination prohibitions

[49] A list of stakeholder groups and notes from these listening sessions and written materials provided during or after the listening sessions are attached to the docket of this proposed rule as a supplemental material at *federalregister.gov.*

[50] 45 CFR 92.3(a)(2).

[51] 42 U.S.C. 18116(a) (emphasis added).

[52] 45 CFR 92.3(a)(2)–(3) (emphasis added).

[53] 85 FR 37160, 37170 (June 19, 2020).

[54] *See, e.g., Griffin* v. *Breckenridge,* 403 U.S. 88, 97 (1971) (civil rights statutes should be construed broadly); *U.S.* v. *Price,* 383 U.S. 787, 801 (1966) (same); *see also N. Haven Bd. of Educ.* v. *Bell,* 456 U.S. 512, 521 (1982) (''[I]f we are to give Title IX the scope that its origins dictate, we must accord it a sweep as broad as its language.''); S. Rep. No. 64, 100th Cong., 2d Sess. 5–7 (1988), reprinted in 1988 U.S.C.C.A.N. 3, 7–9 (statement of Sen. Humphrey stating that Title VI should be interpreted as broadly as necessary to eradicate discriminatory practices in programs that Federal funds supported).

[55] 45 CFR 92.3(c).

[56] 84 FR 27846, 27853–55, 27856–57 (June 14, 2019); 85 FR 37178–79.

[57] *Bostock* v. *Clayton Cty.,* 140 S. Ct. 1731 (2020).

[58] *Id.* at 1739–40, 1743.

[59] See *Doe* v. *Snyder,* 28 F.4th 103, 113–14 (9th Cir. 2022); *Grimm* v. *Gloucester Cty. Sch. Bd.,* 972 F.3d 586, 616 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *cert. denied,* 141 S. Ct. 2878 (Mem) (2020).

[60] *See, e.g.,* U.S. Dep't of Justice, En Banc Brief as Amicus of the United States, *Adams* v. *Sch. Bd. of St. Johns Cty.,* No. 18–13592, 22 (11th Cir. Nov. 26, 2021); U.S. Dep't of Justice, Statement of Interest of the United States, *B.P.J.* v. *W. Va. Bd. of Educ.,* No. 2:21–cv–00316 (S.D.W. Va. June 17, 2021).

[61] 86 FR 7023, 7023–24 (Jan. 25, 2021).

consistent with *Bostock,* while recognizing that the interpretation did not ''determine the outcome in any particular case or set of facts'' and that the Department would comply with RFRA and all other legal requirements.[62] For these reasons and those described in this NPRM, the Department believes the understanding of sex discrimination described in the 2020 Rule's preamble [63] is an inaccurate reading of the statute.

The 2020 Rule's preamble relied heavily on the 2016 injunction and 2019 vacatur issued by the district court in the *Franciscan Alliance* case, which predated the *Bostock* decision, when removing the 2016 Rule's gender identity provisions.[64] The district court in that case found that Section 1557's prohibition of sex discrimination did not cover gender identity discrimination.[65] Even prior to *Bostock,* a number of courts had reached a contrary conclusion and held that Federal sex discrimination protections, including Section 1557, provided protection to transgender and gender-nonconforming individuals, although the exact rationales used by these courts varied.[66] Notably, the *Bostock* Court presumed for the sake of argument that ''sex'' referred only to ''biological distinctions between male and female'' and still found that Title VII's prohibition of sex discrimination prohibits discrimination on the basis of sexual orientation and gender identity.[67] Following *Bostock,* courts have continued to hold that Federal sex discrimination protections, including Section 1557 and Title IX, cover gender identity discrimination.[68] While some post-*Bostock* decisions have placed limits on Section 1557's application to discrimination against transgender people, these decisions have focused on whether RFRA exempts specific entities from potential future enforcement by HHS of Section 1557's requirements against them; for the most part they do not call into question *Bostock*'s application to Section 1557.[69] In its Bostock Notification, the Department affirmed its commitment to complying with RFRA and all other legal requirements supporting religious exercise and freedom of conscience while also affirming Section 1557's prohibition of discrimination on the basis of gender identity and sexual orientation.[70]

### *C. The 2020 Rule Causes Unnecessary Confusion in Compliance*

The 2020 Rule provides no guidance on how covered entities are to implement their compliance responsibilities under Section 1557 and, in particular, whether those responsibilities are the same as, or deviate from, their compliance responsibilities under Title VI, Title IX, Section 504, and the Age Act. Rather, it generally states the nondiscrimination requirements of Section 1557 by restating the statutory language of 42 U.S.C. 18116(a), followed by stating that the grounds prohibited are the grounds found in the Title VI, Title IX, Section 504, and Age Act statutes.[71] The resulting uncertainty is particularly stark for procedural requirements—including the designation of a responsible employee, the provision of notices of nondiscrimination, and adoption of grievance procedures—as the 2020 Rule removed the 2016 Rule provisions addressing these issues.

The implementing regulations for the statutes referenced in Section 1557 require covered entities to have different policies and procedures depending on the alleged basis of discrimination. For example, only the regulations promulgated under Section 504 [72] and Title IX [73] require recipients to implement grievance procedures; regulations to implement Title VI and the Age Act specify no such regulatory requirement. Given that the 2020 Rule does not reference grievance procedures, covered entities are unsure of their responsibility to have a grievance procedure for handling complaints of discrimination in their health programs and activities. As such, it would be reasonable for a covered entity to believe that the 2020 Rule does not require such a procedure. However, a covered entity could also reasonably believe that it must have a grievance procedure to address allegations of disability and sex discrimination, as this is what is independently required under Section 504 and Title IX regulations, but not for complaints of race, color, national origin, or age discrimination because neither the Title VI nor Age Act regulations have such a requirement. To further complicate the issues, the requirement to have a grievance procedure under Section 504 is limited to covered entities that employ 15 or more people, whereas the Title IX regulation requires grievance procedures for covered entities regardless of the number of employees.

As this discussion illustrates, the approach in the 2020 Rule has caused confusion in compliance by failing to provide clear procedural requirements. The 2020 Rule also significantly pared down regulatory language related to the specific discriminatory actions prohibited that one generally finds in an

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[62] 86 FR 27984; *see also* Karlan Memo, *supra* note 46.

[63] 85 FR 37160, 37178–79 (June 19, 2020).

[64] 85 FR 37163–65 (citing *Franciscan All., Inc.* v. *Burwell,* 227 F. Supp. 3d 660 (N.D. Tex. 2016) and *Franciscan All., Inc.* v. *Azar,* 414 F. Supp. 3d 928 (N.D. Tex. 2019)).

[65] *Franciscan All., Inc.* v. *Burwell,* 227 F. Supp. 3d at 688.

[66] *See, e.g., Whitaker By Whitaker* v. *Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.,* 858 F.3d 1034 (7th Cir. 2017) (Title IX); *Smith* v. *City of Salem, Ohio,* 378 F.3d 566 (6th Cir. 2004) (Title VII); *Rosa* v. *Park W. Bank & Trust Co.,* 214 F.3d 213 (1st Cir. 2000) (Equal Credit Opportunity Act); *Schroer* v. *Billington,* 577 F. Supp. 2d 293 (D.D.C. 2008) (Title VII); *Boyden* v. *Conlin,* 341 F. Supp. 3d 979 (W.D. Wis. 2018) (Section 1557 and Title VII); *Flack* v. *Wis. Dep't. of Health Servs.,* 395 F. Supp 3d 1001, 1014 (W.D. Wis. 2019) (Section 1557 and Equal Protection Clause); *Prescott* v. *Rady Children's Hosp. San Diego,* 265 F. Supp. 3d 1090, 1098–100 (S.D. Cal. 2017) (Section 1557); *Tovar* v. *Essential Health,* 342 F. Supp. 3d 947, 957 (D. Minn. 2018) (Section 1557).

[67] *Bostock* v. *Clayton Cty.,* 140 S. Ct. 1731, 1739 (2020).

[68] *Doe* v. *Snyder,* 28 F.4th 103, 113–14 (9th Cir. 2022); *Grimm* v. *Gloucester Cty. Sch. Bd.,* 972 F.3d 586, 616 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *cert. denied,* 141 S. Ct. 2878 (Mem) (2020); *Kadel* v. *Folwell,* No. 1:19–cv–00272, 2022 WL 2106270, at *28–*29 (M.D.N.C. June 10, 2022); *Scott* v. *St. Louis Univ. Hosp.,* No. 4:21–cv–01270–AGF, 2022 WL 1211092, at *6 (E.D. Mo. Apr. 25, 2022); *C.P. by & through Pritchard* v. *Blue Cross Blue Shield of Ill.,* No. 3:20–cv–06145–RJB, 2021 WL 1758896, at *4 (W.D. Wash. May 4, 2021); *Koenke* v. *Saint Joseph's Univ.,* No. CV 19–4731, 2021 WL 75778, at *2 (E.D. Pa. Jan. 8, 2021); *Doe* v. *Univ. of Scranton,* No. 3:19–cv–01486, 2020 WL 5993766, at *11 n.61 (M.D. Pa. Oct. 9, 2020); *Maxon* v. *Seminary,* No. 2:19–cv–9969, 2020 WL 6305460 (C.D. Cal. Oct. 7, 2020); *B.P.J.* v. *W. Va. State Bd. of Educ.,* No. 2:21–cv–00316, 2021 WL 3081883, at *7 (S.D.W. Va. July 21, 2021); *Clark Cty. Sch. Dist.* v. *Bryan,* 478 P.3d 344, 354 (Nev. 2020).

[69] *Franciscan All., Inc.* v. *Becerra,* No. 7:16–cv–00108–O, 2021 WL 3492338 (N.D. Tex. Aug. 9, 2021), *as amended* (Aug. 16, 2021), *appeal pending,* No. 21–11174 (5th Cir. Nov. 21, 2021); *Religious Sisters of Mercy* v. *Azar,* 513 F. Supp. 3d 1113 (D.N.D. 2021), *judgment entered sub nom. Religious Sisters of Mercy* v. *Cochran,* No. 3:16–cv–00386, 2021 WL 1574628 (D.N.D. Feb. 19, 2021), *appeal pending,* No. 21–1890 (8th Cir. April 20, 2021) (oral argument held Dec. 15, 2021); *but see Neese* v. *Becerra,* No. 2:21–cv–00163–Z, 2022 WL 1265925, at *14 (N.D. Tex. Apr. 26, 2022) (denying motion to dismiss based on possibility that neither Section 1557 nor *Bostock* prohibit health care providers from discriminating on the basis of sexual orientation and gender identity).

[70] 86 FR 27984. Three Federal district courts have enjoined the Department from enforcing Section 1557 in certain respects against the plaintiffs in those cases and their members. *See Religious Sisters of Mercy,* 513 F. Supp. at 1153–54; *Franciscan All., Inc.* v. *Becerra,* 553 F. Supp. 3d 361, 378 (N.D. Tex. 2021), *amended,* No. 7:16–CV–00108–O, 2021 WL 6774686 (N.D. Tex. Oct. 1, 2021); *Christian Emp'rs All.* v. *EEOC,* No. 21–cv–00195, 2022 WL 1573689 (D.N.D. May 16, 2022). The Department has appealed the injunctions in *Religious Sisters of Mercy* and *Franciscan Alliance,* and those appeals remain pending. The Department is currently abiding by those injunctions and will continue to do so after this Rule takes effect, to the extent those injunctions remain in place.

[71] 45 CFR 92.2.

[72] *Id.* § 84.7(b).

[73] *Id.* § 86.8(b).

implementing regulation for a civil rights statute.[74] The Department believes covered entities and protected individuals need additional clarity regarding the specific discriminatory actions prohibited under Section 1557, including clarification regarding whether and how those actions found in the implementing regulations of the statutes referenced in Section 1557 may also apply.

*D. Proposed Changes Are Consistent With the Statute and Will Further the Intended Purpose of the Statute*

Despite the best efforts of many health care professionals, inequities in access to health care resulting in disparities in health status and outcomes persist. Such disparities pose a major public health challenge for the United States and hinder efforts by health care professionals who work to ensure that their patients receive quality care. As discussed throughout this preamble, discrimination in health care can contribute to these disparities, which negatively impacts communities of color, individuals with disabilities, women, lesbian, gay, bisexual, transgender,[75] queer, and intersex [76] (LGBTQI+) [77] individuals, LEP individuals, and older adults and children. Critically, access to health care that is free from discrimination benefits *all* communities and people, and is also vital to addressing public health emergencies, such as the COVID–19 pandemic. For example, ensuring nondiscriminatory access to health care, vaccines, and protective equipment during a public health emergency will more effectively and expeditiously end the emergency for everyone.[78]

Strong civil rights protections play a significant role in advancing an equitable society, and every part of government must contribute to ensuring that people in the United States enjoy the protections guaranteed to them. Since taking office, President Biden has issued more than a dozen directives aimed at promoting equity, including the robust enforcement of civil rights.[79] Discrimination in health programs and activities can lead to disparate health outcomes and adverse differences in access to care.[80] Accordingly, the Department is committed to doing its part to eliminate such discrimination, including through robust implementation and enforcement of Section 1557. Moreover, the Department is committed to addressing different, intersecting forms of discrimination experienced by individuals who may be entitled to protection from discrimination on more than one of the protected bases under Section 1557 and whose experience of discrimination may be both quantitatively and qualitatively different from that of individuals experiencing single-basis discrimination.

1. Health Equity and Discrimination Related to Race, Color, and National Origin

Members of racial and ethnic groups that have historically faced discrimination and structural disadvantages in the United States experience disproportionately poor health status.[81] Though health indicators for aggregated racial and ethnic populations may suggest positive outcomes for some groups, broad demographic categories often conceal health disparities within and among racial and ethnic subgroups. For example, positive overall data on the health of persons of Asian descent often obscure disparities among subgroups.[82] One study revealed that while Asian persons in the aggregate appeared to be healthier than white persons in the United States, disaggregation of the data shows that persons of Filipino descent experience a higher prevalence of fair or poor health, obesity, high blood pressure, diabetes, or asthma when compared with white persons.[83] Similarly, while the rate of low birth weight infants is lower for the total Hispanic/Latino population in the United States in comparison to non-Hispanic white people, Puerto Ricans have a low birth weight rate that is almost twice that of non-Hispanic white people.[84]

Beyond poor health outcomes, communities of color in the United States have long experienced disparities in health care—including in health insurance coverage, access to care, quality of care, maternal mortality rates, and inclusion in biomedical research. For example, American Indian/Alaska Native, Black, and Hispanic/Latino adults account for a disproportionately high share of the uninsured population. American Indian/Alaska Native individuals under 65 have an uninsured rate of 28 percent, higher than any other racial or ethnic group.[85] Hispanic/Latino people comprise 29 percent of the uninsured yet make up 19 percent of the U.S. population.[86] These

[74] For example, the implementing regulations for each of Section 1557's referenced statutes include provisions describing specific actions that constitute prohibited discrimination. *See* 45 CFR 80.3 (Title VI) § 84.4 (504); § 86.31 (Title IX); and § 91.11 (Age Act). Consistent with these implementing regulations, the 2016 Rule included a comparable provision at former 45 CFR 92.101, which the 2020 Rule repealed and purportedly replaced with § 92.2, which does not identify specific, prohibited discriminatory actions. *See* 85 FR 37160, 37200 (June 19, 2020); 45 CFR 92.2.

[75] When used in this preamble, the term ''transgender'' refers to people who identify as a gender other than their sex assigned at birth. This may include people who identify as nonbinary, genderqueer, or gender nonconforming, regardless of whether those individuals explicitly use the term transgender to describe themselves.

[76] When used in this preamble, the term ''intersex'' refers to people born with variations in physical sex characteristics—including genitals, gonads, chromosomes, and hormonal factors—that do not fit typical binary definitions of male or female bodies.

[77] We use ''+'' in this acronym to indicate inclusion of individuals who may not identify with the listed terms but who have a different identity with regards to their sexual orientation, gender identity, or sex characteristics.

[78] *See, e.g.,* Ann Lee & Sheila David, *Ensuring Equitable Access to Vaccines,* Stan. Soc. Innovation Rev., Jun. 29, 2021, *https://ssir.org/articles/entry/ensuring_equitable_access_to_vaccines#.*

[79] *See, e.g.,* E.O. 13985, 86 FR 7009 (2021); E.O. 13988, 86 FR 7023 (2021); E.O. 13995, 86 FR 7193 (2021); Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies (2021), *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/;* Memorandum on Condemning and Combating Racism, Xenophobia, and Intolerance Against Asian Americans and Pacific Islanders in the United States (2021), *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-condemning-and-combating-racism-xenophobia-and-intolerance-against-asian-americans-and-pacific-islanders-in-the-united-states/;* E.O. 14012, 86 FR 8722 (2021); E.O.14031, 86 FR 29675 (2021); E.O. 14035, 86 FR 34593 (2021); E.O. 14041, 86 FR 50443 (2021); E.O.14045, 86 FR 51581 (2021); and other Presidential Actions.

[80] 156 Cong. Rec. S1842 (daily ed. Mar. 23, 2010), *https://www.congress.gov/congressional-record/2010/03/23/senate-section/article/S1821-6.*

[81] U.S. Dep't of Health & Human Servs., Office of Minority Health, Minority Population Profiles, *https://www.minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=26* (last visited Nov. 9, 2021).

[82] Alexander Adia et al., *Health Conditions, Outcomes, and Service Access Among Filipino, Vietnamese, Chinese, Japanese, and Korean Adults in California,* 2011–2017, 110 a.m. J. of Pub. Health 520 (2020), *https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2019.305523.*

[83] *Id.*

[84] U.S. Dep't of Health & Human Servs., Office of Minority Health, Profile: Hispanic/Latino Americans *https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=64* (last visited Nov. 19, 2021).

[85] The U.S. Census does not classify the Indian Health Service as health coverage. U.S. Dep't of Health & Human Servs., Assistant Sec'y for Policy & Evaluation, Office of Health Policy, Issue Brief: Health Insurance Coverage and Access to Care for American Indians and Alaska Natives: Current Trends and Key Challenges, p. 1 (July 22, 2021), *aspe-aian-health-insurance-coverage-ib.pdf* (*hhs.gov*).

[86] U.S. Dep't of Health & Human Servs., Assistant Sec'y for Policy & Evaluation, Office of Health Policy, Issue Brief: The Remaining Uninsured: Geographic and Demographic Variation, p. 1 (Mar. 23, 2021), *https://aspe.hhs.gov/sites/default/files/*

Continued

disparities are particularly salient in states that did not expand Medicaid; 37 percent of the total uninsured Black population in the United States reside in just three such states.[87]

In addition to experiencing disparities in coverage, people of color are also more likely than white people to experience a lower quality of care. For example, HHS' 2021 National Health Care Quality and Disparities Report evaluated whether different racial groups received worse care than white individuals in the areas of patient safety, person-centered care, care coordination, the effectiveness of care, healthy living, and affordable care. The study found that Black individuals received worse care than white individuals for 43 percent of 195 quality measures, American Indian/Alaska Native individuals received worse care than white individuals for 40 percent of 108 quality measures, Hispanic/Latino individuals received worse care than white individuals for 36 percent of 172 quality measures, Native Hawaiian/Pacific Islander individuals reported receiving a lower level of care than white people for 28 percent of 81 quality measures, and where Asian individuals received worse care than white individuals, it was for 28 percent of 173 quality measures.[88] While many factors may contribute to these disparities, the report highlights the role of social determinants of health,[89] which include racial and ethnic discrimination, limited English proficiency, and presence of health care laws.[90]

Further, the disparities in maternal mortality rates are alarming. According to National Vital Statistics System data, in 2020, the maternal mortality rate for non-Hispanic/Latino Black women was 55.3 deaths per 100,000 live births, 2.9 times the rate for non-Hispanic/Latino white women (19.1).[91] This disparity is increasing, with maternal mortality rate increases between 2019 and 2020 for non-Hispanic/Latino Black and Hispanic/Latino people.[92] An analysis of vital statistics mortality data showing the cause of maternal deaths in the United States from 2016–2017 revealed maternal mortality for Black women largely resulted from conditions like preeclampsia and cardiomyopathy, and were believed to be preventable.[93] This study also found an increased risk of maternal mortality from multiple causes in Black women, which indicates negative impacts of structural racism on health and health care in the United States. The Biden-Harris Administration has taken initial steps to address these longstanding disparities, issuing the first-ever Presidential proclamation observing Black Maternal Health Week [94] and hosting the first-ever Federal ''Maternal Health Day of Action,'' which included a nationwide call to action to reduce mortality. The Administration has also announced several key policy actions, including CMS' intention to propose the first-ever hospital quality designation specifically focused on maternity care.[95]

While research is beginning to reveal more information about the potential causes of Black maternal mortality, less research exists about the causes of maternal mortality among American Indian/Alaska Native women. A recent study documented the available literature on American Indian/Alaska Native women and found that the three leading causes of maternal mortality among such women are hemorrhage, cardiomyopathies, and hypertensive disorders of pregnancy.[96] The authors ultimately concluded that more research is needed to determine the root causes of maternal mortality among American Indian/Alaska Native women, but suggested that to reduce American Indian/Alaska Native maternal mortality and eliminate racial/ethnic disparities, provider-related factors including implicit bias must be addressed.[97]

Persistent bias and racism in the health care system, as well as across other social determinants of health, also contribute to health challenges for people of color. For example, one study showed that medical students and medical residents hold false beliefs about biological differences between Black people and white people, and these falsely held beliefs are associated with racial disparities in pain perception and treatment recommendation accuracy.[98] A recent study analyzing patients' electronic health records (EHR) found that Black patients had disproportionately higher odds of being described with one or more negative descriptors in the history and notes of the EHR than their white counterparts.[99] The authors note that this may indicate implicit racial bias against Black patients, potentially leading to stigmatizing Black patients and compromising the care they receive. A recent survey indicates that, shaped by these experiences and perceptions, most Black adults believe that racial discrimination is not uncommon in health care.[100] Black adults, and Black women in particular, are more likely than white people to report certain negative health care experiences.[101] Racism and discrimination experienced outside the health care setting may also affect the mental and physical well-being of individuals of color. For example, Black people who experience

*private/pdf/265286/Uninsured-Population-Issue-Brief.pdf.*

[87] *Id.* at p. 8.

[88] U.S. Dep't of Health & Human Servs., Agency for Healthcare Research & Quality, 2021 National Healthcare Quality and Disparities Report Executive Summary, pp. ES–3, D–3–D–51 (Dec. 2020), *https://www.ahrq.gov/sites/default/files/wysiwyg/research/findings/nhqrdr/2021qdr.pdf.*

[89] Social determinants of health are the conditions in the environments where people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks. *Social Determinants of Health,* Healthy People 2030, U.S. Dep't of Health & Human Servs., Office of Disease Prevention & Health Promotion, *https://health.gov/healthypeople/objectives-and-data/social-determinants-health* (last visited January 21, 2022).

[90] U.S. Dep't of Health & Human Servs., Agency for Healthcare Research & Quality, 2019 National Healthcare Quality and Disparities Report Executive Summary, p. 7 (Dec. 2020), *https://www.ahrq.gov/sites/default/files/wysiwyg/research/findings/nhqrdr/2019qdr-final-es-cs061721.pdf.*

[91] Donna L. Hoyert, U.S. Dep't of Health & Human Servs., Ctrs. for Disease Control & Prevention, Maternal Mortality Rates in the United States (Feb. 2022), *https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2020/E-stat-Maternal-Mortality-Rates-2022.pdf.*

[92] *Id.*

[93] Marian F. MacDorman et al., *Racial and Ethnic Disparities in Maternal Mortality in the United States Using Enhanced Vital Records, 2016–2017,* 111 a.m. J. Pub. Health 1673, 1671 (2021), *https://ajph.aphapublications.org/doi/10.2105/AJPH.2021.306375.*

[94] The White House Briefing Room, A Proclamation on Black Maternal Health Week, 2021 (April 13, 2021), *www.whitehouse.gov/briefing-room/presidential-actions/2021/04/13/a-proclamation-on-black-maternal-health-week-2021/ ;see also,* The White House Briefing Room, A Proclamation on Black Maternal Health Week, 2022 (April 8, 2022), *https://www.whitehouse.gov/briefing-room/presidential-actions/2022/04/08/a-proclamation-on-black-maternal-health-week-2022/ .*

[95] The White House Briefing Room, FACT SHEET: Biden-Harris Administration Announces Initial Actions to Address the Black Maternal Health Crisis (Apr. 13, 2021), *www.whitehouse.gov/briefing-room/statements-releases/2021/04/13/fact-sheet-biden-harris-administration-announces-initial-actions-to-address-the-black-maternal-health-crisis./*

[96] Jennifer L. Heck et al., *Maternal Mortality Among American Indian/Alaska Native Women: A Scoping Review.* 30 J. of Women's Health 220, 229 (2021), *https://www.liebertpub.com/doi/epdf/10.1089/jwh.2020.8890.*

[97] *Id.* at 226.

[98] Kelly M. Hoffman et al., *Racial Bias in Pain Assessment and Treatment Recommendations, and False Beliefs About Biological Differences Between Blacks and Whites,* 113 Proc. of the Nat'l Acad. of Sci. 4296, 4301 (2016), *https://doi.org/10.1073/pnas.1516047113.*

[99] Michael Sun et al., *Negative Patient Descriptors: Documenting Racial Bias in the Electronic Health Record,* 41 Health Affairs 203, 211 (2022), *https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2021.01423.*

[100] Liz Hamel et al., The Kaiser Family Found., The Undefeated Survey on Race and Health, p. 4 (2020), *https://files.kff.org/attachment/Report-Race-Health-and-COVID-19-The-Views-and-Experiences-of-Black-Americans.pdf.*

[101] *Id.* at 5.

racism were more likely to experience deteriorations in health that contribute to premature death, including increased risk of inflammation and chronic illness.[102]

It is well-documented that LEP people experience obstacles to accessing health care in the United States.[103] Language barriers negatively affect LEP patients' ability to comprehend their diagnoses and understand medical instructions when they are delivered in English, and impact their comfort with post-discharge care regimens.[104] For example, Hispanic/Latino LEP people report worse access to care and report the receipt of fewer preventive services than Hispanic/Latino people who speak English proficiently.[105] For Asian Americans who are not proficient in English, language barriers are one of the most significant challenges to accessing health care, including making an appointment, communicating with health care professionals, and gaining knowledge about an illness.[106] This is even more pronounced among older Asian Americans, who are more likely to have limited English proficiency.[107] Studies show that LEP patients experience longer hospital stays—leading to a greater risk of line infections, surgical infections, falls, and pressure ulcers—when compared to English-speaking patients.[108] Because LEP patients have greater difficulty understanding medical instructions when those instructions are given in English, they are at higher risk of surgical delays and readmissions.[109] Although the use of qualified interpreters is effective in improving care for LEP patients, some clinicians choose not to use them, fail to use them effectively, or rely instead on ad hoc interpreters—such as family members or untrained bilingual staff.[110] However, in addition to posing legal and ethical concerns, ad hoc interpreters are more likely to make mistakes than professional interpreters.[111] Also, clinicians with basic or intermediate non-English spoken language skills often attempt to communicate with the patient on their own without using an interpreter, increasing patient risk.[112] These barriers contribute to disparities in health outcomes for LEP individuals, which have likely worsened during the COVID–19 pandemic.[113]

2. Health Equity and Discrimination Related to Sex

Disparities in women's health are well-documented. For example, although heart disease is the leading cause of death for men and women in the United States, women are more likely to experience delays in emergency care and treatment to control their cholesterol levels.[114] Women are also more likely than men to die from a heart attack.[115] The delay in the diagnosis and treatment of heart disease is just one of many disparities women experience in health care settings. Some evidence suggests that women treated by male physicians for heart attacks experience higher rates of mortality compared to women treated by a female physician or by a male physician who has had more exposure to female patients and female physicians.[116]

Studies regarding pain management have also indicated the risk of gender bias, based on the notion that men and women are ''separate and different in manners and needs,'' with a review of the literature revealing studies that show women receive less adequate pain medication, more antidepressants, and more mental health referrals compared to men.[117] Studies indicate this may have to do with erroneous gender stereotypes that men are ''stoic, in control, and avoid[] seeking health care,'' whereas women are presented as ''more sensitive to pain and more willing to show and to report pain'' compared to men.[118]

LGBTQI+ individuals in the United States also face pervasive health disparities and barriers in accessing needed health care. Throughout this preamble, we will use the full acronym of LGBTQI+ when talking broadly about individuals who are LGBTQI+ but will use a subset of the acronym (*e.g.,* ''LGB,'' ''LGBT'' or ''LGBTQ'') when discussing studies, research, or concepts that apply only to a subset of this group.

Overall, LGBTQI+ individuals report being in poorer health than non-LGBTQI+ individuals. LGBTQ+ individuals, moreover, are at increased risk for or are particularly affected by certain health conditions, including sexually transmitted infections,[119] Human Immunodeficiency Virus (HIV),[120] obesity,[121] conditions associated with tobacco, alcohol, and other substance use,[122] and mental

[102] Jamila Taylor, The Century Found., Racism, Inequality, and Health Care for African Americans, p. 6 (2019), *https://production-tcf.imgix.net/app/uploads/2019/12/19172443/AfAmHealth_Jamila_PDF.pdf.*

[103] Jason Espinoza et al., *How Should Clinicians Respond to Language Barriers that Exacerbate Health Inequity?,* 23 a.m. Med. Ass'n J. of Ethics E109 (2021) (LEP patients and families in the U.S. ''face barriers to health service access, experience lower quality care, and suffer worse health outcomes''), *https://journalofethics.ama-assn.org/sites/journalofethics.ama-assn.org/files/2021–02/cscm3–2102.pdf.*

[104] *Id.; see also* Leah S. Karliner et al., *Convenient Access to Professional Interpreters in the Hospital Decreases Readmission Rates and Estimated Hospital Expenditures for Patients with Limited English Proficiency,* 55 Med. Care 199 (2017), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5309198/.*

[105] Espinoza, *supra* note 103.

[106] Wooksoo Kim et al., *Barriers to Healthcare Among Asian Americans,* 25 Soc. Work in Pub. Health 286, 289 (2010), *https://www.tandfonline.com/doi/pdf/10.1080/19371910903240704?needAccess=true.*

[107] *Id.*

[108] U.S. Dep't of Health & Human Servs., Agency for Healthcare Research & Quality, Executive Summary: Improving Patient Safety Systems for Patients with Limited English Proficiency (Sept. 2020), *https://www.ahrq.gov/health-literacy/professional-training/lepguide/exec-summary.html#what.*

[109] *Id.*

[110] Espinoza, *supra* note 103, at 110.

[111] *See, e.g.,* Glenn Flores et al., *Errors of Medical Interpretation and Their Potential Clinical Consequences: A Comparison of Professional Versus Ad Hoc Versus No Interpreters,* 5 Annals of Emerg. Med. 545 (Nov. 1, 2012), *https://pubmed.ncbi.nlm.nih.gov/22424655/*; Ali Labaf et al., *The Effect of Language Barrier and Non-Professional Interpreters on the Accuracy of Patient-Physician Communication in Emergency Department,* 3 Adv. J. Emerg. Med., June 6, 2019, at p. 4, *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6789075/pdf/AJEM-3-e38.pdf.*

[112] U.S. Dep't of Health & Human Servs., Agency for Healthcare Research & Quality, *supra* note 108.

[113] *See* Lala Tanmoy Das et al., *Addressing Barriers to Care for Patients with Limited English Proficiency During the COVID–19 Pandemic,* Health Affairs Blog (July 29, 2020), *https://www.healthaffairs.org/do/10.1377/hblog20200724.76821/full/.*

[114] *What Health Issues or Conditions Affect Women Differently than Men?,* U.S. Dep't of Health & Human Servs., Nat'l Inst. of Child Health & Human Dev., *https://www.nichd.nih.gov/health/topics/womenshealth/conditioninfo/howconditionsaffect* (last visited Mar. 15, 2022).

[115] Brad Greenwood et al., *Patient-Physician Gender Concordance and Increased Mortality Among Female Heart Attack Patients,* 115 Proc. Nat'l Acad. Sci. 8569, 8574 (2018), *https://www.pnas.org/doi/epdf/10.1073/pnas.1800097115.*

[116] *Id.*

[117] Anke Samulowitz et al., ''*Brave Men*'' *and* ''*Emotional Women*'': *A Theory-Guided Literature Review on Gender Bias in Health Care and Gendered Norms Towards Patients with Chronic Pain,* Pain Res. & Mgmt., Feb. 25, 2018, at pp. 1, 9–10, *https://downloads.hindawi.com/journals/prm/2018/6358624.pdf*; *see also* Danielle M. Wesolowicz et al., *The Roles of Gender and Profession on Gender Role Expectations of Pain in Health Care Professionals,* 11 J. of Pain Res. 1121 (2018), *https://www.dovepress.com/getfile.php?fileID=42642.*

[118] Samulowitz, *supra* note 117, at pp. 1, 9.

[119] Hilary Daniel et al., Annals of Internal Med. Position Papers, Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper from the American College of Physicians (2015), *https://www.acpjournals.org/doi/full/10.7326/M14-2482?journalCode=aim.*

[120] U.S. Dep't of Health & Human Servs., Ctrs. for Disease Control & Prevention, HIV Surveillance Report, 2019; Vol. 32, pp. 19, 24, 46 (2021), *https://www.cdc.gov/hiv/pdf/library/reports/surveillance/cdc-hiv-surveillance-report-2018-updated-vol-32.pdf.*

[121] Daniel, *supra* note 119.

[122] *Id.*

health conditions,[123] including suicidality.[124] LGB people are more likely to acquire a disability at a younger age than heterosexual individuals.[125]

Discrimination also poses a major challenge to the health of LGBTQI+ people. A 2018 literature review revealed that 82 percent of studies found ''robust evidence that discrimination on the basis of sexual orientation or gender identity is associated with harms to the health of LGBT people.'' [126] Anti-LGBT discrimination is associated with a higher risk of poor mental and physical health, including depression, anxiety, post-traumatic stress disorder, substance use, and cardiovascular disease.[127] These effects are exacerbated for youth and people of color who identify as LGBT.[128] Significant proportions of LGBTQ people report negative experiences with doctors and other health care providers.[129] According to a recent survey, negative experiences with providers occur at higher rates among transgender people, particularly transgender people of color, than among other LGBTQ subgroups.[130]

With respect to transgender individuals, the Department believes that it is particularly important to acknowledge that evidence demonstrates that some health care providers have discriminated against and continue to discriminate against transgender people based on their gender identities. Transgender people commonly report that their providers asked them unnecessarily invasive questions about their gender identity; were physically or verbally abusive; refused them gender-affirming care; or refused to see them at all due to their gender identity.[131] In some cases, transgender people and their providers face discriminatory obstacles at the hospitals or health systems where those providers work or have admitting privileges.[132] Fear of disrespect and discrimination leads many LGBTQI+ people to report delaying or forgoing needed health care, especially for those who identify as transgender.[133] While there is less published research addressing discrimination and disparate health outcomes in individuals with intersex conditions, preliminary studies suggest many of the same concerns and disparities apply.[134]

LGBTQI+ people also face barriers to obtaining health insurance, which can impact their access to appropriate health care. Insured rates for LGB+ people have risen substantially since the implementation of the ACA coverage expansions, yet research indicates that some of these gains in coverage were lost between 2016 and 2019.[135] Although research suggests that transgender people have benefited from the ACA's coverage expansions and consumer protections,[136] significant disparities persist in the uninsured rate for transgender people when compared to cisgender [137] people. Nearly one in five transgender adults reported that they lacked insurance from 2017–2018.[138] Furthermore, transgender people who can access insurance may nonetheless be denied coverage for needed services, including gender-affirming care.[139] For example, more than 40 percent of transgender respondents in one survey said their health insurance company denied them coverage for a gender-affirming surgery; a similar proportion reported that they were denied coverage for hormone therapy.[140]

Recent research confirms that the COVID–19 pandemic has also exacerbated the health disparities identified above for LGBTQI+ people. Specifically, LGBTQ+ people, who have a higher prevalence of underlying health conditions, are more susceptible to COVID-related illnesses and death.[141] Another study revealed that LGBT+ people, in general, have experienced increased negative mental health impacts during the COVID–19 pandemic compared with non-LGBT+ people.[142] LGBTQ+ youth, in particular, may have experienced increased negative mental health impacts during the pandemic based on increased feelings of isolation and the inability to access supportive community groups and LGBTQ+ friendly spaces resulting from stay-at-home orders and social distancing

[123] Charlotte Patterson et al., Nat'l Acads. of Sci., Eng'g, & Med., Understanding the Well-Being of LGBTQI+ Populations, p. 298 (2020), *https://doi.org/10.17226/25877*.

[124] Daniel, *supra* note 119.

[125] *Id.*

[126] What We Know Project, Cornell U., What Does the Scholarly Research Say About the Effects of Discrimination on the Health of LGBT People (2019), *https://whatweknow.inequality.cornell.edu/wp-content/uploads/2019/12/LGBT-Discrimination-Printable-Findings-121319.pdf*.

[127] *Lesbian, Gay, Bisexual, and Transgender Health, HealthyPeople.gov, https://healthypeople.gov/2020/topics-objectives/topic/lesbian-gay-bisexual-and-transgender-health* (last visited June 8, 2022).

[128] *Id.; see also* Bianca D.M. Wilson et al., The Williams Inst., UCLA Sch. of Law, Racial Differences Among LGBT Adults in the US: LGBT Well-Being at the Intersection of Race (2022), *https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Race-Comparison-Jan-2022.pdf*.

[129] Sharita Gruberg et al., Ctr. for Am. Progress, The State of the LGBTQ Community in 2020 (2020), *https://www.americanprogress.org/issues/lgbtq-rights/reports/2020/10/06/491052/state-lgbtq-community-2020/*.

[130] Sandy E. James et al., Nat'l Ctr. for Transgender Equality, The Report of the 2015 U.S. Transgender Survey, p. 97 (2016), *https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf*.

[131] *Id.* at pp. 96–97.

[132] *See, e.g.,* Chico Harlan, *A Small-Town Doctor Wanted to Perform Surgeries for Transgender Women. He Faced an Uphill Battle,* Wash. Post (Nov. 11, 2017), *https://www.washingtonpost.com/national/a-small-town-doctor-wanted-to-perform-surgeries-for-transgender-women-he-faced-an-uphill-battle/2017/11/11/c6073a0a-c3d7-11e7-84bc-5e285c7f4512_story.html*.

[133] Patterson, *supra* note 123, at p. 292.

[134] Laetitia Zeeman & Kay Aranda, *A Systematic Review of the Health and Healthcare Inequalities for People with Intersex Variance,* 17 Int'l J. of Envtl. Res. & Pub. Health 6533 (2020), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7559554/*; Amy Rosenwohl-Mack et al., *A National Study on the Physical and Mental Health of Intersex Adults in the U.S.,* 15 PLoS ONE, Oct. 9, 2020, *https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0240088*.

[135] U.S. Dep't of Health & Human Servs., Assistant Sec'y for Policy & Evaluation, Office of Health Policy, Issue Brief: Health Insurance Coverage and Access to Care for LGBTQ+ Individuals: Current Trends and Key Challenges, p. 4 (June 2021), *https://aspe.hhs.gov/sites/default/files/2021-07/lgbt-health-ib.pdf*.

[136] Gruberg, *supra* note 129.

[137] The term ''cisgender'' refers to a person whose gender identity is the same as the person's assigned sex at birth.

[138] Wyatt Koma et al., The Kaiser Family Found., Demographics, Insurance Coverage, and Access to Care Among Transgender Adults (2020), *https://www.kff.org/health-reform/issue-brief/demographics-insurance-coverage-and-access-to-care-among-transgender-adults/*.

[139] For purposes of this preamble, the term ''gender-affirming care'' refers to care for transgender individuals (including those who identify using other terms, for example, nonbinary or gender nonconforming) that may include, but is not necessarily limited to, counseling, hormone therapy, surgery, and other services designed to treat gender dysphoria or support gender affirmation or transition. Gender-affirming care may also be, but is not necessarily, referred to as ''gender-affirming health services'' or ''transition-related care.'' The terms ''gender-affirming care'' or ''transition-related care'' also include care sought by individuals with intersex conditions who seek treatment for gender dysphoria. *See* World Prof. Ass'n for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, pp. 68–71 (7th Version 2012) [hereinafter WPATH Standards], *https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?_t=1613669341* (last visited Feb. 7, 2022).

[140] Gruberg, *supra* note 129.

[141] Dustin Nowaskie & Anna Roesler, *The Impact of COVID–19 on the LGBTQ+ Community: Comparisons Between Cisgender, Heterosexual People, Cisgender Sexual Minority People, and Gender Minority People,* 309 Elsevier Psychiatry Res., Jan. 10, 2022, at pp. 1, 3, *www.sciencedirect.com/science/article/pii/S0165178122000051*.

[142] Lindsey Dawson et al., Kaiser Family Found., The Impact of the COVID–19 Pandemic on LGBT+ People's Mental Health (2021), *https://www.kff.org/other/issue-brief/the-impact-of-the-covid-19-pandemic-on-lgbt-peoples-mental-health/#:~:text=LGBT%20people%20reported%20the%20COVID,rates%20than%20non%2DLGBT%20people*.

recommendations.[143] These youth may also face familial rejection and related mental health and other consequences.[144] Compared to non-LGBT+ people, larger shares of LGBT+ people reported COVID-related employment disruptions.[145] Thus, accessing and affording mental health care [146] and health insurance generally [147] during the pandemic is disproportionally more difficult for LGBT+ people compared to their numbers in the general population.

3. Health Equity and Discrimination Related to Age

Although the health disparities discussed above exist in all age groups, older adults experience unique age-related discrimination that negatively impacts their health. There is evidence that age discrimination has negative effects on the physical and mental health of older adults,[148] including fatigue, pain, cognitive impairment, depression, and anxiety.[149] Older adults have reported discrimination including providers disregarding their knowledge of their own health care needs, having their pain ignored for prolonged periods of time, and providers assuming that as older adults they are cognitively compromised or unable to communicate their medical concerns.[150] Some older adults also report being disrespected, rushed, and ignored by their health care providers.[151] One study on age discrimination found that one in 17 adults over the age of 50 experience frequent age discrimination in health care settings, and this is associated with a new or worsened disability within four years.[152]

Health care disparities for older adults were tragically amplified by the impact of COVID–19. Recent data show that individuals 65 and older account for 74.3 percent of COVID–19 deaths in the United States.[153] Older adults in nursing homes in particular faced far worse outcomes. Older adults who require a nursing home level of care account for only about 2 percent of the Medicare population but represented about 22 percent of all COVID–19 cases from March 2020 through December 2020.[154] Across all demographic breakdowns, nursing home beneficiaries of Medicare had much higher rates of COVID–19 than beneficiaries in the community, with Hispanic/Latino, Black, and Asian American nursing home beneficiaries having the highest rates.[155] Similarly, nursing home residents were 12 times more likely to be hospitalized with COVID–19 [156] and 43 percent died within 30 days of hospitalization as compared to 22 percent of the individuals admitted from the community.[157] Thus, older adults in nursing homes were dying at higher rates than the general population and disproportionate to their numbers in the general population. Studies suggest that longstanding concerns associated with institutionalization such as crowding, understaffing, and facilities with fewer resources and oversight contributed to the devastating COVID–19 health disparities for older adults in nursing homes.[158]

Older adults of color sometimes experience discrimination in health care settings because of their age and their race. A recent study found that one in four Black and Hispanic/Latino adults in the U.S. age 60 and older reported that they have been treated unfairly or have felt that their health concerns were not taken seriously by health professionals because of their racial or ethnic background.[159] The findings from the report also stated that more than a quarter of U.S. older adults said they did not get the care or treatment they believed they needed,[160] and U.S. older adults who have experienced discrimination in a health care setting were more likely to have worse health status, face economic hardships, and be more dissatisfied with their care than those who did not experience discrimination.[161]

Additionally, even though life expectancy and overall health have improved in recent years for most older Americans, with the exception of what we have seen during the COVID–19 pandemic where older Americans have been disproportionately negatively impacted, not all older adults are benefitting equally because of factors such as race, gender, and disability. For example, it is expected Hispanic/Latino and Black people will experience the largest increases in Alzheimer's disease and related dementias between 2015 and 2060.[162] Additionally, women are nearly two times more likely to be affected by Alzheimer's disease than men.[163] A recent survey commissioned by the Alzheimer's Association found that the ability to obtain a diagnosis, manage the disease, and access care and support services for dementia vary widely depending on race, ethnicity, geography, and socioeconomic status.[164] These disparities reach beyond clinical care to include uneven representation of Black, Hispanic/Latino, Asian American and American Indian/Alaska Native populations in Alzheimer's research and clinical trials as well.[165]

[143] Ishaan Sachdeva et al., *Letter to the Editor: The Disparities Faced by the LGBTQ+ Community in Times of COVID–19,* 297 Elsevier Psychiatry Res., Jan. 14, 2021, *https://www.sciencedirect.com/science/article/pii/S0165178121000226*; Laurie A. Drabble & Michael J. Eliason, *Introduction to Special Issue: Impacts of the COVID–19 Pandemic on LGBTQ+ Health and Well-Being,* 68 J. Homosexuality 545, 549 (2021), *https://www.tandfonline.com/doi/pdf/10.1080/00918369.2020.1868182?needAccess=true*; Scott Emory Moore et al., *Disproportionate Impact of the COVID–19 Pandemic on Perceived Social Support, Mental Health and Somatic Symptoms in Sexual and Gender Minority Populations,* 68 J. Homosexuality 577, 587 (2021), *www.tandfonline.com/doi/full/10.1080/00918369.2020.1868184.*

[144] Sachdeva, *supra* note 143.

[145] Dawson, *supra* note 142.

[146] Nowaskie, *supra* note 141, at p. 3; *see also* Brad Sears et al., Williams Inst., UCLA Sch. of L., The Impact of the Fall 2020 COVID–19 Surge on LGBT Adults in the U.S., p. 10 (2021), *https://williamsinstitute.law.ucla.edu/wp-content/uploads/COVID-LGBT-Fall-Surge-Feb-2021.pdf.*

[147] Drabble, *supra* note 143, at 548.

[148] David Burnes et al., *Interventions to Reduce Ageism Against Older Adults: A Systematic Review and Meta-Analysis,* 109 Am. J. of Pub. Health, e1, e9 (2019), *https://doi.org/10.2105/AJPH.2019.305123.*

[149] *Why Ageism in Health Care Is a Growing Concern,* RegisCollege.edu, *https://online.regiscollege.edu/blog/why-ageism-in-health-care-is-a-growing-concern/* (last visited Apr. 20, 2022).

[150] Judith Graham, '*They Treat Me Like I'm Old and Stupid': Seniors Decry Health Providers' Age Bias,* Kaiser Health News (Oct. 20, 2021), *https://khn.org/news/article/ageism-health-care-seniors-decry-bias-inappropriate-treatment/.*

[151] *Id.*

[152] Stephanie E. Rogers et al., *Discrimination in Healthcare Settings is Associated with Disability in Older Adults: Health and Retirement Study, 2008–2012,* 30 J. Gen. Intern. Med., 1413, 1420 (2015), *https://doi.org/10.1007/s11606–015–3233–6.*

[153] U.S. Dep't of Health & Human Servs., Ctrs. for Disease Control & Prevention, COVID–19 Mortality Overview, Provisional Death Counts for Coronavirus Disease 2019, *https://www.cdc.gov/nchs/covid19/mortality-overview.htm* (last visited Feb. 16, 2022).

[154] U.S. Dep't of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., The Impact of COVID–19 on Medicare Beneficiaries in Nursing Homes, *https://www.cms.gov/medicare-covid-19-nursing-home-analysis* (last visited Mar. 15, 2022).

[155] *Id.*

[156] *Id.*

[157] *Id.*

[158] *See, e.g.,* Fangli Geng et al., *Daily Nursing Home Staffing Levels Highly Variable, Often Below CMS Expectations,* 38 Health Affairs 1095, 1099 (2019), *https://doi.org/10.1377/hlthaff.2018.05322.*

[159] Michelle M. Doty et al., Commonwealth Fund, How Discrimination in Health Care Affects Older Americans, and What Health Systems and Providers Can Do (2022), *https://doi.org/10.26099/yffm-2x15.*

[160] *Id.*

[161] *Id.*

[162] *Minorities and Women Are at Greater Risk for Alzheimer's Disease,* U.S. Dep't of Health & Human Servs., Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/aging/publications/features/Alz-Greater-Risk.html* (last visited Mar. 15, 2022).

[163] *Id.*

[164] Alzheimer's Ass'n, Special Report: Race, Ethnicity and Alzheimer's in America, p. 72 (2021), *https://www.alz.org/media/Documents/alzheimers-facts-and-figures-special-report.pdf.*

[165] *Id.*

Another age group disadvantaged by health disparities is children. Social determinants of health such as racism and poverty have been shown to have profoundly negative effects on the health status of children and adolescents. Research on the relationship between the impact of racism and the biological effects of chronic exposure to stress hormones at the cellular level reveals links between birth disparities and mental health challenges in youth.[166]

Additionally, the relationship between health disparities and the ability of low-income populations to access safe, healthy homes is well-documented. As early as 2005, the Office of the U.S. Surgeon General reported that 14 percent of low-income renters lived in homes with severe to moderate structural problems including water leaks and mold growth triggering allergic reactions and asthma attacks in residents.[167] Exposure to lead in water sources and paint, soil, and dust particles are known to cause neurological disorders and increased risks of learning and intellectual disabilities in children.[168] Data from national health surveys reveal that children of color, low-income families, and certain geographic regions are disproportionately impacted by lead poisoning.[169] Specifically, Black children are the most likely to have higher blood lead levels, children living in poverty are more likely to have lead in their bodies than other children (regardless of their race/ethnicity or age of the home), and the Southern region of the United States has the highest number of children with lead exposure.[170]

4. Health Equity and Discrimination Related to Disability

Individuals with disabilities face barriers to accessing health care and fare worse on a broad range of health indicators than the general population.[171] In addition to experiencing disparate health outcomes and disparate social determinants of health, individuals with disabilities experience challenges in getting the health care they need. For example, standard medical diagnostic equipment is often inaccessible to individuals with mobility-related disabilities. As a result, as many as 20 million adults in the United States who have a disability that limits their functional mobility may experience challenges accessing preventive, primary, and specialty care due to the lack of accessible medical diagnostic equipment.[172] Lack of physical access may lead to poor quality of care, ''delayed and incomplete care, missed diagnoses, exacerbation of the original disability, and increases in the likelihood of the development of secondary conditions.'' [173]

Disability-based bias and discrimination in the health care setting likely contribute to access issues faced by individuals with disabilities. A recent survey of U.S. physicians' perceptions of individuals with disabilities shows the prevalence of potentially biased views. For example, 82.4 percent of respondents in a study published in 2021 reported that individuals with significant disabilities have worse quality of life than those without disabilities, and only 40.7 percent were very confident about their ability to provide the same quality of care to patients with disabilities.[174] Other studies confirm that some health care providers are likely to deny needed medical care to individuals with disabilities, substitute their own judgment for the preferences of patients with disabilities, and exhibit other forms of implicit and explicit bias.[175]

Compared to individuals without disabilities, people with disabilities are more likely to have unmet medical, dental, and prescription medication needs—especially women with disabilities and individuals with disabilities who have lower incomes.[176] Individuals with disabilities are also less likely to receive preventive health care services, such as routine teeth cleanings and cancer screenings.[177] One study of Medicare beneficiaries with disabilities found that they were significantly more likely to report difficulty accessing care and more likely to lack annual clinician evaluation and management visits for primary and specialty care than those without disabilities.[178] The same beneficiaries were also more likely to have general, nonemergent, and preventable emergency department visits.[179] Female Medicare beneficiaries with disabilities aged 65 and older were found less likely to receive mammography screening

[166] Maria Trent et al., *The Impact of Racism on Child and Adolescent Health,* 144 Am. Acad. of Pediatrics, Aug. 1, 2019, *https://publications.aap.org/pediatrics/article/144/2/e20191765/38466/The-Impact-of-Racism-on-Child-and-Adolescent*.

[167] U.S. Dep't of Health & Human Servs., Office of the Surgeon Gen., The Surgeon General's Call to Action to Promote Healthy Homes (2009), *https://www.ncbi.nlm.nih.gov/books/NBK44192/pdf/Bookshelf_NBK44192.pdf*.

[168] *Health Effects of Lead Exposure,* U.S. Dep't of Health & Human Servs., Ctrs. for Disease Control & Prevention, *https://www.cdc.gov/nceh/lead/prevention/health-effects.htm* (last visited Mar. 15, 2022).

[169] *See, e.g.,* Eric M. Roberts et al., *Assessing Child Lead Poisoning Case Ascertainment in the US, 1999–2010,* 139 Pediatrics, May 2017, *https://publications.aap.org/pediatrics/article/139/5/e20164266/38761/Assessing-Child-Lead-Poisoning-Case-Ascertainment*; *Who is Vulnerable to Childhood Lead Poisoning,* Tracking California, *https://www.trackingcalifornia.org/childhood-lead-poisoning/who-is-vulnerable-to-childhood-lead-poisoning* (last visited Mar. 15, 2022).

[170] *See, e.g.,* Roberts, *supra* note 169; *Who is Vulnerable to Childhood Lead Poisoning, supra* note 169.

[171] *See, e.g.,* Valerie L. Forman-Hoffman et al., *Disability Status, Mortality, and Leading Causes of Death in the United States Community Population,* 53 Med Care 346 (2015), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5302214/*; Gloria L. Krahn et al., *Persons with Disabilities as an Unrecognized Health Disparity Population,* 205 Am. J. Pub. Health S198 (Apr. 2015), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4355692/*; *2020 Topics and Objectives: Disability and Health, HealthyPeople.gov, https://www.healthypeople.gov/2020/topics-objectives/topic/disability-and-health* (last visited Nov. 10, 2021); Elham Mahmoudi & Michelle Meade, *Disparities in Access to Health Care Among Adults with Physical Disabilities: Analysis of a Representative National Sample for a Ten-Year Period,* 8 Disability Health J. 182 (2015), *https://pubmed.ncbi.nlm.nih.gov/25263459/*.

[172] Debra L. Brucker & Andrew J. Houtenville, *People with Disabilities in the United States,* 96 Archives of Physical Medicine and Rehabilitation 771 (2015), *https://doi.org/10.1016/j.apmr.2015.02.024*.

[173] Nat'l Council on Disability, Enforceable Accessible Medical Equipment Standards: A Necessary Means to Address the Health Care Needs of People with Mobility Disabilities, p. 7 (2021), *https://ncd.gov/sites/default/files/Documents/NCD_Medical_Equipment_Report_508.pdf*.

[174] Lisa I. Iezzoni et al., *Physicians' Perceptions of People with Disability and Their Health Care,* 40 Health Affairs 297 (2021), *https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.01452*. *See also,* Lisa I. Iezzoni et al., *US Physicians' Knowledge About the Americans with Disabilities Act and Accommodation of Patients with Disability,* 41 Health Affairs 96 (2022), *https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2021.01136*.

[175] Kenneth A. Gerhart et al., *Quality of Life Following Spinal Cord Injury: Knowledge of Attitudes of Emergency Care Providers,* 24 Annals of Emergency Med. 807 (1994), *https://www.annemergmed.com/article/S0196-0644(94)70318-3/fulltext*; David Carlson et al., Nat'l Disability Rights Network, Devaluing People with Disabilities: Medical Procedures that Violate Civil Rights, pp. 17, 23, 28, 42–43, 49, 54 (2012), *https://www.ndrn.org/wp-content/uploads/2012/05/Devaluing-People-with-Disabilities.pdf*; Laura VanPuymbrouck et al., *Explicit and Implicit Disability Attitudes of Healthcare Providers,* 65 Rehab. Psychology 101 (2020), *https://pubmed.ncbi.nlm.nih.gov/32105109/*.

[176] Andrés J. Gallegos, *Misperceptions of People with Disabilities Lead to Low-Quality Care: How Policy Makers Can Counter that Harm and Injustice,* Health Affairs Blog (Apr. 1, 2021), *https://www.healthaffairs.org/do/10.1377/hblog20210325.480382/full/*.

[177] *2020 Topics and Objectives: Disability and Health, HealthyPeople.gov, https://www.healthypeople.gov/2020/topics-objectives/topic/disability-and-health* (last visited Nov. 10, 2021).

[178] Kenton J. Johnson et al., *Ambulatory Care Access and Emergency Department Use for Medicare Beneficiaries With and Without Disabilities,* 40 Health Affairs 910 (2021), *https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.01891*.

[179] *Id.*

compared to female beneficiaries of the same age reporting no disability.[180]

A recent study examined the intersectionality of disability and pregnancy and how this may impact risk for maternal morbidity and mortality, thereby underscoring the importance of ensuring nondiscrimination against women with disabilities.[181]

The COVID–19 pandemic exacerbated existing health disparities and uniquely affected individuals with disabilities, who are more likely to have pre-existing health conditions and face barriers to accessing health care, placing them at increased risk of COVID–19 infection and death.[182] Further, some people who have been infected with COVID–19 continue to experience symptoms that can last months after first being infected, or may have new or recurring symptoms at a later time, a condition known as ''long COVID'' that itself can constitute a disability.[183] During the course of the COVID–19 pandemic, OCR has received a number of complaints from aging and disability rights advocates raising concerns that resource allocation decisions under state Crisis Standards of Care were being made in a manner that was discriminatory on the basis of age and disability. OCR provided technical assistance to a number of states to prevent resource allocation decisions from being made on the basis of discriminatory criteria.[184]

5. Improving the Nation's Health Through Civil Rights Protections

The Department is committed to doing its part to address health disparities and to promote equity in health care access through a range of initiatives, including through implementation and enforcement of Section 1557's protections. As reviewed above, the 2016 Rule provided clarity regarding Section 1557's strong statutory protections from discrimination and equipped the Department with the means to enforce these protections. The 2020 Rule, by contrast, limited the Rule's scope, removed principal provisions from the Section 1557 regulation, and left ambiguity regarding the extent of various protections. The 2020 Rule removed specific provisions implementing nondiscrimination protections regarding gender identity. The 2020 Rule also eliminated specific provisions addressing discrimination in health insurance coverage benefit design and eliminated provisions designed to ensure access to language assistance services for LEP individuals. Furthermore, 2020 Rule also narrowed the regulation's application to some, but not all, operations of health insurance issuers and to only certain programs administered by the Department.

The 2020 Rule's removal of specific nondiscrimination provisions from the Section 1557 regulation—including the provision implementing protections based on gender identity discrimination, as well as other changes that could be read to limit the reach of Section 1557—has the potential to increase the incidence of discrimination for groups protected under the statute. As described above, discrimination leads to negative impacts on access to care and mental and physical health outcomes. An increase in discrimination will widen existing disparities and harm the well-being of underserved and historically marginalized individuals and communities. The Department acknowledges the potential interest that covered entities and other stakeholders may have in maintaining the 2020 Rule and recognizes that some of the proposed revisions reflect changes to certain positions articulated in that Rule. However, the Department is also cognizant of the fact that absent revisions to the 2020 Rule, protected groups likely will be relegated to inferior health care access without strong civil rights protections at a moment when health disparities have been magnified by the unequal burden of the COVID–19 pandemic.

## III. Nondiscrimination in Health Programs and Activities

### Subpart A—General Provisions

### Purpose and effective date (§ 92.1)

Proposed § 92.1(a) states that the purpose of this part is to implement Section 1557, which prohibits discrimination in certain health programs and activities on the grounds prohibited under Title VI, Title IX, the Age Act, or Section 504. As discussed further in the Preamble's discussion of proposed § 92.2, HHS interprets Section 1557's prohibition of discrimination on the ''ground[s] prohibited'' under Title VI, Title IX, Age Act, or Section 504 to mean that Section 1557 prohibits discrimination based on race, color, national origin, sex, age, or disability.[185] In addition to incorporating the ''ground[s] prohibited'' by these other statutes, Section 1557 incorporates the ''enforcement mechanisms'' of the statutes.[186] Though the Section 1557 rule is informed by the Title VI, Title IX, Age Act, and Section 504 implementing regulations, Section 1557 provides an independent basis for regulation of discrimination in covered health programs and activities that is distinct from Title VI, Title IX, the Age Act, and Section 504. Section 1557's nondiscrimination requirements do not in any way limit or impact the interpretation of those statutes.[187]

Section 92.1(b) proposes that the effective date of the Section 1557 implementing regulation shall be 60 days after the publication of a final rule in the **Federal Register**. This section provides an exception to the start date for provisions of this part that require changes to health insurance or group health plan benefit design. Such provisions will have a delayed implementation date of the first day of the first plan year (in the individual market, policy year) beginning on or after the year immediately following the effective date of the Final Rule in the **Federal Register**. This delayed implementation will allow covered entities to revise their health insurance coverage or other health-related coverage to comply with the regulation and to avoid administrative challenges associated with applying the Final Rule's requirements in the middle of a plan year or policy year. We seek

[180] U.S. Dep't of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., Medicare Current Beneficiary Survey (2013), *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Data-Highlight-ADA–2017.pdf*.

[181] Caroline Signore et al., *The Intersection of Disability and Pregnancy: Risks for Maternal Morbidity and Mortality.* 30 J. of Women's Health 147, 153 (2021), *https://doi.org/10.1089/jwh.2020.8864*.

[182] Sabrina Epstein et al., *New Obstacles and Widening Gaps: A Qualitative Study of the Effects of the COVID–19 Pandemic on U.S. Adults with Disabilities,* 14 Disability & Health J. 101103 (2021), *https://doi.org/10.1016/j.dhjo.2021.101103*.

[183] U.S. Dep't of Health & Human Servs. & U.S. Dep't of Justice, Guidance on ''Long Covid'' as a Disability Under the ADA, Section 504, and Section 1557 (July 26, 2022), *https://www.hhs.gov/about/news/2021/07/26/hhs-doj-issue-guidance-on-long-covid-and-disability-rights.html*.

[184] *Civil Rights and COVID–19,* U.S. Dep't of Health & Human Servs., Office for Civil Rights, *https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/index.html* (last updated July 26, 2021); Bulletin, U.S. Dep't of Health & Human Servs., Office for Civil Rights, *Civil Rights, HIPAA, and the Coronavirus Disease 2019* (Mar. 28, 2020), *https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf*.

[185] *See Schmitt* v. *Kaiser Found. Health Plan of Wash.,* 965 F.3d 945, 953 (9th Cir. 2020) (''Section 1557(a) incorporates only the prohibited 'grounds' and 'the mechanisms provided for and available under' the four civil rights statutes. A prohibited 'ground' for discrimination . . . is simply the protected classification at issue.'').

[186] 42 U.S.C. 18116(a).

[187] *See id.* 18116(b).

comments from issuers, employers, and other plan sponsors on how long they anticipate it would take to adjust their plan offerings, and from Exchanges on how long they would need to implement the proposed requirements.

**Application (§ 92.2)**

Proposed § 92.2 addresses the application of this regulation. The Department proposes in § 92.2(a) to apply the rule, except as otherwise provided in this part, to: (1) every health program or activity, any part of which receives Federal financial assistance, directly or indirectly, from the Department; (2) every health program or activity administered by the Department; and (3) every program or activity administered by a Title I entity.

Paragraph (a)(1) proposes to make the rule applicable to every health program or activity, any part of which receives Federal financial assistance, directly or indirectly, from the Department.

In paragraph (a)(2), we propose to apply the rule to all health programs and activities of the Department. This is consistent with the 2016 Rule, and in contrast to the 2020 Rule, which only applies to those programs and activities administered by the Department under Title I of the ACA. The statute prohibits discrimination on the enumerated bases in ''any program or activity that is administered by an Executive Agency *or* any entity established under this title.'' [188] The operative word, ''or,'' distinguishes programs and activities operated by an Executive Agency from those operated by a Title I entity. Although the 2020 Rule construes this language to cover only programs and activities administered by the Department under Title I of the ACA and programs and activities administered by any entity established under Title I of the ACA, upon further review the Department finds this reading of the statute unpersuasive. We do not believe that the best way to resolve any perceived ambiguity is to construe the phrase ''established under this title'' as modifying the phrase ''administered by an Executive Agency.''

We propose, consistent with the 2016 Rule, to reinstate the word ''health'' to modify ''programs or activities'' operated by the Department. The Department considered applying the rule to all programs and activities of the Department; however, we believe this is an appropriate limitation for this regulation given the specificity of the vast majority of the regulatory provisions to health programs and activities. We seek comment on the implications of this scope; the implications of applying a Section 1557 implementing regulation broadly to all programs and activities of the Department; and, if the Department were to do so, if that should be done through a separate regulation, similar to the Department's Section 504 implementing regulation that applies to programs and activities conducted by the Department at 45 CFR part 85.

Consistent with the 2016 Rule, the Department proposes to limit the application of this rulemaking to the health programs and activities of only the Department itself and not all Executive Agencies. The Department remains committed to working with other Departments that administer health programs and activities to support them in their efforts to ensure that their programs are nondiscriminatory, because Section 1557 applies to programs and activities that are administered by all Executive Agencies.[189] This proposed regulation, however, is limited to HHS.

Proposed paragraph (a)(3) states that the rule applies to every program or activity administered by a Title I entity. Title I entities include State Exchanges (including those on the Federal platform) and federally-facilitated Exchanges, both of which were created under Title I of the ACA.[190] We do not believe the modifier ''health'' is necessary when describing covered programs and activities of Title I entities because they are, as a whole, health programs or activities under the definition of ''health program or activity'' at proposed § 92.4.

Proposed paragraph (b) provides that provisions of this part do not apply to an employer with regard to its employment practices, including the provision of employee health benefits. This is distinct from both the 2016 and 2020 Rules, each of which applied to employment in very limited circumstances. The 2016 Rule did not apply to hiring, firing, promotions, or terms and conditions of employment but did address employee health benefit programs at former § 92.208. This provision was repealed by the 2020 Rule as ''duplicative of, inconsistent with, or confusing in relation to the Department's preexisting regulations,'' which instead reverted to enforcing the statutorily referenced nondiscrimination statutes through their existing regulations.[191]

The Department has considered this issue, in consultation with Federal agencies primarily charged with enforcing existing employment discrimination laws, and is proposing that this part not apply to employment. OCR recognizes that over 55 percent of the U.S. population receives health care benefits through an employer.[192] However, based on enforcement experience under the 2016 and 2020 Rules, we believe that the proposed approach will minimize confusion among individuals seeking relief and will decrease the likelihood that individuals seeking relief under Federal Equal Employment Opportunity laws will miss strict time limits for filing complaints to challenge discrimination under those laws. The Department is proposing this language to promote clarity regarding the filing and processing of discrimination complaints. The Department proposes that employment discrimination complaints alleging violations of similar protections against discrimination to those that are covered under Section 1557 be handled by other Federal agencies under the statutes they enforce, and not by the Department. The Department would maintain jurisdiction over complaints alleging discrimination in covered health insurance or other health-related coverage; however, should the Department receive a complaint under Section 1557 alleging discrimination by an employer (such as a claim involving a Federal Employees Health Benefits plan), such a complaint will be referred to the appropriate Federal agency if it is determined that another agency (*e.g.,* Office of Personnel Management (OPM), Equal Employment Opportunity Commission (EEOC), or DOJ) may have jurisdiction under the statutes it enforces.

Proposed paragraph (c) provides that if any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it shall be severable from this part and not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other, dissimilar circumstances.

We seek comment on the effects of the proposed scope of application of the regulation, including the application to

[188] *Id.* 18116(a) (emphasis added).

[189] *Id.*

[190] Section 1311 of the ACA (codified at 42 U.S.C. 18031) (establishing grants and requiring those grants to be used by states to create ''American Health Benefit Exchanges'').

[191] 85 FR 37160, 37169 (June 19, 2020).

[192] Katherine Keisler-Starkey & Lisa N. Bunch, U.S. Dep't of Commerce, U.S. Census Bureau, Health Insurance Coverage in the United States: 2019, p. 4 (2020), *https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-271.pdf.*

programs and activities of the Department and other Executive Agencies; application of this part to recipients of Federal financial assistance from Executive Agencies other than the Department; and the application to employment.

**Treatment of Title IX Exceptions**

Section 1557 provides that ''an individual shall not, on the ground prohibited under'' Title VI, Title IX, the Age Act, and Section 504, ''be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance.'' [193] The statute further provides that ''[t]he enforcement mechanisms provided for and available under'' Title VI, Title IX, the Age Act, and Section 504 ''shall apply for purposes of violations of this subsection.'' [194] Section 1557 thus explicitly incorporates from those four statutes the grounds of discrimination that are prohibited and the enforcement mechanisms of the referenced statutes (Title VI, Title IX, the Age Act, and Section 504). Under the most natural understanding of Section 1557's text, as well as the statute's structure and purpose, the statutory term ''ground prohibited'' is best understood as incorporating the bases of the discrimination prohibitions in the referenced statutes (race, color, national origin, sex, age, and disability).

As discussed further below, the Department also believes that in order to construe particular terms in (or incorporated by) Section 1557, such as the meaning of ''sex'' or ''disability''; what it means to be ''subjected to discrimination'' on one of the specified grounds; the scope of ''program or activity''; and what counts as ''Federal financial assistance,'' it is reasonable and appropriate to look to how Congress, the agencies, and the courts have construed those terms under Title VI, Title IX, the Age Act, and Section 504. There is no similar basis, however, for concluding that Congress incorporated into Section 1557 any of the exceptions that Congress added to Title IX—the only one of the four statutes referenced by Section 1557 that contains such exceptions, and also the only statute with jurisdiction that is limited to a certain type of program or activity (*i.e.,* education programs or activities). At the very least, Section 1557 does not unambiguously require HHS to incorporate any of the Title IX exceptions into its regulatory scheme.[195]

Section 1681(a) of Title IX states the statute's basic prohibition on discrimination on the basis of sex, and then enumerates several circumstances in which that prohibition does not apply, which it denominates as ''exceptions'' from the basic rule of section 1681(a). The prohibition on sex-based discrimination does ''not apply'' at all, for example, ''to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine'';[196] nor does it apply to any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference.[197] Title IX includes an exception for *admissions* decisions of educational institutions other than institutions of vocational education, professional education, graduate higher education, and public undergraduate institutions,[198] and yet another exception for the *membership* practices of certain tax-exempt social fraternities and sororities, the YMCA and YWCA, the Girl Scouts, the Boy Scouts, and voluntary youth service organizations whose membership has ''traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age.'' [199] Title IX also contains exceptions that permit educational institutions to authorize father-son or mother-daughter activities,[200] and to award scholarships based upon the results of sex-specific beauty pageants.[201] Section 1681(a)(3) contains another exception for an educational institution controlled by a religious organization, which is permitted to engage in otherwise prohibited sex discrimination in particular circumstances—namely, where ''the application of [Title IX's nondiscrimination mandate] would not be consistent with the religious tenets of such organization.'' [202]

The 2016 Rule did not incorporate these Title IX exceptions for purposes of construing Section 1557. The treatment under the 2020 Rule is not as clear. Section 92.6(b) of the 2020 Rule states that ''[i]nsofar as the application of any requirement under this part would violate, depart from, or contradict definitions, *exemptions,* affirmative rights, or protections provided by'' the four referenced nondiscrimination statutes (and several others that are listed), ''such application shall not be imposed or required.'' (Emphasis added.) The preamble to the 2020 Rule asserted that because Section 1557 ''incorporates the statutory *scope* of Title IX, . . . it is appropriate for this rule to incorporate the Title IX statutory language concerning religious institutions . . . '' [203] Indeed, the preamble went so far as to say that ''this final rule amends the Department's Title IX regulation to explicitly incorporate relevant statutory exemptions from Title IX, including . . . the religious exemption.'' [204] The regulatory text of the 2020 Rule itself, however, does not expressly call for incorporation of the religious exemption nor repeat the specific language of that Title IX provision.[205]

[193] 42 U.S.C. 18116(a).

[194] *Id.*

[195] To the degree that there is any statutory ambiguity, the Department has discretion as to whether and how to incorporate other aspects of the referenced statutes. *See Chevron, U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837 (1984) (courts should give ''considerable weight to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations, 'has been consistently followed whenever a decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations'").

[196] 20 U.S.C. 1681(a)(4).

[197] *Id.* 1681(a)(7).

[198] *Id.* 1681(a)(1).

[199] *Id.* 1681(a).

[200] *Id.* 1681(a)(8).

[201] *Id.* 1681(a)(9).

[202] The section 1681(a)(3) exception applies only to certain religiously affiliated *educational* institutions. The Civil Rights Restoration Act of 1987, however, contains a proviso that exempts application of Title IX to ''any operation of an entity which is controlled by a religious organization if the application of section 1681 of this title to such operation would not be consistent with the religious tenets of such organization,'' creating a parallel exception to that contained in section 1681(a)(3).

[203] 85 FR 37160, 37207–08 (June 19, 2020) (emphasis added).

[204] 85 FR 37162.

[205] Following issuance of the 2020 Rule, a consortium of plaintiffs filed a lawsuit against the Department in Federal district court, seeking to enjoin the Department from incorporating the Title IX religious exemption. Compl., *Whitman-Walker Clinic* v. *U.S. Dep't of Health & Human Servs.,* No. 1:20-cv-01630 (D.D.C. June 22, 2020) [hereinafter *Whitman-Walker* Complaint]; *see also* Compl. *BAGLY* v. *U.S. Dep't of Health & Human Servs.,* No. 20–11297, (D. Mass. July 9, 2020); Compl. *N.Y.* v. *U.S. Dep't of Health & Human Servs.,* No. 1:20-cv-05583 (S.D.N.Y. July 20, 2020). A little more than two weeks after the 2020 Rule went into effect, the court in *Whitman-Walker Clinic, Inc., et al.* v. *U.S. Dep't of Health & Human Servs.* preliminarily enjoined the Department ''from enforcing its incorporation of the religious exemption contained in Title IX.'' *Whitman-Walker Clinic* v. *U.S. Dep't of Health & Human Servs.,* 485 F. Supp. 3d 1, 37 (D.D.C. 2020). The court held that the Department's apparent inclusion of Title IX's religious exemption in the 2020 Rule violated the APA because the Department failed to consider ''the potential

Continued

This NPRM proposes not to import any of the Title IX exceptions into the Section 1557 regulation because the statutory language of Section 1557 is best interpreted to not authorize, and at the very least not command, the Secretary to promulgate such an extension of the Title IX exceptions.

The Department's analysis begins with the relevant statutory text. Section 1557 prohibits discrimination ''on the ground[s] prohibited under'' Title IX and the other referenced statutes.[206] The district court in *Franciscan Alliance* read the term ''ground'' to necessarily incorporate not only the prohibited basis for discrimination—*i.e.,* sex—but also any exceptions set forth in Title IX.[207] The Department believes that, as a textual matter, the more natural understanding of ''ground prohibited'' is that it refers simply to the basis on which discrimination is prohibited. Further, subsection (b) of Section 1557 refers to ''discrimination on any *basis* described in subsection (a),'' which suggests that ''ground'' in subsection (a) means the ''basis'' for discrimination, *i.e.,* race, color, national origin, sex, age, and disability.[208]

Recent Supreme Court opinions support the Department's reading. In an April 2022 decision, the Court used the term ''grounds'' when discussing prohibited bases for discrimination in several antidiscrimination statutes, including Section 1557.[209] Additionally, in the *Bostock* decision, the Court also used the term ''grounds'' in interpreting Title VII, while also referring separately to Title VII's ''express statutory exception for religious organizations.'' [210]

As a matter of ordinary speech, it would be uncommon to refer to a provision ''excepting'' particular entities from a statutory prohibition on discrimination as part of the ''ground prohibited'' by the statute from which they are excepted. The preamble to the 2020 Rule assumed that Section 1557 ''incorporates the statutory *scope* of Title IX''—which it understood to include Title IX's exceptions.[211] But nowhere does Section 1557 state that it incorporates the full ''scope'' of those statutes. The better reading of the text of Section 1557, then, is that it expressly incorporates the ''grounds'' and ''enforcement mechanisms'' of the four antidiscrimination statutes, but not their scope. Instead, the text of Section 1557 provides its own scope of application—to ''any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under'' Title I of the ACA.[212] Therefore, the best reading of Section 1557 is that it does not incorporate Title IX's religious exception or any of the other Title IX exceptions.

Section 1557's structure confirms that textual understanding. The statute explicitly incorporates ''[t]he enforcement mechanisms provided for and available under'' the referenced statutes.[213] That provision demonstrates that when Congress wanted to incorporate aspects of the referenced statutes other than the ''grounds'' of prohibited discrimination, it did so expressly. There is, by contrast, no such express incorporation of the Title IX exceptions. To the contrary, the very first words of Section 1557 are that ''*[e]xcept as otherwise provided for in this title (or an amendment made by this title),* an individual shall not, on the ground prohibited under [the four referenced statutes], be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance . . .'' [214] Congress, in other words, specifically signaled that the only ''except[ions]'' to Section 1557's prohibition would be those ''provided for'' or ''made by'' Title I of the ACA, which does *not* encompass Title IX of the Education Amendments of 1972.

Furthermore, Section 1557's role as a health care statute further supports the Department's reading of the text and understanding of Congress' intent. The Title IX exceptions are specifically concerned with educational institutions and other recipients of Federal funds that operate an education program or activity. The apparent reasons for the exceptions in the education setting would, at least in many cases, be inappropriate or nonsensical in the context of health programs and activities. For example, Title IX exceptions related to the membership practices of social fraternities, sororities, YWCA, YMCA, Girls Scouts, Boys Scouts, and voluntary youth service organizations; father-son and mother-daughter activities; and beauty pageant-based scholarships are ill-suited for application to health programs and activities.

Moreover, the application of the Title IX exception for entities controlled by religious organizations, in particular, could raise distinctive concerns in the health care context that are not typically present in education programs and activities. Health care settings differ significantly from educational settings with respect to both the ability of affected parties to choose or avoid a certain religiously affiliated health care institution and the urgency of the need for services provided by the covered entities.[215] For example, access to health care settings raises considerations of choice and notice to affected parties that are largely absent in the educational context. Whereas students and families typically make a choice to attend religious educational institutions, patients seeking health care are much more likely to be driven by considerations of availability, convenience, urgency, geography, cost, insurance network restrictions, and other factors unrelated to the question of whether the health care provider is controlled by or affiliated with a religious organization. There are an increasing number of communities in the United States with limited options to access health care from non-religiously affiliated health care providers.[216] As a practical matter, then, many patients and their families may have little or no choice about where to seek care, particularly in exigent circumstances, or in cases where the quality or range of care may vary dramatically among providers. Moreover, health care consumers are not always aware that the health care entities from which they seek care may

negative consequences that importing a blanket religious exemption into Section 1557 might have for access to health care.'' *Id.* (citing *Mfrs. Ass'n* v. *State Farm Mut. Auto Ins.,* 463 U.S. 29, 42 (1983) (agency must examine relevant date and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made)). The preliminary injunction issued by the court in *Whitman-Walker* remains in effect.

[206] 42 U.S.C. 18116(a).

[207] *Franciscan All., Inc.* v. *Burwell,* 227 F. Supp. 3d 660, 690–91 (N.D. Tex. 2016).

[208] 42 U.S.C. 18116(b) (emphasis added).

[209] *Cummings* v. *Premier Rehab Keller, P.L.L.C.,* 142 S. Ct. 1562, 1569 (2022) (''Congress has enacted four statutes prohibiting recipients of Federal financial assistance from discriminating based on certain protected grounds.'').

[210] *Bostock* v. *Clayton Cty.,* 140 S. Ct. 1731, 1742, 1754 (2020).

[211] 85 FR at 37208.

[212] 42 U.S.C. 18116(a).

[213] *Id.* § 18116.

[214] *Id.* 18116(a) (emphasis added).

[215] 81 FR 31375, 31380 (May 18, 2016).

[216] *See, e.g.,* Maryam Guiahi et al., *Patient Views on Religious Institutional Health Care,* 2 JAMA Network Open, Dec. 27, 2019, at p. 2, *https://pubmed.ncbi.nlm.nih.gov/31880794/* (discussing growing religious ownership of health care entities in the context of whether U.S. adults consider religious affiliation when selecting health care facilities); Michael Booth, *SCL Health to Merge with Intermountain Health, Creating Not-For-Profit Hospital Giant in West,* The Colorado Sun (Sept. 16, 2021), *https://coloradosun.com/2021/09/16/hospital-merger-scl-health-colorado/.*

be limited in the care they provide.[217] Incorporation of Title IX's religious exception would therefore seriously compromise Congress's principal objective in the ACA of increasing access to health care.

While not incorporating the Title IX religious exception, the Department is fully committed to respecting conscience and religious freedom laws when applying this rule, including an organization's assertion that the provisions of this rule conflict with their rights under Federal conscience and religious freedom laws as addressed in proposed § 92.302.

The application of these statutes, all of which Congress enacted *after* it enacted Title IX, protects important religious liberty interests and conflicts of conscience, even without the incorporation of the Title IX religious exception into Section 1557. Under RFRA, exemptions from any of the antidiscrimination requirements of Section 1557 would depend in part on the ramifications of applying such exemptions. For example, even if the rule substantially burdened religious practices, a religious exemption would not be required if that burden was the result of the government's advancement of a compelling interest by means that were least restrictive of religious exercise in particular contexts. The U.S. Supreme Court has made it clear that a fact-sensitive, case-by-case analysis of such burdens and interests is needed under RFRA, something the Title IX exception does not allow.[218] The Department will apply RFRA in this manner.

Applying the existing Federal conscience and religious freedom laws will allow the Department to address the interests in providing nondiscriminatory health care and religious or conscience commitments by applying the legal standards applicable to those conscience and religious freedom laws. It was reasonable for Congress to rely upon existing conscience and religious freedom laws to protect religious exercise and respect conscience in appropriate cases, rather than to import the Title IX religious exception[219] into Section 1557.

We seek comment on the approach proposed in this NPRM and particularly invite comments from covered entities controlled by or affiliated with religious organizations; providers employed by such entities; and people who receive health care from religiously affiliated medical providers and entities.

**Relationship to Other Laws (§ 92.3)**

Proposed § 92.3 explains the relationship of the proposed regulation to existing laws. Paragraph (a) provides that Section 1557 is not intended to apply lesser standards for the protection of individuals from discrimination than the standards under Title VI, Title IX, Section 504, the Age Act, or the regulations issued pursuant to those laws.

Consistent with the statute, paragraph (b)(1) states that nothing in this part shall be interpreted to invalidate or limit the existing rights, remedies, procedures, or legal standards available to individuals aggrieved under the Federal civil rights laws cited in 42 U.S.C. 18116(b) (Title VI, Title VII, Title IX, Section 504, and the Age Act).

We note here that Title II of the Americans with Disabilities Act[220] (ADA) prohibits discrimination on the basis of disability by public entities (*i.e.,* State and local governments and their agencies) and is modeled on Section 504.[221] Title II of the ADA and Section 504 are generally understood to impose substantially the same requirements, given that Congress enacted the ADA to extend Section 504's existing protections beyond Executive Agencies and recipients of Federal funds,[222] and the Congressional directive that the ADA be construed to grant at least as much protection as provided by Section 504 and the regulation implementing Section 504.[223] Following the passage of the ADA, the Rehabilitation Act Amendments of 1992 revised the Rehabilitation Act's findings, purpose, and policy provisions to incorporate language acknowledging the discriminatory barriers faced by individuals with disabilities, and to recognize that individuals with disabilities have the right to ''enjoy full inclusion and integration in the economic, political, social, cultural and educational mainstream of American society.'' [224] The Senate Report concerning the Rehabilitation Act Amendments of 1992 states that the purpose and policy statement is ''a reaffirmation of the precepts of the Americans with Disabilities Act'' and that these principles are intended to guide the Rehabilitation Act's policies, practices, and procedures.[225]

Accordingly, a number of the changes that the Department is proposing for specific disability-related provisions in the Section 1557 regulation, which encompasses Section 504's ground for discrimination, conform to DOJ's implementing regulation for Title II of the ADA, many of which were updated in 2010. Where the Department has made changes to its Section 1557 regulation to correspond to provisions in DOJ's Title II regulation, the Department encourages individuals to look to the corresponding Title II guidance and section-by-section analysis for guidance on how to interpret these provisions.[226]

The Department also notes that there may be overlap among different Federal civil rights statutes, and that certain Section 504 requirements and terminology may be specific to the programs and activities that are funded or conducted by the relevant Federal agency. For example, if a covered entity is a recipient of Federal financial assistance from the Department of Housing and Urban Development (HUD), HUD's Section 504 regulation, which contains distinct requirements and terminology related to housing, would also apply.

Proposed paragraph (b)(2) provides that nothing in Section 1557 shall be interpreted to invalidate or limit the existing rights, remedies, procedures, or legal standards available to individuals

[217] *See, e.g.,* Coleman Drake et al., *Market Share of US Catholic Hospitals and Associated Geographic Network Access to Reproductive Health Services,* Jama Network Open, Jan. 29, 2020, *https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2759762* (research study examining the impact and growth of Catholic health care entities on the provision of reproductive health care in the United States); Harris Meyer, *Most Catholic Hospitals Don't Disclose Religious Care Restrictions,* Modern Healthcare, Mar. 15, 2019, *https://www.modernhealthcare.com/operations/most-catholic-hospitals-dont-disclose-religious-care-restrictions.*

[218] *See, e.g., Gonzales* v. *O Centro Espírita Beneficente União do Vegetal,* 546 U.S. 418, 430–31 (2006) (when applying RFRA, courts look ''beyond broadly formulated interests justifying the general applicability of government mandates and scrutinized the asserted harm of granting specific exemptions to particular religious claimants''); *cf. Ramirez* v. *Collier,* 142 S. Ct. 1264, 1281 (2022) (holding that the Religious Land Use and Institutionalized Persons Act, which applies RFRA's test for religious exemptions in the prison context, ''requires that courts take cases one at a time, considering only 'the particular claimant whose sincere exercise of religion is being substantially burdened'''') (quoting *Holt* v. *Hobbs,* 574 U.S. 352, 363 (2015)).

[219] A religiously controlled covered entity that operates an education program or activity that is entitled to a religious exemption under Title IX would follow the Department's Title IX regulation at 45 CFR 86.12.

[220] Public Law 101–336, 104 Stat. 327 (1990) (codified as amended at 42 U.S.C. 12101, *et seq.*).

[221] 42 U.S.C. 12132 (''[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.'').

[222] *See Berardelli* v. *Allied Servs. Inst. of Rehab. Med.,* 900 F.3d 104, 115 (3d Cir. 2018).

[223] *See, e.g.,* 42 U.S.C. 12201(a).

[224] 29 U.S.C. 701(a)(3), as amended.

[225] S. Rep. 102–357, at 14 (Aug. 3, 1992); H.R. Rep. 102–822, at 81 (Aug. 10, 1992).

[226] *See* 28 CFR pt. 35, app. A, B, C.

asserting rights under Federal conscience or religious freedom laws. These would include statutory protections under RFRA and the Coats-Snowe Amendment,[227] the Church Amendments,[228] section 1303 of the ACA,[229] section 1553 of the ACA,[230] and the Weldon Amendment.[231]

Under the 2016 Rule, former § 92.2(b)(2) provided that if an application of Section 1557 requirements violated applicable Federal statutory protections for conscience and religious exercise, application of Section 1557 was not required.[232] The 2020 Rule, at § 92.6(b), provides that Section 1557 will not apply if such application would ''violate, depart from, or contradict definitions, exemptions, affirmative rights, or protections'' of the Coats-Snowe Amendment, Church Amendments, RFRA, Section 1553 of the ACA, Section 1303 of the ACA, Weldon Amendment, or ''any related, successor, or similar Federal laws or regulations.'' [233] The Department has considered the current regulatory language and has determined that the 2020 Rule also fails to provide sufficient information to covered entities and beneficiaries regarding how OCR will approach any apparent interaction between Section 1557 requirements and the enumerated protections. Further, the 2020 Rule preamble and Regulatory Impact Analysis (RIA) failed to consider potential harms to third parties that may result from granting a religious exemption in the health care context—a consideration that can be relevant to the RFRA analysis in a particular case.[234] The Department acknowledges and respects laws protecting conscience and religious exercise. The Department believes the approach in this proposed rule will ensure that all constitutional and statutory rights are protected and seeks comment on this approach. We further address exemptions under Federal conscience and religious freedom laws at proposed § 92.302.

**Definitions (§ 92.4)**

Proposed § 92.4 contains proposed definitions, which is the same approach taken in the 2016 Rule at former § 92.4. The 2020 Rule does not include a specific definition section, an approach that contributes to uncertainty. We reintroduce definitions to help reinstate clarity. For ease of organization, definitions are discussed below by topic area, and definitions of particular note are set out in additional detail.

We propose to define a range of terms related to disability discrimination, including: auxiliary aids and services; disability; qualified individual with a disability; qualified interpreter for an individual with a disability; and qualified reader. These definitions appeared in the 2016 Rule and have not been changed substantively, with the exception of the addition of the term ''qualified reader,'' which incorporates the definition of ''qualified reader'' from the ADA Title II regulation [235] to provide clarity to both covered entities and protected individuals about the necessary qualifications of a reader when required under this regulation. Any other differences between the definitions proposed herein and the 2016 Rule were made to update appropriate citations.

We also propose to define a range of terms related to language access, including limited English proficient individual; language assistance services; qualified bilingual/multilingual staff; qualified interpreter for a limited English proficient individual; and qualified translator. These definitions appeared in the 2016 Rule and have not been changed substantively. Terminology has been revised to read ''limited English proficient individual,'' rather than ''individual with limited English proficiency,'' as ''limited English proficient individual'' reflects widely used terminology. The Department also proposes to provide more detail in the definition of ''limited English proficient individual'' to explain that a limited English proficient individual may be competent in English for certain types of communication (*e.g.,* speaking or understanding), but still be LEP for other purposes (*e.g.,* reading or writing). This language will assist covered entities in understanding that a person who has proficiency in English in one context (*e.g.,* speaking) may still require assistance in another context (*e.g.,* receiving translated documents). The Department welcomes comment on this change in terminology.

We also propose to define terms related to covered entities and other entities addressed in the rule, including applicant; companion; covered entity; Department; Director; Exchange; Federally-facilitated Exchange; OCR; recipient; State Exchange; and Title I Entity. These definitions were included in the 2016 Rule and have not been changed substantively, though we have replaced the term ''Marketplace'' with ''Exchange'' to reflect the terminology used in Departmental regulations defining the term.[236] The terms ''age'' and ''national origin'' are also defined, with the same definitions as provided in the 2016 Rule.

Particular definitions of note are included below.

*Federal financial assistance.* We propose to include the definition of Federal financial assistance found in former § 92.4 of the 2016 Rule, with slight modifications. The 2020 Rule does not include a definition of this term.

We propose the definition of ''Federal financial assistance'' to include grants, loans, and other types of assistance from the Federal Government, in accordance with the definition of the term in the Section 504 and the Age Act implementing regulations at 45 CFR 84.3(h) and 91.4, respectively. We also propose to specifically include credits, subsidies, and contracts of insurance, in accordance with the statutory language of Section 1557. Examples of HHS programs that provide Federal financial assistance subject to this part include but are not limited to Medicaid and CHIP, Medicare Part A, Medicare Part B (as proposed in this rule), Medicare Part C (Medicare Advantage), Medicare Part D (drug coverage), and HHS grant programs.

As discussed previously, similar to the 2016 and 2020 Rules, this proposed rule applies only to Federal financial assistance from HHS and does not apply to health programs or activities receiving Federal financial assistance from other Federal agencies.[237] While the Section 1557 statute applies to all Executive Agencies, the Department continues to believe that it is appropriate to limit this proposed rule to health programs or activities that receive Federal funding from the Department, which is within the Department's area of expertise. We encourage other Federal agencies to use this proposed rule as a template for developing their own Section 1557 regulations and policies applicable to their federally assisted health programs or activities.

We propose to include a clause to clarify the Federal financial assistance

[227] 42 U.S.C. 238n.

[228] *Id.* 300a–7.

[229] *Id.* 18023(b)(2)(A).

[230] *Id.* 18113.

[231] Consolidated Appropriations Act, 2022, Public Law 117–103, div. H, title V General Provisions, § 507(d)(1) (Mar. 15, 2022).

[232] 81 FR 31375, 31381 (May 18, 2016).

[233] 45 CFR 92.6(b).

[234] *See, e.g., Whitman-Walker Clinic* v. *U.S. Dep't of Health & Human Servs.,* 845 F. Supp. 3d 1, 45–46 (D.D.C. 2020).

[235] 28 CFR 35.104.

[236] 45 CFR 155.20 (defining ''Exchange'' and ''Federally-facilitated Exchange''); § 155.100 (providing for establishment of an Exchange by a State).

[237] 81 FR 31375, 31379 (May 18, 2016); 85 FR 37160, 37170 (June 19, 2020).

includes Federal financial assistance that the Department plays a role in providing or administering. This includes advance payments of the premium tax credit and cost-sharing reduction payments under Title I of the ACA, as well as payments, subsidies, or other funds extended by the Department. This is similar to, but differs slightly from, the 2016 Rule by clarifying that the Federal financial assistance that the Department plays a role in providing or administering includes the ''advance payments of the premium tax credit and cost-sharing reduction payments,'' which are the relevant credit and subsidy payments under Title I of the ACA that the Department plays a role in providing or administering. The language in this provision was informed by the definition of ''Federal financial assistance'' in the regulation implementing Title IX at 45 CFR 86.2(g). That Title IX regulatory provision clarifies that Federal financial assistance includes wages, loans, grants, scholarships, and other monies that are given to any entity for payment to or on behalf of students who are admitted to that entity or that are given directly to these students for payment to that entity.[238]

In the health care context, Federal funds are provided on behalf of eligible individuals for advance payments of the premium tax credit and cost-sharing reductions (also referred to as cost-sharing subsidies) to ensure the affordability of health insurance coverage purchased through the Health Insurance Exchanges. As in the 2016 Rule, we have added language to this proposed definition stating that such funds, as well as payments, subsidies, or other funds extended by the Department, are Federal financial assistance covered by the Rule when extended to the entity providing the health insurance coverage or services, whether they are paid directly by the Federal Government to that entity or to the individual for payment to the entity providing health insurance coverage or services. Thus, an issuer participating in any Health Insurance Exchange is receiving Federal financial assistance when advance payments of the premium tax credit or cost-sharing subsidies are provided on behalf of any of the issuer's enrollees. A health services provider that contracts with such an issuer does not become a recipient of Federal financial assistance by virtue of the contract but would be a recipient if the provider otherwise receives Federal financial assistance, such as through participation in Medicare or Medicaid.

The 2020 Rule did not include language regarding Federal financial assistance that the Department plays a role in providing or administering. The Department asserted in the preamble of the 2020 Rule that the 2016 definition was overbroad. This interpretation fails to consider the statutory language of Section 1557, which specifically includes ''credits'' and ''subsidies'' as Federal financial assistance, in conjunction with the entirety of Title I of the ACA, which specifically grants the Secretary clear authority over the programs for which the Department plays a role in providing or administering Federal financial assistance. These Title I programs include the advance payments of the premium tax credit and cost-sharing reductions,[239] as well as pass-through funding available to states through section 1332 waivers.[240]

The Department plays a role in providing or administering advance payments of the premium tax credit and cost-sharing reductions as set forth in Title I of the ACA, which specifies that the Secretary of HHS, ''in consultation with the Secretary of the Treasury, shall establish a program'' for advance payments of the premium tax credit and cost-sharing reductions.[241] HHS advises the Department of the Treasury of the amounts of advance payments of the premium tax credit and cost-sharing reductions and works with Department of the Treasury to make payments to issuers.[242]

The Department notes that it is not currently making cost-sharing reduction payments to issuers. On October 11, 2017, the Attorney General issued a legal opinion that HHS did not have a valid appropriation with which to make cost-sharing reduction payments to issuers.[243] As a result, the cost-sharing reduction payments ceased as of October 12, 2017.[244] If issuers receive cost-sharing reduction payments in the future from the Department, such payments would be considered Federal financial assistance under this proposed rule similar to the advance payments of the premium tax credit.

Similarly, the Department plays a role in providing or administering pass-through funding available to states through section 1332 waivers.[245] Section 1332 of the ACA provides that states may apply to the Department of Health and Human Services and the Department of the Treasury for waivers of certain ACA requirements in the individual and small group markets if the waiver satisfies certain statutory requirements.[246] Section 1332(a)(3) of the ACA directs the Department of Health and Human Services and the Department of the Treasury to pay pass-through funding to the state for the purpose of implementing the state section 1332 waiver plan and outlines accompanying requirements for making the pass-through funding determination.[247] The amount of Federal pass-through funding is equal to the amount, determined annually by the Department of Health and Human Services and the Department of the Treasury, of the premium tax credit under section 36B of the Internal Revenue Code, the small business tax credit under section 45R of the Internal Revenue Code, or cost-sharing reductions under ACA Title I, part I of subtitle E, that individuals and small employers in the state would otherwise be eligible for had the state not received approval for its section 1332 waiver. This calculation includes any amount not paid due to an individual or small employer not qualifying for the premium tax credit, small business tax credit, or cost-sharing reductions or qualifying for a reduced level of such financial assistance.[248]

As with the advance payments of the premium tax credit, HHS plays a role in providing the section 1332 pass-through funding by working with the Department of the Treasury in calculating the pass-through funding amount and administering the pass-

[238] 45 CFR 86.2(g)(1)(ii).

[239] Section 1412 of the ACA, codified at 42 U.S.C. 18082.

[240] Section 1332(a)(3) of the ACA, codified at 42 U.S.C. 18052(a)(3).

[241] Section 1412 (a)–(c) of the ACA, codified at 42 U.S.C. 18082(a)–(c).

[242] *Id.*

[243] Memorandum from Eric Hargan, Acting Sec'y, Dep't of Health & Human Servs., to Seema Verma, Admin'r, Ctrs. for Medicare & Medicaid Servs. (enclosing Attorney General Jeff Sessions' legal opinion, dated October 11, 2017, regarding cost-sharing reduction payments) (Oct. 12, 2017), *https://www.hhs.gov/sites/default/files/csr-payment-memo.pdf.*

[244] *Id.*

[245] Section 1332(a)(3) of the ACA, codified at 42 U.S.C. 18052(a)(3).

[246] Section 1332(a) of the ACA, codified at 42 U.S.C. 18052(a). States with approved waivers have specific terms and conditions (STCs) that the state must also comply with all applicable Federal statutes relating to nondiscrimination, including Section 1557. *See e.g.,* Ctrs. for Medicare & Medicaid Servs., approval of Colorado's extension application for a section 1332 State Innovation Waiver, STC 4 (Aug. 13, 2021), *https://www.cms.gov/files/document/1332-co-extension-approval-letter-stcs.pdf.*

[247] *See* Section 1332(a)(3) of the ACA, codified at 42 U.S.C. 18052(a)(3), and implementing regulations at 31 CFR 33.122, 45 CFR 155.1322.

[248] 31 CFR 33.122; 45 CFR 155.1322; 86 FR 53412 (Sept. 27, 2021).

through funds to the state.[249] We also note that any entity receiving section 1332 pass-through funds from the state would also be a recipient of Federal financial assistance from HHS under Section 1557.

In conclusion, in all of these programs, the ACA establishes that the Secretary of HHS is involved in calculating the amounts of Federal financial assistance and sets forth the Secretary's role in administering the programs. For these reasons, we are reinstituting the provision that Federal financial assistance for purposes of HHS' jurisdiction under this part includes that Federal financial assistance which the Department plays a role in providing or administering.

*Health program or activity.* The Department proposes to adopt a definition of ''health program or activity.'' The 2016 Rule contained such a definition. Among other things, the 2016 Rule defined ''health program or activity'' to include all of the operations of entities principally engaged in health services, health insurance coverage, or other health-related coverage, including ''a hospital, health clinic, group health plan, health insurance issuer, physician's practice, community-based health care providers, nursing facility, residential or community-based treatment facility, or other similar entity.'' [250] In contrast, the 2020 Rule does not provide a definition but rather addresses the term ''health program or activity'' in the application section of the rule at § 92.3(b). While defining ''health program or activity'' to encompass ''all of the operations of entities principally engaged in the business of providing health care,'' the 2020 Rule explicitly provides that ''an entity principally or otherwise engaged in the business of providing health insurance shall *not,* by virtue of such provision, be considered to be principally engaged in the business of providing health care.'' [251]

The Department believes that returning to a definition of ''health program or activity'' provides covered entities with important information regarding the types of operations that will be covered for purposes of this proposed rule. Whereas Title VI, Section 504, and the Age Act apply to *all* federally funded programs or activities, Section 1557 applies only to *health* programs or activities, just as Title IX applies only to *education* programs or activities. In determining the application of Section 1557, therefore, the Department has looked to the analogous ways in which ''education program or activity'' is understood under Title IX.

In paragraph (a), we propose to define health program or activity to mean any project, enterprise, venture or undertaking to provide or administer health-related services, health insurance coverage, or other health-related coverage; provide assistance to persons in obtaining health-related services, health insurance coverage, or other health-related coverage; provide clinical, pharmaceutical, or medical care; engage in health research; or provide health education for health care professionals or others. Coverage of health research and health education was discussed in the preamble to the 2016 Rule [252] but neither was mentioned in the 2020 Rule or preamble.

It has long been understood under the ''fungibility of funds'' rationale that Title IX applies to all the operations of entities principally engaged in educational functions, primarily on the theory that funds provided to such an entity invariably subsidize education operations. So, for instance, Title IX applies to not only the ''traditional educational operations'' of such an institution but also to ''faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities.'' [253] Likewise, it is fair to assume Congress intended the nondiscrimination requirements of Section 1557 to apply categorically to entities principally engaged in the provision or administration of health-related activities, based upon the same ''fungibility of funds'' rationale. Indeed, Section 1557 specifically applies to ''any health program or activity, *any part of which* is receiving Federal financial assistance,'' [254] which appears to contemplate the application of such a ''fungibility of funds'' understanding.

The Department, at paragraph (b), thus proposes to define ''health program or activity'' to include all of the operations of any entity principally engaged in the provision or administration of health projects, enterprises, ventures, or undertakings described in paragraph (a). Such entities include but are not limited to a: state or local health agency; hospital; health clinic; health insurance issuer; physician's practice; pharmacy; community-based health care provider; nursing facility; residential or community-based treatment facility; or other similar entity or combination thereof. We are proposing that whether such entities are administered by a government or a private entity, all of their operations would be covered under this part.[255] The 2016 Rule contained a similar provision, which also specifically referred to ''all of the operations of a State Medicaid program, a Children's Health Insurance Program, and the Basic Health Program.'' [256] We do not propose to expressly list Medicaid programs, CHIP, or the Basic Health Program in paragraph (b) because we believe they would be covered in their entirety as operations of state or local health agencies. We seek comment as to whether such programs should be explicitly referenced in the regulatory language.

Unlike under the 2020 Rule, we propose to apply this rule to all the operations of a recipient entity principally engaged in the provision or administration of health insurance coverage or other health-related coverage. We believe that the most natural reading of the language ''health program or activity'' in the statute encompasses health insurance programs or activities. In the preamble to the 2020 Rule, the Department emphasized that the provision of health-care *insurance* is not necessarily a form of health*care.* Whether or not that is true in any practical sense for purposes that bear on the application of nondiscrimination protections, the applicability of Section 1557 does not turn on whether a program or activity involves health care as such—it depends instead on whether the operations in question are a ''*health* program or activity''—something that unequivocally describes the operations of health insurance issuers.[257]

This straightforward textual reading is reinforced by the ACA's structure and clear indicia of the statute's purpose. Section 1557 forms a key part of the ACA—a law that itself focuses on health insurance market reforms as a means of expanding access to and provision of health care. Given the ACA's focus on

[249] 42 U.S.C. 18052(a)(3).

[250] Former 45 CFR 92.4.

[251] 45 CFR 92.3(b), (c) (emphasis added).

[252] 81 FR 31385.

[253] S. Rep. No. 64 at 17, reprinted in 1988 U.S.C.C.A.N. at 19; *see also* U.S. Dep't of Justice, Title IX Legal Manual, sec. C.3., n. 28 (citing H.R. Rep. No. 98–829, at 27 (1984), and noting that though this comment was made in reference to an earlier draft of the CRRA, ''sponsors of the CRRA, as eventually enacted, later noted that, despite the new language, coverage would operate in the same manner envisioned for the prior bill'').

[254] 42 U.S.C. 18116(a) (emphasis added).

[255] *See, e.g., Fain* v. *Crouch,* 545 F. Supp. 3d 338, 343 (S.D.W. Va. 2021) (holding that defendant health plan was, ''by virtue of its acceptance of Federal assistance under its Medicare Advantage program,'' required to comply with Section 1557 ''under its entire portfolio'').

[256] Former 45 CFR 92.4 (defining ''health program or activity'').

[257] *See, e.g., Fain,* 545 F. Supp. 3d at 342 (''health program or activity' under Section 1557 necessarily includes health insurance issuers'').

health insurance and other health-related coverage, if Congress intended to exclude health insurance from Section 1557's reach, it is logical to assume that it would have done so expressly.

In enacting the ACA, Congress showed a clear intent to protect individuals from discrimination in health insurance and other health-related coverage and to regulate the content of such coverage. As further evidence that Congress intended the ACA to prohibit discriminatory practices in health insurance and other health-related coverage, in addition to the protections against discrimination afforded under Section 1557, Congress enacted the ACA's market reforms that prohibited certain common discriminatory practices in health insurance benefit designs.[258]

By including a nondiscrimination provision in Title I of the ACA, a title of the health care law that predominantly addresses access to and the design of health insurance and other health-related coverage, Congress demonstrated an intent to apply the non-discrimination provision to health insurance issuers that receive financial support from the Federal Government. Private health insurance issuers play a critical role in ensuring that people are able to receive care within the current health care system. Issuers exercise significant control over enrollees' ability to access their health care by strongly influencing which providers they see, which hospitals they visit, and which treatments or medications they receive.[259] Indeed, a recent district court opinion on this issue found that, by virtue of being the ''gatekeeper'' of the plaintiff's health care, a health plan qualified as a '' 'health program' that Congress intended to rid of discrimination.'' [260] This proposed rule is consistent with that reading.

We note that the 2016 Rule included group health plans [261] as among the entities that were categorically covered for all of their operations. We propose to not explicitly include group health plans in the non-exhaustive list of entities identified in proposed paragraph (b). Although we still consider group health plans to be principally engaged in providing or administering health programs or activities described in paragraph (a), many group health plans themselves are not recipients of Federal financial assistance (as opposed to the employer or plan sponsor offering the group health plan or the third party administrator administering the group health plan), so inclusion of group health plans on the list may be confusing. That said, if the Department receives a complaint against a group health plan, we will evaluate the facts on a case-by-case basis to determine whether the group health plan is a covered entity subject to this part.

We note that even if the Department determines that a group health plan is not covered under this part, other entities that contract with a group health plan or a sponsor of a group health plan may be covered entities. For example, recipient health insurance issuers principally engaged in providing or administering health insurance coverage would be covered for health insurance they provide to a fully-insured group health plan and also for third party administrator activities that they are responsible [262] for providing in a self-funded group health plan.[263] The Department will evaluate the facts on a case-by-case basis to determine whether other entities that contract with a group health plan are covered entities subject to this part. Further, though a group health plan may not be covered under Section 1557, it may still be subject to other Federal nondiscrimination requirements. For example, group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage are prohibited from establishing any rule for eligibility, benefits, or premiums or contributions that discriminates based on any health factor.[264]

We seek comment on the circumstances under which a group health plan might receive funds that could be considered Federal financial assistance from the Department, including the type and prevalence of funds received that could be considered Federal financial assistance under this part.

Finally, we emphasize that proposed paragraph (b) is not intended to serve as an exhaustive list of those entities HHS believes would qualify as principally engaged in the provision or administration of health programs or activities described in paragraph (a). For example, we propose to expressly refer to hospitals but not to refer to other common names, such as medical centers, for the same or similar entities. Similarly, we propose not to expressly include hospital systems or healthcare systems, even though in many instances they will fall within the scope of

[258] 42 U.S.C. 18022(b)(4)(B)–(C) (in defining essential health benefits, the Secretary of HHS must ''take into account the health care needs of diverse segments of the population, including women, children, persons with disabilities, and other groups,'' and ''not make coverage decisions . . . or design benefits in ways that discriminate against individuals because of their age, disability, or expected length of life''); 18031(c)(1)(A) (criteria for qualified health plans require plans to ''not employ marketing practices or benefit designs that have the effect of discouraging the enrollment in such plan by individuals with significant health needs''); 300gg (prohibiting discriminatory premium rates by limiting rating factors to only include family size, geographic rating area, age, and tobacco use); 300gg–4 (prohibiting discrimination against individual participants and beneficiaries based on health status by prohibiting establishment of rules for eligibility (including continued eligibility) based on the following health-status-related factors: (1) Health status; (2) Medical condition (including both physical and mental illnesses); (3) Claims experience; (4) Receipt of health care; (5) Medical history; (6) Genetic information; (7) Evidence of insurability (including conditions arising out of acts of domestic violence); (8) Disability; (9) Any other health status-related factor determined appropriate by the Secretary).

[259] Additionally, many health insurance issuers are directly involved in the provision of care through administration of a health maintenance organization (HMO). An HMO is a health insurance plan that usually limits coverage to care from doctors who work for or contract with the HMO.

[260] *Fain,* 545 F. Supp. 3d at 342 (holding that defendant health plan was a ''health program or activity'' for purposes of Section 1557 jurisdiction).

[261] ''Group health plan'' is defined as ''an employee welfare benefit plan to the extent that the plan provides medical care (as defined in paragraph (2) and including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise. Such term shall not include any qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of Title 26).'' 29 U.S.C. 1191b(a)(1); *see also* 42 U.S.C. 300gg–91(a). ''Employee welfare benefit plan'' is defined as ''any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).'' 29 U.S.C. 1002(1).

[262] *See, e.g., Tovar* v. *Essentia Health,* 857 F.3d 771, 778 (8th Cir. 2017) (holding that a third party administrator could be liable under Section 1557 for damages arising from discriminatory terms in a self-funded employer-provided health plan if the third party administrator provided the employer with a discriminatory plan document, notwithstanding the fact that the employer subsequently adopted the plan and maintained control over its terms).

[263] *See* discussion *infra* under proposed § 92.207 on application to third party administrators.

[264] 45 CFR 147.110 (HHS); 29 CFR 2590.715–2705 (Department of Labor); 26 CFR 54.9815–2705 (Department of the Treasury). We note that grandfathered and non-grandfathered group health plans and health insurance issuers offering health insurance coverage in connection with a group health plan are prohibited from establishing any rule for eligibility, benefits, or premiums or contributions that discriminates based on any health factor pursuant to 45 CFR 146.121 (HHS); 29 CFR 2590.702 (Department of Labor); 26 CFR 54.9802–1 (Department of the Treasury).

paragraph (b). For example, under proposed (b), the rule could cover all of the operations of a non-profit healthcare system operating five hospitals, depending on the specific facts. HHS will evaluate the facts, on a case-by-case basis, to determine whether an entity falls within the scope of paragraph (b)'s categorical coverage. We invite comments on whether it is important to add any other entities to the list in (b) in order to further clarify coverage.

*Machine translation.* We propose to define ''machine translation'' as automated translations, without the assistance of or review by a qualified human translator, that are text-based and provide instant translations between various languages, sometimes with an option for audio input or output. This is in contrast to human translation, which is context-based and captures the intended meaning of the source. This definition is based on literature addressing the use of machine translation in the clinical setting, which we believe captures the automated translations that are being used in the health care setting.[265] We seek comment on the adequacy of this definition.

**Assurances Required (§ 92.5)**

This proposed rule would retain the requirement of the 2016 and 2020 Rules for recipients to submit assurances of compliance to the Department. One method that the Federal Government uses to ensure civil rights compliance is to require covered entities to submit assurances of compliance when applying for Federal financial assistance. The assurances and related certification documents remind covered entities of their civil rights obligations and can also assist the Department in pursuing an independent contract claim for enforcement of nondiscrimination requirements.[266]

Specifically, proposed § 92.5 is the same as § 92.4 of the 2020 Rule. In proposed paragraph (a), each entity applying for Federal financial assistance, each issuer seeking certification to participate in a Health Insurance Exchange, and each state seeking approval to operate a State Exchange is required to submit an assurance that its health programs and activities will be operated in compliance with Section 1557, Title VI, Title IX, Section 504, and the Age Act. The duration of obligation (proposed paragraph (b)), and covenants language (proposed paragraph (c)) adopt the corresponding requirements found in the Section 504 regulation at 45 CFR 84.5.

**Remedial Action and Voluntary Action (§ 92.6)**

The Department proposes to include requirements regarding remedial and voluntary action, which would reinstate former § 92.6 in the 2016 Rule. The 2020 Rule repealed former § 92.6, stating that it was duplicative and overlapped with existing civil rights laws and regulations, and therefore would cause confusion about the responsibilities of covered entities.[267] The regulations implementing Title IX, Section 504, and the Age Act do require a covered entity to take voluntary action upon a determination that the entity engaged in discriminatory conduct.[268] The Department believes that, rather than causing confusion, proposed § 92.6 clarifies that Section 1557 also requires covered entities that have engaged in discriminatory conduct with respect to their health programs and activities in violation of this part to take voluntary actions to remediate the effects of such discriminatory conduct. Where a covered entity is required to take remedial actions under Title VI, Section 504, Title IX, or the Age Act, such actions would likely satisfy the remedial actions required by proposed § 92.6.

**Designation and Responsibilities of a Section 1557 Coordinator (§ 92.7)**

Proposed § 92.7(a) requires covered entities with 15 or more employees to designate at least one employee to serve as a Section 1557 coordinator (Section 1557 Coordinator) to coordinate their efforts to comply with and carry out the covered entity's responsibilities under Section 1557 and this part with regard to their health programs and activities. The 2016 Rule similarly required covered entities of this size to designate a compliance coordinator for Section 1557 at former § 92.7. We newly propose to permit covered entities to, as appropriate, assign one or more designees to carry out some of the responsibilities of the Section 1557 Coordinator. The 2016 Rule did not include this provision, and we include it here in recognition that some covered entities may want or need to spread the duties of the Section 1557 Coordinator over multiple staff. However, the Section 1557 Coordinator must retain ultimate oversight for ensuring coordination with the covered entity's compliance.

In 2020, the Department repealed the requirement for each covered entity with 15 or more employees to designate a Section 1557 Coordinator or ''designated employee,'' reasoning that to the extent that the implementing regulations for the referenced statutes ''have responsible employee and grievance procedures, they are sufficient for enforcement of Section 1557.'' [269] We believe that a designated Section 1557 Coordinator will help ensure covered entities comply with the requirements of Section 1557. Additionally, a designated Section 1557 Coordinator will better allow covered entities to resolve potential grievances as accurately and efficiently as possible, to the benefit of individuals seeking care as well as the covered entity.

The Department recognizes that covered entities with 15 or more employees may have retained their Section 1557 Coordinators required by the 2016 Rule even though the 2020 Rule does not require covered entities to do so. Under proposed § 92.7, those covered entities that have retained their Section 1557 Coordinators need not appoint a new one, though the existing Section 1557 Coordinator would be responsible for the responsibilities outlined in proposed paragraph (b).

The implementing regulations for Section 504 and Title IX require covered entities to designate a responsible employee to coordinate the covered entity's civil rights compliance, and the Title VI and Age Act regulations do not explicitly include such a requirement.[270] A covered entity that has already designated a responsible employee pursuant to the Section 504 or Title IX regulations may assign that individual to coordinate the covered entity's efforts to comply with Section 1557, provided that the scope of the individual's responsibilities is modified to include all prohibited bases of discrimination included in Section 1557 and other duties as required. Like the 2016 Rule, proposed § 92.7(a) standardizes the requirement for covered entities that employ more than 15 people to designate a Section 1557 Coordinator.

At proposed paragraph (b), we provide a list of responsibilities of the Section 1557 Coordinator. The 2016 Rule did not include a similar provision. The Department proposes to

[265] Gudeeshpal Randhawa et al., *Using Machine Translation in Clinical Practice,* 59 Can. Fam. Physician 328 (2013), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3625087/pdf/0590382.pdf.*

[266] *See, e.g.,* Dep't of Justice, Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964, 28 CFR 50.3, pt. I.B.1 (listing various ''[p]ossibilities of judicial enforcement,'' including suits to enforce contractual assurances).

[267] *See* 85 FR 37160, 37162 (June 19, 2020).

[268] 45 CFR 86.3(a)–(b) (Title IX); § 84.6(a)–(b) (Section 504); § 91.48 (Age Act).

[269] 85 FR 37204.

[270] 45 CFR 84.7(a) (Section 504); § 86.8(a) (Title IX).

include a list of responsibilities to assist covered entities in developing a position description for the Section 1557 Coordinator and to identify the provisions over which Coordinators must have direct responsibility. Proposed responsibilities include, at a minimum, that the covered entity ensure that the Section 1557 Coordinator: (1) receives, reviews, and processes grievances filed under the grievance procedure as set forth in proposed § 92.8(c); (2) coordinates the covered entity's recordkeeping requirements as set forth in proposed § 92.8(c); (3) coordinates effective implementation of the covered entity's language access procedures as set forth in proposed § 92.8(d); (4) coordinates effective implementation of the covered entity's effective communication procedures as set forth in proposed § 92.8(e); (5) coordinates the covered entity's procedures for providing reasonable modifications for individuals with disabilities in accordance with proposed § 92.8(f); and (6) coordinates training of relevant employees as set forth in proposed § 92.9, including maintaining the required documentation.

We seek comment on this requirement, including whether OCR should require covered entities with fewer than 15 employees to designate a Section 1557 Coordinator and, if so, whether there should be a requisite number of employees or whether all covered entities should be required to designate a Section 1557 Coordinator. We are particularly interested in hearing from smaller covered entities who have a civil rights coordinator about whether they believe there is a benefit to having such a dedicated staff member, and any associated costs or burdens. We further seek comment on whether the enumeration of responsibilities of the Section 1557 Coordinator is beneficial and sufficiently comprehensive. We also seek comment on how the Department can support Section 1557 Coordinators, including through the provision of training, so that they understand their duties, the protections afforded by Section 1557, and the rationale for both.

**Policies and Procedures (§ 92.8)**

Proposed § 92.8 would require covered entities to develop and implement written policies and procedures that are designed to facilitate compliance with the requirements of this part. The Department recognizes that, taken alone, the implementing regulations for the statutes referenced in Section 1557 may require entities to undertake different processes depending on the alleged basis of discrimination.

This rulemaking provides for more consistency regardless of whether an allegation of discrimination in a covered health program or activity is based on race, color, national origin, sex, age, or disability—or some combination thereof. The 2020 Rule fails to account for claims of discrimination in health programs and activities that are alleged to have occurred based on multiple protected bases. The Department believes that establishing procedural requirements across nondiscrimination bases is important because it benefits the public and covered entities, and it streamlines OCR's enforcement scheme. For the public, providing consistent regulatory procedural requirements across nondiscrimination bases recognizes the potential for complaints alleging discrimination on multiple bases (*e.g.,* sex and race). Covered entities would gain clarity with respect to their regulatory procedural requirements without any confusion as to whether different provisions apply depending on the protected basis. For example, there are currently questions as to whether or not the 2020 Rule requires covered entities to have a responsible employee and grievance procedure to address issues of sex discrimination, or if that is only required to the extent that it would be required under Title IX (*i.e.,* whether the health program and activity must also be an education program or activity to trigger the requirement).

This proposed section would require each covered entity, in its health programs and activities, to adopt and implement a nondiscrimination policy, grievance procedures (for covered entities employing 15 or more persons), language access procedures, auxiliary aids and services procedures, and procedures for reasonable modifications for individuals with disabilities (collectively, ''Section 1557 Policies and Procedures''). We recognize that the covered entities vary significantly in size, nature of business, and location and accordingly recognize that each covered entity's Section 1557 Policies and Procedures may vary. OCR is committed to supporting covered entities as they develop policies and procedures and is planning to provide sample documents on the Department's website. Given the prevalence of covered entities with fewer than 15 employees that provide health care services to a significant volume of patients, the Department highly encourages such covered entities to implement Section 1557 Policies and Procedures based on the sample documents that will be available on the agency website. The Department underscores that covered entities with fewer than 15 employees would still be prohibited from discriminating in health programs and activities under Section 1557, even if those entities are not required to adopt grievance procedures, or to hire a Section 1557 Coordinator, under this proposed rulemaking.

The Department's goal is to address potential compliance issues and help resolve civil rights concerns at an early stage, avoiding the need for an OCR investigation. The Department has also heard from a range of stakeholders that it is important to include proactive measures to increase covered entities' knowledge of their responsibilities under Section 1557. The proposed complementary civil rights policies and procedures advance these objectives.

This proposed requirement is also informed by OCR's enforcement experience. It is common that, either during or following an investigation, OCR will enter into a voluntary resolution agreement with a covered entity that requires the adoption and implementation of nondiscrimination policies as well as procedures for providing auxiliary aids and services and reasonable modifications for individuals with disabilities, and language assistance services for LEP individuals.[271] OCR's resolution agreements require these interventions, in part, because our experience generally demonstrates that targeting such interventions at the underlying

[271] *See, e.g.,* Voluntary Resolution Agreement between U.S. Dep't of Justice, U.S. Dep't Health & Human Servs., Office for Civil Rights & William W. Backus Hosp. (2021), *https://www.hhs.gov/civil-rights/for-providers/compliance-enforcement/agreements/vra-between-doj-hhs-ocr-william-backus-hospital/index.html*; Voluntary Resolution Agreement between U.S. Dep't of Health & Human Servs., Office for Civil Rights & CHRISTUS Trinity Mother Frances Health Sys. (2020), *https://www.hhs.gov/sites/default/files/christus-vra.pdf*; Voluntary Resolution Agreement between U.S. Dep't of Health & Human Servs., Office for Civil Rights & Mid-Maryland Musculoskeletal Inst. (2019), *https://www.hhs.gov/sites/default/files/MMI-vra.pdf*; *https://www.hhs.gov/sites/default/files/uconn-vra.pdf*; Voluntary Resolution Agreement between U.S. Dep't of Health & Human Servs., Office for Civil Rights & Pa. Dep't of Human Servs. (2019), *https://public3.pagefreezer.com/content/HHS.gov/31-12-2020T08:51/https://www.hhs.gov/sites/default/files/hhs-padhs-vra.pdf*; Voluntary Resolution Agreement between U.S. Dep't of Justice, U.S. Dep't Health & Human Servs., Office for Civil Rights & Univ. of Vt. Med. Ctr. (2017), *https://www.hhs.gov/sites/default/files/uvmmc-vra.pdf*; Voluntary Resolution Agreement between U.S. Dep't of Health & Human Servs., Office for Civil Rights & Erie Cty. Dep't of Soc. Servs. (2016), *https://www.hhs.gov/sites/default/files/ecdss-vra-final.pdf*; Voluntary Resolution Agreement between U.S. Dep't of Justice, U.S. Dep't Health & Human Servs., Office for Civil Rights & St. Francis Hosp. & Med. Ctr. (2015), *https://www.hhs.gov/sites/default/files/stfrancishospital-vra.pdf*.

problems can result in covered entities being better positioned to prevent discriminatory conduct in the future.

Through the implementation of Section 1557 Policies and Procedures, a covered entity's employees will be better equipped to provide services in a nondiscriminatory manner. For example, an employee will be able to refer to the covered entity's official policy for providing LEP individuals with language assistance services; such policies will also be interpreted or translated as needed, and be available to an LEP individual or their representative. Overall, the covered entity's policies and procedures should bring consistency to the covered entity's health programs and activities and improve compliance.

Finally, we note that many health care providers have adopted policies and procedures required under OCR's existing civil rights authorities and therefore would only need to review and update such policies and procedures rather than creating them anew. For example, this provision is consistent with OCR's civil rights clearance process required of providers seeking initial certification or undergoing a change of ownership to be certified as a Medicare Part A provider by CMS.[272] In order to obtain a civil rights clearance, would-be Medicare Part A providers and businesses must have nondiscrimination policies and procedures, including: policies and procedures to identify and communicate orally and in writing with LEP individuals; policies and procedures to ensure effective communication for individuals with disabilities, including, where necessary, the provision of appropriate auxiliary aids and services; and a description of how Medicare providers and applicants make their program accessible to persons with disabilities, among other things.[273] This proposed provision would establish similar obligations. Under this proposed provision, covered entities may need to revise any pre-existing policies and procedures to ensure they, at minimum, include the proposed required content.

The Department acknowledges that requiring covered entities to develop and implement Section 1557 Policies and Procedures for their health programs and activities would be a departure from previous rulemakings, under which covered entities that implemented such policies and procedures did so voluntarily. However, the Department's enforcement and compliance assistance experience demonstrates that interventions such as implementing policies and procedures can result in covered entities being better positioned to prevent discriminatory conduct and to better avoid the risk of an employee providing services in a discriminatory manner. Thus, we are proposing the Section 1557 Policies and Procedures requirement because we believe that the lack of such a requirement leaves individuals more susceptible to discrimination and covered entities more susceptible to violations. Specifically, as noted above, we believe that such a proactive measure will more effectively increase covered entities' employees' knowledge of their responsibilities under Section 1557. The Department acknowledges that Section 1557 Policies and Procedures are not a panacea for eliminating discrimination in health care; however, we emphasize that our experience has indicated that implementing policies and procedures that are the same or similar to the proposed Section 1557 Policies and Procedures helps prevent future instances of discriminatory conduct.

Proposed paragraph (a) of this section requires covered entities to implement written Section 1557 Policies and Procedures. The policies and procedures must include an effective date and be reasonably designed, taking into account the size, complexity, and the type of health programs or activities undertaken by a covered entity, to ensure compliance with this part.

Proposed paragraph (b) requires each covered entity to implement a written nondiscrimination policy that, at minimum, provides the contact information for the Section 1557 Coordinator (if applicable) and states that the covered entity in its health programs and activities: does not unlawfully discriminate on the basis of race, color, national origin (including limited English proficiency and primary language), sex (including pregnancy, sexual orientation, gender identity, and sex characteristics), age, or disability; and provides language assistance services and appropriate auxiliary aids and services free of charge, when necessary for compliance with Section 1557 or this part.

Proposed paragraph (c) addresses the requirements for covered entities with 15 or more employees with regard to grievance procedures and recordkeeping in their health programs and activities, including ensuring that the grievance procedure is accessible to LEP individuals and individuals with disabilities.

In proposed paragraph (c)(1), OCR is proposing to require that covered entities with more than 15 employees establish written civil rights grievance procedures. This is similar to the 2016 Rule at former § 92.7, except that we propose to include a record retention requirement. The 2020 Rule repealed former § 92.7 and provided that certain covered entities need only have a grievance procedure to the extent the referenced statutes require it.[274] We believe that the requirement in proposed paragraph (c)(1) will restore consistency of requirements for covered entities that existed under former § 92.7. It is also responsive to data related to improving health care visits for historically marginalized communities, which indicate that a majority of patients in these communities desire a method for submitting grievances to health care providers so that the providers can address the patients' problems.[275] Though the referenced data did not identify whether patients desired a mechanism to submit discrimination grievances specifically, the data support the supposition that, for patients of color, trust in their health care providers would increase if these patients could voice their concerns directly to their health care providers, thus, improving these patients' overall health care experiences. Accordingly, the Department's proposed § 92.8(c) provides a mechanism for patients to raise allegations of discrimination directly to their respective health care providers. We expect covered entities to tailor the sample grievance procedure to fit their different needs for flexibility, efficiency, and cost effectiveness.

At paragraph (c)(2), we propose that a covered entity must retain records related to grievances filed with it that allege discrimination on the basis of race, color, national origin, sex, age, or disability in its health programs and activities for no less than three (3) years from the date of the filing of the

[272] *See Civil Rights Clearance for Medicare Provider Applicants,* U.S. Dep't of Health & Human Servs., Office for Civil Rights, *https://www.hhs.gov/civil-rights/for-providers/clearance-medicare-providers/index.html* (last updated Oct. 26, 2021).

[273] *See Technical Assistance for Medicare Providers and Applicants,* U.S. Dep't of Health & Human Servs., Office for Civil Rights, *https://www.hhs.gov/civil-rights/for-providers/clearance-medicare-providers/technical-assistance/index.html* (last updated Oct. 27, 2021).

[274] 85 FR 37160, 37204 (Jun. 19, 2020) (''To the extent that [the referenced statutes'] implementing regulations have . . . grievance procedures, they are sufficient for enforcement of Section 1557.'').

[275] Leslie Read et al., The Deloitte Ctr. for Health Solutions, Rebuilding Trust in Health Care: What Do Consumers Want—and Need—Organizations to Do?, p. 3 (2021) (''62% [of surveyed people of color] want their local hospitals to ensure patients have a voice to relay their experiences and take action to address their problems.''), *https://www2.deloitte.com/content/dam/insights/articles/US164518_CHS-Equity-trust/DI_Rebuilding-trust-in-healthcare.pdf.*

grievance. The records must include the grievance; the name and contact information of the complainant (if provided by the complainant); the alleged discriminatory action and alleged basis (or bases) of discrimination; the date the grievance was filed; the grievance resolution; and any other pertinent information. Pertinent information includes, to the extent relevant to a particular complaint, information related to the complainant's national origin (including limited English proficiency and primary language), sex (including pregnancy, sexual orientation, gender identity, or sex characteristics), etc.

Through its enforcement experience, OCR has found that obtaining records of past grievances from covered entities is an important and informative component of a thorough investigation, as it assists OCR in identifying potential patterns or practices of discrimination that may not otherwise be apparent while reviewing a single OCR discrimination complaint. For example, if OCR receives a single discrimination complaint from a person giving birth alleging discrimination on the basis of race, OCR could review the grievances submitted to a covered entity to identify the presence or absence of any potential patterns of discrimination against people giving birth on the basis of race. Without a requirement to retain grievances for a period of time, it is more difficult for OCR to identify potential patterns or practices of discrimination. This requirement will assist OCR not only in identifying the scope of concern, but also in crafting appropriate technical assistance and complaint resolutions.

OCR understands that retaining grievances for a specified period of time is already the practice of some covered entities. This requirement seeks to make the practice more consistent, thereby allowing OCR to better identify potential patterns or practices of discrimination during complaint investigations and compliance reviews. Having access to discrimination complaints over a period of time will also allow covered entities to be proactive in identifying potential patterns or practices of discrimination, which will allow them to take corrective actions, if necessary, before a complaint is filed with OCR. We believe the three-year record retention requirement strikes the right balance between covered entities' burden concerns and the need for access to this vital information. However, while we propose to require records to be kept for three (3) years, nothing in the proposed rule will prevent covered entities from keeping their records for a longer period of time if the recipient wishes or due to other legal obligations.[276]

Proposed paragraph (c)(3) requires that a covered entity keep confidential the identity of an individual who has filed a grievance, except as required by law or to the extent necessary to carry out the purposes of this proposed regulation, including the conduct of any investigation.

We seek comment on the record retention requirement, particularly with regard to patient privacy concerns or concerns regarding potentially unauthorized use of information included in such records. We seek comment on best practices for record retention of grievance procedures, including strategies for ensuring patient privacy.

Rather than requiring health programs and activities of the Department to adopt separate grievance procedures, the 2016 Rule provided that, for the Department, the procedures for addressing complaints of discrimination under Section 1557 would be deemed the required grievance procedures under this section. We decline to reinstate this approach, as individuals and the Department's health programs and activities can also benefit from a process for covered entities to address any potential compliance issues at an earlier stage and in a less formal manner than an OCR investigation. However, individuals may opt not to use a health program or activity's grievance procedure and may elect to file a complaint with OCR at any time, regardless of whether the health program or activity is conducted by a recipient, the Department, or a Title I entity.

Proposed paragraph (d) requires covered entities to develop and implement written language access procedures to support compliance with requirements to take reasonable steps to provide meaningful access to LEP individuals in their health programs and activities under proposed § 92.201. Given existing requirements to provide language assistance to LEP individuals under Title VI and Section 1557, informed by the Department's ''2003 Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons'' (HHS LEP Guidance),[277] we anticipate that some covered entities may have already implemented policies and procedures akin to this requirement. Additionally, Federal agencies have been required to have language access procedures since 2000, as provided for in E.O. 13166,[278] and the Department itself has a Language Access Plan.[279] This requirement is also consistent with the civil rights clearance process required for Medicare Part A providers, which requires policies and procedures to identify and communicate orally and in writing with LEP individuals.[280]

We propose that, at a minimum, a covered entity's language access procedures must include information detailing the contact information for the Section 1557 Coordinator (if applicable); how an employee identifies whether an individual is LEP; how an employee obtains the services of qualified interpreters and translators the covered entity uses to communicate with LEP individuals; the names of any qualified bilingual or multilingual staff members; and a list and the location of any electronic and written translated materials the covered entity has, the languages they are translated into, and the publication date. We note that covered entities have a duty to translate that extends beyond those documents that have already been translated at the time this list is made, and the list should be updated periodically.

Proposed paragraph (e) requires covered entities to develop and implement written effective communication procedures to support compliance with requirements to take appropriate steps to ensure that communications in their health programs and activities with individuals with disabilities are as effective as communications with individuals without disabilities under proposed § 92.202. We propose that, at a minimum, a covered entity's effective communication procedures must include the contact information for the Section 1557 Coordinator (if applicable); how an employee obtains the services of qualified interpreters the covered entity uses to communicate with individuals with disabilities; the names of any qualified interpreter staff members; and how to access appropriate auxiliary aids and services that are necessary for

[276] For example, the Department of Education Title IX regulation requires recipients to keep records related to Title IX sexual harassment grievances and investigations for a period of seven (7) years. 34 CFR 106.45(b)(10).

[277] 68 FR 47311, 47316 (Aug. 8, 2003).

[278] 65 FR 50121 (Aug. 16, 2000).

[279] U.S. Dep't of Health & Human Servs., Language Access Plan (2013), *https://www.hhs.gov/sites/default/files/open/pres-actions/2013-hhs-language-access-plan.pdf*.

[280] *Technical Assistance for Medicare Providers and Applicants,* U.S. Dep't of Health & Human Servs., Office for Civil Rights, *https://www.hhs.gov/civil-rights/for-providers/clearance-medicare-providers/technical-assistance/index.html* (last updated Oct. 27, 2021).

effective communication. This provision is similarly consistent with the civil rights clearance process required for Medicare Part A providers, which requires policies and procedures to ensure effective communication for individuals with disabilities, including, where appropriate, the provision of auxiliary aids and services.[281]

Proposed paragraph (f) requires covered entities to develop and implement written procedures for making reasonable modifications to their policies, practices, or procedures that allow individuals with disabilities equal opportunity to participate in their health programs and activities as required under proposed § 92.205. As proposed, a covered entity's reasonable modification procedures must, at a minimum, include contact information for the covered entity's Section 1557 Coordinator (if applicable); describe the covered entity's process for responding to requests from individuals with disabilities for changes, exceptions, or adjustments to a rule, policy, practice, or service of the covered entity; and the process for determining whether making the modification would fundamentally alter the nature of the service, program, or activity, including identifying an alternative modification that does not result in a fundamental alteration to ensure the individual with a disability receives the benefits or services in question.

We note that the failure to request a reasonable modification does not always excuse the covered entity from providing a reasonable modification to avoid discrimination on the basis of disability, as long as it does not result in a fundamental alteration. For example, when a covered entity had knowledge of an individual's disability and needs, or when an individual's disability and needs are obvious, a covered entity must provide modifications in the absence of a request.[282]

Proposed paragraph (g) provides that a covered entity may combine the content of the policies and procedures required by this provision with any policies and procedures pursuant to other civil rights statutory protections if they clearly comply with Section 1557 and the provisions in this part.

The Department encourages covered entities to include additional information in their Section 1557 Policies and Procedures to provide employees the means to ensure individuals are able to access their health programs and activities free from discrimination. For example, covered entities may consider including information in their respective Section 1557 Policies and Procedures regarding service animals, as well as maintaining civil rights protections during public health emergencies.

We seek comment on this proposed provision and whether there may be alternative measures that the Department should consider to proactively prevent discrimination, and whether they would be more or less burdensome than what is proposed. We would particularly welcome comments from covered entities concerning their experiences under voluntary resolution agreements with OCR requiring them to adopt policies and procedures. We also invite comment from all covered entities that have previously implemented or are currently implementing a nondiscrimination policy, grievance procedures, language access procedures, effective communication procedures, or reasonable modification procedures; consumers who interact with covered health programs and activities; and community-based organizations that work with LEP individuals and individuals with disabilities. We also seek comment on whether covered entities employing less than 15 people should be required to have a grievance procedure, including the benefits for a less formal resolution process.

**Training (§ 92.9)**

To ensure that covered entities implement Section 1557 Policies and Procedures in accordance with proposed § 92.8, proposed § 92.9 requires covered entities to train relevant employees in their health programs and activities on their Section 1557 Policies and Procedures. This proposed section, coupled with § 92.8, is designed to help covered entities and their employees take measures to prevent discrimination by ensuring that staff are knowledgeable about the nondiscrimination policy, grievance procedures, and processes by which to obtain language assistance services for LEP individuals and to ensure effective communication with and provide reasonable modifications for individuals with disabilities.

Proposed paragraph (a) provides a general requirement that covered entities train relevant employees of their health programs and activities on the Section 1557 Policies and Procedures required by proposed § 92.8. Given the diversity of entities covered by this part, the Department is not prescribing the specific training methods a covered entity must use or the nature of a covered entity's training program. The Department notes, however, that the more thoroughly a covered entity trains its staff on its Section 1557 Policies and Procedures, the more likely it is that the covered entity will successfully provide services to individuals in a nondiscriminatory manner and avoid potential liability for violations of Section 1557 and this part.

Further, this provision takes into consideration potential burdens on covered entities by requiring that only relevant staff (including, but not limited to, the Section 1557 Coordinator, if applicable) be trained, rather than requiring all staff to be trained. The Department anticipates that relevant health program and activity staff will include those involved in client and patient interactions, as well as those involved with drafting, approving, and funding policies and procedures for compliance with this part. However, such aspects of training required by this section are left to the discretion of the covered entity. The proposed approach, which requires training only on the covered entity's Section 1557 Policies and Procedures, is efficient, provides practical benefits based on each covered entity's unique circumstances, and is less resource intensive than requiring covered entities to train relevant staff on all of the regulatory requirements for Section 1557's underlying statutes.

Similar to the proposal to require Section 1557 Policies and Procedures, the Department believes in the importance of proactive measures to prevent and mitigate the potential for discriminatory conduct in covered health programs and activities. That is why the Department proposes to require training in this rulemaking. OCR provides public education and outreach and has found it to be an effective means to ensure covered entities are complying with their respective Federal civil rights obligations. Just as OCR's proactive public education and outreach efforts yield compliance benefits, based on the Department's enforcement and compliance assistance experience we believe that covered entities' proactive Section 1557 Policies and Procedures, coupled with employee training, will

[281] *Technical Assistance for Medicare Providers and Applicants,* U.S. Dep't of Health & Human Servs., Office for Civil Rights, *https://www.hhs.gov/civil-rights/for-providers/clearance-medicare-providers/technical-assistance/index.html* (last updated Oct. 27, 2021).

[282] *See, e.g., Greer* v. *Richardson Indep. Sch. Dist.,* 472 F. App'x 287, 296 (5th Cir. 2012) (holding that a ''failure to expressly 'request' an accommodation is not fatal to an ADA claim where the defendant otherwise had knowledge of the individual's disability and needs but took no action''); *Duvall* v. *Cty. of Kitsap,* 260 F.3d 1124, 1139 (9th Cir. 2001) (''When the plaintiff has alerted the public entity to his need for accommodation (or where the need for accommodation is obvious . . .), the public entity is on notice that an accommodation is required . . .'').

yield compliance benefits as well as improved health outcomes.[283]

Federal agency technical assistance materials on language access consistently highlight the important role training plays in delivering services effectively. For example, CMS' ''Guide to Developing a Language Access Plan'' dedicates an entire section to advising organizations about the importance of training.[284] The Guide provides, in part, that an organization's training should focus on the organizations' policies and procedures related to providing language assistance services. Similarly, a DOJ assessment and planning tool for federally conducted and federally assisted programs included ''training staff on policies and procedures'' as one of the key six steps for developing an effective language access policy.[285] DOJ's tool provides that ''[t]raining should explain how staff can identify the language needs of an LEP individual, access and provide the necessary language assistance services, work with interpreters, request document translations, and track the use of language assistance services.'' [286]

The Department believes that a staff training requirement will increase the likelihood that covered entities are prepared to best meet the communication needs of LEP individuals and individuals with disabilities, avoiding potentially critical delays or denials of care. This is particularly salient as the nation addresses the COVID–19 pandemic and works to prepare for future public health emergencies. As described above, the COVID–19 pandemic exposed barriers to accessing health care for historically marginalized populations, including challenges related to providing testing and vaccination services in a way that provides meaningful access to LEP individuals and is accessible to individuals with disabilities. For example, many covered entities required individuals to register on a website or through an online portal in order to obtain a COVID–19 test or vaccine. Websites and portals often failed to include non-English registration instructions,[287] and some have been inaccessible to individuals with disabilities.[288]

We have previously noted that, when necessary, OCR enters into voluntary resolution agreements with covered entities to resolve concerns about noncompliance with Federal civil rights laws, including Section 1557.[289] These voluntary resolution agreements routinely require covered entities to develop policies and procedures and provide employee training on their policies and procedures because such actions promote compliance with Federal civil rights laws. OCR believes that the development and implementation of, and training on, such policies are likely to reduce discriminatory actions from occurring in the future and reduce the need for voluntary resolution agreements.

Proposed paragraph (a) provides a general requirement that covered entities train relevant employees of their health programs and activities on the civil rights policies and procedures required by proposed § 92.8.

Proposed paragraph (b) specifies when covered entities must train relevant employees on their Section 1557 Policies and Procedures. We consider relevant employees to be those who directly encounter or interact with individuals such as patients, clients, and members of the public. Employees are also considered relevant when they make decisions regarding the services individuals seek from a covered entity's health programs and activities. Under paragraph (b)(1) covered entities would be required to train existing relevant employees on their Section 1557 Policies and Procedures as soon as practicable, but no later than one (1) year after the effective date of the Final Rule. Proposed paragraph (b)(2) proposes that covered entities train new relevant employees within a reasonable period of time after they join a covered entity's workforce.

In paragraph (b)(3), we propose to require covered entities to train relevant employees whose roles are affected by material changes to the covered entity's Section 1557 Policies and Procedures. Examples of material changes may include new contact information for a covered entity's Section 1557 Coordinator (if applicable), changing from one qualified interpreter service provider to another, acquiring or discontinuing the use of certain auxiliary aids and services, such as in response to changing technology, or substantive changes to the covered entity's process for ensuring effective communication or for providing language assistance services. Similar to paragraph (b)(2), paragraph (b)(3) would require covered entities to train employees within a reasonable time after a material change has been made. Nothing in the proposed provision prohibits covered entities from training their employees on Section 1557 Policies and Procedures more frequently. For example, covered entities may include such training in the existing annual or quarterly training programs that they require their employees to complete.

Proposed paragraph (c) requires covered entities to contemporaneously document their employees' completion of the training required by this section

[283] *See, e.g.,* John S. Lord, Jr., *Health Care Providers: It's Not Just Employee Discrimination Claims—Patients Can Have Discrimination Claims Too,* Nat'l L. Rev. (Feb. 8, 2022) (recommending ''perioding compliance reviews and up-to-date trainings'' on civil rights nondiscrimination requirements to ''help prevent and defend'' against patient discrimination claims), *https://www.natlawreview.com/article/health-care-providers-it-s-not-just-employee-discrimination-claims-patients-can-have.*

[284] U.S. Dep't of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., Guide to Developing a Language Access Plan, p. 9, *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Language-Access-Plan-508.pdf.*

[285] U.S. Dep't of Justice, Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs, p. 6 (2011), *https://www.lep.gov/sites/lep/files/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf.*

[286] *Id.*

[287] Joseph R. Fuchs et al., *Older Adults with Limited English Proficiency Need Equitable COVID–19 Vaccine Access*, 69 J. Am. Geriatr. Soc'y. 888, 889 (2021), *https://agsjournals.onlinelibrary.wiley.com/doi/10.1111/jgs.17069*; *Rachana Pradham, 'Press 1 for English': Vaccination Sign-Ups Prove Daunting for Speakers of Other Languages,* Kaiser Health News (Mar. 23, 2021), *https://khn.org/news/article/press-1-for-english-vaccination-sign-ups-prove-daunting-for-speakers-of-other-languages/.*

[288] Press release, U.S. Dep't of Justice, Justice Department Secures Settlement with Rite Aid Corporation to Make Its Online Covid-19 Vaccine Portal Accessible to Individuals with Disabilities (Nov. 1, 2021), *https://www.justice.gov/usao-mdpa/pr/justice-department-secures-settlement-rite-aid-corporation-make-its-online-covid-19*; *Press release,* U.S. Dep't of Justice, Justice Department Secures Agreement with Hy-Vee Supermarket Chain to Make Online COVID–19 Vaccine Registration Accessible for People with Disabilities (Dec. 1, 2021), *https://www.justice.gov/opa/pr/justice-department-secures-agreement-hy-vee-supermarket-chain-make-online-covid-19-vaccine*; Lauren Weber & Hannah Recht, *Covid Vaccine websites Violate Disability Laws, Create Inequity for the Blind,* Kaiser Health News (Feb. 25, 2021), *https://khn.org/news/article/covid-vaccine-websites-violate-disability-laws-create-inequity-for-the-blind/*; Haley Messenger, *Blind Americans Face Roadblocks Booking Online Vaccine Appointments,* NBC News (Mar. 13, 2021, 6:02 a.m.), *https://www.nbcnews.com/business/consumer/blind-americans-face-roadblocks-booking-online-vaccine-appointments-n1260954*; *Fixing the Problem of Inaccessible Information from the Beginning,* Equidox, *https://equidox.co/blog/fixing-the-problem-of-inaccessible-covid-19-information/* (last visited June 15, 2022); Elise Young, *Vaccine Rollout Leaves Behind the Blind, Paralyzed, Autistic,* Bloomberg (Mar. 18, 2021, 10:25 a.m.), *https://www.bloomberg.com/news/articles/2021-03-18/disabled-citizens-left-behind-in-u-s-push-to-overcome-pandemic*; Maggie Vaughn, *Vaccine Registration websites: Inaccessible to the Blind,* Dubbot: DubBlog (Mar. 10, 2021), *https://dubbot.com/dubblog/2021/vaccine-registration-websites-inaccessibile-to-the-blind.html.*

[289] *See Recent Civil Rights Resolution Agreements & Compliance Reviews,* U.S. Dep't of Health & Human Servs., Office for Civil Rights, *https://www.hhs.gov/civil-rights/for-providers/compliance-enforcement/agreements/index.html* (last updated June 15, 2022); *see also supra* note 271.

in written or electronic form and maintain said documentation for no less than three (3) calendar years.

We note that neither the 2016 Rule nor the 2020 Rule included a training requirement, though we are aware that many covered entities already have civil rights trainings for their employees that could be modified to comply with this proposed provision. We seek comment on the experiences of covered entities in implementing training such as that required by proposed § 92.9, examples of where training made a difference in compliance, the timing of required training, whether covered entities would like the flexibility to include this required training as part of its existing annual compliance training, what types of changes would constitute a material change such that a covered entity would need to retrain staff, and the amount of time for which training records must be retained. We also seek general comment on this proposal, including the effectiveness of civil rights training programs, the benefits experienced by covered entity staff and the people they serve, as well as the costs associated with the proposed training requirements.

We further seek comment on whether the Section 1557 Policies and Procedures requirements and training requirements may increase the likelihood of compliance with the substantive legal requirements of Section 1557.

**Notice of Nondiscrimination (§ 92.10)**

Proposed § 92.10 requires each covered entity to provide a notice of nondiscrimination, relating to its health programs and activities, to participants, beneficiaries, enrollees, and applicants of its health programs and activities, and members of the public. Notice can be provided through written translations or in-language recorded audio or video clips.

The 2016 Rule required covered entities to include a nondiscrimination notice and set of taglines (*i.e.,* a short non-English statement in appropriate languages indicating the availability of language assistance services) in all ''significant publications or significant communications . . . which may include patient handbooks, outreach publications, or written notices pertaining to rights or benefits or requiring a response from an individual'' in conspicuous physical locations and online.[290] The 2016 Rule included a separate provision for ''small-sized'' significant publications communications.[291] This provision required covered entities to include a notice statement in lieu of the full notice, on small-sized significant publications and significant communications like postcards and tri-fold brochures.[292]

The 2016 Rule received criticism for failing to provide a definition of ''significant publications or significant communications,'' though it provided some examples of what would be considered ''significant.'' The Department also received substantial feedback regarding the financial burden imposed by the notice and tagline requirements. Citing these concerns, the 2020 Rule repealed the 2016 Rule's provisions on notices and taglines in their entirety.[293]

The Department has reviewed concerns raised in response to the 2016 Rule requirements, as well as those raised in response to the removal of the notice and tagline requirements in the 2020 Rule. Although we acknowledge the additional responsibilities placed on covered entities through the 2016 Rule requirements, we believe that the 2020 Rule does not adequately consider some of the adverse consequences that individuals incur or the burdens that the health care system faces without these notice provisions.[294] Therefore, the Department has concluded that it should not have eliminated these provisions in their entirety. To ensure clarity and reduce confusion, this proposed rule will address the notice of nondiscrimination and notice of availability of language assistance services and auxiliary aids and services in separate sections.

Proposed § 92.10(a) requires covered entities to provide a notice of nondiscrimination, relating to their health programs and activities, to participants, beneficiaries, enrollees, and applicants of their health programs and activities, and to members of the public. Proposed paragraph (a)(1) provides the required contents of the notice of nondiscrimination, including that (i) the covered entity does not discriminate on the basis of race, color, national origin (including limited English proficiency and primary language), sex (including pregnancy, sexual orientation, gender identity, or sex characteristics), age, or disability in its health programs or activities; (ii) the covered entity provides reasonable modifications for individuals with disabilities, and appropriate auxiliary aids and services, including qualified interpreters, for individuals with disabilities and information in alternate formats, such as braille or large print, free of charge and in a timely manner, when such modifications or aids and services are necessary to ensure accessibility and equal opportunity to participate to individuals with disabilities; (iii) the covered entity provides language assistance services, including electronic and written translated documents and oral interpretation free of charge and in a timely manner, when such services are necessary to provide meaningful access to a limited English proficient individual; (iv) how to obtain from the covered entity the reasonable modifications, auxiliary aids and services, and language assistance services in paragraphs (a)(1)(ii) and (iii) of this section; (v) the contact information for the covered entity's Section 1557 Coordinator designated pursuant to § 92.7 of this part (if applicable); (vi) the availability of the covered entity's grievance procedure pursuant to § 92.8(c) of this part and how to file a grievance (if applicable); (vii) details on how to file a discrimination complaint with HHS' Office for Civil Rights; and (viii) how to access the covered entity's website, if it has one, that provides the information required under paragraph (a)(1) of this section. OCR is proposing to require a parenthetical for national origin discrimination, to include limited English proficiency and primary language, to clarify for the public that these are prohibited forms of discrimination. For the same reason, a parenthetical would be required for sex discrimination, to include pregnancy, sexual orientation, gender identity, or sex characteristics.

Proposed § 92.10(a)(2) would provide specific information on when and where covered entities must provide the notice of nondiscrimination. Rather than requiring entities to include the notice in ''significant'' communications, we propose that covered entities provide the notice on an annual basis and upon request. Similar to the 2016 Rule requirements, we propose that the notice also be placed at a conspicuous location on the covered entity's health program or activity website,[295] if it has

[290] 81 FR 31375, 31396 (May 18, 2016).

[291] Former 45 CFR 92.8(g)(1).

[292] *Id.*

[293] 85 FR 37160, 37161, 37176, 37228 (June 19, 2020).

[294] *See, e.g.,* Nat'l Council of Asian Pacific Ams., Comment on Section 1557 NPRM, pp. 3–7 (Aug. 13, 2019), *https://www.regulations.gov/comment/HHS–OCR–2019–0007–145953.*

[295] For more information about improving access to public websites for LEP individuals, *see* U.S. Dep't of Justice, Title VI Interagency Working Group, Improving Access to Public websites and Digital Services for Limited English Proficient (LEP) Persons (Dec. 2021), *https://www.lep.gov/sites/lep/*

one, and in clear and prominent physical locations where it is reasonable to expect individuals seeking service from the health program or activity to be able to read or hear the notice. These requirements would pose a relatively low-cost burden for covered entities while ensuring information regarding the covered entity's civil rights obligations is provided in locations that are highly visible and visited by participants and members of the public.

Paragraph (b) proposes that a covered entity may combine the content of the notice required by paragraph (a) of this section with the notices required by Title VI, Section 504, Title IX, and the Age Act implementing regulations [296] if the combined notice clearly informs individuals of their civil rights under Section 1557 and this part and meets the requirements outlined in proposed paragraph (a)(1).

In drafting these proposed notice provisions, the Department considered alternative approaches such as requiring covered entities to provide notices at every encounter with a participant or beneficiary or simply adopting the approach in the 2016 Rule. The Department decided against these approaches, and believes the proposed provisions emphasize the importance of notifying individuals of their civil rights and makes clear the requirements for notifying individuals about important civil rights requirements. Further, we believe this proposal addresses the burdens raised by covered entities in response to the 2016 Rule notice requirements by providing specific occurrences (annual basis and upon request) and locations (conspicuous location on website and prominent physical location) for when and where the notice must be provided rather than the ambiguity caused by the 2016 Rule.

We seek comment on whether the notice of nondiscrimination requirement as proposed is practical, likely to be effective, and responsive to concerns raised regarding the 2016 and 2020 Rules, including the sufficiency of the content of the notice and requirements regarding when and where covered entities must provide the notice. In particular, we seek comment on the best ways to provide an accessible initial notice to individuals who may require auxiliary aids and services for their disabilities and the best way in which to provide the notice in a manner accessible to LEP individuals. The Department is also interested in hearing from covered entities regarding whether they are still following the 2016 notice requirement, and the potential burdens and costs of what is proposed here.

**Notice of Availability of Language Assistance Services and Auxiliary Aids and Services (§ 92.11)**

Proposed § 92.11 requires covered entities to notify the public of the availability of language assistance services and auxiliary aids and services for their health programs and activities (''Notice of Availability''). This provision is similar to the ''tagline'' requirement found at former § 92.8 in the 2016 Rule, but with additional information required to be included in the notice. The 2016 Rule required covered entities to provide ''taglines,'' short statements written in non-English languages that indicate the availability of language assistance services free of charge, in a variety of languages and communications.[297] The Department has opted not to use the term ''tagline'' in this rule because this provision also now requires a notice of the availability of auxiliary aids and services.

The 2016 Rule required covered entities to include ''taglines'' in at least the top 15 languages spoken by LEP individuals in the relevant state or states in significant publications and communications and at various locations.[298] To reduce the administrative burden on covered entities, OCR translated these statements into 64 languages and made the translated statements available to covered entities.[299]

The 2020 Rule repealed this provision, citing costs, confusion, and waste, but stated that covered entities are still required ''to provide taglines whenever such taglines are necessary to ensure meaningful access by LEP individuals to a covered program or activity.'' [300] Commenters argued the 2019 NPRM's Regulatory Impact Analysis (RIA) labeled the impact on LEP individuals of eliminating notice and tagline requirements as negligible without providing an evidentiary basis [301] and failed to address the costs beneficiaries would face without these provisions and the additional costs to the health care system that could result.[302] We now believe that in finalizing the 2020 Rule absent any ''tagline'' requirement, the Department did not adequately weigh the concerns raised by commenters, including the costs individuals incur or the burdens the health care system would face without these requirements.[303]

Commenters specifically argued that eliminating ''tagline'' provisions would result in fewer safeguards that minimize health care risks LEP individuals face in the health care system, including avoidable hospital readmissions, lower rates of outpatient follow up, limited use of preventive services, poor medication adherence, and lack of understanding discharge instructions.[304] According to commenters, these impacts could lead to higher costs to the health care system, as LEP individuals are more likely to experience medical errors due to communication barriers. The availability of language assistance services, on the other hand, is associated with fewer readmission rates and fewer malpractice claims.[305]

Several organizations have sued the Department for repealing the notice and tagline provisions of the 2016 Rule. The lawsuits detail the costs of repealing these requirements. In the *Whitman-Walker* case, the plaintiffs, organizations providing and advocating for health care services, and individual health care professionals, alleged that the removed provisions are critical to ensuring meaningful access to care.[306] The plaintiffs further argued that removing the 2016 Rule's tagline provisions, ''burden[s] private health care and individual provider plaintiffs, as well as members of health professional association plaintiffs, because patients will come to them sicker due to inadequate care elsewhere, and more people may come to them because their LEP services will remain robust.'' [307] The plaintiffs also alleged that eliminating the notice provisions would make it more difficult for patients ''to understand their health care rights, communicate with doctors and other health care workers, and navigate complex insurance and medical

*files/media/document/2021-12/2021_12_07_website_Language_Access_Guide_508.pdf.*

[296] 45 CFR 80.6(d) (Title VI); § 84.8 (Section 504, federally assisted); § 85.12 (federally conducted); § 86.9 (Title IX); § 91.32 (Age Act).

[297] Former 45 CFR 92.8.

[298] *Id.* § 92.8(d)(1).

[299] 81 FR 31453.

[300] *See* 85 FR 37160, 37176, 37228, 37241 (June 19, 2020).

[301] *See id.* at 37204.

[302] *See* Nat'l Council of Asian Pacific Ams., *supra* note 294, at pp. 3–7; *see also* 85 FR 37233.

[303] *See supra* note 302.

[304] *See* Nat'l Women's Law Ctr., Comment on Section 1557 NPRM, p. 21 (Aug. 13, 2019), *https://www.regulations.gov/comment/HHS-OCR-2019-0007-149018.*

[305] *See* Nat'l P'ship for Women & Families, Comment on Section 1557 NPRM, p. 16 (Aug. 13, 2019) (citing to Quan K. Lynch, Nat'l Health Law Program, The High Costs of Language Barriers in Medical Malpractice, p. 18 (2010)), *https://www.regulations.gov/comment/HHS-OCR-2019-0007-137897.*

[306] *Whitman-Walker* Compl., supra note 205, at p. 67–68.

[307] *Id.* at p. 68.

documents with specialized terminology, and cause an increase in patients who will delay or not seek care at all.'' [308] In *Chinatown Services Center* v. *U.S. Department of Health & Human Services,* the plaintiffs, community-based organizations that serve older LEP adults, similarly alleged that elimination of the notice and tagline requirements of the 2016 Rule undermines access to health care, and that the elimination was arbitrary and capricious because HHS did not consider alternatives to repealing these protections.[309] The *Chinatown Service Center* plaintiffs alleged the 2020 Rule fails to adequately consider the confusion caused by the removal of taglines, the impact of the rule change on access to care and treatment, individuals' reliance on taglines, and frustration with difficulty accessing health care.[310] The complaint alleges that ''without notice of their rights, LEP older adults remain in the dark as to their right to free interpreter services at a medical appointment or what they can do when providers wrongly require LEP individuals to rely on unqualified informal or family-member interpreters.'' [311]

The Department has also heard from covered entities that they are committed to providing LEP individuals with language assistance services but recommend that the Department require covered entities to provide language assistance services in a manner that does not overwhelm enrollees with redundant paperwork that may be unnecessary, repetitive, or wasteful.[312]

After considering concerns raised through litigation, stakeholder feedback, and language access complaints OCR continues to receive, we have determined that the 2020 Rule's approach in eliminating these provisions in their entirety is unnecessary and counterproductive. We believe that the benefits of meaningful access to LEP individuals, through notice of the availability of language access services, outweigh the costs of implementing the changes set forth in this NPRM. The 2020 Rule creates uncertainty and confusion concerning when language assistance services must be provided, resulting in higher risk for covered entities while rendering Section 1557 less effective at combatting discrimination experienced by LEP individuals. The Department believes that the provisions set forth in this NPRM would help restore consistency in language assistance procedural requirements and provide certainty to covered entities and consumers about what covered entities' obligations are and what rights consumers have.

The proposed reinstatement of in-language notices is also intended to help alleviate burdens on covered entities who primarily serve LEP populations. LEP individuals often rely on community-based organizations as the first line of support when they are unable to access other systems due to language barriers. While we recognize that this reported increase coincides with the COVID–19 pandemic, we also believe it highlights the importance now, more than ever, of providing notice of the availability of language assistance services in health programs and activities. Additionally, we believe having these services in place now will help covered entities be better prepared to serve LEP individuals during any future public health emergencies that may arise.

In addition, several commenters to the 2019 NPRM indicated that removing the 2016 Rule's tagline provisions would contribute to health disparities. For example, the National Women's Law Center referenced a 2018 poll, which said approximately 6 in 10 Latino adults reported having trouble communicating with their providers due to language or cultural barriers.[313] As a result, the poll reported that Spanish-speaking LEP individuals are more likely to report experiencing worse health outcomes than Latino individuals who are monolingual in English or bilingual in English and Spanish.[314] Although the 2020 Rule removed the requirement that covered entities include ''taglines'' in the top 15 languages spoken by LEP individuals in their state, it maintained the requirement that covered entities provide taglines whenever such taglines are necessary to ensure meaningful access by LEP individuals to a covered health program or activity. Yet the 2020 Rule provides limited guidance to covered entities and consumers on what covered entities' obligations are and what consumers' rights are. Covered entities remain without clear guidance as to when in-language taglines must be included to help LEP individuals understand that language services are available and how to access them. OCR continues to receive language access complaints that raise concerns about entities not providing sufficient taglines. The proposed ''Notice of Availability'' requirement, analogous to the 2016 Rule ''tagline'' requirement, removes existing ambiguity for covered entities and would result in increased access to health programs and activities for LEP individuals.

While the 2020 Rule preamble raised concerns about cost and waste, we believe it failed to strike the right balance by eliminating these important provisions altogether given the considerations discussed above. With proposed § 92.11, we seek to be responsive to industry concerns regarding excessive costs and other potential burdens to covered entities, while balancing the importance of providing LEP individuals notice of the availability of language assistance services to eliminate barriers to accessing quality health care. In this new provision, we also propose to require the Notice of Availability to include a statement regarding the availability of appropriate auxiliary aids and services to reduce barriers to access for individuals with disabilities.

Proposed paragraph (a) requires a covered entity to provide a notice that, at minimum, states that the covered entity provides language assistance services and appropriate auxiliary aids and services free of charge in its health programs and activities, when necessary for compliance with Section 1557 or this part. This notice must be provided to participants, beneficiaries, enrollees, and applicants of the covered entity's health program or activity, and members of the public. Notice can be provided through written translations or recorded audio or video clips.

Proposed paragraph (b) requires the Notice of Availability to be provided in English and at least the 15 most common languages spoken by LEP individuals of the relevant state or states, and in alternate formats for individuals with disabilities who request auxiliary aids and services to ensure effective communications. This standard ensures that a significant proportion of each state's particular LEP population is receiving key information in the appropriate language. While the standard of providing the statement in these ''top 15'' languages is the same as that required by the 2016 Rule, we attempt to alleviate burdens here by proposing a list of the relevant materials in which the Notice of Availability must be included and providing options for covered entities to allow individuals to ''opt out'' of receipt of the Notice of

[308] *Id.* at p. 28.

[309] Compl., *Chinatown Serv. Ctr.* v. *U.S. Dep't of Health & Human Servs.*, No. 1:21–cv–00331, pp. 23, 35 (D.D.C. Feb. 5, 2021), ECF No. 1 [hereinafter *Chinatown Serv. Ctr.* Compl.].

[310] *Id.* at p. 21.

[311] *Id.* at p. 2.

[312] AHIP Recommendations for 1557 Notice and Tagline Requirements, p. 1 (Nov. 1, 2021). The document will be attached to the docket of this proposed rule as a supplemental material at *federalregister.gov.*

[313] Nat'l Women's Law Ctr., *supra* note 304, at p. 21.

[314] *Id.*

Availability or to provide communication to individuals in their primary language in lieu of a Notice of Availability. As in 2016, OCR will provide a sample Notice of Availability for covered entities to use, as well as the 15 most common non-English languages spoken by LEP individuals for each state and territory.

The Department considered including a population threshold after consulting the Department of Agriculture's Supplemental Food and Nutrition regulation, which includes requirements prescribed by the Food Stamp Act [315] to translate materials in non-English languages.[316] The Department declines to include the adoption of a population threshold because of the inconsistent results that would result in notice requirements for urban and rural communities.[317] The Department also considered requiring translation of the Notice of Availability in the ''top 15'' languages to the extent that there are at least 200 LEP speakers for a particular language in the relevant state or states. This standard would require fewer language translations for states such as Montana (notices in only 11 languages) and Wyoming (notices in only 4 languages). However, we declined to institute this alternative so as to not include an arbitrary cut-off, such as 200 LEP speakers, into the proposed regulation, and instead provided covered entities alternatives to the requirement to provide a Notice of Availability. We seek comment on this approach.

Proposed § 92.11(c) requires the notice be provided on an annual basis to participants, beneficiaries, enrollees (including late and special enrollees), and applicants, and upon request at any time. Similar to the notice of nondiscrimination requirement in proposed § 92.10, the Notice of Availability would also be required to be provided at a conspicuous location on the covered entity's health program or activity website, if it has one, and in clear and prominent physical locations where it is reasonable to expect individuals seeking service from the health program or activity to be able to read or hear the notice. This notice must also be accessible to individuals with disabilities who require auxiliary aids and services. These requirements would pose a relatively low-cost burden for covered entities and ensure information about language assistance services is provided in locations that are highly visible and visited by members of the public.

In response to concerns raised by stakeholders regarding the lack of specificity in the term ''significant publications or significant communications,'' rather than providing a general class of documents for which the notice must be provided (*e.g.,* ''significant documents''), we propose in paragraph (c)(5) to provide a list of specific electronic and written communications that must be accompanied by the Notice of Availability. After consideration, we believe this approach is more tailored to the needs of LEP individuals and individuals with disabilities when accessing important information regarding a range of health programs and activities and provides the level of specificity sought by covered entities.

We propose to require the Notice of Availability to accompany the following documents: (i) the notice of nondiscrimination required by proposed § 92.10 of this part; (ii) the notice of privacy practices required by the implementing regulations for the Health Insurance Portability and Accountability Act of 1996 [318] (HIPAA) at 45 CFR 164.520; (iii) application and intake forms; (iv) notices of denial or termination of eligibility, benefits, or services, including Explanations of Benefits (EOBs), and notices of appeal and grievance rights; (v) communications related to a person's rights, eligibility, benefits, or services that require or request a response from a participant, beneficiary, enrollee, or applicant; (vi) communications related to a public health emergency; (vii) consent forms and instructions related to medical procedures or operations, medical power of attorney, or living will (with an option of providing only one notice for all documents bundled together); (viii) discharge papers; (ix) complaint forms; and (x) patient and member handbooks.

We considered limiting the requirement to include the notice of availability of language assistance services and auxiliary aids in EOBs to only those EOBs that notify individuals of a cost-sharing responsibility. In other words, an EOB showing that services have been fully covered and that the patient has no further financial responsibility for the service (including co-payment, co-insurance, disallowed cost for which a provider may bill the patient, or other charge) would not constitute a notice of a denial or termination of benefits or services, and therefore would not be required to include the notice of availability. However, we determined that the burden of administering a process to assess which EOBs fall under the requirement and then include the notice only to those EOBs would be more burdensome than the alternative of including the notice in all EOBs. We invite comment as to whether this is the most appropriate approach, balancing the burden of providing notices of availability with all EOBs against the burdens associated with determining which EOBs must include the notice.

To further alleviate the potential burdens of subsection (d), we propose alternative, optional methods by which a covered entity may be deemed in compliance with proposed § 92.11(a). First, pursuant to proposed paragraph (d)(1), a covered entity shall be deemed in compliance with respect to an individual if the covered entity, on an annual basis: provides individuals, in their primary language and through any appropriate auxiliary aids and services, the option to opt out of receipt of the Notice of Availability; does not condition receipt of any aid or service on the decision to opt out; informs the individual of their right to receive the notice upon request in their primary language and through any appropriate auxiliary aids and services, and that opting out of receiving the notice is not a waiver of their right to receive language assistance services and any appropriate auxiliary aids and services as required by this part in their primary language and through any appropriate auxiliary aid or service; documents, on an annual basis, the individual's decision to opt out; and does not treat a non-response from an individual as a decision to opt out. Second, proposed paragraph (d)(2) provides that a covered entity shall be deemed in compliance with this section with respect to an individual if the covered entity documents the individual's primary language and any appropriate auxiliary aids and services and either provides all materials and communications in that individual's primary language and through any appropriate auxiliary aids and services, or provides the notice required by § 92.11(a) in that individual's primary language and through any appropriate auxiliary aids

[315] 7 U.S.C. 2020(e)(1)(B).

[316] 7 CFR 272.4(b)(2); *see also* 65 FR 70143–44 (Nov. 21, 2000) (discussing access to households with language access barriers).

[317] *See* 43 FR 47846, 47849 (Oct. 17, 1978) (''Although many commenters suggested adoption of a uniform percentage test, the Department rejected that concept because it could require bilingual service in sparsely populated areas where only two or three households are of a single language minority. Conversely, in densely populated low-income areas, hundreds of single-language areas and hundreds of single-language minority households could be an insufficient number to meet the percentage test required for bilingual services.'').

[318] Public Law 104–191, 100 Stat. 2548 (1996).

and services in all communications that are identified in § 92.11(c)(5).

In drafting these proposed provisions, the Department considered alternative approaches, such as requiring covered entities to provide the Notice of Availability at every interaction with a participant or beneficiary, or simply adopting the approach in the 2016 Rule. However, the unnecessary duplication of requiring covered entities to provide a Notice of Availability at every interaction with a beneficiary outweighs any potential benefit, and simply adopting the approach in the 2016 Rule would not address confusion regarding covered entities' legal obligations related to the term ''significant documents'' or concerns expressed about financial burden. We also considered an opt-in approach whereby covered entities would offer individuals an opportunity to opt in to receiving a copy of a covered entity's Notice of Availability. However, given the varying nature of Section 1557 covered entities, it would be difficult to specify when covered entities must offer individuals the opportunity to opt in to receiving its Notice of Availability. More importantly, we believe that the information contained in the proposed Notice of Availability is indispensable to the receipt of services free from discrimination. Accordingly, by providing an opt-out option, proposed § 92.11 attempts to balance the potential financial burden on covered entities of providing the Notice of Availability against the essential need for individuals to understand their rights and therefore would limit the burden without jeopardizing individual access to information.

The Department believes the approach in this proposed rule emphasizes the importance of notifying individuals of their civil rights and makes clear the requirements for notifying individuals about important civil rights requirements. The Department also believes the proposed rule addresses concerns raised by covered entities in response to the 2016 Rule requirements.

We seek comment on whether the Notice of Availability requirement as proposed is practical and responsive to concerns raised regarding the 2016 and 2020 Rules, including the sufficiency of the content of the Notice of Availability and requirements on when and where covered entities must provide the notice. We also seek comment as to whether it adequately addresses the specific concerns raised regarding the burdens associated with the 2016 Rule requirements by providing a list of specific documents with which the Notice of Availability must be provided. Additionally, we seek comment on how to best provide the Notice of Availability to individuals with disabilities to ensure they know how to request and receive relevant materials and documents in formats that meet their disability-related needs, and whether covered entities should be required to provide the Notice of Availability in sign language. Similarly, we seek comment on how to best provide the Notice of Availability to LEP individuals, including LEP individuals with disabilities, to ensure they know how to request and receive language assistance services and auxiliary aids and services to provide meaningful access to relevant materials and documents. We also seek comment on whether the list of communications proposed adequately captures the documents for which LEP individuals and individuals with disabilities should receive the Notice of Availability. We further seek comment on the anticipated costs to covered entities of various sizes to comply with the proposed requirements.

**Data Collection**

Commenters on the 2015 NPRM requested that OCR require covered entities to collect additional data, beyond those required by the referenced statutes and their regulations, on race, ethnicity, language, sex, gender, gender identity, sexual orientation, disability, and age, in part so that such entities could better plan how to meet the needs of those populations.[319] We considered including a provision in the rule requiring covered entities to collect additional civil rights data given the vital role data can play in ensuring civil rights compliance and the fact that such data remain largely uncollected for many demographic subgroups. At this time, however, we are not including such a provision but are soliciting feedback and comments on such data collection to inform a final rule and OCR's overall civil rights work.

The COVID–19 pandemic serves as an example of the importance of access to data collection in addressing harm at the earliest possible stages of a public health emergency in order to provide effective and lifesaving health care. In the early days of the COVID–19 pandemic, public health officials lacked the data necessary to gain a full picture of how the pandemic was impacting marginalized communities, prompting the publication of tools like the COVID Racial Data Tracker. The COVID Racial Data Tracker was created out of a collaboration between the COVID Tracking Project and the Boston University Center for Antiracist Research to gather racial and ethnic demographic data to understand the outbreak of COVID–19 and protect vulnerable communities.[320] Indeed, as the COVID–19 pandemic has highlighted, the lack of demographic data can make it challenging to determine where public health disparities are occurring and where to allocate resources such as COVID–19 testing and vaccinations.[321] These issues have civil rights implications. Just as nearly all of the provisions in this proposed rule benefit Section 1557 covered entities as much as they benefit the public, a data collection provision has the potential to benefit state and local health departments because they would be able to use the data they collect to reveal existing health disparities and proactively allocate and disseminate the resources necessary to address public health disparities.

Since the beginning of the COVID–19 pandemic, the Federal Government has responded with several data collection resources—which can be used by Federal, State, territorial, and local governments alike—to provide a clearer picture of how COVID–19 is impacting communities across the country. Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' established the Interagency Working Group on Equitable Data with the goal of collecting more disaggregated data across Federal agencies to be better equipped to measure and advance equity through the work of every Federal agency.[322] Data that the Federal Government has recently made available can continue to be used to reveal and address long-existing health disparities. Some examples of health data the Federal Government is collecting include those in HHS' Protect Public Data Hub,[323] which is a secure data ecosystem for sharing, parsing, housing, and accessing COVID–19 data; CDC data

[319] 81 FR 31375, 31392–93 (May 18, 2016).

[320] *About the Racial Data Tracker, covidtracking.com, https://covidtracking.com/race/about* (last visited June 15, 2022).

[321] *See* Tom Simonite, *Covid Hits Minorities Hardest, But Data Often Doesn't Show It,* Wired Business (Aug. 24, 2020, 7:00 a.m.), *https://www.wired.com/story/covid-hits-minorities-hardest-data-doesnt-show/*; Laura Barron-Lopez et al., *Missing Data Veils Coronavirus Damage to Minority Communities,* Politico (June 14, 2020, 7:00 a.m.), *https://www.politico.com/news/2020/06/14/missing-data-veils-coronavirus-damage-to-minority-communities-316198.*

[322] 86 FR 7009 (Jan. 25, 2021).

[323] *HHS Protect Public Data Hub, https://protect-public.hhs.gov/* (last June 15, 2022).

on COVID–19 cases and deaths by state or territory; [324] those in the *HealthData.gov* COVID–19 Reported Patient Impact and Hospital Capacity by State Timeseries, which provides state-aggregated data for hospital utilization in a timeseries format; [325] and those in the *HealthData.gov* COVID–19 Diagnostic Laboratory Testing Time Series, which reports COVID–19 test results from over 1,000 U.S. laboratories and testing locations, including commercial and reference laboratories, public health laboratories, and other testing locations.[326] This is not an exhaustive list of the Federal Government's data collection activities, but merely identifies some examples of what has changed since the beginning of the COVID–19 pandemic.

When considering adding a data collection provision to this proposed rule, the Department contemplated what kind of additional data we might require covered entities to collect and from which covered entities the Department should collect such data. In addition to race, ethnicity, language, age, and disability, we considered requiring covered entities to collect data on sex, gender, gender identity, and sexual orientation from patients and health care providers. Some states and territories, including California and Washington, DC, currently require plans sold on their Health Insurance Exchanges to collect demographic data about enrollees' race and ethnicity, but not sexual orientation or gender identity.[327] In Colorado, a new state law will require issuers to offer a standardized ''Colorado Option'' plan on the State Exchange in 2023, which includes a requirement to offer a culturally responsive network of providers.[328] Additionally, the state's law requires issuers to attempt to collect demographic data, including race, ethnicity, disability status, sex, sexual orientation, and gender identity from their providers and the providers' front office staff.[329] The Department understands there may be concerns related to requiring covered entities to collect deeply personal data. On one hand, the access to such data can provide a clearer picture of disparities and gaps in patient outcomes and representation in the provision of care. On the other hand, some providers and patients are hesitant to provide data on their race, sexual orientation, or gender identity for fear of discrimination.[330] The Department recognizes the challenges associated with requiring covered entities to collect such data.

The Department believes that rather than codifying a specific set of data collection measures within this rulemaking, the Department—through OCR—is better positioned to create a dynamic and responsive civil rights data collection structure by using its existing authorities. OCR does have the authority to request compliance data from covered entities under its existing civil rights authorities, which we propose to codify for purposes of Section 1557 at proposed § 92.303(a) (incorporating by reference 45 CFR 80.6 with regard to recipients and State Exchanges) and proposed § 92.303(c) (with regard to the Department and Federally-facilitated Exchanges). Using our existing authorities would be similar to the Department of Education (ED)'s civil rights data collection process. Since 1968, ED's Office for Civil Rights has, without a regulatory standard for a recurring civil rights data collection, required its elementary and secondary education recipients to collect data [331] on the leading civil rights data indicators related to access and barriers to an educational opportunity from early childhood through 12th grade, disaggregated by race/ethnicity, sex, disability, and English Learner status.[332] By using existing authorities, the Department believes OCR will have the flexibility to be responsive to the critical health-related civil rights issues that may arise in the future.

We seek comment on this general approach, including whether covered entities are already collecting disaggregated demographic data in their health programs and activities and, if so, for which categories of data, through what systems, and at what cost. We also seek comment on how a civil rights data collection requirement could impact current data collection efforts, either positively or negatively. We also seek comment on whether the adoption of a regulatory standard for a recurring civil rights data collection would benefit civil rights enforcement, as well as how frequently the data should be submitted to OCR. We also seek comment on whether the data collection requirements should vary by type of entity, as recipients of Federal financial assistance include a variety of entities, including state and local agencies, health insurance issuers, health care providers, health care facilities and clinics, hospitals, federally qualified health centers, and health-related educational and training programs. Accordingly, we seek comment on which types of recipients (if any) should be covered; if recipients under a certain size should be exempt from the data collection requirement, and if so, should that be based on employee number, the number of beds (if relevant), or some other metric; what types of data should be collected; what definitions should be used; the potential costs associated with such a requirement; and the potential benefits of such a requirement.

**Subpart B—Nondiscrimination Provisions**

For the reasons described below, Subpart B of the proposed rule generally adopts certain regulatory provisions regarding specific discriminatory actions prohibited by the implementing civil rights statutes referenced in Section 1557(a): Title VI, Section 504, Title IX, and the Age Act.

**Discrimination Prohibited (§ 92.101)**

Proposed § 92.101(a) provides a general prohibition of discrimination on the basis of race, color, national origin, sex, age, or disability under any health program or activity to which Section 1557 or this part applies and provides additional detail regarding what constitutes discrimination on the basis of sex. Proposed paragraph (b) identifies some specific forms of prohibited discrimination.

Proposed paragraph (a)(1) provides the general prohibitions on discrimination under Section 1557 by restating the core objective of Section 1557: ensuring that covered entities do not discriminate on the basis of race, color, national origin, sex, age, or disability against any individual seeking

[324] *United States COVID–19 Cases and Deaths by State over Time, data.cdc.gov, https://data.cdc.gov/Case-Surveillance/United-States-COVID-19-Cases-and-Deaths-by-State-o/9mfq-cb36* (last updated June 15, 2022).

[325] *COVID–19 Reported Patient Impact and Hospital Capacity by State Timeseries, HealthData.gov, https://healthdata.gov/Hospital/COVID-19-Reported-Patient-Impact-and-Hospital-Capa/g62h-syeh* (last updated June 15, 2022).

[326] *COVID–19 Diagnostic Laboratory Testing (PCR Testing) Time Series, HealthData.gov, https://healthdata.gov/dataset/COVID-19-Diagnostic-Laboratory-Testing-PCR-Testing/j8mb-icvb* (last updated June 15, 2022).

[327] Markian Hawryluk, *Some Physicians Are Uneasy as Colorado Collects Providers' Diversity Data,* npr.org (April 25, 2022, 5:00 a.m.), *https://www.npr.org/sections/health-shots/2022/04/25/1094354537/colorado-doctor-diversity-data.*

[328] *Id.*

[329] *Id.*

[330] *Id.*

[331] ED's current authority to collect data comes from section 203(c)(1) of the Department of Education Organization Act (20 U.S.C. 3413(c)(1)) and is informed by the regulations implementing several of the civil rights statutes that it implements authorizing collection of data that are necessary to ensure compliance with civil rights laws within the jurisdiction of ED's OCR.

[332] 20 U.S.C. 3413(c)(1). *See also* 34 CFR 100.6(b), § 104.61, § 106.71; *Civil Rights Data Collection: Frequently Asked Questions,* U.S. Dep't of Educ., Office for Civil Rights, *https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/crdc.html* (last modified Apr. 14, 2021).

to participate in or receive the benefits of the covered entity's health program or activity. Consistent with Federal case law [333] and existing Federal civil rights enforcement,[334] the Department's proposed nondiscrimination protections prohibit discrimination based upon a person's actual or perceived race, color, national origin, sex, age, or disability.

Proposed paragraph (a)(2) clarifies that discrimination on the basis of sex includes discrimination on the basis of sex stereotypes; sex characteristics, including intersex traits; pregnancy or related conditions; sexual orientation; and gender identity.

The proposed inclusion of ''sex stereotypes'' codifies the Supreme Court's holding in *Price Waterhouse* v. *Hopkins* that discrimination on the basis of sex stereotypes is a form of sex discrimination.[335] As the Court there explained, ''we are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group,'' for ''[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.'' [336] The Supreme Court reiterated this principle in *Bostock,* explaining that ''an employer who fires both [a woman] and [a man] for failing to fulfill traditional sex stereotypes doubles rather than eliminates Title VII liability.'' [337]

We are proposing to include ''sex characteristics'' because discrimination based on anatomical or physiological sex characteristics (such as genitals, gonads, chromosomes, hormone function, and brain development/anatomy) is inherently sex-based. Discrimination on the basis of intersex traits is similarly prohibited sex discrimination because the individual is being discriminated against based on their sex characteristics. If their sex characteristics were different—*i.e.,* traditionally ''male'' or ''female''—the intersex person would be treated differently. Moreover, like gender identity and sexual orientation, intersex traits are ''inextricably bound up with'' sex,[338] and ''cannot be stated without referencing sex.'' [339] The DOJ has similarly concluded that *Bostock*'s reasoning applies to discrimination based upon intersex traits.[340]

The proposed inclusion of ''pregnancy or related conditions'' is consistent with the longstanding interpretation of sex discrimination under Title IX, including the Department's Title IX implementing regulation.[341]

The proposed inclusion of ''sexual orientation'' and ''gender identity'' is consistent with the Supreme Court's reasoning in *Bostock.* As explained in the Department's Bostock Notification, the Court's reasoning applies to Title IX and, by extension, to Section 1557.[342] Given the similarity in nondiscrimination language between Title VII and Title IX, most Federal courts [343] that have addressed the issue, and the Departments of Justice and Education, have interpreted Title IX consistent with *Bostock's* reasoning.[344]

The *Franciscan Alliance* court concluded that the 2016 Rule's definition of ''sex'' as including ''gender identity'' was contrary to Section 1557 because ''Title IX and Congress' incorporation of it in [Section 1557 of] the ACA unambiguously adopted the binary definition of sex.'' [345] The Department disagrees. In *Bostock,* the Supreme Court held that the prohibition on discrimination ''because of . . . sex'' under Title VII covers discrimination on the basis of gender identity and sexual orientation even *assuming* that ''sex'' refers ''only to biological distinctions between male and female.'' [346] Title IX and Section 1557 prohibit discrimination ''on the basis of sex.'' [347] Because their statutory prohibitions against sex discrimination are similar, the Supreme Court and other Federal courts consistently look to interpretations of Title VII to inform Title IX.[348] Thus, *Bostock's* discussion of the text of Title VII informs the Department's analysis of Title IX and Section 1557.

First, like Title VII, Title IX and Section 1557 apply to sex discrimination against an individual. Title VII states that it is unlawful for an

[333] *See Fogleman* v. *Mercy Hosp.,* 283 F.3d 561, 572 (3d Cir. 2002) (employee of hospital employer may pursue retaliation claim even if employer's perception that employee was Muslim is factually incorrect); *EEOC* v. *WC&M Enters.,* 496 F.3d 393, 400–01 (5th Cir. 2007) (national origin harassment of an Indian Muslim employee included harassment based on the employer's perception that he was an Arab Muslim); *Glenn* v. *Brumby,* 663 F.3d 1312, 1319 (11th Cir. 2011) (''An individual cannot be punished because of his or her *perceived* gender-nonconformity.'') (emphasis added); *Jones* v. *UPS Ground Freight,* 683 F.3d 1283 (11th Cir. 2012) (employer may still be liable for harasser's use of epithets associated with an ethnic or racial minority different than that of the plaintiff employee); *Estate of Lance* v. *Lewisville Indep. Sch. Dist.,* 743 F.3d 982, 991 (5th Cir. 2014) (''. . . [section] 504's reach extends not only to individuals who in fact have a disability, but also to individuals who are regarded as having a disability (whether or not that perception is correct)''); *but cf. El* v. *Max Daetwyler Corp.,* 451 F. App'x 257 (4th Cir. 2011) (per curiam opinion affirmed district court's order granting employer's motion to dismiss because Title VII does not ''contain an explicit provision for the protection of persons who are merely perceived to be a part of a protected class'').

[334] *See* U.S. Equal Emp't Opportunity Comm'n, *EEOC Enforcement Guidance on National Origin Discrimination,* n.16 (Nov. 18, 2016), *https://www.eeoc.gov/laws/guidance/national-origin-guidance.cfm#ftn16* (Title VII prohibits employer actions that have the purpose or effect of discriminating against persons because of their real or *perceived* race, national origin, or association with a particular religion) (emphasis added); *Housing Discrimination and Persons Identified as Lesbian, Gay, Bisexual, Transgender, and/or Queer/Questioning (LGBTQ),* U.S. Dep't of Hous. & Urban Dev., *https://www.hud.gov/program_offices/fair_housing_equal_opp/housing_discrimination_and_persons_identifying_lgbtq* (last updated Feb. 1, 2022) (''Persons who identify as LGBTQ and believe they have experienced housing discrimination because of their actual or *perceived* sexual orientation or gender identity can assert their rights under the Fair Housing Act by filing a complaint with HUD.'') (emphasis added); *Race and National Origin Discrimination Frequently Asked Questions,* U.S. Dep't of Educ., *https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/race-origin.html* (last modified Jan. 1, 2020) (''Discrimination on the basis of race, color, national origin includes discrimination based on a person's actual or *perceived* race, color, national origin, ethnicity, or ancestry.'') (emphasis added).

[335] 490 U.S. 228, 250–51 (1989).

[336] *Id.; cf. U.S.* v. *Virginia,* 518 U.S. 515, 533 (1996) (in making classifications based on sex, states ''must not rely on overboard generalizations about the different talents, capacities, or preferences of males and females'').

[337] *Bostock* v. *Clayton Cty.,* 140 S. Ct. 1731, 1742–43 (2020).

[338] *Id.* at 1742.

[339] *Grimm* v. *Gloucester Cty. Sch. Bd.,* 972 F.3d 586, 608 (4th Cir. 2020) (quoting *Whitaker* v. *Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.,* 858 F.3d 1034, 1051 (7th Cir. 2017)).

[340] *See* Memorandum from Kristen Clarke, Assistant Att'y Gen., Civil Rights Div., U.S. Dep't of Justice, to Dep't of Justice Office of Justice Programs, Office of Cmty. Oriented Policing Servs., Office on Violence Against Women, & Money Laundering & Asset Recovery Section, 2 (Mar. 10, 2022), *https://www.justice.gov/crt/page/file/1481776/download;* U.S. Dep't of Justice, Title IX Legal Manual, Title IX Cover Addendum post-Bostock (updated Aug. 12, 2021), *https://www.justice.gov/crt/title-ix#Bostock.*

[341] *See Conley* v. *Northwest Fla. State Coll.,* 145 F. Supp. 3d 1073 (N.D. Fla. 2015). *See also* 45 CFR 86.21(c)(2), (3); § 86.40(b)(1), (4), (5); § 86.51(b)(6); § 86.57(b)(d) (Title IX regulation).

[342] 86 FR 27984 (May 25, 2021).

[343] *Doe* v. *Snyder,* No. 21–15668, 2022 WL 711420, at *9 (9th Cir. Mar. 10, 2022); *Grimm* v. *Gloucester Cty. Sch. Bd.,* 972 F.3d at 616; *Koenke* v. *Saint Joseph's Univ.,* No. 19–cv–4731, 2021 WL 75778, at *2 (E.D. Pa. Jan. 8, 2021); *Doe* v. *Univ. of Scranton,* No. 3:19–cv–01486, 2020 WL 5993766, at *11 n.61 (M.D. Pa. Oct. 9, 2020); *but see Neese* v. *Becerra,* No. 2:21–cv–00163–Z, 2022 WL 1265925, at *14 (N.D. Tex. Apr. 26, 2022) (denying motion to dismiss, finding ''at this stage of litigation, the approved tools of textualism do not support'' application of *Bostock* to ''Title IX—and by extension Section 1557'').

[344] Karlan Memo, *supra* note 46; *86 FR 32637 (June 22, 2021) (Department of Education).*

[345] *Franciscan All., Inc.* v. *Burwell,* 227 F. Supp. 3d 660, 689 (N.D. Tex. 2016).

[346] 140 S. Ct. at 1744.

[347] 20 U.S.C. 1681(a); 42 U.S.C. 18116.

[348] *See, e.g., Franklin* v. *Gwinnett Cty. Pub. Sch.,* 503 U.S. 60, 75 (1992); *Jennings* v. *Univ. of N.C.,* 482 F.3d 686, 695 (4th Cir. 2007); *Gossett* v. *Oklahoma ex rel. Bd. of Regents for Langston Univ.,* 245 F.3d 1172, 1176 (10th Cir. 2001).

employer ''to fail or refuse to hire or to discharge any *individual,* or otherwise to discriminate against any *individual*'' regarding their ''compensation, terms, conditions, or privileges of employment, because of such *individual's* race, color, religion, sex, or national origin.'' [349] The *Bostock* Court focused on this feature of Title VII in reaching its holding.[350] Similarly, Title IX states that ''no *person* in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.'' [351] Furthermore, Section 1557 provides that ''an *individual* shall not, on the ground prohibited [under Title VI, Title IX, the Age Act, or Section 504] be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance.'' [352]

Second, Title IX's ''on the basis of'' sex language is sufficiently similar to ''because of'' sex under Title VII as to be considered interchangeable. In *Bostock* itself, the Supreme Court described Title VII's language that way: ''[I]n Title VII, Congress outlawed discrimination in the workplace on the basis of race, color, religion, sex, or national origin.'' [353] The *Bostock* Court concluded that Title VII's prohibition of discrimination ''because of'' sex includes discrimination because of sexual orientation and transgender status, finding that when an employer discriminates against employees for being gay or transgender, ''the employer must intentionally discriminate against individual men and women in part because of sex.'' [354] Indeed, the Court clearly held that it is ''impossible to discriminate against a person'' for being gay or transgender ''without discriminating against that individual on the basis of sex.'' [355]

The same reasoning in *Bostock* supports the interpretation that Title IX's prohibition of discrimination ''on the basis of'' sex, and, relatedly, that Section 1557's prohibition on discrimination ''on the ground prohibited under Title IX'' prohibits covered entities from discriminating against an individual based on that person's sexual orientation or transgender status. After considering the text of Title IX and Section 1557, Supreme Court case law, and developing jurisprudence in this area, the Department has determined that the best reading of Title IX's prohibition on discrimination ''on the basis of sex'' and Section 1557's prohibition on discrimination ''on the ground prohibited under Title IX'' is that it includes discrimination on the basis of gender identity and sexual orientation. Should there be any ambiguity read into the statutory text of Title IX or Section 1557 with regard to this issue, the Department would nonetheless adopt this interpretation given the statutory objectives of the civil rights statutes and the importance of ensuring that individuals are able to receive health care free from discrimination.

Proposed paragraph (b) identifies several specific forms of prohibited discrimination under Section 1557. It does so by incorporating by reference the specific prohibitions on discrimination in the regulations implementing each civil rights statute referenced in Section 1557's statutory text. Even though Section 1557 provides an independent basis for the regulation of discrimination in covered programs and activities, this proposed section expressly adopts the specific prohibitions on discrimination found in the implementing regulations of the referenced antidiscrimination statutes. We believe this approach is appropriate in light of Section 1557's express adoption of the same language used in the four referenced statutes to describe the nature of the prohibited conduct—namely, causing an individual to ''be excluded from participation in, be denied the benefits of, or be subjected to discrimination under'' a specified program or activity. Incorporating by reference the regulations that have long described certain forms of such conduct under those specified statutes is consistent with the ACA and provides clarity, while not including redundant text in this rule. The text proposes to direct the reader to the ''prohibitions on discrimination'' in sections of the Title VI, Section 504, Title IX (subparts C and D), and Age Act (subpart B) regulations. This is similar to the approach taken in the 2016 Rule but, rather than citing specific provisions, we propose a general reference.

Though the 2020 Rule purported to clarify covered entities' Section 1557 obligations, it sought to do so through general statements. The 2020 Rule, at § 92.2, generally provides the nondiscrimination requirements of Section 1557 by restating the statutory language of 42 U.S.C. 18116(a), followed by stating that the grounds prohibited are the grounds found in the Title VI, Title IX, Section 504, and Age Act statutes. This approach has caused confusion by eliminating guidance as to certain specific discriminatory actions that one generally finds in an implementing regulation for a civil rights statute. The Department believes it is helpful for covered entities and protected individuals to have additional clarity regarding some common, specific prohibitions under Section 1557.

We believe the proposed approach is the most reasonable reading of Section 1557's direction that ''an individual shall not . . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title (or amendments).'' [356] Because this language is adapted from the four referenced statutes, it is reasonable and appropriate to look to those statutes' implementing regulations to further clarify what it means to discriminate on the grounds prohibited by those statutes. Rather than restating each of the specific prohibitions on discrimination under each implementing regulation, we propose that § 92.101(b) simply cross-reference the implementing regulations of these referenced civil rights statutes. Note that this proposed rule does not in any way limit or impact the interpretation of those statutes.

Proposed paragraph (b)(1)(i) specifically refers to recipients of Federal financial assistance and State Exchanges; proposed paragraph (b)(1)(ii) refers to the Department's health programs and activities, including Federally-facilitated Exchanges. Under both of these paragraphs, covered entities would be prohibited from the discriminatory actions found in the applicable sections of the Title VI, Title IX, and Age Act implementing regulations, found at 45 CFR parts 80, 86 (subparts C and D), and 91 (subpart B), respectively. For the specific discriminatory actions provided for in Section 504 implementing regulation, recipients and State Exchanges will look

[349] 42 U.S.C. 2000e–2(a)(1) (emphasis added).

[350] *Bostock,* 140 S. Ct. at 1740–41 (''[The statute] tells us three times—including immediately after the words ''discriminate against''—that our focus should be on individuals.'').

[351] 20 U.S.C. 1681(a) (emphasis added).

[352] 42 U.S.C. 18116 (emphasis added).

[353] *Bostock,* 140 S. Ct. at 1737; *see also Meritor Sav. Bank, FSB* v. *Vinson,* 477 U.S. 57, 64 (1986) (''[W]hen a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex.'') (emphasis added).

[354] *Bostock,* 140 S. Ct. at 1740–43.

[355] *Id.* at 1741.

[356] 42 U.S.C. 18116(a).

to the implementing regulation at 45 CFR part 84 (federally funded), and the Department will look to the implementing regulation at 45 CFR part 85 (federally conducted).

Proposed paragraph (b)(2) provides that the enumeration of specific forms of discrimination in paragraph (b) of this section does not limit the general application of the prohibition in proposed paragraph (a) of this section. Although some of these provisions would articulate specific forms of prohibited discrimination that have not otherwise been articulated under some of the underlying statutes referenced in Section 1557, these provisions are included to ensure parity across all prohibited bases of discrimination under Section 1557 with regard to covered entities' health programs and activities.

The 2016 Rule included, at former § 92.101(b)(3)(ii) and (iii), provisions specifically related to prohibited discrimination on the basis of sex related to criteria and methods of administration and selection of facility sites and locations that have the effect of discriminating on the basis of sex or the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity on the basis of sex. The 2020 Rule removed these paragraphs. The 2016 Rule language is similar to language found in the implementing regulations for Title VI, Section 504, and the Age Act.[357] The Department has determined not to include a similar provision here as the Department believes it is important to preserve—and not expand—the longstanding treatment of disparate impact in the referenced statutes' implementing regulations. We seek comment on this approach, including whether a provision similar to that included in the 2016 Rule is necessary, and whether it should be limited to discrimination on the basis of sex, or should also include each of the enumerated grounds covered under Section 1557's statutory prohibition on discrimination.

**Subpart C—Specific Applications to Health Programs and Activities**

Because of Section 1557's unique application to health programs and activities, Subpart C provides additional specificity regarding nondiscrimination requirements in this setting. The provisions in this subpart are responsive to the nature and importance of health care, health insurance, and related decision-making as it impacts individuals and communities protected by Section 1557's prohibition of discrimination. These provisions are intended to provide clear instruction to covered entities and are informed by OCR's stakeholder outreach and experience in both enforcement and in providing technical assistance.

**Meaningful Access for Limited English Proficient Individuals (§ 92.201)**

Proposed § 92.201 effectuates Section 1557's prohibition on national origin discrimination as it is applied to LEP individuals in covered health programs and activities. For LEP individuals, the lack of proficiency in English and the use of non-English languages is often tied to their national origin. It is well-established that an entity may violate Title VI and its implementing regulation by failing to take reasonable steps to provide meaningful access to LEP individuals.[358] The provision of free and effective language assistance services to LEP individuals is essential to ensure compliance with nondiscrimination laws.

Proposed paragraph (a) provides that covered entities ''must take reasonable steps to provide meaningful access to each limited English proficient individual eligible to be served or likely to be directly affected by its health programs and activities.'' This language is nearly identical to the 2016 Rule at former § 92.201(a), which required a covered entity to take reasonable steps to provide meaningful access to each LEP individual ''eligible to be served or likely to be encountered.'' [359] The Department is proposing to revise this language slightly to include individuals likely to be ''directly affected'' rather than ''encountered.'' This language is consistent with the 2003 HHS LEP Guidance [360] and OCR resolution agreements,[361] and we believe this language provides more clarity for covered entities regarding the individuals for whom reasonable steps must be taken. As the Department has advised in the past, ordinarily, persons eligible to be served or likely to be directly affected by a recipient's program are those persons who are in the covered entity's service area, and who either are eligible for the covered entity's benefits or services, or otherwise might be directly affected by such an entity's conduct. For example, a parent seeking health services for a child would be seen as directly affected by a covered entity's policies and practices.[362]

The language of the 2020 Rule differs from the 2016 Rule in that it requires reasonable steps to ensure meaningful access ''to programs or activities by limited English proficient individuals,'' rather than ''each'' LEP individual.[363] The preamble to the 2020 Rule explains this change by arguing that the 2016 Rule's ''stringent requirement . . . could potentially be interpreted to require a covered entity to provide language assistance services to every LEP individual it comes into contact with.'' [364] The plain language of the 2016 Rule in fact required that covered entities must take *reasonable steps* to provide meaningful access to each individual with limited English proficiency eligible to be served or likely to be encountered in its health programs and activities.[365] For example, a surgeon would likely determine that it is a reasonable step to provide an interpreter when discussing the risks and aftercare of a particular procedure with an LEP individual in order to afford that individual meaningful access; however, a hospital may determine that reasonable access can be provided via sight translation of a generic brochure for an LEP patient rather than providing a fully translated version. This standard does not impose a significant burden on covered entities, as it does not mandate that every LEP individual receive language services,

[357] 45 CFR 80.3(b)(2), (3) (Title VI); § 84.4(b)(4), (5) (Section 504); § 90.12.(b) (Age Act).

[358] *See, e.g., Lau* v. *Nichols,* 414 U.S. 563, 566 (1974) (interpreting Title VI and its implementing regulations to require a school district with students of Chinese origin with limited English proficiency to take affirmative steps to provide the students with a meaningful opportunity to participate in federally funded educational programs); Dep't of Health, Educ., & Welfare, Identification of Discrimination and Denial of Services on the Basis of National Origin, 35 FR 11595 (July 18, 1970); E.O. 13166, Improving Access to Services. for Persons with Limited English Proficiency, 65 FR 50121 (Aug. 16, 2000) (directing Federal agencies that extend assistance subject to the requirements of Title VI to publish guidance for their respective recipients clarifying the obligation to provide language services to LEP individuals); Dep't of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 FR 41455, 41457 (June 18, 2002); Dep't of Educ., Office for Civil Rights & Dep't of Justice, Civil Rights Div., Dear Colleague Letter: English Learner Students and Limited English Proficient Parents (Jan. 7, 2015), *https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf.*

[359] Former 45 CFR 92.201(a).

[360] 68 FR 47311, 47314 (Aug. 8, 2003).

[361] *See, e.g.,* Voluntary Resolution Agreement between U.S. Dep't Health & Human Servs., Office for Civil Rights & Pa. Dep't of Human Servs. (2019), *https://www.hhs.gov/sites/default/files/hhs-padhs-vra.pdf.*

[362] *See, e.g.,* 65 FR 52762, 51767–68 (Aug. 30, 2000).

[363] 85 FR 37160, 37245 (June 19, 2020); 45 CFR 92.101(a).

[364] 85 FR 37210.

[365] 81 FR 31375, 31470 (May 18, 2016).

but rather that covered entities at a minimum conduct a reasonable steps evaluation for each LEP individual. However, the Department notes that, as the availability of telephonic interpreters increases, the evaluation of the reasonableness of providing language services shifts.

Taking reasonable steps to assess and meet the needs of each LEP individual eligible to be served or likely to be directly affected by the covered entity's health program or activity is important to ensure compliance with both Title VI and Section 1557. The need for a case-by-case determination is particularly important in the area of health care. As noted in the preamble to the 2016 Rule,

> [S]afe and quality health care requires an exchange of information between the health care provider and patient for the purposes of diagnoses, treatment options, the proper use of medications, obtaining informed consent, and insurance coverage of health-related services, among other purposes. This exchange of information is jeopardized when the provider and the patient speak different languages and may result in adverse health consequences and even death. Indeed, the provision of health care services, by its 'very nature[,] requires the establishment of a close relationship with the client or patient that is based on sympathy, confidence and mutual trust,' which cannot be established without effective communication.[366]

Ensuring accurate, timely, and high-quality communication within the health care context is particularly important to LEP individuals and their families, who can be put in danger by not understanding a physician or other health care provider and the health protocols those individuals may prescribe. For example, an LEP parent or guardian may leave a doctor's office misunderstanding how to properly care for their child, putting the well-being of the child at risk due to miscommunication between the parent or guardian and the doctor regarding the health details of the child. Vigorous communication standards are extremely important in helping to minimize the health care risks LEP people face in the health care system, including lower rates of outpatient follow up, poor medication adherence, and a lack of understanding of diagnosis and discharge instructions.[367] Nothing has changed in this regard since the publication of the 2016 Rule; rather, the COVID–19 pandemic has demonstrated how critical meaningful access to health programs and activities is for the health and well-being of LEP individuals. A recent study documented the unique challenges faced by LEP individuals during the COVID–19 pandemic. The authors explained that factors like under-interpretation of complex conversations, non-universal use of interpreters, fewer conversations throughout the day with staff, not receiving important medical paperwork in their native language, and being separated from social support networks that often assist with the navigation of health care systems exacerbated these challenges for LEP individuals under the social isolation of inpatient care settings during the strict COVID–19 no visitation policies.[368]

Proposed paragraph (b) states that language assistance services required under paragraph (a) must be provided free of charge, be accurate and timely, and protect the privacy and independent decision-making ability of an LEP individual. This provision is similar to those included in the 2016 Rule at former § 92.201(c) and the 2020 Rule at § 92.101(b)(2) and is consistent with longstanding Title VI requirements and the HHS LEP Guidance.[369] The Department reminds states that they have the option to claim Medicaid reimbursement for the cost of interpretation services, either as medical-assistance or administration related expenditures.[370]

Proposed paragraph (c) provides specific requirements for interpreter and translation services. Proposed paragraph (c)(1) states that when interpreter services are required under this part, a covered entity must offer a qualified interpreter. Proposed paragraph (c)(2) provides that when translation services are required under this part, a covered entity must use a qualified translator. These terms are defined in the definitions section at proposed § 92.4.

Proposed paragraph (c)(3) addresses the use of machine translation by covered entities. Machine translation, which can involve speech-based machine translation to facilitate patient-provider communication as well as text-based machine translation to develop multilingual health materials, is increasingly being used as a method to assist communication in the health care setting and increase access to in-language health resources.[371] While the technology behind machine translation has improved in accuracy, the possibilities of significant consequences from inaccurate translation continue to exist.[372] During the COVID–19 pandemic, several states and some territories received complaints from LEP individuals because they were unable to sign up for COVID–19 vaccines on websites using machine translation or found translated information confusing because of inaccuracies in some translations.[373] The prevalence of inaccuracies was highlighted in a recent literature review of articles discussing machine translation in the health care context, which found that no matter the language or form of machine translation, all studies indicated error rates so high as to be ''unacceptable for actual deployment in health settings.'' [374]

The Department proposes regulatory language requiring a covered entity that uses machine translation to have translated materials reviewed by a qualified human translator when the underlying text is critical to the rights, benefits, or meaningful access of an LEP

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[366] *Id.* at 31413.

[367] U.S. Dep't Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., Guide to Preventing Readmissions Among Racially and Ethnically Diverse Medicare Beneficiaries, p. 4 (Sept. 2015), *https://essentialhospitals.org/wp-content/uploads/2016/01/OMH_Readmissions_Guide.pdf.*

[368] Natale K. Kucirek et al., *Stories from COVID–19 Reveal Hospitalized Patients with Limited English Proficiency Have Always Been Uniquely Prone to Social Isolation,* 36 J. of General Internal Med. 786, 789 (2021), *https://doi.org/10.1007/s11606-020-06383-z.*

[369] 68 FR 47316.

[370] *See Translation and Interpretation Services,* Ctrs. for Medicare & Medicaid Servs., *https://www.medicaid.gov/medicaid/financial-management/medicaid-administrative-claiming/translation-and-interpretation-services/index.html* (last visited June 15, 2022).

[371] Kristin N. Dew et al., *Development of Machine Translation Technology for Assisting Health Communication: A Systematic Review,* 85 J. of Biomedical Informatics 56, 57 (2018), *https://reader.elsevier.com/reader/sd/pii/S1532046418301448?token=D92E78CBB86826ADC4834 79DED4B8E8442AE7763 0BCCB53F5385AE5AD2452E 7FFC803B8CBA43AC533 A509E3F977291BC&originRegion=us-east-1&originCreation=20220615184038.*

[372] *See* Wenxiu Xie et al., *Predicting Risks of Machine Translations of Public Health Resources by Developing Interpretable Machine Learning Classifiers,* 18 Int. J. Environ. Res. Pub. Health 8789 (2021), *https://www.mdpi.com/1660-4601/18/16/8789/htm*; Lucas N. Vieira et al., *Understanding the Societal Impacts of Machine Translation: A Critical Review of the Literature on Medical and Legal Use Cases,* 24 Info., Comm., & Soc'y 1515 (2020), *https://www.tandfonline.com/doi/full/10.1080/1369118X.2020.1776370;* Nicole Wetsman, *Google Translate Still Isn't Good Enough for Medical Instructions,* The Verge (Mar. 9, 2021), *https://www.theverge.com/2021/3/9/22319225/google-translate-medical-instructions-unreliable;* Breena R. Taira et al., *A Pragmatic Assessment of Google Translate for Emergency Department Instructions,* 36 J. Gen. Intern. Med. 3361 (2021), *https://link.springer.com/article/10.1007%2Fs11606-021-06666-z;* Mark P. Sendak et al., *A Path for Translation of Machine Learning Products into Healthcare Delivery,* EMJ Innov., Jan. 27, 2021, *https://emj.emg-health.com/wp-content/uploads/sites/2/2020/01/A-Path-for-Translation-of-Machine-Learning.....pdf;* Dew, *supra* note 371.

[373] Julie Zauzmer Weil, *DC Says Long-Awaited Translation of Vaccine Website Is Coming This Weekend,* Wash. Post (Apr. 9, 2021), *https://www.washingtonpost.com/local/coronavirus-vaccine-translation-spanish/2021/04/09/40ed126a-9942-11eb-962b-78c1d8228819_story.html.*

[374] Dew, *supra* note 371, at 64.

individual; when accuracy is essential; or when the source documents or materials contain complex, non-literal, or technical language.

We seek comment on the use of machine translation in health programs and activities generally, other possible approaches to address this issue, and whether there should be an exception to this provision to allow for the limited use of machine translation in exigent circumstances.

Proposed paragraph (d) addresses how the Director will evaluate compliance with this section. The 2015 NPRM in then-proposed § 92.201(b)(1) provided that the Director would evaluate a covered entity's compliance with meaningful access for LEP individuals by giving substantial weight to the nature and importance of the program or activity and the particular communication at issue.[375] The 2015 NPRM also identified five other relevant factors that the Director would consider.[376] In response to comments, the preamble to the 2016 Rule eliminated the list of five factors and articulated only one factor in former § 92.201(b)(2): whether a covered entity had developed and implemented an effective written language access plan appropriate to its circumstances.[377] Commenters suggested many other factors that could be included.[378] The preamble explained that including multiple illustrative factors in the regulatory text may create the erroneous impression that the Director will not consider other relevant factors, and trying to capture all possible factors could result in an unintentionally unworkable regulatory scheme.[379] Accordingly, the preamble to the 2016 Rule contains a lengthy list of factors that may be relevant in a particular case, including:

> the length, complexity, and context of the communication; the prevalence of the language in which the individual communicates among those eligible to be served or likely to be encountered by the health program or activity; the frequency with which a covered entity encounters the language in which the individual communicates; whether a covered entity has explored the individual's preference, if any, for a type of language assistance service, as not all types of language assistance services may work as well as others in providing an individual meaningful access to the covered entity's health program or activity; the cost of language assistance services and whether a covered entity has availed itself of cost-saving opportunities; and all resources available to the covered entity, including the entity's capacity to leverage resources among its partners or to use its negotiating power to lower the costs at which language assistance services could be obtained.[380]

At paragraph (d)(1), we propose that the Director shall evaluate, and give substantial weight to, the nature and importance of the health program or activity and the particular communication at issue, to the LEP individual. This is the same language as was included in the 2016 Rule.[381] Proposed paragraph (d)(2) provides that the Director shall take into account other relevant factors, including the effectiveness of the covered entity's written language access procedures for its health programs and activities, that the covered entity has implemented pursuant to proposed § 92.8(d) of this part. In this proposed regulation, we are not requiring a formal language access plan; however, we continue to strongly encourage covered entities to develop such plans, in concert with developing and implementing language access procedures required under proposed § 92.8(d), to be in a better position to meet their obligations to provide effective language services in a timely manner.

The proposed language contrasts with the 2020 Rule which, at § 92.101(b)(1), provides that the Director will assess how the covered entity balances four factors,[382] essentially adopting the ''four-factor analysis'' found in the HHS LEP Guidance.[383] The preamble to the 2020 Rule notes that ''some commenters believed that the four-factor analysis under § 92.101(b) is too broad, lacks clarity, does not ensure that translation and other language services are available under important medical circumstances, may require recipients to provide unnecessarily expensive services, and weakens recipient language access obligations to serve persons who speak infrequently encountered languages.'' [384] The 2020 Rule preamble states that OCR viewed the four-factor analysis as an appropriate way ''to allow flexibility for covered entities.'' [385]

During the four years that these provisions of the 2016 Rule were in effect, former § 92.201(a) was never challenged. However, the standard contained in the 2020 Rule has been challenged in Federal district court. In *Chinatown Service Center,* plaintiffs alleged that the 2020 Rule's replacement of the standard in former § 92.201(a) resulted in only a ''generalized duty'' to LEP individuals rather than a case-by-case review to ensure the covered entities take reasonable steps to provide each individual with limited English proficiency with necessary language assistance services.[386]

After reviewing and reconsidering comments received in response to the 2019 NPRM, we believe that the four-factor analysis is more appropriately described as a general framework for planning on a system-wide and site-level basis, but does not provide clarity as to what the covered entity's obligations are to a particular individual. The proposed rule applies the general obligation to take reasonable steps to provide meaningful access and focuses on the steps the covered entity must take for each individual in the health care setting.

The level of specificity we propose is especially important when addressing benefits or services with high importance or consequences such as those provided in the health care setting. This specificity helps guide a covered entity by supplying a framework that they can choose to use, while providing a covered entity an appropriate level of flexibility to determine how best to comply with statutory and regulatory obligations to provide meaningful access to LEP individuals. Therefore, while we have taken the four-factor analysis into consideration in formulating the specific provisions, we decline to include it in this proposed regulation. We seek comment on this approach.

Proposed paragraph (e) identifies restrictions on the use of certain persons to provide language assistance services for LEP individuals. This language is similar to that contained in the 2020 Rule at § 92.101(b)(4), with additional descriptors to ensure the best available and most accurate language assistance services in covered health programs and activities.[387] Proposed paragraph (e)(1) prohibits covered entities from requiring LEP individuals to provide, or pay for,

[375] 80 FR 54171, 54218 (Sept. 8, 2015).

[376] *Id.*

[377] 81 FR 31470.

[378] *Id.* at 31415.

[379] *Id.*

[380] *Id.* at 31416.

[381] Former 45 CFR 92.201(b)(1).

[382] *See* 85 FR 37245.

[383] 68 FR 47311, 47314 (Aug. 8, 2003) (suggesting, as a starting point for covered entities meeting their obligations, the balancing of four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs).

[384] 85 FR 37212.

[385] *Id.*

[386] *See Chinatown Serv. Ctr.* Compl., *supra* note 309.

[387] 85 FR 37246.

their own interpreters. Proposed paragraph (e)(2) provides for very limited situations in which an adult, not qualified as an interpreter, accompanying an LEP individual can serve as an interpreter. The first limited circumstance includes an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter for the LEP individual immediately available. For example, directly following a natural disaster such as an earthquake, a covered entity may temporarily rely on a non-qualified interpreter to help first responders provide services to LEP individuals during emergency response and recovery efforts. This is permitted only as a temporary measure while finding a qualified interpreter, and the qualified interpreter that arrives must confirm or supplement the initial communications with the accompanying adult.

In the second limited circumstance, an adult who is not qualified as an interpreter may also serve as an interpreter when: an LEP individual specifically requests that the accompanying adult interpret or facilitate communication; the accompanying adult agrees to provide such assistance; the request and agreement by the accompanying adult is documented; and reliance on that adult for such assistance is appropriate under the circumstances. When considering whether the reliance on such an adult to interpret without confirming or supplementing the interpretation is appropriate, the covered entity should consider the accompanying adult's language proficiency in both English and the primary language of the LEP individual; the possibility of bias; whether the individual is an interested party, such as in situations of domestic violence; and whether the accompanying adult helps the covered entity better understand the LEP individual. Covered entities should also keep in mind that untrained ''interpreters'' are more likely to make errors, violate confidentiality, and increase the risk of poor outcomes.[388] If the covered entity is unable to make the required assessment, relying on the accompanying adult is inappropriate.

Proposed paragraph (e)(3) prohibits a covered entity from relying on a minor child to interpret or facilitate communication, except as a temporary measure while finding a qualified interpreter in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter for the LEP individual immediately available—for example, directly following a serious car accident where, due to the nature of the injuries sustained, an LEP individual's critical care is a priority. Once the qualified interpreter has arrived, they must confirm or supplement the initial communications with the minor child. The use of children as interpreters raises the same concerns as those of an accompanying adult who is not qualified as an interpreter, but also poses other problems including exposing children to complex health care interactions for which they are not developmentally prepared, upsetting a family power dynamic, causing embarrassment, and conveying incorrect or incomplete information.[389]

Proposed paragraph (e)(4) prohibits reliance on staff other than qualified interpreters, qualified translators, or qualified bilingual or multilingual staff to communicate directly with LEP individuals.

Proposed paragraph (f) addresses standards for video remote interpreting (VRI) and is identical to former § 92.201(f) in the 2016 Rule.[390] The preamble to that rule states the purpose of developing VRI standards was to address concerns that the use of this technology may result in less comprehensible communication. The 2016 Rule preamble also explains that the VRI standards are designed to achieve parity with the regulation in the disability rights context.[391] These standards closely parallel those standards set forth in proposed § 92.202 regarding effective communication for individuals with disabilities, which, similar to the 2016 Rule, relies on standards in Title II of the ADA for the use of sign language interpreters.

The 2020 Rule does not address VRI services. The preamble explains that in place of VRI standards, the final rule adopts the four-factor analysis ''which will help covered entities balance competing considerations related to VRI quality standards.'' [392] The 2020 Rule RIA states that ''the burden of requiring covered entities to provide video technology training and utilize expensive software does not appear to be justified based on minimal benefit to language speakers who can effectively communicate when there is a clear audio transmission through the remote interpreting service.'' [393] The Department disagrees with this assessment. Performance standards are necessary so that VRI technologies do not result in ineffective communication. The plain terms of this provision do not require a covered entity to provide VRI but rather ensure that when such services are used, they must meet a quality standard.

Proposed paragraph (g) sets forth standards for audio remote interpreting services. Those standards, which are likewise important in order to have meaningful communication, are identical to those in the 2020 Rule at § 92.101(b)(3)(iii).[394]

Proposed paragraph (h) states that nothing in this section shall be construed to require an LEP individual to accept language assistance services. Identical language is contained in the 2020 Rule at § 92.101(c), and the 2016 Rule at former § 92.101(g).[395]

**Effective Communication for Individuals With Disabilities (§ 92.202)**

Proposed § 92.202 addresses requirements related to providing effective communication for individuals with disabilities. The 2020 Rule at § 92.102 and the 2016 Rule at former § 92.202 contain substantially the same requirements as this proposed section.

In proposed paragraph (a), we require a covered entity to take appropriate steps to ensure that communications with individuals with disabilities, and companions with disabilities, are as effective as communications with individuals without disabilities in its health programs and activities, incorporating the standards found at 28 CFR 35.130 and 35.160 through 35.164 of the regulation implementing Title II of the ADA. Proposed paragraph (a) is similar to the 2020 Rule at § 92.102(a), with the addition of ''companions'' to codify the Department's longstanding position that a covered entity's obligation to ensure effective communication extends not just to individuals with disabilities but to companions as well, if they are individuals with disabilities.[396]

[388] Gregory Juckett & Kendra Unger, *Appropriate Use of Medical Interpreters,* 90 A. Fam. Physician 476 (2014), *https://www.aafp.org/pubs/afp/issues/2014/1001/p476.html.*

[389] *See, e.g.,* Sunmin Lee et al., *Barriers to Health Care Access in 13 Asian American Communities,* 45 Am. J. Health Behav. 21, 22 (2010), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6628721/;* Wooksoo, *supra* note 106, at 289.

[390] 81 FR 31375, 31470–71 (May 18, 2016).

[391] *Id.* at 31418.

[392] 85 FR 37213.

[393] *Id.* at 37223.

[394] *Id.* at 37246.

[395] *Id.*

[396] Consistent with the Department's position in the 2016 Rule; 42 U.S.C. 12182(b)(1)(E)(Title III); 28 CFR 35.130(g) (Title II). *See generally,* U.S. Equal Emp't Opportunity Comm'n, Questions & Answers: Association Provision of the ADA (Oct. 17, 2005), *https://www.eeoc.gov/laws/guidance/questions-answers-association-provision-ada; cf. Loeffler* v. *Staten Island Univ. Hosp.,* 582 F.3d 268, 277 (2d

Continued

Because we propose to incorporate all of the relevant Title II standards into proposed paragraph (a), including requirements that were enumerated in the 2020 Rule (*e.g.,* the requirements to provide auxiliary aids and services in a timely manner and free of charge, and to give primary consideration to the requests of individuals with disabilities when determining what types of auxiliary aids and services are necessary), we do not propose to enumerate these specific additional standards in this rule. This proposed section also clarifies that where the regulatory provisions referenced in this section use the term ''public entity,'' the term ''covered entity'' shall apply in its place.

We propose in paragraph (b) to explicitly require covered entities to provide appropriate auxiliary aids and services to individuals with impaired sensory, manual, or speaking skills, where necessary to afford such individuals an equal opportunity to benefit from the service in question. Once again, this paragraph is substantially similar to the 2020 Rule at § 92.102(b), which applied to recipients and State Exchanges. Because all covered entities, including the Department, are required to provide auxiliary aids and services, we propose to apply paragraph (b) to all covered entities, not just recipients and State Exchanges.[397]

We also note that in order to ensure a covered entity meets its obligations to provide both meaningful access and effective communication for LEP individuals with disabilities, it must comply with both proposed § 92.201 and proposed § 92.202. Auxiliary aids and services that are not provided in a language consistent with proposed § 92.201 do not satisfy the requirements of proposed § 92.202. For example, a covered entity that only offered auxiliary aids and services in English to an LEP individual with a disability may be in violation of both proposed § 92.201 and § 92.202.

The 2020 Rule defines ''disability,'' ''auxiliary aids and services'' and ''qualified interpreter'' at § 92.201; those definitions are now located in proposed § 92.4.

**Accessibility for Buildings and Facilities (§ 92.203)**

Proposed § 92.203 adds a general provision establishing that no qualified individual with a disability shall, because a covered entity's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any health program or activity to which this part applies, consistent with the Department's Section 504 regulation covering federally assisted and federally conducted programs and activities.[398] The remainder of proposed § 92.203 incorporates the identical language found in the 2020 Rule at § 92.103, except that the definitions for ''1991 Standards,'' ''2010 Standards,'' and ''UFAS'' are now located in proposed § 92.4.

**Accessibility of Information and Communication Technology for Individuals With Disabilities (§ 92.204)**

Proposed § 92.204 addresses the accessibility of information and communication technology (ICT) for individuals with disabilities. This proposed section is substantially the same as § 92.104(a)–(b) of the 2020 Rule and former § 92.204 of the 2016 Rule. The 2020 Rule also defines ''information and communication technology'' at § 92.104(c), which we propose to define at proposed § 92.4.

With the advent of COVID–19 constraints placed on in-person services, the use of technology has become ever more critical. Covered entities have adapted creatively utilizing remote communications technologies to provide telehealth services, including audio, text messaging or video conferencing. Additionally, websites and online portals are serving as primary registration vehicles for obtaining COVID–19 tests and vaccines. In some instances, however, the use of inaccessible websites or online portals has resulted in access barriers for individuals with disabilities. For example, individuals with vision impairments who use screen reader software or persons with mobility impairments who have difficulty using a mouse, may not be able to access inaccessible online registration forms or navigate inaccessible vaccine websites.[399]

Many covered entities are currently relying on Section 508 standards promulgated by the Access Board or Web Content Accessibility Guidelines (WCAG) developed through the Worldwide Web Consortium's (W3C) Web Accessibility Initiative to ensure that their ICT is accessible to individuals with disabilities.[400] Additionally, multiple states have laws or policies addressing accessibility of ICT with which entities covered by those statutes must comply.[401] Over time, the feasibility of technological applications and solutions has continued to develop and dramatically change the way the public interacts with health programs and activities.

Proposed paragraph (a) requires covered entities to ensure that their health programs and activities provided through ICT are accessible to individuals with disabilities, unless doing so would result in undue financial and administrative burdens or a fundamental alteration in the nature of the health programs or activities. If an action required to comply with this subpart would result in such an alteration or burdens, a covered entity is required to take any other action that would not result in such an alteration or burdens but would nevertheless enable, to the maximum extent possible, individuals with disabilities to receive the benefits or services of the health program or activity provided by the covered entity.

Proposed paragraph (b) requires recipients and State Exchanges to ensure that their health programs and activities provided through websites and mobile applications comply with the requirements of Section 504 as interpreted in a manner consistent with Title II of the ADA. Both the 2020 Rule and the 2016 Rule have the same provision as it applies to recipient and State Exchange websites. We propose to modify this provision by extending it to mobile applications in addition to websites.

Given the heightened impact ICT has on individuals with disabilities in health programs and activities, as

Cir. 2009) (permitting associational discrimination claim under Section 504); *Falls* v. *Prince George's Hosp. Ctr.,* No. Civ. A 97–1545, 1999 WL 33485550, at *11 (D. Md. Mar. 16, 1999) (holding that parent had an associational discrimination claim under Section 504 when hospital required hearing parent to act as interpreter for child who was deaf).

[397] The Department is required to provide appropriate auxiliary aids and services under 45 CFR 85.51(a)(1) of this subchapter, which is incorporated by reference under proposed § 92.101(b)(1)(ii).

[398] 45 CFR 84.21 (federally assisted); § 85.41 (federally conducted).

[399] *See e.g.,* Press Release, U.S. Dep't of Just., Justice Department Secures Settlement with Rite Aid Corporation to Make Its Online Covid–19 Vaccine Portal Accessible to Individuals with Disabilities (Nov. 1, 2021), *https://www.justice.gov/usao-mdpa/pr/justice-department-secures-settlement-rite-aid-corporation-make-its-online-covid-19.*

[400] *See* Press Release, U.S. Dep't of Just., Justice Department Issues Web Accessibility Guidance Under the Americans with Disabilities Act (Mar. 18, 2022), *https://www.justice.gov/opa/pr/justice-department-issues-web-accessibility-guidance-under-americans-disabilities-act.*

[401] *Policy & Management: State Policy, Section508.gov, https://www.section508.gov/manage/laws-and-policies/state/* (last visited June 15, 2022).

evidenced by COVID–19, OCR is seeking comments on whether the Section 1557 rule should include a provision requiring covered entities to comply with specific accessibility standards, such as the Web Content Accessibility Guidelines (WCAG) developed by the Web Accessibility Initiative. Additionally, OCR seeks comments on whether to adopt a safe harbor provision under which covered entities that are in compliance with established specific accessibility standards are deemed in compliance with proposed paragraphs (a) and (b) of this section; whether OCR should require covered entities to comply with the most recent edition of a published standard; and the timeline necessary for covered entities to come into compliance with a new standard.

**Requirement To Make Reasonable Modifications (§ 92.205)**

Proposed § 92.205 requires covered entities to make reasonable modifications to policies, practices, or procedures when such modifications are necessary to avoid discrimination on the basis of disability, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the health program or activity. This provision is the same as § 92.105 of the 2020 Rule and former § 92.205 of the 2016 Rule. For the purposes of this section, the term ''reasonable modifications'' shall be interpreted in a manner consistent with the term as set forth in the regulation implementing Title II of the ADA at 28 CFR 35.130(b)(7).[402]

**Equal Program Access on the Basis of Sex (§ 92.206)**

The Department proposes to include a section clarifying covered entities' obligation to ensure equal access to their health programs and activities without discrimination on the basis of sex, including pregnancy, sexual orientation, gender identity, and sex characteristics.[403] This provision primarily relates to covered entities that are directly engaged in the provision of health care services, such as hospitals, physical and mental health care providers, and pharmacies. While the 2016 Rule included a section on equal program access on the basis of sex, the 2020 Rule does not include an analogous provision. As Section 1557 is the only Federal civil rights law explicitly prohibiting sex discrimination in health programs and activities, the Department believes that it is beneficial to both covered entities and the public to have additional regulatory clarity. Nondiscrimination by covered entities in the provision or administration of health insurance coverage and other health-related coverage is addressed in proposed § 92.207.

Proposed § 92.206(a) describes a covered entity's general obligation to provide individuals equal access to the covered entity's health programs or activities without discrimination on the basis of sex. The Department proposes paragraphs (b)(1)–(4) to clarify certain types of discriminatory actions that would be prohibited for a covered entity in its provision of access to health programs or activities.

As is true for any claim of discrimination under this proposed rule, and consistent with the Department's standard practice for investigating such claims, OCR may use the tools of longstanding civil rights case law in analyzing claims of discrimination under paragraph (b). These tools include, but are not limited to, the multi-factor test articulated in *Arlington Heights,*[404] and the *McDonnell Douglas* [405] burden-shifting framework. Explained in great depth in the DOJ's Title VI Legal Manual, *Arlington Heights* is a method of proof that uses a number of different types of circumstantial evidence that, taken collectively, can demonstrate that the covered entity acted, at least in part, because of a protected basis. Under this test, evidence of disparate impact can be one piece of evidence that is considered in determining whether there is intentional discrimination. This framework is most commonly applied in cases alleging discrimination against a group.[406] The *McDonnell Douglas* burden-shifting framework, however, is most commonly applied in cases alleging discrimination in individual instances and is an inferential method of proof that is used to show that a defendant treated similarly situated individuals differently because of a protected basis.[407] Under *McDonnell Douglas,* where there is a prima facie case of discrimination against a covered entity, that covered entity must articulate a legitimate, nondiscriminatory reason for its actions. This legitimate, nondiscriminatory reason would be a defense against the claim of discrimination, unless it can be established that this reason is in fact a mere pretext for prohibited discrimination.

Proposed paragraph (b)(1) provides a general prohibition on the denial or limitation of health services, including those that are offered exclusively to individuals of one sex, to an individual based on the individual's sex assigned at birth, gender identity, or gender otherwise recorded. The text of this proposed paragraph is similar to former § 92.206 of the 2016 Rule, which provided that ''a covered entity may not deny or limit health services that are ordinarily or exclusively available to individuals of one sex, to a transgender individual based on the fact that the individual's sex assigned at birth, gender identity, or gender otherwise recorded is different from the one to which such health services are ordinarily or exclusively available.'' [408] The 2020 Rule does not include a similar provision. The Department proposes to not include the word ''transgender'' in this proposed provision. This approach recognizes that the form of discrimination discussed herein may impact a range of individuals, including transgender people, individuals with intersex conditions, or people who may need these services but do not identify as transgender.

The Department's review of the literature indicates that this provision is warranted based on continued discrimination experienced by transgender and gender non-conforming individuals as they seek basic medical care. For example, transgender men who are pregnant experience significant forms of ''discrimination, stigma, and erasure'' when navigating pregnancy and prenatal care, particularly because pregnancy and childbirth are often treated as something exclusively experienced by cisgender women.[409]

Under this provision, a covered entity that routinely provides gynecological or obstetric care could not deny an individual a pelvic exam or pregnancy-related care because the individual is a transgender man or nonbinary person assigned female at birth, if the entity otherwise provides that care to cisgender individuals. Similarly, a community clinic that receives funding from the Department could not refuse to provide a transgender woman a prostate cancer screening because her sex is

[402] *See* discussion *supra* § 92.3 (addressing need for parity between Section 504 and the ADA).

[403] *See* discussion *supra* section II.B. (The 2020 Rule's Preamble Does Not Reflect Recent Developments in Civil Rights Law).

[404] *Vill. of Arlington Heights* v. *Metro. Housing Dev. Corp.,* 429 U.S. 252, 266–68 (1977).

[405] *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792 (1973).

[406] U.S. Dep't of Just., Title VI Legal Manual, sec. VI.B.2.

[407] *Id.* at sec. VI.B.3.

[408] *See* 81 FR 311375, 31471 (May 18, 2016).

[409] Margaret Besse et al., *Experiences with Achieving Pregnancy and Giving Birth Among Transgender Men: A Narrative Literature Review,* 93 Yale J. of Biology & Med. 517, 518 (2020).

listed female in her electronic health record, if the entity otherwise provides these screenings to cisgender individuals.

Proposed paragraph (b)(2) prohibits covered entities from denying or limiting a health care professional's ability to provide health services on the basis of a patient's sex assigned at birth, gender identity, or gender otherwise recorded. This provision recognizes that prohibited discrimination may take the form of attempted restrictions on individual providers, such as attending physicians, that have the effect of discriminating against patients, in addition to discriminatory actions that target patients directly. This is similar to Title VI's limited application to employment when a recipient's ''discrimination has a secondary effect on the ability of beneficiaries to participate meaningfully in and/or receive the benefits of a federally assisted program in a nondiscriminatory manner.'' [410]

Under this provision, a covered entity is also prohibited from punishing or disciplining a provider for providing clinically appropriate care where doing so would have the impact of limiting that provider's ability to provide such care on the basis of a patient's assigned sex at birth, gender identity, or gender otherwise recorded. As with all proposed paragraphs in this section, this provision does not require covered entities to perform services outside of their specialty area. However, restrictions by covered entities on the ability of providers to prescribe or provide care based on their patient's gender identity or sex assigned at birth would likely constitute prohibited discrimination in violation of this rule.

Proposed paragraph (b)(3) would prohibit a covered entity from applying any policy or practice of treating individuals differently or separating them on the basis of sex in a manner that subjects any individual to more than *de minimis* harm. The 2016 Rule provided, at former § 92.101(b)(3)(iv), that sex-specific health programs and activities were allowable only where the covered entity could ''demonstrate an exceedingly persuasive justification, that is, that the sex-specific health program or activity is substantially related to the achievement of an important health-related or scientific objective.'' The 2020 Rule repealed this provision, finding that the provision ''placed an unjustified burden on sex-specific health programs and activities conducted by private entities'' by adopting the Equal Protection standard that otherwise applies only to governmental actions that discriminate on the basis of sex.[411] The Department has considered the approaches taken in the 2016 and 2020 Rules and believes that while it is important to include a provision on this issue, the Constitutional standard is not the most appropriate for a regulation that applies to governmental and non-governmental actors. Rather, we believe the standard proposed now is the more appropriate approach.

Although differential treatment on the basis of sex is generally prohibited, the Department acknowledges that there are certain circumstances in which Section 1557 does not prohibit separation by sex or differential medical treatment on the basis of sex, namely, where it does not cause more than *de minimis* harm. A sex-based distinction that has only a minimal impact is not a form of ''discrimination'' that Congress intended to prohibit,[412] and an individual shall not be deemed subject to discrimination under this part by reason of the fact that an otherwise lawful health program or activity has chosen to utilize such sex-based distinctions consistent with the requirements of this rule. For example, the practice of assigning patients to dual-occupancy rooms in hospitals and in-patient treatment facilities on the basis of sex is not, standing alone, a form of discrimination.

However, the Department may still find that a covered entity violates Section 1557 if it implements the sex-based distinction in a way that constitutes discrimination, by imposing more than *de minimis* harm upon a particular individual. This is what Title IX requires.[413]

Discriminatory harm that is more than *de minimis* may include any adverse effect on a person's equal access to or participation in a covered entity's health program or activity based on sex. This provision does not, however, prohibit a covered entity from treating an individual for conditions that may be specific to their sex characteristics. For example, it would be permissible for an emergency department to treat a transgender man with a positive human chorionic gonadotropin (pregnancy) test as a pregnant person, even though pregnancy is generally associated with ''female'' sex characteristics, such as having a functioning uterus and ovaries.[414] Similarly, sex-specific clinical trials may be permissible based upon the scientific purposes of the study, *i.e.,* trials based on a particular sex-characteristic(s), such as those that test treatments for specific conditions or that evaluate differences in responses to treatment regimens among individuals with different sex characteristics. In evaluating a complaint of discrimination challenging a covered entity's sex-specific health program or activity, OCR may consider a variety of factors relevant to the particular health program or activity.

In particular, this provision would prohibit the adoption of a policy, or engaging in a practice, that prevents any individual from participating in a covered entity's health program or activity consistent with their gender identity. The 2016 Rule required that covered entities ''treat individuals consistent with their gender identity'' at former § 92.206; as discussed previously, the 2020 Rule preamble indicated that Section 1557 likely did not prohibit discrimination on the basis of gender identity as a form of prohibited sex discrimination, and therefore did not include a similar provision. The Department believes this provision is necessary to better effectuate Section 1557's purpose: to eliminate sex discrimination in a range of health programs and activities. Reading Section 1557's prohibition of sex discrimination consistently with the reasoning in *Bostock,* discrimination on the basis of gender identity necessarily involves consideration of an individual's sex—even if that term is narrowly defined—and Section 1557's prohibition covers discrimination on that basis. For example, a hospital that assigns patients to dual-occupancy rooms based on sex would be prohibited from requiring a transgender woman to share a room with a cisgender man,

[410] U.S. Dep't of Just., Title VI Legal Manual, sec. X.A.

[411] 85 FR 37160, 37196 (June 19, 2020).

[412] *See, e.g., Oncale* v. *Sundowner Offshore Servs., Inc.,* 523 U.S. 75, 81 (1998) (Title VII does not reach non-harmful ''differences in the ways men and women routinely interact with'' each other); *see also Burlington N. & Santa Fe Ry. Co.* v. *White,* 548 U.S. 53, 59–60 (2006) (''No one doubts that the term 'discriminate against' refers to distinctions or differences in treatment that injure protected individuals.''); *Threat* v. *City of Cleveland,* 6 F.4th 672, 678 (6th Cir. 2021) (''To 'discriminate' reasonably sweeps in some form of an adversity and a materiality threshold.'').

[413] *See Peltier* v. *Charter Day Sch., Inc.,* Nos. 20–1001, 20–1023, 2022 WL 2128579, at *16 (4th Cir. June 14, 2022) (en banc) (''for the plaintiffs to prevail under Title IX, they must show that . . . the challenged action caused them harm, which may include 'emotional and dignitary harm' '' (internal citation omitted)).

[414] *See, e.g.,* Daphna Strousma et al., *The Power and Limits of Classification—A 32-Year-Old Man with Abdominal Pain,* 380 N. Eng. J. Med. 1885 (2019), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7395710/pdf/nihms-1609250.pdf.*

regardless of how her sex is recorded in her insurance or medical records.[415]

Proposed paragraph (b)(4) prohibits a covered entity from denying or limiting health services sought for the purpose of gender-affirming care that the covered entity would provide to a person for other purposes if the denial or limitation is based on a patient's sex assigned at birth, gender identity, or gender otherwise recorded.

This preamble generally uses the phrase ''gender transition or gender-affirming care.'' Relevant clinical guidelines acknowledge that not all individuals for whom such care is clinically appropriate will specifically identify as transgender, nor will all gender-affirming care specifically be related to transition from one binary gender to another.[416] For example, people seeking gender-affirming care may refer to their gender identity using terms other than ''transgender,'' such as ''nonbinary,'' ''gender nonconforming,'' ''genderqueer,'' or ''genderfluid.'' Individuals using any of these terms may have a gender dysphoria diagnosis and seek clinically appropriate gender-affirming care. A person's use of particular identity terminology is not determinative of whether the care in question is appropriate.

There also may be variations in the types of health services that are sought or are clinically appropriate for each person (*e.g.,* some people undergo hormone therapy as part of gender transition but do not seek any surgical care).[417] Additionally, some transgender people might not seek or require health interventions as part of their gender transition or gender-affirmation process. Nothing in this preamble or the regulatory text is intended to limit the application of provisions discussing gender-affirming care or transition-related care based on whether an individual uses particular terms to describe their gender identity or seeks only certain types of gender-affirming or transition-related care. The Department welcomes comments on this choice of terminology in the regulatory text, particularly from individuals seeking and providing such care.

Importantly, this provision does not require health care professionals to perform services outside of their normal specialty area; therefore a provider that declines to provide services outside its specialty area would have a legitimate, nondiscriminatory reason for its action. This is consistent with the Department's position under Section 504 regarding medical specialization. As explained in Appendix A to the Department's Section 504 implementing regulation, ''[a] burn treatment center need not provide other types of medical treatment to [individuals with disabilities] unless it provides such medical services to [persons without disabilities]. It could not, however, refuse to treat the burns of a deaf person because of his or her deafness.'' [418] This provision also does not compel a provider to prescribe a specific treatment that the provider decides not to offer after making a nondiscriminatory bona fide treatment decision. For example, a family practice covered by the rule would not be required to provide transition-related surgery where surgical care is not within its normal area of practice. Nor would the proposed rule require a pediatrician to prescribe hormone blockers for a prepubescent gender-nonconforming minor if that health care provider concluded, pursuant to a nondiscriminatory bona fide treatment decision, that social transition was the clinically indicated next step for that child.

By contrast, a gynecological surgeon may be in violation of the rule if they accept a referral for a hysterectomy but later refuse to perform the surgery upon learning the patient is a transgender man. If OCR were to receive a complaint in a case such as this, it would evaluate whether the provider had a legitimate basis for concluding that the surgery would not be clinically appropriate for the patient. If the surgeon invokes such a justification, OCR would make a determination as to whether the reason was a pretext for discrimination. OCR would also consider the application of Federal conscience and religious freedom laws, where relevant.

Proposed paragraph (c) provides that nothing in this section requires the provision of any health service where the covered entity has a legitimate, nondiscriminatory reason for denying or limiting that service, including where the covered entity reasonably determines that such health service is not clinically appropriate for that particular individual. However, a provider's view that no gender transition or other gender-affirming care can ever be beneficial for such individuals (or its compliance with a state or local law that reflects a similar judgment) is not a sufficient basis for a judgment that a health service is not clinically appropriate. Paragraph (c) is consistent with the general principle in nondiscrimination law that covered entities facing allegations of discrimination have the opportunity to articulate a legitimate, nondiscriminatory basis for their challenged action or practice.[419] For example, a covered entity would not be required to perform a cervical exam on an individual who does not have a cervix, or to perform a prostate exam on an individual who does not have a prostate.

In evaluating whether a facially sex-neutral asserted basis is pretextual, OCR may consider whether a determination that care is not clinically appropriate is based on generally accepted scientific or medical standards. For example, a clinic could not raise a defense under this provision if they denied a transgender woman a prostate exam based on the provider's belief that prostate exams are never clinically appropriate for women, if in fact the particular patient has a prostate. Nor would this provision provide a defense to a provider denying testosterone therapy to an intersex woman with complete androgen insensitivity syndrome based on a categorical belief that such therapy is never clinically appropriate for women.[420]

Similarly, OCR recognizes that providers often need to make inquiries about a patient's sex-related medical history, health status, or physical traits related to sex in the course of providing care. Such inquiries are not per se discriminatory, even where they touch on intimate or sensitive matters, but should be related to the underlying condition. For example, it is not discriminatory—*i.e.,* it does not result in more than *de minimis* harm—for a provider treating a patient presenting with symptoms consistent with an ectopic pregnancy to inquire about the possibility that the patient could be pregnant, regardless of that patient's gender identity. However, where they are relevant to allegations of

[415] *See, e.g.,* Bulletin, U.S. Dep't of Health & Human Servs., The Brooklyn Hospital Center Implements Non-Discriminatory Practices to Ensure Equal Care for Transgender Patients (July 14, 2015), *https://www.hhs.gov/sites/default/files/ocr/civilrights/activities/agreements/TBHC/statement.pdf.*

[416] WPATH Standards, *supra* note 139, at pp. 8–9.

[417] *Id.*

[418] *See* 45 CFR pt. 84, app. A, subpt. F.

[419] *See, e.g., McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792, 802 (1973); U.S. Dep't of Just., Title IX Legal Manual, sec. IV.A.1; *id.* at sec. VI.B.3; *see also Vill. of Arlington Heights* v. *Metro. Hous. Dev. Corp.,* 429 U.S. 252 (1977) (enumerating factors to be considered in evaluating whether a policy or practice is motivated by discriminatory intent); U.S. Dep't of Just., Title VI Legal Manual, sec. VI.B.2.

[420] *See* Wiebke Birnbaum et al., *Oestrogen Versus Androgen in Hormone-Replacement Therapy for Complete Androgen Insensitivity Syndrome: A Multicentre, Randomised, Double-Dummy, Double-Blind Crossover Trial,* 10 Lancet Diabetes Endocrinol. 771 (2018), *https://pubmed.ncbi.nlm.nih.gov/30075954/.*

discrimination, OCR may consider whether such inquiries are related to providing the care sought. Where such inquiries do not have a relationship to the care provided, or where they are made in a manner that is harassing, hostile, or evinces disregard for a patient's privacy, OCR may consider whether a provider's inquiries may be evidence of discrimination. For example, if a provider refused to provide treatment for a broken arm unless the patient answered questions about their history of genital surgery, OCR would consider whether there was any medical rationale for asking the question or whether it was mere pretext for discrimination, given the lack of connection between the question and the care being provided.[421] Similarly, a provider's repeated questions about whether a patient had had breast augmentation surgery could be considered as evidence of discrimination where such questions were unrelated to the care provided, especially if the manner of the questioning had other indicia of harassment. Where relevant, OCR will consider the totality of the circumstances in determining whether overbroad, irrelevant, or hostile inquiries may constitute evidence of discrimination.

Proposed paragraph (d) provides that the enumeration of specific forms of discrimination in paragraph (b) does not limit the general applicability of the prohibition in paragraph (a) of this section.

The Department believes that the provisions in proposed § 92.206 are consistent with, and in furtherance of, Section 1554 of the ACA, which prohibits the Secretary of HHS from promulgating a regulation that ''interferes with communications regarding a full range of treatment options between patient and the provider,'' or ''restricts the ability of health care providers to provide full disclosure of all relevant information to patients making health care decisions.''[422] The provision as written supports and encourages health care providers' ability to discuss a full range of treatment options with their patients and in no way restricts providers' ability to share the range of risks and benefits associated with each treatment option. As discussed throughout this section, the provisions here do not compel a particular treatment for any given condition; rather, this section prohibits health care providers from discriminating against individuals on the basis of sex, including gender identity. Gender-affirming care, like all medical care, should follow clinical practice guidelines and professional standards of care.[423] Informed consent to any medical treatment is both a legal and ethical standard, regardless of the type of care, and serves as a basis for shared decision making.[424] When providing gender-affirming medical care for minors, informed consent involves discussions among providers, minors, and parents or guardians.[425]

We seek comment on this section, including whether it adequately addresses the forms of discrimination faced by individuals on the basis of sex (including pregnancy, sexual orientation, gender identity, and sex characteristics) when seeking access to and participating in health programs and activities; whether the proposed regulation text captures the policies set forth in this preamble; what sex-based distinctions, if any, should be permitted in the context of health programs and activities; and the standards for permitting such distinctions that do not result in more than *de minimis* harm.

We also invite comment on whether additional regulatory language should be added to specifically address the circumstance in which a provider offers a particular health treatment, service or procedure for certain purposes, but refuses to offer that same treatment, service or procedure for gender-transition or other gender-affirming care purposes because they believe it would not be clinically appropriate.

**Nondiscrimination in Health Insurance Coverage and Other Health-Related Coverage (§ 92.207)**

Proposed § 92.207 prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in the provision or administration of health insurance coverage and other health-related coverage. This proposed section would apply to all covered entities that provide or administer health insurance coverage or other health-related coverage that receive Federal financial assistance, and the Department in the administration of its health-related coverage programs. This is consistent with the 2016 Rule, which similarly prohibited discrimination in health-related insurance and other health-related coverage under former § 92.207, including in marketing practices and benefit design. The 2020 Rule repealed former § 92.207 in its entirety, stating that an additional or separate section on health insurance was not necessary.[426] Despite removing former § 92.207, the preamble to the 2020 Rule stated that OCR would continue to investigate discrimination in health insurance, including in benefit design.[427]

In rescinding former § 92.207, the 2020 Rule creates a lack of clarity for covered entities as to what constitutes prohibited discrimination in health insurance and health-related coverage.[428] This uncertainty creates confusion regarding what conduct is prohibited and renders Section 1557 less effective at combatting discrimination in health insurance and other health-related coverage, resulting in greater risk for covered entities and less protection for people who need health care and who are protected by Section 1557 against discrimination.

The statutory text of Section 1557 demonstrates Congress' intent to apply Section 1557 nondiscrimination requirements to health insurance and other health-related coverage where an entity receives Federal financial assistance and, therefore, the Department proposes to reinstate specific provisions related to nondiscrimination in health insurance and other health-related coverage in the Section 1557 rule. Robust enforcement of such nondiscrimination requirements for health insurance and other health-related coverage practices is critical to ensure individuals' ability to receive the health services that they need, unencumbered by discriminatory conduct. Such discriminatory conduct

[421] *See, e.g.,* David Oliver, '*Being Transgender Is Not a Medical Condition': The Meaning of Trans Broken Arm Syndrome,* USA Today (last updated Mar. 31, 2022), *https://www.usatoday.com/story/life/health-wellness/2021/07/27/trans-broken-arm-syndrome-what-it-how-combat-discrimination-health-care/8042475002/*; Douglas Knutson et al., ''*Trans Broken Arm*''*: Health Care Stories from Transgender People in Rural Areas,* 7 J. of Rsch. on Women & Gender 30 (2016), *https://journals.tdl.org/jrwg/index.php/jrwg/article/download/97/50.*

[422] 42 U.S.C. 18114(3), (4).

[423] *See e.g.,* WPATH Standards, *supra* note 139; Wylie Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline,* 102 J. Clinical Endocrinology & Metabolism 3869 (2017), *https://academic.oup.com/jcem/article/102/11/3869/4157558.*

[424] Am. Med. Ass'n, Informed Consent, *https://www.ama-assn.org/delivering-care/ethics/informed-consent* (*last* visited June 15, 2022).

[425] Hilary Cass, The Cass Review, Independent Review of Gender Identity Services for Children and Young People: Interim Report (2022), *https://cass.independent-review.uk/publications/interim-report/.*

[426] 85 FR 37160, 37201 (June 19, 2020).

[427] *Id.* at 37177, 37201.

[428] *See* Valarie K. Blake, *Health Care Civil Rights Under Medicare for All,* 72 Hastings L.J. 773, 800 (2021), *https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3925&context=hastings_law_journal* (stating the 2020 Rule ''eliminated all of the specific guidance on what counts as insurance discrimination, leaving the issue to OCR and the courts'').

reduces both access to care and the quality of care received on the basis of race, color, national origin, sex, age, or disability. The Department's proposal to reinstate the provisions is consistent not only with the ACA, but with the Administration's mission to enhance the health and well-being of all Americans.[429]

E.O. 14009, ''Strengthening Medicaid and the Affordable Care Act,'' states that it is the Administration's policy to ''protect and strengthen Medicaid and the ACA and to make high-quality health care accessible and affordable for every American.'' [430] Of particular relevance to Section 1557, E.O. 14009 requires agencies to examine policies or practices that may undermine protections for people with pre-existing conditions under the ACA, may present ''unnecessary barriers'' to individuals seeking access to Medicaid or ACA coverage, and may reduce the affordability of coverage.[431] Additionally, E.O. 14070, ''Continuing To Strengthen Americans' Access to Affordable, Quality Health Coverage,'' states that agencies ''. . . shall review agency actions to identify ways to continue to expand the availability of affordable health coverage, to improve the quality of coverage, to strengthen benefits, and to help more Americans enroll in quality health coverage.'' [432] By specifying that health insurance and other health-related coverage offered through the Exchanges and Medicaid must be provided in a nondiscriminatory manner, proposed § 92.207 would strengthen access to health care and prevent unnecessary barriers in accessing coverage consistent with E.O. 14009 and E.O. 14070.

As discussed previously, historically marginalized communities disproportionally suffer from worse health outcomes and higher rates of discrimination in accessing health care than other communities.[433] By addressing the prevention of discrimination in health insurance and other health-related coverage, proposed § 92.207 also aligns with the Administration's goal of achieving health equity for these populations.[434]

Adopting proposed § 92.207, particularly paragraphs (b)(3)–(5), would establish specific provisions to protect gender-diverse individuals from discrimination in health insurance and other health-related coverage.

Proposed paragraph (a) provides a general nondiscrimination requirement, and proposed paragraph (b) provides specific examples of prohibited actions.

Proposed paragraph (b)(1) specifies that covered entities are prohibited from denying, cancelling, limiting, or refusing to issue or renew health insurance coverage or other health-related coverage, or denying or limiting coverage of a claim, or imposing additional cost sharing or other limitations or restrictions on coverage, on the basis of race, color, national origin, sex, age, or disability. This language is identical to the 2016 Rule and would prohibit health insurance issuers and other covered entities [435] from taking discriminatory actions related to coverage.

Proposed paragraph (b)(2) prohibits marketing practices or benefit designs that discriminate on the basis of race, color, national origin, sex, age, or disability. This is consistent with both the 2016 Rule, which contained the same regulatory language, as well as the assurance in the preamble of the 2020 Rule that OCR will continue to investigate discrimination in health insurance or other health coverage benefit design, despite the repeal of former § 92.207.[436] Reinstating this provision will provide clarity and notice to covered entities and the public that Section 1557 continues to prohibit discriminatory marketing practices and benefit designs on the bases specified under Section 1557. This provision is independent of other regulations that separately prohibit discrimination in health insurance or other health-related coverage.[437] While these nondiscrimination requirements complement each other, covered entities are required to independently comply with all applicable regulations.

The terms ''benefit design'' and ''marketing practices'' encompass an array of features. To avoid being overly prescriptive or unintentionally inconsistent with other departmental regulations,[438] the Department does not propose defining these terms in this rule and intends to interpret them broadly. Examples of benefit design features include, but are not limited to, coverage, exclusions, and limitations of benefits; prescription drug formularies; cost sharing (including copays, coinsurance, and deductibles); utilization management techniques (such as step therapy and prior authorization); medical management standards (including medical necessity standards); provider network design; and reimbursement rates to providers and standards for provider admission to participate in a network.

Marketing practices would broadly include, for example, activities designed to encourage individuals to participate or enroll in particular health plans or certain types of plans, or to discourage them from doing so, and activities that steer or attempt to steer individuals towards or away from a particular plan or certain types of plans.[439] For example, covered entities that avoid advertising in areas populated by a majority of people of color to reduce the

[429] *Mission Statement,* U.S. Dep't of Health & Human Servs., *https://www.hhs.gov/about/strategic-plan/introduction/index.html#mission* (last updated Mar. 28, 2022).

[430] 86 FR 7793 (Jan. 28, 2021) (revoking E.O. 13765, ''Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal,'' 82 FR 8351 (Jan. 20, 2017), which was cited as a justification for the 2020 Rule).

[431] *Id.* at 7794.

[432] 87 FR 20689, 20690 (Apr. 8, 2022).

[433] *See* discussion *supra* section II.D. (on advancing health equity).

[434] *See, e.g.,* E.O. 13985, 86 FR 7009 (2021).

[435] A variety of entities may be considered covered entities subject to proposed § 92.207, including but not limited to health insurance issuers, sponsors of group health plans, Medicare Advantage organizations, Medicare Part D plan sponsors, Medicaid managed care organizations, pharmacy benefit managers, third party administrators (as part of a covered entity's operations when it meets the criteria in paragraph (b) of the definition of ''health program or activity'' in proposed § 92.4), and the Department. For simplicity, we simply refer to ''health insurance issuers'' or ''issuers'' throughout the preamble, but please note that other covered entities may also be subject to the proposed section under discussion.

[436] *See* 85 FR 37177, 377201.

[437] *See, e.g.,* 42 CFR 422.100(f)(2)–(3), § 422.110 (Medicare Advantage); 42 CFR 423.2262(a)(1)(iv) (Part D); 42 CFR 438.3(d), (f) (Medicaid); 42 CFR 600.405(d) (Basic Health Program); 45 CFR 147.104(e) (group and individual health insurance markets); 45 CFR 155.120(c) (Exchanges); 45 CFR 156.125(a)–(b) (essential health benefits); 45 CFR 156.200(e), § 156.225(b) (qualified health plans).

[438] Other departmental and Federal regulations governing private health insurance and public health coverage refer to ''benefit design'' and ''marketing practices.'' *See, e.g.,* 45 CFR 147.104(e), § 156.20, § 156.125(a) (health insurance issuers); 45 CFR 156.110(d), § 156.125(a), § 156.200(b)(3), § 156.225(b) (qualified health plans); 45 CFR 156.110(d), § 156.111(b)(2)(v) (essential health benefits benchmark plans); 42 CFR 422.100(f)(3) (Medicare Advantage); 42 CFR 422.2260–15 (Medicare Part D marketing requirements); 42 CFR 423.882, § 423.894(d) (Medicare retiree prescription drug plans); 42 CFR 440.347(e) (Medicaid benchmark plans); 42 CFR 600.405 (Basic Health Program); 29 CFR 2510.3–40(c)(1)(iv)(A) (employee welfare benefit plan under Employee Retirement Income Security Act of 1974).

[439] For simplicity and for purposes of this preamble only, we use the term ''health plan'' or ''plan'' interchangeably to refer generally to health insurance coverage and other health coverage that is subject to this proposed rule. As used in this preamble, ''health plan'' or ''plan'' may include health insurance coverage offered in the group and individual markets, group health plans, Medicare Advantage plans, Medicare Part D plans, and Medicaid plans that are subject to this proposed rule. We do not intend ''health plan'' or ''plan'' to be regulatory terms in this proposed regulation or to replace any existing or proposed term in Federal law.

enrollment of people of color in their plans could violate this provision.[440]

By clarifying that health insurance and other health-related coverage must not employ discriminatory benefit design or marketing practices, proposed paragraph (b)(2) would further the ACA's goals of expanding access to affordable and quality health care and would be consistent with existing departmental regulations governing health insurance and other health-related coverage that similarly prohibit such discriminatory practices. The ACA prohibits the use of many formerly standard health insurance industry practices in many types of coverage that resulted in higher costs or denial of coverage or benefits for individuals with disabilities and others, including practices such as medical underwriting and premium rating[441] and pre-existing condition exclusions.[442] Its prohibition of discrimination in health-related coverage furthers the same goals.

We acknowledge that covered entities have discretion in designing their benefit packages, and we do not require entities to cover any particular procedure or treatment. When assessing complaints alleging discrimination in benefit design, OCR will evaluate on a case-by-case basis whether a particular design feature or coverage requirement is discriminatory. Where appropriate, OCR will determine if there is a legitimate, nondiscriminatory justification for the particular benefit design feature or coverage requirement. This justification cannot be pretext for discrimination. We elaborate further about how OCR will analyze claims of discrimination in benefit design later in this section.[443] As we articulate in that discussion,[444] this rule is not intended to prohibit covered entities from utilizing nondiscriminatory medical management techniques.

Proposed paragraphs (b)(3) through (5) address benefit designs that impermissibly limit coverage based on a person's sex at birth, gender identity, or gender otherwise recorded. The Department believes it is important to address discrimination faced by transgender individuals, including nonbinary and gender diverse individuals, in accessing coverage of health services.[445] Discrimination against transgender people in health insurance and other health-related coverage remains pervasive, especially for individuals who experience intersectional discrimination, such as individuals who experience both transphobia and racism.[446] As reported in a 2020 study of self-identified LGBTQ adults, 38 percent of transgender respondents—and 52 percent of transgender respondents of color—said that they had been denied hormone therapy coverage by their health insurer, and 43 percent reported being denied coverage for surgery for their transition.[447]

OCR believes the approach proposed in § 92.207(b)(3) through (5), which is similar to provisions in the 2016 Rule, will once again prove vital in helping to address discrimination faced by individuals whose sex assigned at birth is different from their gender identity in accessing coverage of health services, including health services that are medically necessary,[448] and is consistent with the legal principle that discrimination on the basis of sex includes discrimination on the basis of gender identity.[449] As discussed regarding how the Department will evaluate claims of discrimination under proposed § 92.206(b), the Department will look for direct or circumstantial evidence of discrimination when considering claims of intentional discrimination. Direct evidence may come in the form of an express classification (*e.g.,* explicit conditions for the receipt of benefits or services based on the sex of an individual) or statements from decisionmakers that express discriminatory intent. In the absence of such direct evidence, the Department would look for circumstantial evidence, including by using the *Arlington Heights* factors or *McDonnell Douglas* framework.

Proposed paragraph (b)(3) clarifies that it is prohibited discrimination to deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage to an individual based upon the individual's sex at birth, gender identity, or gender otherwise recorded.[450] The 2016 Rule provided a

[440] *See* Sidney D. Watson, *Section 1557 of the Affordable Care Act: Civil Rights, Health Reform, Race, and Equity,* 55 How. L.J. 855, 868 (2012), *https://heinonline.org/HOL/LandingPage?handle=hein.journals/howlj55&div=33&id=&page=.*

[441] 42 U.S.C. 300gg (prohibiting discriminatory premium rates by limiting rating factors to only include family size, geographic rating area, age, and tobacco use); 300gg–1 (requiring guaranteed availability of coverage to any individual or employer applying for coverage); 300gg–2 (requiring guaranteed renewability of coverage at the option of the plan sponsor or individual).

[442] 42 U.S.C. 300gg–3.

[443] *See* discussion *infra* under this section on Benefit Design.

[444] *See* discussion *infra* under this section on paragraph (c).

[445] As noted elsewhere in this preamble, although individuals with a gender identity that differs from their sex assigned at birth are commonly referred to as transgender, many individuals do not identify as such. Instead, some individuals may identify as nonbinary or gender diverse, meaning they do not identify with traditional binary gender or a single gender. Within these provisions, the term ''transgender'' is being used as an umbrella term to encompass individuals with transgender, nonbinary, gender diverse identities.

[446] Patterson, *supra* note 123, at p. 299.

[447] Gruberg, *supra* note 129, at p. 21; *see also* James, *supra* note 130, at p. 10 (2016) (25% of respondents with insurance reported experiencing insurance discrimination based on their gender identity, including being denied gender specific services and care not related to gender affirmation).

[448] The definition of medical necessity can vary. While the term ''medical necessity'' is not explicitly defined by CMS statute or regulation, Medicare provides coverage for items and services that are ''reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.'' 42 U.S.C. 1395y(a)(1)(A). CMS further outlines medical necessity requirements for specific services in its various Medicare Policy Manuals. *See, e.g.,* Ctrs. for Medicare & Medicaid Servs., Medicare Program Integrity Manual, Chapter 6—Medicare Contractor Medical Review Guidelines for Specific Services, Sec. 6.1.4—Medical Review Process, p. 7 (2020), *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/pim83c06.pdf* (stating ''[c]linical documentation that supports medical necessity may be expected to include: physician orders for care and treatments, medical diagnoses, rehabilitation diagnosis (as appropriate), past medical history, progress notes that describe the beneficiary's response to treatments and his/her physical/mental status, lab and other test results, and other documentation supporting the beneficiary's need for the skilled services being provided in the SNF.''). CMS defines ''medically necessary'' in the Summary of Benefits and Coverage (SBC) Template Uniform Glossary as ''[h]ealth care services or supplies needed to prevent, diagnose, or treat an illness, injury, condition, disease, or its symptoms, including habilitation, and that meet accepted standards of medicine.'' Ctrs. for Medicare & Medicaid Servs., Glossary of Health Coverage and Medical Terms, p. 3 (2020), *https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/Uniform-Glossary-01-2020.pdf.* The American Medical Association defines ''medical necessity'' as ''[h]ealth care services or products that a prudent physician would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is: (a) in accordance with generally accepted standards of medical practice; (b) clinically appropriate in terms of type, frequency, extent, site, and duration; and (c) not primarily for the economic benefit of the health plans and purchasers or for the convenience of the patient, treating physician, or other health care provider.'' Am. Med. Ass'n, Definitions of ''Screening'' and ''Medical Necessity'' H–320.953 (2016), *https://policysearch.ama-assn.org/policyfinder/detail/H-320.953?uri=%2FAMADoc%2FHOD.xml-0-2625.xml*; *see also* WPATH Standards, *supra* note 139. While this regulation and preamble primarily use the term ''medical necessity,'' many covered entities also consider the related concepts of ''medical appropriateness'' or ''clinical appropriateness'' in making decisions about care and coverage, as can be seen in the definitions in this footnote. For the purposes of this rule, any such decisions must be nondiscriminatory, regardless of the label used.

[449] *Bostock* v. *Clayton Cty.,* 140 S. Ct. 1731 (2020).

[450] Under the general nondiscrimination requirement in proposed § 92.207(a), a covered entity would be barred from denying coverage of any claim (not just for sex-specific services) on the basis that the enrollee's sex assigned at birth is different than their gender identity.

more specific prohibition, which provided that to deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on any health service that is ordinarily or exclusively available to persons of one sex when the denial or limitation is due to the fact that the individual's sex assigned at birth, gender identity, or gender otherwise recorded by the covered entity, is different from the one to which such services are ordinarily or exclusively available was prohibited sex discrimination. Such discrimination is similarly prohibited under this provision.

Although covered health plans routinely cover sex-specific preventive care services (*e.g.,* prostate and cervical cancer screenings) for cisgender individuals, some transgender individuals, due to their gender identity or because they are not enrolled in their health plan consistent with their sex assigned at birth, are denied coverage parity for the same preventive health services.[451] For example, under proposed § 92.207(b)(3), a health insurance issuer may not deny coverage for a transgender man who requires a mammogram screening, based on the fact that he is enrolled in the health plan as a man.[452] Nor could they deny him coverage of a uterine biopsy to identify potential uterine cancer because he is enrolled in the health plan as a man. Distinct from Section 1557, we remind covered entities that section 2713 of the Public Health Service Act (''PHS Act'') and its implementing regulations generally require coverage for certain recommended preventive health services without imposing cost-sharing requirements.[453]

We clarify that Section 1557 does not prohibit a covered entity from inquiring about an individual's relevant medical history and physical traits when necessary to determine the medical necessity of a health service for that individual. For example, in the same way a medical professional would not be prohibited from treating a pregnant transgender man for pregnancy,[454] a health insurance issuer (including its third party administrator activities, if applicable) may confirm that treatment related to pregnancy is medically necessary for an enrollee whose recorded sex is male.

We seek comment on this provision, including whether it sufficiently addresses the challenges transgender and gender nonconforming individuals are experiencing when seeking to access to medically necessary care due to a discordance between their sex assigned at birth and their sex as recorded by their issuer.

The Department, in paragraph (b)(4), proposes to prohibit a covered entity from having or implementing a categorical coverage exclusion or limitation for all health services related to gender transition or other gender-affirming care.[455] This is consistent with the 2016 Rule at former § 92.207(b)(4), modified to include gender-affirming care. Some health plans continue to have a categorical ban on all gender-affirming care for transgender individuals as not medically indicated and as improper care to treat gender dysphoria, regardless of whether such care has been prescribed by a health care professional and despite widespread professional consensus to the contrary.[456]

Such categorical exclusions in covered plans both facially deny transgender individuals coverage access based on their gender identity and result in more than *de minimis* harm to the individuals; therefore they are prohibited discrimination on the basis of sex.[457] A covered entity's denial of coverage solely on the basis of one's sex assigned at birth—*i.e.,* if the individual was assigned a different sex at birth, such care coverage would not be denied—constitutes disparate treatment and is prohibited under this proposed rule because transgender individuals are the only individuals who seek transition-related care.[458] Additionally, a recent district court opinion found that ''it is impossible to determine whether a particular treatment is connected to'' gender affirming care without comparing [the person's] ''sex before the treatment to how it might be impacted by the treatment.''[459]

Nonetheless, some health plans still have broad exclusions of coverage for care related to gender dysphoria or associated with gender affirmation.[460]

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[451] Providers and issuers frequently formulate incorrect assumptions about transgender and gender non-conforming individual's bodies when assessing medical necessity for sex-specific preventive care. For example, cervical cancer risks for transgender men are sometimes erroneously assumed by providers to be lower than for cisgender women. Only 64% of respondents who retained a uterus were told by their providers to get screened for cervical cancer. *See* Mandi L. Pratt-Chapman & Adam R. Ward, *Provider Recommendations Are Associated with Cancer Screening of Transgender and Gender-Nonconforming People: A Cross-Sectional Urban Survey,* 5 Transgender Health 80, 83 (2020), *https://www.liebertpub.com/doi/10.1089/trgh.2019.0083.*

[452] *See also* FAQs about Affordable Care Act Implementation (Part XXVI), Q5 (May 11, 2015) (stating ''[w]hether a sex-specific recommended preventive service that is required to be covered without cost sharing under PHS Act section 2713 and its implementing regulations is medically appropriate for a particular individual is determined by the individual's attending provider. Where an attending provider determines that a recommended preventive service is medically appropriate for the individual—such as, for example, providing a mammogram or pap smear for a transgender man who has residual breast tissue or an intact cervix—and the individual otherwise satisfies the criteria in the relevant recommendation or guideline as well as all other applicable coverage requirements, the plan or issuer must provide coverage for the recommended preventive service, without cost sharing, regardless of sex assigned at birth, gender identity, or gender of the individual otherwise recorded by the plan or issuer''), available at *https://www.cms.gov/cciio/resources/fact-sheets-and-faqs/downloads/aca_implementation_faqs26.pdf* and *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-xxvi.pdf.*

[453] 45 CFR 147.130; 26 CFR 54.9815–2713; 29 CFR 2590.715–2713.

[454] *See* discussion *supra* proposed § 92.206(b)(3), (c).

[455] As noted in the discussion of § 92.206 above, this preamble uses the terms ''gender transition'' and ''gender affirmation'' interchangeably in discussing the range of care that transgender individuals (including those who identify using other terms, for example, nonbinary or gender nonconforming) may seek to treat gender dysphoria and support gender transition or affirmation. Because insurance coverage provisions and medical-necessity determinations more often use the term gender transition, within these provisions, the term gender affirmation encompasses gender transition, that is the terminology used in the text of the regulation. The use of the term ''gender transition'' in the regulation, however, is not intended to convey a narrower meaning than the term ''gender affirmation.''

[456] *See Boyden* v. *Conlin,* 341 F. Supp. 3d 979, 987 (W.D. Wis. 2018) (noting that the American Medical Association, the American Psychiatric Association, the American Psychological Association, the American Counseling Association, the American Psychoanalytic Association, and the World Professional Association of Transgender Health, all recognize the medical necessity of transition related care for transgender people with gender dysphoria); *see also Flack* v. *Wisconsin Dep't of Health Servs.,* 395 F. Supp. 3d 1001, 1005 (W.D. Wis. 2019) (''For appropriate candidates, however, major medical organizations, including the American Medical Association, Endocrine Society, and American Psychiatric Association view gender-confirming surgeries as medically accepted, safe, and effective treatments for severe gender dysphoria.'').

[457] *See e.g., Flack,* 395 F. Supp. at 1001 (striking down Wisconsin Medicaid exclusion under Section 1557, Availability and Comparability Provisions of the Medicaid Act, and Equal Protection Clause of the U.S. Constitution); *Cruz* v. *Zucker,* 195 F. Supp. 3d 554, 571 (S.D.N.Y. 2016), *on reconsideration,* 218 F. Supp. 3d 246 (S.D.N.Y. 2016), *appeal withdrawn* (Dec. 30, 2016) (finding that a categorical ban on medically necessary treatments for a specific diagnosis, gender dysphoria, violates the Federal Medicaid Act's Availability Provision).

[458] *See* U.S. Dep't of Justice, Brief for the United States as Amicus Curiae in Support of Plaintiffs-Appellees, *Brandt* v. *Rutledge,* No. 21–2875, 11 (8th Cir. Aug. 23, 2021) (''Only persons who are transgender would seek these ''gender transition procedures,'' because only their gender identity differs from their ''biological sex'' (as defined by the Act).'').

[459] *Kadel* v. *Folwell,* No. 1:10–cv–00272, 2022 WL 2106270, at *19 (M.D.N.C. June 10, 2022).

[460] *See* Out2Enroll, Summary of Findings: 2021 Marketplace Plan Compliance with Section 1557, p.

Continued

The Department proposes in paragraph (b)(5) to ensure that a covered entity does not impose discriminatory limits on coverage for specific health services related to gender transition or other gender affirming care, which would generally be the case if such limits are not applied when those same health services are not related to gender transition. The limits that could constitute discriminatory conduct prohibited by this paragraph include denying or limiting coverage, denying or limiting a claim for coverage, imposing additional cost sharing, or other limitations or restrictions on coverage on the basis of gender identity. For example, a health plan that excludes ''coverage for surgery, such as a vaginoplasty and mammoplasty'' for any enrollee whose sex assigned at birth is male ''while providing coverage for such medically necessary surgery'' for enrollees whose sex assigned at birth is female ''is discriminatory on its face.'' [461] Exclusions that limit care related to one class of gender transition or other gender-affirming care may also violate this provision.[462]

The proposed paragraphs (b)(3) through (5) do not: require covered entities to cover specific procedures or treatments for gender transition or other gender-affirming care that they do not otherwise cover under the plan.

In proposed paragraph (b)(6), the Department proposes an integration provision that prohibits covered entities from having or implementing a benefit design that does not provide or administer health insurance coverage or other health-related coverage in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

The Department's existing Section 504 regulation includes an integration provision at 45 CFR 84.4(b)(2), which would be incorporated into Section 1557 at proposed § 92.101(b)(1). Section 504's integration provision provides that covered entities must provide services and programs in the most integrated setting appropriate to the needs of the qualified individual with a disability (referred to as the ''integration mandate''). The most integrated setting appropriate to the needs of an individual with a disability means a setting that enables individuals with disabilities to interact with individuals without disabilities to the fullest extent possible.[463] In 1999, the Supreme Court held in *Olmstead* v. *L.C.*[464] that the ADA's integration mandate prohibits the unjustified segregation of individuals with disabilities. Section 504's integration mandate creates the same set of obligations for entities that receive Federal financial assistance. In addition, health programs and activities must make reasonable modifications to policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.[465]

Covered entities providing or administering health insurance or other health-related coverage are subject to the integration requirements under Section 504. Despite these obligations, covered entities may not be taking these requirements into account in their health-related coverage benefit design.[466] For example, literature shows that variation in benefit design, including reimbursement rates, impact whether individuals with disabilities exiting hospitals enter institutional, congregate, or otherwise segregated settings for post-acute care services, with payment practices and provider network design playing a greater role than clinical characteristics in some instances.[467]

OCR's intent in articulating this provision is to clarify that a benefit design that results in the unjustified segregation or institutionalization of qualified individuals with disabilities or that place such individuals at serious risk of unjustified institutionalization or segregation is prohibited disability discrimination.

For instance, benefit designs raising integration concerns may include those that: limit or deny access to services in

1 (2021), *https://out2enroll.org/wp-content/uploads/2020/11/Report-on-Trans-Exclusions-in-2021-Marketplace-Plans.pdf* (listing Bright Health, Ala., Ariz., Ill., N.C., Neb., Okla., S.C., Tenn.; United Healthcare, Ariz., Okla., Tenn.; Alliant, Ga.; Mercy Care, Ill. as offering plans that include categorical exclusions for all transition-related care). Until 2020, the percentage of issuers that affirmatively stated that some or all gender-affirming care for transgender individuals is covered had increased each year. There continues to be a presumption among some issuers, however, that except under narrow circumstances, such care is not medically necessary and therefore not covered. *Id.*

[461] *Fletcher* v. *Alaska,* 443 F. Supp. 3d 1024, 1031 (D. Alaska 2020) (Title VII); *see also Kadel,* No. 1:19–cv–00272, 2022 WL 2106270, at *28–*29 (Title VII).

[462] *See, e.g.,* Conn. Comm'n on Human Rights & Opportunities, Declaratory Ruling on Petition Regarding Health Insurers' Categorization of Certain Gender-Confirming Procedures as Cosmetic (Apr. 17, 2020), *https://www.glad.org/wp-content/uploads/2020/04/Dec-Rule_04152020.pdf* (discussing how depending on the policy or plan, the categorical exclusion of certain procedures for gender dysphoria discriminates on the basis of sex by denying equal access to certain medical procedures based on an individual's assigned sex. As such, a blanket policy exclusion for gender transition and related services is prohibited.). *See also Challenging Insurance Exclusions for Gender Affirming Medical Care,* GLBTQ Legal Advocates & Defenders, *https://www.glad.org/cases/challenging-insurance-exclusions-for-gender-affirming-medical-care* (last updated April 23, 2020).

[463] 28 CFR pt. 35, app. B (2011) (addressing § 35.130).

[464] *Olmstead* v. *L.C.,* 527 U.S. 581 (1999).

[465] 28 CFR 35.130(b)(7)(i); 45 CFR 92.105; *see also Olmstead,* 527 U.S. at 603–07.

[466] *See* Letter from the Bazelon Center for Mental Health Law to Robinsue Frohboese, Acting Dir., Office for Civil Rights, U.S. Dep't of Health & Human Servs. (June 7, 2021) (discussing how benefit design decisions can result in needless segregation of people with disabilities). The letter will be attached to the docket of this proposed rule as a supplemental material at *federalregister.gov.*

[467] Medicare Advantage and commercial health plan benefit designs that impose beneficiary cost-sharing, referral requirements or prior authorization requirements can restrict access to home health services. *See, e.g.,* Lacey Loomer et al., *Comparing Receipt of Prescribed Post-Acute Home Health Care Between Medicare Advantage and Traditional Medicare Beneficiaries: An Observational Study,* 36 J. Gen. Intern. Med. 2323 (2020), *https://link.springer.com/content/pdf/10.1007/s11606-020-06282-3.pdf* (finding that receipt of post-acute home health care was lower for Medicare Advantage enrollees compared with traditional Medicare enrollees, and that among Medicare Advantage enrollees, HMO plans with home health utilization restrictions (*i.e.,* cost sharing, pre-authorization, referral requirements) were less likely to receive prescribed home health); Laura Skopec et al., *Home Health Use in Medicare Advantage Compared to Use in Traditional Medicare,* 39 Health Affairs 1072 (2019), *https://www.healthaffairs.org/doi/10.1377/hlthaff.2019.01091* (finding Medicare Advantage enrollees were less likely to use home health care than traditional Medicare enrollees were and had shorter average home health spells, and suggesting that these differences in use and length of spell may be related to differences in how Medicare Advantage plans manage and pay for home health care); Scott E. Regenbogen et al., *Spending on Postacute Care After Hospitalization in Commercial Insurance and Medicare Around Age Sixty-five,* 38 Health Affairs 1505 (2019), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7795720/pdf/nihms-1659826.pdf* (finding that the benefit design practices of commercial insurers result in substantially less access to home health services for post-acute care than that which is available in fee-for-service Medicare). Such reductions in home health use do not necessarily violate the integration mandate if issuers simply reduce unnecessary service-provision without increasing risk of institutionalization and apply standard medical management techniques in a nondiscriminatory fashion as permitted under Section 1557 (proposed § 92.207(c)). However, a benefit design restricting access to home health services may raise concerns under the integration mandate if it leads to a serious risk of unjustified or unnecessary institutionalization of people with disabilities. Benefit design can also reduce the risk of institutionalization, including long-term institutionalization. *See, e.g.,* Amit Kumar et al., *Comparing Post-Acute Rehabilitation Use, Length of Stay, and Outcomes Experienced by Medicare Fee-for-Service and Medicare Advantage Beneficiaries with Hip Fracture in the United States: A Secondary Analysis of Administrative Data,* 15 PLoS Med., June 6, 2018, *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6019094/pdf/pmed.1002592.pdf* (finding that benefit design and care management practices adopted by Medicare Advantage plans resulted in a lower risk of long-term institutionalization within a nursing home and a higher rate of successful discharge to the community relative to those used in fee-for-service Medicare).

the most integrated setting while making comparable services available in segregated or institutional settings; place additional terms and conditions on the receipt of certain benefits in integrated settings that are not in place within segregated or institutional settings; impose more restrictive rules or requirements for coverage for services in community-based settings than those applied to coverage for services in segregated or institutional settings; or set better reimbursement rates for a service or item for individuals in segregated settings than for individuals in community settings.[468] For example, an issuer covering a service or benefit (such as personal care or durable medical equipment) for individuals in institutional settings, but not covering the same service or benefit for individuals living in their own homes or in other community settings would violate this provision if the difference in coverage resulted in the unnecessary segregation of individuals with disabilities, or a serious risk of such segregation, unless it could show that modifications (to the coverage rule or policy) would fundamentally alter the nature of the service, program, or activity. We note that a state Medicaid program would generally not be required to provide a new benefit, because that would fundamentally alter the nature of the program. However, to the extent that a benefit, including an optional benefit, is already provided as part of the state's program, it must be offered in a manner that does not incentivize institutional services over community services.[469]

This provision will also be interpreted to apply both to circumstances where individuals with disabilities are unnecessarily segregated or institutionalized as a result of benefit design features, and circumstances where the benefit design places individuals with disabilities at serious risk of placement within an institution, congregate care setting, or other segregated settings through the coverage of or payment for services offered or provided in integrated settings relative to segregated ones, or through funding or service implementation practices within a benefit design set or administered by a covered entity that result in such a risk.[470] For example, a Medicare Advantage plan that requires prior authorization or step therapy to receive a medication in the community, but not in a skilled nursing facility, would be in violation of this provision if the discrepancy resulted in unnecessary segregation or a serious risk of unnecessary segregation and the distinction was not clinically appropriate. Similarly, if the plan relied on a pharmacy benefit manager (PBM) to administer prescription drug benefits, and the PBM employed utilization management techniques in the community that created greater barriers to accessing medication than in an institutional setting, the PBM may be in violation of this provision if the PBM is subject to this part.

This provision encompasses both the direct design of a benefit offered by a covered entity and indirect mechanisms that affect the implementation of a benefit design within the covered entity's control, such as utilization management practices, provider reimbursement, contracting out to third party-contractors such as PBMs, and quality measurement and incentive systems. Covered entities designing contracts with managed care organizations, PBMs, or other third-party entities taking on financial risk for the delivery of health services should carefully scrutinize their capitation, reimbursement, quality measurement, and incentive structures to ensure that they do not result in the unjustified segregation of individuals with disabilities or place individuals with disabilities at serious risk of unjustified segregation.

OCR seeks comment on the scope and nature of the benefit design features that result in unjustified segregation or institutionalization of qualified individuals with disabilities or place such individuals at serious risk of unjustified institutionalization or segregation. We are interested in feedback on the application of the integration mandate to a wide variety of health services and are particularly interested in comments on the application of the integration mandate to coverage of post-acute services, mental health services, and other services commonly provided by non-state payers (*i.e.,* health insurance issuers, self-insured group health plans, and other payers). We are also interested in feedback on the application of the integration mandate to the Medicaid program and its statutory framework at Title XIX of the Social Security Act. Specifically, we request input on how state Medicaid agencies are able to achieve compliance with the integration mandate through benefit design, such as through reimbursement, service scope, and service authorization that do not incentivize institutional services over community services. In addition, we request input on the amount of time needed to reach compliance with needed benefit design modifications.

Proposed paragraph (c) states that nothing in this section requires the coverage of any health service where the covered entity has a legitimate, nondiscriminatory reason for determining that such health service fails to meet applicable coverage requirements, such as medical necessity requirements, in an individual case.

Covered entities may employ reasonable medical management techniques, including medical necessity standards,[471] for determining coverage of a particular treatment based on whether it is medically appropriate under current generally accepted standards of care for an individual or whether the treatment is experimental or cosmetic, as long as the medical management standards are not discriminatory and are not otherwise prohibited under other applicable Federal and state law. When developed and used appropriately in a nondiscriminatory manner, medical necessity guidelines prevent unnecessary costs to covered entities and protect the safety of enrollees by ensuring that the requested treatment is safe and clinically appropriate for the particular enrollee. This determination involves a medical review of the patient's condition and the clinical appropriateness of the requested treatment in accordance with the covered entity's medical necessity guidelines. Such guidelines should be

[468] *See* Letter from the Bazelon Ctr. for Mental Health Law, *supra* note 466 (discussing how benefit design decisions can result in needless segregation of people with disabilities). The letter will be attached to the docket of this proposed rule as a supplemental material at *federalregister.gov.*

[469] *See, e.g., Radaszewski ex rel Radaszewski* v. *Maram,* 383 F.3d 599, 611 (7th Cir. 2004) (''Although a state is not obliged to create entirely new services or to otherwise alter the substance of the care that it provides to Medicaid recipients . . . the integration mandate may well require the State to make reasonable modifications to the form of existing services in order to adapt them to community-integrated settings.'')

[470] U.S. Dep't of Justice, Civil Rights Div., Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C. (June 22, 2011), *https://www.ada.gov/olmstead/q&a_olmstead.htm. See also Fisher* v. *Oklahoma Health Care Authority,* 355 F.3d 1175 (10th Cir. 2003) (finding that it violates the integration mandate to restrict the number of prescription medications available to individuals enrolled in Medicaid home and community-based services to five per month while not applying such a cap to individuals in institutional settings); see also *Pashby* v. *Delia,* 709 F.3d 307 (4th Cir. 2021).

[471] *See supra* note 448 discussing definitions of medical necessity. *See also* 45 CFR 156.125(c) (CMS regulation prohibiting discrimination in essential health benefits stating that ''nothing in this section shall be construed to prevent an issuer from appropriately utilizing reasonable medical management techniques'').

applied in a neutral manner and could raise concerns under this proposed rule if the guidelines establish more restrictive requirements for certain diseases or conditions without justification, for example, if the guidelines require a separate, more stringent review process only for mental health services.[472]

When OCR receives a complaint alleging that a denial of coverage was based upon prohibited discrimination rather than on a nondiscriminatory assessment of medical necessity, consistent with longstanding OCR practice, OCR will not conduct a general review of the medical judgment behind the denial for a specific individual. Rather, OCR's review will focus on the narrow question of whether the rationale for the denial was tainted by impermissible discriminatory considerations. Thus, OCR may require a covered entity to provide its medical necessity standards or guidelines; the clinical, evidence-based criteria or guidelines [473] relied upon to make the medical necessity determination; and the medical substantiation for the medical necessity determination.

Claims of medical necessity that are not based upon genuine medical judgments will be considered evidence of pretext for discrimination. For example, issuers have historically excluded services related to gender-affirming care for transgender people as experimental or cosmetic (and therefore not medically necessary).[474] Characterizing this care as experimental or cosmetic would be considered evidence of pretext because this characterization is not based on current standards of medical care.[475] Such exclusions are a form of disparate treatment discrimination, as they distinguish between care that is covered and care that is not solely by whether such care is provided as gender-affirming care for transgender people. Thus, categorical exclusions for gender-affirming care for transgender people that provide the basis for the exclusion as ''experimental'' would result in prohibited discrimination on the basis of sex. This is not to say that issuers must cover all services related to gender-affirming care for transgender individuals—or all medically necessary services generally. Issuers retain flexibility in designing their benefit packages, and this proposed rule would not require issuers to cover any particular benefit or to cover all medically necessary services. It does require, however, that issuers apply standards in a consistent, neutral, nondiscriminatory manner that does not limit or deny services to individuals based on a protected basis.

Proposed paragraph (c) also would not prohibit a covered entity from engaging in utilization management techniques applied in a neutral, nondiscriminatory manner. Utilization management techniques include prior authorization,[476] step therapy (or ''fail-first''),[477] and durational or quantity limits.[478] Utilization management controls, designed to control costs and ensure the clinically appropriate use of services,[479] are standard industry practices [480] that are permitted under Section 1557 as long as they are applied in a neutral, nondiscriminatory manner and are not otherwise prohibited under other applicable Federal and state law.[481] Excessive use or administration of utilization management tools that target a particular condition that could be considered a disability or other prohibited basis could violate Section 1557.[482] For example, prescription drug formularies that place utilization management controls on most or all drugs that treat a particular condition regardless of their costs without placing similar utilization management controls on most or all drugs used to treat other conditions may be discriminatory under this section. Similarly, benefit designs that place utilization management controls on most or all services that treat a particular disease or condition but not others may raise concerns of discrimination. Where there is an alleged discriminatory practice or action, the covered entity would be expected to provide a legitimate, nondiscriminatory reason, based on clinical evidence, for the practice.

Finally, the Department proposes § 92.207(d) to explain that the enumeration of specific forms of discrimination in paragraph (b) does not limit the general applicability of the prohibition in paragraph (a) of this section.

*Benefit Design*

As discussed when addressing the requirements of proposed paragraph (b), OCR will apply basic nondiscrimination

[472] We note this practice may also violate the rules regarding non-quantitative treatment limitations applicable to group health plans and health insurance issuers under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), Public Law 110–343, as amended, which is distinct from Section 1557 and not enforced by OCR. *See* 42 U.S.C. 300gg–26 (HHS); 29 U.S.C. 1185a (Department of Labor); 26 U.S.C. 9812 (Department of Treasury), and implementing regulations at 45 CFR 146.136, 29 CFR 2590.712, and 26 CFR 54.9812–1, respectively; *see also* U.S. Dep't of Labor, U.S. Dep't of Health & Human Servs., U.S. Dep't of the Treasury, 2022 MHPAEA Report To Congress: Realizing Parity, Reducing Stigma, and Raising Awareness: Increasing Access to Mental Health and Substance Use Disorder Coverage (2022), *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf*; U.S. Dep't of Labor, Self-Compliance tool for the Mental Health Parity and Addiction Equity Act (MHPAEA), p. 38 (2020), *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/self-compliance-tool.pdf.*

[473] *See* Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023, 87 FR 27208, 27296–300 (May 6, 2022) (discussing newly promulgated 45 CFR 156.125(a), which states ''[a] non-discriminatory benefit design that provides [essential health benefits] is one that is clinically-based'').

[474] *See* discussion *supra* under this section on paragraphs (b)(3) through (4).

[475] *Id.*

[476] Medicare defines ''prior authorization'' as ''the process through which a request for provisional affirmation of coverage is submitted to CMS or its contractors for review before the service is provided to the beneficiary and before the claim is submitted for processing.'' 42 CFR 419.81 (Medicare definition of prior authorization for hospital outpatient department services). *See also* Ctrs. for Medicare & Medicaid Servs., Prior Authorization Process for Certain Hospital Outpatient Department (OPD) Services Frequently Asked Questions (FAQs), Q1 (Dec. 27, 2021), *https://www.cms.gov/files/document/opd-frequently-asked-questions.pdf.*

[477] Medicare defines ''step therapy'' for the Medicare Advantage Program as a ''utilization management policy for coverage of drugs that begins medication for a medical condition with the most preferred or cost effective drug therapy and progresses to other drug therapies if medically necessary.'' 42 CFR 422.2.

[478] Durational or quantity limits place limits on the frequency or number of benefits to be provided, such as limiting therapy visits to once per week or limiting prescription drug coverage to a 30-day supply of a medication.

[479] *See, e.g.,* Ctrs. for Medicare & Medicaid Servs., Prior Authorization Process for Certain Hospital Outpatient Department (OPD) Services Frequently Asked Questions (FAQs), Q1 (Dec. 27, 2021), *https://www.cms.gov/files/document/opd-frequently-asked-questions.pdf* (explaining prior authorization ''ensures that Medicare beneficiaries continue to receive medically necessary care while protecting the Medicare Trust Funds from unnecessary increases in the volume of covered services and improper payments'' and ''helps to make sure that applicable coverage, payment, and coding requirements are met before services are rendered while ensuring access to and quality of care'').

[480] *See generally* 42 U.S.C. 18120(1) (stating ''[n]otwithstanding any other provision in the [ACA], nothing in such Act (or an amendment made by such Act) shall be construed to (1) prohibit (or authorize the Secretary of Health and Human Services to promulgate regulations that prohibit) a group health plan or health insurance issuer from carrying out utilization management techniques that are commonly used as of March 23, 2010'').

[481] We note that, similar to medical necessity, discussed previously, these practices would generally be subject to the rules regarding non-quantitative treatment limitations applicable to group health plans and health insurance issuers, with respect to medical/surgical benefits and mental health and substance use disorder benefits, under MHPAEA, *see supra* note 472.

[482] *See generally* Stacey L. Worthy et al., *Now or Never: The Urgent Need for Action Against Unfair Coverage Denials for Quality Health Care,* 48 Loy. U. Chi. L.J. 1041 (2017), *https://lawecommons.luc.edu/luclj/vol48/iss4/8/.*

principles to the facts of the particular plan or coverage when analyzing allegations of discrimination under this section to determine if the challenged action is unlawful. Due to the fact-intensive nature of the analysis necessary to determine whether a particular benefit design is discriminatory under this section, we decline to include examples of per se discriminatory benefit design features in the proposed rule (other than categorical exclusions of all health services related to gender transition under proposed paragraph (b)(4), which, as discussed above, impermissibly single out an entire category of services based on an individual's gender identity).[483] However, we provide additional discussion here to demonstrate how OCR will approach investigations related to allegedly discriminatory benefit design.

Consistent with general principles in civil rights law, covered entities will have the opportunity to articulate a legitimate, nondiscriminatory justification for an alleged discriminatory action or practice. OCR will scrutinize the justification to ensure it is not a pretext for discrimination. When articulating a justification for a challenged action or practice that relies upon medical standards or guidelines, covered entities should be mindful that such standards and guidelines may be subject to additional scrutiny if they are not based on clinical, evidence-based criteria or guidelines.

As discussed in detail later in this section,[484] we propose to apply this part to all the operations of a covered entity that is principally engaged in the provision or administration of health programs or activities as described in paragraph (a) of the proposed definition of ''health program or activity,'' including a health insurance issuer's excepted benefits and short-term limited duration insurance products. Given the unique nature of these products, which are generally exempt from complying with any of the ACA's market reforms, we provide further analysis on how OCR proposes to investigate potential claims of discrimination challenging benefit design features in these products. OCR will consider the nature, scope, and contours of the specific plan at issue, and will evaluate on a case-by-case basis an alleged discriminatory design feature in light of the entity's stated coverage parameters.[485] Further, as discussed throughout this section, covered entities have the opportunity to articulate a legitimate, nondiscriminatory basis for their challenged action or practice.

*Scope of Application and Application to Excepted Benefits and Short-Term Limited Duration Insurance*

Proposed § 92.207 applies to all the operations of covered entities that provide or administer health insurance coverage or other health-related coverage, including health programs and activities that receive Federal financial assistance, and the Department in the administration of its health-related coverage programs, but would not apply to employers generally or in their provision of employee health benefits per proposed § 92.2(b). Examples of recipients that provide or administer health insurance coverage or other health-related coverage include health insurance issuers, Medicare Advantage organizations, Medicare Part D plan sponsors, and Medicaid managed care organizations.

Per paragraph (b) of the proposed definition of ''health program or activity'' under proposed § 92.4, we propose to apply this part to all the operations of any entity principally engaged in the provision or administration of health programs or activities described in paragraph (a) of the proposed definition of ''health program or activity,'' including a health insurance issuer. Thus, this proposed rule applies to all of a covered health insurance issuer's health programs and activities in the individual or group health insurance markets, including its offer of products through or outside of an Exchange. For example, an issuer participating in the Exchange and thereby receiving Federal financial assistance would be covered by the rule for its qualified health plans (QHPs) offered on the Exchange, as well as for its health plans offered outside the Exchange, including, for example, large group market plans,[486] grandfathered plans,[487] grandmothered plans,[488] excepted benefits,[489] and short-term limited duration insurance,[490] as well as for its operations related to acting as a third party administrator for a self-insured group health plan.

We recognize that many of these health insurance products are not subject to the ACA's market reforms codified in title XXVII of the PHS Act[491] in the same fashion as QHPs and other non-grandfathered health insurance coverage. For instance, large group market plans and grandfathered plans are subject to some but not all of the market reforms,[492] whereas excepted benefits and short-term limited duration insurance are generally exempt from all of the ACA's market reforms. Excepted benefits are statutorily defined benefits that are exempt from certain health care requirements, such as the ACA's market

[483] For examples of presumptively discriminatory benefit designs under CMS' essential health benefits nondiscrimination regulations applicable to non-grandfathered health insurance coverage in the individual and small group markets, *see* Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023, 87 FR 27208, 27301–05 (May 6, 2022) (providing the following illustrative examples of presumptively discriminatory practices under CMS' essential health benefits nondiscrimination regulations: (1) limitation on hearing aid coverage based on age; (2) autism spectrum disorder coverage limitations based on age; (3) age limits for infertility treatment coverage when treatment is clinically effective for the age group; (4) limitation on foot care coverage based on diagnosis (whether diabetes or another underlying medical condition); and (5) access to prescription drugs for chronic health conditions (adverse tiering)). We note these regulations are enforced by CMS and are distinct from Section 1557 and other civil rights laws enforced by OCR.

[484] *See* discussion *infra* under this section on Scope of Application and Application to Excepted Benefits and Short-Term Limited Duration Insurance.

[485] *Cf. Easley by Easley* v. *Snider,* 36 F.3d 297, 301–05 (3d Cir. 1994) (examining the ''essential nature of the program'' as intended by the state when determining that a state's Attendant Care Program did not discriminate against individuals with mental disabilities under the ADA by excluding adults with disabilities who were not mentally alert).

[486] 42 U.S.C. 300gg–91(2); 45 CFR 144.103.

[487] 42 U.S.C. 18011; 45 CFR 147.140.

[488] Grandmothered plans, also known as ''transitional'' plans, are certain non-grandfathered health insurance coverage in the individual and small group market that are not considered to be out of compliance with certain specified market reforms under certain conditions. *See* Ctrs. for Medicare & Medicaid Servs., Extended Non-Enforcement of Affordable Care Act-Compliance With Respect to Certain Policies (Mar. 23, 2022), *https://www.cms.gov/files/document/extension-limited-non-enforcement-policy-through-calendar-year-2023-and-later-benefit-years.pdf.*

[489] 42 U.S.C. 300gg–91(c); 45 CFR 144.103, § 146.145(b), § 148.220. Excepted benefits are a tri-Department matter regulated by the Departments of HHS, Labor, and the Treasury. In this proposed rule, we cite to HHS regulations, but note that the Departments of Labor and the Treasury have parallel regulatory citations.

[490] Short-term limited duration insurance is a type of health insurance coverage that is not subject to most of the provisions of title XXVII of the Public Health Service Act because it is specifically excluded from the definition of individual health insurance coverage in the PHS Act. 42 U.S.C. 300gg–91(b)(5). Short-term limited duration insurance is generally defined in Federal regulations as health insurance coverage issued under a contract that is effective for less than 12 months, and, taking into account renewals or extensions, has a duration of no longer than 36 months in total. 45 CFR 144.103. Short-term limited duration insurance is regulated by the Departments of HHS, Labor, and the Treasury. In this proposed rule, we cite to HHS regulations, but note that the Departments of Labor and the Treasury have parallel regulatory citations.

[491] 42 U.S.C. 300gg *et seq.*

[492] For example, large group market plans and grandfathered plans are not subject to the ACA's fair health insurance premiums (42 U.S.C. 300gg) or essential health benefits (42 U.S.C. 300gg–6) requirements.

reforms [493] and the nondiscrimination and portability requirements of HIPAA [494] when certain conditions are met, such as when benefits are supplemental to other medical benefits, when benefits are limited in scope, or when the benefits are provided as independent, non-coordinated benefits.[495] Examples of excepted benefits include limited scope vision insurance and limited scope dental insurance (though stand-alone dental plans sold through the Exchange are subject to certain QHP requirements [496]), long term care insurance, specified disease insurance, and Medicare supplemental health insurance (also known as ''Medigap'').

Public comments received from health insurance entities on the 2015 and 2019 NPRMs opposed application of Section 1557 nondiscrimination requirements to excepted benefits and short-term limited duration insurance.[497] The 2020 Rule narrowed the scope of application to health insurance at § 92.3(b)–(c) to provide that an issuer principally engaged in the business of providing health insurance shall not, by virtue of such provision, be covered by Section 1557 in all of its operations. This resulted in coverage of an issuer's operations only with respect to the particular line or sub-line of business for which the issuer receives Federal financial assistance, which effectively exempts coverage of excepted benefits and short-term limited duration insurance from the requirements established under the 2020 Rule.[498]

Unlike the 2020 Rule, this proposed rule would apply to all of an issuer's health programs and activities when an issuer is principally engaged in providing or administering health insurance coverage, or other health-related coverage as specified under paragraph (b) in the proposed definition of ''health program or activity'' under proposed § 92.4.[499] The fact that excepted benefits and short-term limited duration insurance are exempt from the ACA's market reforms because they are not intended to serve as comprehensive medical insurance does not negate that offering such insurance is a ''health program or activity.'' Further, the text of Section 1557 does not limit its protections only to health programs and activities that are subject to other provisions of the ACA. However, because the Department believes commenters' concerns about the application of Section 1557 to excepted benefits and short-term limited duration insurance warranted further consideration, we have provided additional discussion on how OCR proposes to analyze allegations of discrimination in such products in the preceding discussion on benefit design.

*Application to Third Party Administrators*

An issuer's or other entity's operations related to third party administrative services also would be subject to the rule when the issuer receives Federal financial assistance and is deemed to be principally engaged in the provision or administration of health programs or activities as described in paragraph (a) of the proposed definition of ''health program or activity'' under proposed § 92.4, which includes providing or administering health-related services, health insurance coverage, or other health-related coverage. We recognize that the Employee Retirement Income Security Act of 1974 (ERISA) requires group health plans to be administered consistent with their terms,[500] and, therefore, third party administrators are unable to change any discriminatory design features in the self-insured plans they administer to comply with Section 1557's requirements. In the 2016 Rule, we clarified that third party administrators were generally not responsible for the benefit designs of the self-insured group health plans they administer and that enforcing Section 1557 against a third party administrator for a group health plan with a discriminatory benefit design could result in holding a third party administrator liable for plan designs over which it had no control. Some third party administrators, however, are responsible for the development of the group health plan document or other policy documents that are ultimately adopted by the self-insured plan. Under these circumstances, where the discriminatory terms of the group health plan originated with the third party administrator rather than with the plan sponsor, the third party administrator could be liable for the discriminatory design feature under Section 1557.[501]

When OCR receives a complaint alleging discrimination in a self-insured group health plan administered by a covered entity acting as a third party administrator, we propose to adopt an approach similar to the 2016 Rule that takes into account the party responsible for the alleged discriminatory conduct.[502] We also restate the 2016 Rule's position that we will engage in a fact-specific analysis to evaluate whether a third party administrator is appropriately covered under Section 1557 as a recipient of Federal financial assistance in circumstances where the third party administrator is legally separate from the issuer that receives Federal financial assistance.

We also newly address that a third party administrator may be liable under this part when it is responsible for the underlying discriminatory plan design feature that is adopted by a group health plan. This modification is consistent with subsequent case law holding the same.[503] Accordingly, OCR will determine whether responsibility for the decision or alleged discriminatory action lies with the plan sponsor or with the third party administrator. Where the alleged discrimination relates to the administration of the plan by a covered third party administrator, OCR will process the complaint against the third party administrator because it is the entity responsible for the decision or other action being challenged in the complaint. For example, if a third party administrator denies a claim because the individual's name suggests that they are of a certain race or national origin, or threatens to expose an employee's transgender or disability status to the employee's employer, OCR will proceed against the third party administrator as the entity responsible for the decision. In addition, OCR will pursue claims

[493] 42 U.S.C. 300gg–21(b)–(c), 300gg–63.

[494] Public Law 104–191, 100 Stat. 2548 (1996).

[495] 42 U.S.C. 300gg–91(c); 29 U.S.C. 1191b(c).

[496] *See, e.g.,* 45 CFR 155.1065, § 156.150.

[497] *See* 81 FR 31375, 31430–31 (May 18, 2016); 85 FR 37160, 37173 (June 19, 2020).

[498] *See* 85 FR 37173.

[499] We note that some health insurance issuers may be considered principally engaged in the business of providing health care as defined under the 2020 Rule at § 92.3(b), such as issuers offering HMO plans.

[500] ERISA Section 404(a)(1)(D) (29 U.S.C. 1104(a)(1)(D)).

[501] *See Tovar* v. *Essentia Health,* 342 F. Supp. 3d 947, 954 (D. Minn. 2018) (holding that a third party administrator may be liable under Section 1557 for damages arising from discriminatory terms in a self-insured, employer-sponsored health plan that was under the sole control of the employer by refusing to construe ERISA to impair Section 1557 and finding that ''[n]othing in Section 1557, explicitly or implicitly, suggests that [third party administrators] are exempt from the statute's nondiscrimination requirements'').

[502] *See* 81 FR 31432.

[503] *See Tovar,* 342 F. Supp. at 954 (holding that a third party administrator may be liable under Section 1557 for damages arising from discriminatory terms in a self-insured, employer-sponsored health plan that was under the sole control of the employer by refusing to construe ERISA to impair Section 1557 and finding that ''[n]othing in Section 1557, explicitly or implicitly, suggests that [third party administrators] are exempt from the statute's nondiscrimination requirements'').

against the third party administrator in circumstances where the third party administrator is the entity responsible for developing the discriminatory benefit design feature that was adopted by the employer. On the other hand, where the alleged discrimination relates to the benefit design of a self-insured group health plan that did not originate with the third party administrator, but rather with the plan sponsor, OCR will refer the complaint to the EEOC or the DOJ for potential investigation.

As part of OCR's enforcement authority, OCR has the option of referring or transferring matters to other Federal agencies with jurisdiction over the entity. For example, OCR will transfer matters to the EEOC where OCR lacks jurisdiction over an employer responsible for the benefit design of an employer-sponsored group health plan.[504] Complaints alleging discrimination in the Federal Employees Health Benefits (FEHB) Program, the Federal Employees Dental and Vision Insurance Program (FEDVIP), or the Federal Long Term Care Insurance Program (FLTCIP), would be referred to OPM. This Rule does not determine how or whether any other agency will investigate or enforce any matter referred or transferred by the Department.

*Network Adequacy*

Plan choices regarding provider networks may also violate Section 1557. Network plans offer medical care through a defined set of providers under contract with the issuer.[505] Subject to other applicable Federal and State laws, covered entities have discretion in developing their networks of providers, establishing reimbursement rates, and determining cost-sharing for in-network and out-of-network providers, including excluding coverage for out-of-network care. Covered entities using provider networks may be subject to certain network adequacy requirements governed by state and Federal law.[506] For example, CMS regulations contain network adequacy requirements for QHPs [507] (including essential community providers),[508] Medicare Advantage plans,[509] Medicare Part D prescription drug plans,[510] and Medicaid managed care plans.[511] Several of these regulations prescribe specific requirements, such as listing the types of providers that must be included in the network [512] and establishing time and distance standards for providers within a certain area.[513] QHPs that maintain a provider network must ensure that the provider network consisting of in-network providers includes essential community providers and is ''sufficient in number and types of providers, including providers that specialize in mental health and substance abuse services, to ensure that all services will be accessible without unreasonable delay.'' [514] Starting in plan years 2023 and 2024 respectively, QHP issuers on a Federally-facilitated Exchange must meet time and distance standards, and appointment wait time standards established by the Federally-facilitated Exchange.[515]

Recognizing that network adequacy is regulated by other departmental regulations, we noted in the 2016 Rule, and again note here, that it is outside the scope of Section 1557 to establish uniform or minimum network adequacy standards. Nonetheless, the prevalence of narrow networks continues to grow as payers seek to keep premiums and costs low and drive patients to high-value providers.[516] Provider networks that limit or deny access to care for individuals with certain disabilities, such as by excluding certain providers from the network that treat high-cost enrollees, raise discrimination concerns.[517] Similarly, limited provider networks may require transgender enrollees to visit inexperienced providers in order to receive services, regardless of the potentially serious risks from receiving inadequate care. Enrollees are often required to prove why an in-network provider cannot meet their needs before their insurance will cover an out-of-network provider, raising additional obstacles that may cause particular harm to individuals with disabilities, transgender people, or other groups.[518]

We understand that an array of factors can affect the provider network design of a plan, including the geographic location of the service area, the number of available providers and specialists in the service area, reimbursement rates, the number of providers willing to contract with the payer, and the overall design of the plan as it relates to premiums. We recognize plans' and issuers' autonomy in developing their provider networks as part of their benefit design packages, consistent with existing state and Federal network adequacy and other laws, and we do not

[504] *See* 28 CFR 42.605.

[505] 42 U.S.C. 300gg–91(10); 45 CFR 144.103 (defining ''network plan'' as ''health insurance coverage of a health insurance issuer under which the financing and delivery of medical care (including items and services paid for as medical care) are provided, in whole or in part, through a defined set of providers under contract with the issuer'').

[506] Network adequacy refers to ''a health plan's ability to deliver the benefits promised by providing reasonable access to enough in-network primary care and specialty physicians, and all health care services included under the terms of the contract.'' *Network Adequacy,* Nat'l Ass'n of Ins. Comm'rs, *https://content.naic.org/cipr_topics/topic_network_adequacy.htm* (last updated Aug. 25, 2021).

[507] 45 CFR 156.230; *see also* Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023, 87 FR 27208, 27322–34 (May 6, 2022) (discussing changes to network adequacy requirements for qualified health plans at 45 CFR 156.230); U.S. Dep't of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., 2023 Letter to Issuers in the Federally-facilitated Exchanges, pp. 10–17 (April 28, 2022), *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-2023-Letter-to-Issuers.pdf.*

[508] 45 CFR 156.235; *see also* 87 FR 27334–37 (discussing changes to the essential community providers requirements for qualified health plans at 45 CFR 156.235).

[509] *See e.g.,* 42 CFR 422.116; U.S. Dep't of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., Medicare Advantage and Section 1876 Cost Plan Network Adequacy Guidance (2020), *https://www.cms.gov/files/document/medicareadvantageandsection1876costplannetworkadequacyguidance6-17-2020.pdf.*

[510] 42 CFR 423.120(a).

[511] 42 CFR 438.68 (requiring states to establish specified network adequacy requirements).

[512] 42 CFR 422.116(b) (Medicare Advantage); § 438.68(b) (Medicaid).

[513] 42 CFR 422.116(d) (Medicare Advantage); § 423.120 (a) (Part D); § 438.68(c) (Medicaid).

[514] 45 CFR 156.230(a)(1)–(2).

[515] 87 FR 27322–34 (discussing changes to network adequacy requirements for qualified health plans at 45 CFR 156.230).

[516] Steven Findlay, *In Search Of Insurance Savings, Consumers Can Get Unwittingly Wedged Into Narrow-Network Plans,* Kaiser Health News (Nov. 1, 2018), *https://khn.org/news/in-search-of-insurance-savings-consumers-can-get-unwittingly-wedged-into-narrow-network-plans/* (discussing 73% of plans offered through the Exchange in 2018 had restrictive networks compared to 54% in 2015).

[517] *See* Valarie K. Blake, *Restoring Civil Rights to the Disabled in Health Insurance,* 95 Neb. L. Rev. 1071, 1086 (2016), *https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=3046&context=nlr*; *see also,* Mark Shepard, Nat'l Bureau of Econ. Research, Working Paper 22600: Hospital Network Competition & Adverse Selection: Evidence from the Massachusetts Health Insurance Exchange (2016), *https://www.nber.org/papers/w22600* (finding high-cost enrollees favor plans that include expensive ''star'' hospitals in their network, which incentivizes plans not to include such hospitals in their networks); Subodh Potla et al., *Access to Neurosurgery in the Era of Narrowing Insurance Networks: Statewide Analysis of Patient Protection and Affordable Care Act Marketplace Plans in Arizona,* 149 World Neurosurgery e963 (May 2021), *https://pubmed.ncbi.nlm.nih.gov/33515792/* (finding 67 percent of counties in Arizona do not have access to outpatient neurosurgical care despite the presence of neurosurgical facilities in most counties); Stephen M. Schleicher et al., *Effects of Narrow Networks on Access to High-Quality Cancer Care,* 2 JAMA Oncology 427 (2016), *https://jamanetwork.com/journals/jamaoncology/article-abstract/2499779* (finding more than half of Exchange plans excluded four of eleven cancer centers).

[518] *Health Insurance—Choosing a Plan,* Transgender Legal Defense & Education Fund, Trans Health Project, *https://transhealthproject.org/trans-health-insurance-tutorial/choosing-plan/ (last updated July 16, 2020).*

propose to prescribe specific network adequacy requirements for covered entities under this rule. However, to ensure compliance with Section 1557, payers must develop their networks in a manner that does not discriminate against enrollees on the basis of race, color, national origin, sex, age, or disability.

We generally seek comment on how Section 1557 might apply to: provider networks; how provider networks are developed, including factors that are considered in the creation of the network and steps taken to ensure that an adequate number of providers and facilities that treat a variety of health conditions are included in the network; the ways in which provider networks limit or deny access to care for individuals on the basis of race, color, national origin, sex, age, or disability; and the extent to which the lack of availability of accessible medical diagnostic equipment in a provider network limits or denies access to care for individuals with disabilities.

In addition, the Department is also aware of growing concerns regarding impermissible discrimination in the application of value assessment methodologies used to set valuations for health care goods and services. Value assessment methodologies are an important tool to support health care payers in their coverage decisions and can significantly influence health benefit design, particularly through their use in price negotiations and value-based purchasing arrangements, as well as by informing utilization management decisions. However, where value assessment makes use of methods for calculating value that penalize individuals or groups of individuals on the basis of race, color, national origin, sex, age, or disability (*e.g.,* by placing a lower value on life-extension for a group of individuals based on a protected basis or via inappropriate adjustment of clinical end points on the basis of a protected basis under Section 1557), they may violate this part. To that end, OCR seeks comment on the extent, scope and nature of value assessment methods that discriminate on the basis of race, color, national origin, sex, age, or disability. We are interested in feedback on the civil rights implications of value assessment across a wide variety of contexts, including utilization management, formulary design, price negotiations, alternative payment models and other relevant applications.

Finally, we seek comment on all aspects of this section. In particular, we seek comment on the anticipated impact of the proposed application to excepted benefits and short-term limited duration insurance plans when such products are offered by a covered entity; how the proposed rule's nondiscrimination requirements would impact the industry that offers excepted benefits and short-term limited duration insurance and the consumers who rely upon those products; the prevalence of excepted benefits and short-term limited duration insurance offered by covered entities and the standard industry practices under which such plans are designed and administered; and excepted benefits and short-term limited duration insurance plans' scope of coverage, types of exclusions and limitations, underwriting practices, premium setting, and actuarial or business justifications for industry practices (as applicable), that may raise concerns about discrimination under Section 1557.

**Prohibition on Sex Discrimination Related to Marital, Parental, or Family Status (§ 92.208)**

The Department proposes in § 92.208 to provide that covered entities are prohibited from discriminating on the basis of sex in their health programs and activities with respect to an individual's marital, parental, or family status. The 2016 and 2020 Final Rules did not include a similar provision. This is not a new concept, however, as it is similar to the Department's Title IX regulation.[519]

The Department is proposing this provision to address issues OCR has encountered in its Section 1557 enforcement work. For example, OCR has resolved complaints against covered entities with policies of automatically assigning a male spouse as the guarantor when a female spouse received medical services, while not automatically assigning a female spouse as the guarantor when a male spouse received medical services.[520]

Proposed § 92.208 thus would provide that, in determining whether an individual satisfies any policy or criterion regarding access to its health programs or activities, a covered entity must not take an individual's sex into account in applying any rule concerning an individual's current, perceived, potential, or past marital, parental, or family status.

The Department is also considering whether § 92.208 should include a provision to specifically address discrimination on the basis of pregnancy-related conditions.[521] Although neither the 2016 nor the 2020 Rules included a stand-alone provision prohibiting discrimination on the basis of pregnancy-related conditions, the 2016 Rule defined discrimination ''on the basis of sex'' to include, *inter alia,* discrimination on the basis of ''pregnancy, false pregnancy, termination of pregnancy, or recovery therefrom, childbirth or related medical conditions.'' [522] The 2020 Rule does not include a definition of ''on the basis of sex'' at all, and therefore does not specifically include in the Section 1557 regulation a prohibition on discrimination on the basis of a person's ''termination of pregnancy'' or other conditions related to pregnancy.

The 2020 Rule does, however, prohibit discrimination on any of the ''grounds'' prohibited under Title IX,[523] and the Department's Title IX regulation, in turn, includes a provision expressly prohibiting discrimination on the basis of pregnancy-related conditions, including childbirth, false pregnancy, termination of pregnancy, and recovery therefrom.[524] Under this proposed rule, too, recipients would be required to comply with the specific prohibitions on discrimination found in the Department's Title IX regulations (including the regulation prohibiting discrimination on the basis of pregnancy-related conditions, including childbirth, false pregnancy, termination of pregnancy, and recovery therefrom).[525] In that respect it would not deviate from the 2016 or the 2020 Rule.

At the same time the Department promulgated the 2020 Rule, the Department amended its Title IX regulations to expressly include Title IX's statutory abortion neutrality provision,[526] and included in the Department's Section 1557 regulation a provision stating that the Section 1557 regulations may not be applied insofar as they would ''depart from, or contradict,'' Title IX exemptions, rights,

[519] 45 CFR 86.40(a).

[520] *Sex Case Summaries: Summary of Selected OCR Compliance Activities,* Dep't of Health & Human Servs., Office for Civil Rights, *https://www.hhs.gov/civil-rights/for-providers/compliance-enforcement/examples/sex-discrimination/index.html* (last updated Feb. 21, 2017).

[521] Such a provision would supplement proposed 92.101(a)(2), in which the Department proposes to define ''on the basis of sex'' to include pregnancy discrimination. *See* discussion *supra* § 92.101(a)(2).

[522] Former 45 CFR 92.4. Although the *Franciscan Alliance* court vacated the inclusion of the term ''termination of pregnancy'' in the 2016 Rule's definition of discrimination on the basis of sex, that vacatur neither applies to this current rulemaking, nor to a possible new final provision prohibiting discrimination on the basis of pregnancy-related conditions.

[523] 45 CFR 92.2(a), (b)(2).

[524] 45 CFR 86.40(a).

[525] *See* proposed 45 CFR 92.101(b).

[526] *See* 85 FR 37243 (promulgating 45 CFR 86.18(b)).

or protections.[527] This aspect of the 2020 Rule has been challenged in litigation.[528] This NPRM proposes repealing 45 CFR 92.6(b), the provision of the 2020 Rule challenged in those cases. The Department's view is that Section 1557 does not require the Department to incorporate the language of Title IX's abortion neutrality provision [529] into its Section 1557 regulation. This approach is consistent with the 2016 rule, which also did not incorporate Title IX's abortion neutrality provision. We acknowledge that the *Franciscan Alliance* court vacated the challenged provisions of the 2016 rule and reasoned that the Department was required to incorporate the language of Title IX's abortion neutrality provision; however, we disagree with that decision, which does not bind this new rulemaking.

The Department does note, however, that there are several other statutory and regulatory provisions related to the provision of abortions that may apply to an entity covered by Section 1557, and OCR will apply such provisions consistent with the law. For example, the Weldon Amendment forbids funds appropriated to HHS, among other Departments, from being ''made available to a Federal agency or program, or to a state or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.'' [530] The Coats-Snowe Amendment forbids discriminating against an entity that refuses to undergo training in performance or referrals for abortions.[531] The Church Amendment forbids requiring any individual ''to perform or assist in the performance of any part of a health service program . . . if his performance or assistance in the performance of such part of such program . . . would be contrary to his religious beliefs or moral convictions.'' [532] It also provides that an entity's receipt of any grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Services and Facilities Construction Act ''does not authorize any court or any public official or other public authority to require . . . such entity to . . . make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions.'' [533] The Church Amendment also prohibits discrimination against health care personnel related to their employment or staff privileges because they ''performed or assisted in the performance of a lawful sterilization procedure or abortion.'' [534] The same nondiscrimination protections also apply to health care personnel who refuse to perform or assist in the performance of sterilization procedures or abortion.[535] In addition, some of HHS' programs and services are specifically governed by abortion restrictions in the underlying statutory authority or program authorization.[536]

The Department also notes in this regard that the Emergency Medical Treatment and Active Labor (EMTALA) provides rights to individuals when they seek examination or treatment and appear at an emergency department of a hospital that participates in Medicare.[537] If that person has an ''emergency medical condition,'' the hospital must provide available stabilizing treatment, including abortion, or an appropriate transfer to another hospital that has the capabilities to provide available stabilizing treatment, notwithstanding any directly conflicting state laws or mandate that might otherwise prohibit or prevent such treatment.

The Department believes it could be beneficial to include a provision specifically prohibiting discrimination on the basis of pregnancy-related conditions as a form of sex-based discrimination. We seek comment on whether and how the Department should do so. We also seek comment on what impact, if any, the Supreme Court decision in *Dobbs* v. *Jackson Women's Health Organization* [538] has on the implementation of Section 1557 and these regulations. In light of the *Dobbs* decision and E.O. 14076,[539] the Department also seeks comments on other approaches to ensure nondiscriminatory access to care under this provision.

Though Congress did not require the Department to incorporate the language of Title IX abortion-neutrality provision in its Section 1557 regulations, we seek comment on this approach and on other possible readings of the Title IX abortion-neutrality provision, as well as whether the Department should align its Title IX regulation regarding the abortion neutrality provision of Title IX with the 2000 ''Common Rule'' version of that regulatory provision that more than 20 agencies have long adopted.[540]

**Nondiscrimination on the Basis of Association (§ 92.209)**

Proposed § 92.209 prohibits discrimination against an individual on the basis of the race, color, national origin, sex, age, or disability of an individual with whom the individual is

[527] *See* 45 CFR 92.6(b)).

[528] *See BAGLY* v. *U.S. Dep't of Health & Human Servs.,* No. 1:20–cv–11297 (D. Mass. Sept. 18, 2020); *New York* v. *U.S. Dep't of Health & Human Servs.,* No. 1:2–cv–00583 (S.D.N.Y. July 20, 2020). This NPRM proposes repealing 45 CFR 92.6(b), the provision of the 2020 Rule challenged in those cases.

[529] 20 U.S.C. 1688 (''Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.'').

[530] Consolidated Appropriations Act, 2022, Public Law 117–103, div. H, title V General Provisions, sec. 507(d)(1) (Mar. 15, 2022). *See also, e.g.,* the ''Hyde Amendment,'' Consolidated Appropriations Act, 2021, Public Law 116–260, div. H, §§ 506–07, 134 Stat. 1182 (Dec. 27, 2020).

[531] 42 U.S.C. 238n(a).

[532] 42 U.S.C. 300a–7(d).

[533] *Id.* 300a–7(b)(2)(A).

[534] *Id.* 300a–7(c)(1). For more information, *see Guidance on Nondiscrimination Protections under the Church Amendments,* U.S. Dep't of Health & Hum. Servs., *https://www.hhs.gov/conscience/conscience-protections/guidance-church-amendments-protections/index.html* (last updated Sept. 17, 2021).

[535] *Id.*

[536] *See, e.g.,* Title X of the PHS Act, 24 U.S.C. 300a–6; Section 1303(b)(4) of the ACA, 42 U.S.C. 18023.

[537] 42 U.S.C. 1395dd. For more information, *see* Letter to State Survey Agency Directors from U.S. Dep't of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., Directors, Quality, Safety & Oversight Group and Survey & Operations Group (July 11, 2022), *https://www.cms.gov/files/document/qso-22-22-hospitals.pdf.*

[538] 142 S. Ct. 2228 (2022).

[539] 87 FR 42053 (July 8, 2022).

[540] See 65 FR 52869 (Aug. 30, 2000); see also, *e.g.,* 28 CFR 54.235(d)(1) (DOJ regulation). The agencies that have adopted the Common Rule include: Agency for International Development, 22 CFR pt. 229; Corporation for National and Community Service, 45 CFR pt. 2555; Department of Agriculture, 7 CFR pt. 15d.; Department of Commerce, 15 CFR pt. 8a; Department of Defense, 32 CFR pt. 196; Department of Energy, 10 CFR 1040; Department of Homeland Security, 6 CFR pt. 17; Department of Housing and Urban Development, 24 CFR pt. 3; Department of the Interior, 43 CFR pt. 41; Department of Justice, 28 CFR pt. 54; Department of Labor, 29 CFR pt. 36; Department of State, 22 CFR pt. 146; Department of Transportation, 49 CFR pt. 25; Department of the Treasury, 31 CFR pt. 28; Department of Veterans Affairs, 38 CFR pt. 23; Environmental Protection Agency, 40 CFR pt. 5; Federal Emergency Management Agency, 44 CFR pt. 19; General Services Administration, 41 CFR pt. 101–4; National Aeronautics and Space Administration, 14 CFR pt. 1253; National Archives and Records Administration, 36 CFR pt. 1211; National Science Foundation, 45 CFR pt. 618; Nuclear Regulatory Commission, 10 CFR pt. 5; Small Business Administration, 13 CFR pt. 113; and Tennessee Valley Authority, 18 CFR pt. 1317.

known to have a relationship or association. Longstanding interpretations of existing civil rights laws recognize claims of associational discrimination, where the basis is a characteristic of the harmed individual or an individual who is associated with the harmed individual.[541] In addition, the proposed prohibition on associational discrimination under Section 1557 corresponds with the specific prohibition of discrimination based on association with an individual with a disability under Section 504.[542]

The proposed provision is consistent with the former § 92.209 in the 2016 Rule, which was repealed by the 2020 Rule. OCR received many comments in response to the 2015 and 2019 NPRMs favoring the inclusion of an explicit provision in Section 1557 prohibiting discrimination on the basis of association.[543] Of particular note, the preamble to the 2020 Rule acknowledged that commenters opposed the repeal of former § 92.209 because: removing such protections would cause confusion; the lack of reference to associational discrimination in the regulatory text is inconsistent with existing case law; and specific protected populations are more susceptible to associational discrimination.[544]

The Department agrees that additional clarity is beneficial in this area, as OCR continues to see complaints alleging discrimination based on association. For example, under this provision, a medical practice may not refuse to see a prospective female patient based, in part, on the knowledge that the patient has a female spouse or partner because the refusal would be based on the sex of the prospective patient and on the sex of an individual with whom the patient is known to have a relationship or association.

**Use of Clinical Algorithms in Decision-Making (§ 92.210)**

Proposed § 92.210 states that a covered entity must not discriminate against any individual on the basis of race, color, national origin, sex, age, or disability through the use of clinical algorithms in its decision-making. This is a new provision, and this topic has not been addressed in previous Section 1557 rulemaking. The Department believes it is critical to address this issue explicitly in this rulemaking given recent research demonstrating the prevalence of clinical algorithms that may result in discrimination.[545] Further, the Department became aware that clinical algorithms in state Crisis Standards of Care plans used during the COVID–19 pandemic may be screening out individuals with disabilities, as discussed in more detail below. OCR believes that proposed § 92.210 would put covered entities on notice that they cannot use discriminatory clinical algorithms and may need to make reasonable modifications in their use of the algorithms, unless doing so would cause a fundamental alteration to their health program or activity. The intent of proposed § 92.210 is not to prohibit or hinder the use of clinical algorithms but rather to make clear that discrimination that occurs through their use is prohibited.

While covered entities are not liable for clinical algorithms that they did not develop, they may be held liable under this provision for their decisions made in reliance on clinical algorithms. Covered entities using clinical algorithms in their decision-making should consider clinical algorithms as a tool that supplements their decision-making, rather than as a replacement of their clinical judgment. By over-relying on a clinical algorithm in their decision-making, such as by replacing or substituting their own clinical judgment with a clinical algorithm, a covered entity may risk violating Section 1557 if their decision rests upon or results in discrimination.

Clinical algorithms are tools used to guide health care decision-making and can range in form from flowcharts and clinical guidelines to complex computer algorithms, decision support interventions, and models. End-users, such as hospitals, providers, and payers (*e.g.,* health insurance issuers) use these systems to assist with decision-making for various purposes. Clinical algorithms are used for screening, risk prediction, diagnosis, prognosis, clinical decision-making, treatment planning, health care operations, and allocation of resources,[546] all of which affect the care that individuals receive. Recent studies have found that health care tools using clinical algorithms may create or contribute to discrimination on the bases protected by Section 1557, and as a result of their use by covered entities in their health care decision-making may lead to poorer health outcomes among members of historically marginalized communities.[547]

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[541] *See Kengerski* v. *Harper,* No. 20–1307, 2021 WL 3199225 (3d Cir. 2021) (a white plaintiff employee's claim is justiciable under an associational discrimination legal theory under Title VII of the Civil Rights Act of 1964, where his employer retaliated against him for complaining about a supervisor's racist remarks directed at the employee's biracial family member and other minority coworkers); *Kelleher* v. *Fred A. Cook, Inc.,* 939 F.3d 465 (2d Cir. 2019) (an employer's reaction to a non-disabled employee's reasonable accommodation request to care for disabled dependent can support an inference of associational discrimination); *McGinest* v. *GTE Serv. Corp.,* 360 F.3d 1103, 1118 (9th Cir. 2004) (case involving indirect comments in the workplace that crossed racial lines, noting that ''Title VII has . . . been held to protect against adverse employment actions taken because of the employee's close association with black friends or coworkers'') (internal citations omitted); *Johnson* v. *Univ. of Cincinnati,* 215 F.3d 561, 574 (6th Cir. 2001) (a plaintiff who is not a member of a recognized protected class nevertheless alleges a cognizable discrimination claim under Title VII and 42 U.S.C. 1981 if he alleges that he was discriminated against based on his association with a member of a recognized protected class); *Tetro* v. *Elliot Popham Pontiac, Oldsmobile, Buick & GMC Trucks Inc.,* 173 F.3d 988, 994–95 (6th Cir. 1999) (holding that white plaintiff with biracial child stated a claim under Title VII based on his own race ''even though the root animus for the discrimination is a prejudice against the biracial child''); *Parr* v. *Woodmen of the World Life Ins.,* 791 F.2d 888, 892 (11th Cir. 1986) (''Where a plaintiff claims discrimination based upon an interracial marriage or association, he alleges by definition that he has been discriminated against because of his race.''); *Arceneaux* v. *Vanderbilt Univ.,* 25 Fed. App'x. 345 (6th Cir. 2001) (unpub'd) (treating sex discrimination as associational discrimination). *Cf. Loving* v. *Va.,* 388 U.S. 1 (1967).

[542] 29 U.S.C. 794a(a)(2); *see also McCullum* v. *Orlando Reg'l Healthcare Sys., Inc.,* 768 F.3d 1135, 1142 (11th Cir. 2014) (''[i]t is widely accepted that under both the [Rehabilitation Act] and the ADA, non-disabled individuals have standing to bring claims when they are injured because of their association with a disabled person.''); *Loeffler* v. *Staten Island Univ. Hosp.,* 582 F.3d 268, 279 (2d Cir. 2009) (permitting associational discrimination claim under Section 504). *See also,* 42 U.S.C. 12182(b)(1)(E) (ADA); *Falls* v. *Prince George's Hosp. Ctr.,* No. 97–1545, 1999 WL 33485550 (D. Md. Mar. 16, 1999) (holding that parent had an associational discrimination claim under Title III of the ADA because hospital directly discriminated against parent by requiring hearing parent to act as interpreter for child who was deaf). *See generally* U.S. Equal Emp't Opportunity Comm'n, Association Q&A, *supra* note 396.

[543] *See* 81 FR 31375, 31438–39 (May 18, 2016); 85 FR 37160, 37199 (June 19, 2020).

[544] 85 FR 37199.

[545] *See infra* note 547.

[546] U.S. Dep't of Health & Human Servs., Agency for Healthcare Research & Quality, Impact of Healthcare Algorithms on Racial Disparities in Health and Healthcare (Jan. 25, 2022), *https://effectivehealthcare.ahrq.gov/products/racial-disparities-health-healthcare/protocol*; *see also* Sahar Takshi, *Unexpected Inequality: Disparate-Impact from Artificial Intelligence in Healthcare Decisions,* 34 J. L. & Health 215, 219 (2021), *https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1580&context=jlh*; Christina Badaracco, Avalere, AI in Healthcare: 5 Areas in Which Artificial Intelligence Is Disrupting the Status Quo (Dec. 16, 2019), *https://avalere.com/insights/ai-in-healthcare-5-areas-in-which-artificial-intelligence-is-disrupting-the-status-quo* (including preventive health and risk assessment; diagnosis, precision medicine, drug development, and administration and care delivery).

[547] *See, e.g.,* Darshali A. Vyas et al., *Hidden in Plain Sight—Reconsidering the Use of Race Correction in Clinical Algorithms,* 383 N. Engl. J. Med. 874, 876–78 (Aug. 27, 2020); Ziad Obermeyer et al., *Dissecting Racial Bias in an Algorithm Used to Manage the Health of Populations,* 366 Science 447 (Oct. 2019), *https://doi.org/10.4018/978-1-7998-7888-9.ch001*; Donna M. Christensen et al., *Medical Algorithms Are Failing Communities of Color,*

Clinical algorithms commonly include clinical and sociodemographic variables and measures of health care utilization.[548] Race and ethnicity are often used as explicit input variables. Known as ''race correction'' or ''race norming,'' this practice adjusts an algorithm's output on the basis of a patient's race or ethnicity.[549] The use of ''race norming'' notably garnered public attention when the National Football League (NFL) pledged to end the practice of adjusting the results of cognitive functioning tests based on race to determine settlement amounts for brain injury claims of former NFL players.[550]

Another example of this practice can be found in the clinical tools that evaluate kidney function. Many such tools employ an estimation of glomerular filtration rate (eGFR) that includes race as a factor to reflect that Black people have been associated with higher levels of blood creatinine than white people.[551] The option for entering race in the eGFR is limited to a binary ''black/non-black'' option. The eGFR adjusts the score for Black patients, making their kidneys register as 16 percent healthier than white patients' kidneys even though Black Americans are about four times as likely to have kidney failure as white Americans and make up more than 35 percent of people on dialysis while representing only 13 percent of the U.S. population.[552] This race-based practice reduces the number of Black people placed on transplant lists and referred for kidney disease management, nephrology specialists, and dialysis planning.[553]

Reliance on the eGFR clinical algorithm may lead to discrimination against patients based on race and ethnicity. For example, discrimination concerns arise if a covered entity takes action based on the algorithmic output that results in less favorable treatment of a Black patient as compared to white patients with similar or healthier kidneys because an algorithm determined that a Black patient's kidney function is better than it actually is.[554] Concerns with the use of race in the estimation of GFR in the United States led the National Kidney Foundation and the American Society of Nephrology to create a task force on the issue, which ultimately recommended an approach that does not use race.[555]

The practice of ''race norming'' is not limited to eGFR, and also occurs in the following clinical tools: cardiology (to assess the risk of heart failure), cardiac surgery (to assess the risk of complications and death), obstetrics (to determine risks associated with vaginal birth after cesarean), urology (to assess the risk of kidney stones and urinary tract infections), oncology (to predict rectal cancer survival and breast cancer risk), endocrinology (to assess osteoporosis and fracture risks), and pulmonology (to measure lung function).[556] Covered entities must be mindful when using tools that rely on racial or ethnic variables to ensure their reliance on such tools does not result in discriminatory clinical decisions. We encourage covered entities to use updated tools that have removed or do not have known biases, such as the updated eGFR discussed above.

The Department notes that the use of algorithms that rely upon race and ethnicity-conscious variables may be appropriate and justified under certain circumstances, such as when used as a means to identify, evaluate, and address health disparities.[557] The Department also notes that the use of clinical algorithms may result in discriminatory outcomes when variables are used as a proxy for a protected basis and may also result from correlations between a variable and a protected basis.[558]

The use of clinical algorithms may also result in discrimination against individuals with disabilities and older adults. This issue surfaced in connection with Crisis Standards of Care and their use during the COVID–19 pandemic.[559] During the COVID–19 public health emergency, OCR received complaints and requests for technical assistance related to state Crisis Standards of Care plans. OCR worked with multiple states to address nondiscrimination in their Crisis Standards of Care plans and practices, including the states of Alabama, Arizona, North Carolina, Texas, Tennessee, and Utah.[560] Crisis Standards of Care are formal guidelines or policies adopted during an emergency or crisis that effect substantial change in usual health care operations and the level of care it is possible to deliver, which is made necessary by a pervasive or catastrophic disaster. In the effective marshaling of scarce resources, these standards may authorize the prioritization of scarce resources through means not permitted during non-crisis conditions. Crisis Standards of Care may include clinical algorithms in the form of flowcharts or other assessment tools intended to assist covered entities in prioritizing patients for scarce resources.

Health Affairs Blog (Sept. 9, 2021), *https://www.healthaffairs.org/do/10.1377/hblog20210903.976632/full/*; Kristine Gloria, Aspen Digital, Center for Inclusive Growth, Power and Progress in Algorithmic Bias (2021), *https://www.aspeninstitute.org/wp-content/uploads/2021/07/Power-Progress-in-Algorithmic-Bias-July-2021.pdf*.

[548] U.S. Dep't of Health & Human Servs., Agency for Healthcare Research & Quality, Healthcare Algorithms, *supra* note 546.

[549] Vyas, *supra* note 547, at 876–78 (2020).

[550] Will Hobson, *How* ''*Race-Norming*'' *Was Built into the NFL Concussion Settlement,* Wash. Post (Aug. 2, 2021), *https://www.washingtonpost.com/sports/2021/08/02/race-norming-nfl-concussion-settlement/* (explaining race adjustments in cognitive test scores emanate from studies in the 1990s finding that some people of color, including Black people, performed worse than white people on cognitive tests).

[551] *See* Lundy Braun et al, *Racialized Algorithms for Kidney Function: Erasing Social Experience,* 286 J. Soc. Science & Med. 113548, p. 5 (2021), *https://doi.org/10.1016/j.socscimed.2020.113548* (discussing how race correction in eGFR is rooted in the assumption that Black individuals as a group are biologically distinct and have higher muscle mass than other groups, which was based on studies from the 1970s, without considering ''the complexity of national origin, socioeconomic status, the bodily effects of racism, and other unexplored considerations that influence kidney function'').

[552] *See, e.g.,* Nwamaka D. Eneanya et al., *Race-Free Biomarkers to Quantify Kidney Function: Health Equity Lessons Learned From Population Based Research,* 77 Am. J. of Kidney Diseases 667 (2021), *https://doi.org/10.1053/j.ajkd.2020.12.001*; Lesley A. Inker et al., *A New Panel-Estimated GFR, Including* β*2-Microglobulin and* β*-Trace Protein and Not Including Race, Developed in a Diverse Population,* 77 Am. J. of Kidney Diseases 673 (2021), *https://doi.org/10.1053/j.ajkd.2020.11.005*; Salman Ahmed et al., *Examining the Potential Impact of Race Multiplier Utilization in Estimated Glomerular Filtration Rate Calculation on African-American Care Outcomes,* 36 J. of Gen. Internal Med. 464, 466–67 (2021), *https://link.springer.com/content/pdf/10.1007/s11606-020-06280-5.pdf*.

[553] *See Ahmed, supra* note 552, at 467.

[554] *See, e.g.,* Compl., *Crowley* v. *Strong Mem. Hosp. of the Univ. of Rochester,* Civ. No. 21–cv–1078 (W.D.N.Y. Oct. 1, 2021) (22-year-old biracial individual with kidney disease brought a Title VI and Section 1557 action against hospital for using a medical algorithm (eGRF) to assess kidney health that added a race-specific multiplier for a Black person, which deemed him ineligible for a kidney transplant).

[555] *See* Cynthia Delgado et al., *A Unifying Approach for GFR Estimation: Recommendations of the NKF–ASN Task Force on Reassessing the Inclusion of Race in Diagnosing Kidney Disease,* 79 Am. J. of Kidney Diseases 268, 283–284 (2022), *https://doi.org/10.1053/j.ajkd.2021.08.003* (recommending a new estimating equation for GFR that does not incorporate race).

[556] Vyas, *supra* note 547.

[557] *See e.g.,* Michelle Tong & Samantha Artiga, Kaiser Family Foundation, Issue Brief: Use of Race in Clinical Diagnosis and Decision Making: Overview and Implications (Dec. 9, 2021), *https://www.kff.org/racial-equity-and-health-policy/issue-brief/use-of-race-in-clinical-diagnosis-and-decision-making-overview-and-implications/*.

[558] *See, e.g.,* Obermeyer, *supra* note 547.

[559] *See* U.S. Dep't of Health & Human Servs., Office for Civil Rights FAQs for Healthcare Providers during the COVID–19 Public Health Emergency: Federal Civil Rights Protections for Individuals with Disabilities under Section 504 and Section 1557, Q4 (Feb. 4, 2022), *https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/disabilty-faqs/index.html*.

[560] *See Civil Rights and COVID–19, supra* note 184.

Use of such assessment tools for making resource allocation decisions that screen out or tend to screen out individuals with disabilities from fully and equally enjoying any health care service, program, or activity being offered, would violate Section 1557, unless the criteria used in such tools can be shown to be necessary for the provision of the service, program or activity being offered.[561] For example, to the extent an assessment tool considers a person's current health status, including a disability, for the purpose of determining a person's risk of in-hospital mortality as part of its resource allocation decision-making, such assessment tool might not violate this part, as consideration of short-term mortality risk is necessary for the implementation of Crisis Standards of Care. Similarly, assessment tools should not penalize patients for diminished long-term life-expectancy.[562] Assessment tools should not include categorical exclusions of certain types of disabilities, such as Down syndrome, when treatment would not be futile for individuals with that type of disability. As another example, Crisis Standards of Care may rely on instruments such as the Sequential Organ Failure Assessment (SOFA). The SOFA score is a scoring tool that assesses the performance of several organ systems in the body (neurologic, blood, liver, kidney, and blood pressure/hemodynamics) and assigns a score based on the data obtained in each category.[563] The higher the SOFA score, the higher the likely mortality, and consequently the higher likelihood of de-prioritization of the patient under many Crisis Standards of Care allocation frameworks. In addition, the SOFA score includes algorithmic scoring systems, such as the Glasgow Coma Scale, to assess the likelihood of mortality. The Glasgow Coma Scale considers whether a person's speech is comprehensible and whether they obey commands for movement. Someone with cerebral palsy may have difficulty speaking or moving as part of their underlying disability, which does not contribute to the short-term mortality outcomes the instrument is designed to assess. Adjustments must be made to ensure that such a person's pre-existing condition, and the symptoms of that condition, are not considered when using the Glasgow Coma Scale (whether within or outside of the SOFA) to evaluate whether they qualify for treatment or what priority they will receive in accessing scarce resources.[564] When using such tools, an entity may need to make reasonable modifications as required by proposed § 92.205 to its use of the assessment tool in order to avoid discrimination, unless doing so would cause a fundamental alteration.

In addition, the Department notes the existence of an emerging body of research showing that the SOFA and other prognostic scoring algorithms used in Crisis Standards of Care frequently overestimate Black mortality, resulting in greater de-prioritization of Black patients under Crisis Standards of Care.[565] The Department solicits comments on potential remedies to this issue and the larger topic of racial inequities in Crisis Standards of Care.

Research suggests that overly relying upon any clinical algorithm, particularly without understanding the effects of its uses, may amplify and perpetuate racial and other biases.[566] Accordingly, the Department strongly cautions covered entities against overly relying upon a clinical algorithm, for example, by replacing or substituting the individual clinical judgment of providers with clinical algorithms.[567] The individual clinical judgment of a provider should always be based on the specific needs and medical history of the patient being treated.[568] Covered entities that use clinical algorithms should consider using clinical algorithms as a tool to augment their decision-making but not as a replacement of clinical judgment. Covered entities that overly rely upon clinical algorithms run the risk of noncompliance with Section 1557 because such overreliance may result in discrimination.[569]

[561] *See also* 42 U.S.C. 12182(b)(2)(A)(i) (ADA).

[562] *See* U.S. Dep't of Health & Human Servs., Office for Civil Rights, *supra* note 559, at Q4.

[563] *See generally* U.S. Dep't of Health & Human Servs., Office of the Assistant Sec'y for Preparedness & Response, Tech. Res. Assistance Ctr. & Info. Exchange (TRACIE), SOFA Score: What it is and How to Use it in Triage (Dec. 21, 2020), *https://files.asprtracie.hhs.gov/documents/asprtracie-sofa-score-fact-sheet.pdf.*

[564] *See* U.S. Dep't of Health & Human Servs., Office for Civil Rights, *supra* note 559, at Q4. *See also Civil Rights and COVID–19, supra* note 184.

[565] *See, e.g.,* Deepshikha C. Ashana et al., *Equitably Allocating Resources During Crises: Racial Differences in Mortality Prediction Models,* 204 a.m. J. Respir. Crit. Care Med. 178 (2021), *https://pubmed.ncbi.nlm.nih.gov/33751910/* (finding use of SOFA in Crisis Standards of Care may lead to racial disparities in resource allocation); Benjamin Tolchin et al., *Racial Disparities in the SOFA Score Among Patients Hospitalized with COVID–19,* 16 PLoS ONE, Sept. 2021, at p. 2, *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8448580/* (finding non-Hispanic Black patients but not Hispanic patients had greater odds of an elevated SOFA score when compared to non-Hispanic white patients); Shireen Roy et al., *The Potential Impact of Triage Protocols on Racial Disparities in Clinical Outcomes Among COVID-Positive Patients in a Large Academic Healthcare System,* 16 PLoS ONE, Sept. 2021, at p. 2, *https://pubmed.ncbi.nlm.nih.gov/34529684/* (finding Black patients had higher SOFA scores compared to patients of other races).

[566] *See, e.g.,* Letter from the Am. Med. Ass'n to David Meyers, Agency for Healthcare Research & Quality, p. 6 (May 3, 2021), *https://searchlf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2021-5-3-Letter-to-Meyers-re-AHRQ-AI-RFI-(002).pdf* (in response to AHRQ's March 5, 2021 Request for Information on Use of Clinical Algorithms That Have the Potential to Introduce Racial/Ethnic Bias Into Healthcare Delivery) (stating that ''it is vital that all providers understand how the clinical algorithms they rely on to provide appropriate and equitable care in practice are developed. The need for such understanding is particularly acute as to how algorithms developed using artificial intelligence are trained in order to understand the appropriate uses for and limitations of such algorithms. Having this understanding will help ensure appropriate utilization of algorithms and encourage effective oversight by regulators, providers, and others. Over-reliance on any algorithm, particularly without an understanding of what its most effective uses are, can create a risk for amplifying and perpetuating biases that are present in the data, including any bias based in race or ethnicity.'').

[567] *See, e.g.,* Public Comment from the Am. Acad. of Family Physicians to the Office of Mgmt. & Budget, pp. 4–5 (June 23, 2021), *https://www.aafp.org/dam/AAFP/documents/advocacy/prevention/equality/LT-OMB-EquityRFI-062321.pdf* (in response to OMB's May 5, 2021 notice on Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government) (stating that ''AI-based technology is meant to augment decisions made by the user, not replace their clinical judgement or shared decision making.''); Elliot Crigger & Christopher Khoury, *Making Policy on Augmented Intelligence in Health Care,* 21 a.m. Med. Ass'n, J. of Ethics 2, E188–191, Feb. 2019, at pp. 188–189, *https://journalofethics.ama-assn.org/article/making-policy-augmented-intelligence-health-care/2019-02* (discussing that health care AI should be a ''tool to augment professional clinical judgment, not a technology to replace or override it,'' and that organizations that implement AI systems ''should vigilantly monitor [the systems] to identify and address adverse consequences''); *see also* Nat'l Ass'n of Ins. Comm'rs, Principles on Artificial Intelligence (AI), p. 2 (2020), *https://content.naic.org/sites/default/files/inline-files/AI%20principles%20as%20Adopted%20by%20the%20TF_0807.pdf* (discussing that AI actors ''should implement mechanisms and safeguards . . . to ensure all applicable laws and regulations are followed, including ongoing (human or otherwise) monitoring, and when appropriate, human intervention'').

[568] *See* Elliot Crigger et al., *Trustworthy Augmented Intelligence in Health Care,* 46 J. Med. Sys., Jan. 2022, at p. 6, *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8755670/pdf/10916_2021_Article_1790.pdf* (discussing that physicians are expected to understand the ''benefits, risks, indications, appropriateness, and alternatives'' of using AI tools and that tools should not be used if the physician is not able to understand enough about the tool to use it in their practice).

[569] *See* U.S. Dep't of Just., Algorithms, Artificial Intelligence, and Disability Discrimination in Hiring (2022), *https://beta.ada.gov/ai-guidance/* (discussing how algorithms and artificial intelligence in hiring technologies may result in unlawful discrimination against certain groups of applicants, including people with disabilities); U.S. Equal Emp't Opportunity Comm'n, The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job

Clinical algorithmic tools are pervasive, and a covered entity may be unaware of any discrimination that may result from their reliance on such a tool. We note that individual providers are not likely to have designed the clinical algorithms that augment their clinical decision-making. However, covered entities are responsible for ensuring that any action they take based on a clinical algorithm does not result in discrimination prohibited by this part, irrespective of whether they played a role in designing the algorithm.[570] The fact that a covered entity did not design the algorithm or does not have knowledge about how the tool works does not alleviate their responsibility to ensure that they do not take actions that result in discrimination. In sum, this part does not hold covered entities liable for clinical algorithms that they did not develop but holds entities liable under this proposed section for the decisions they make in reliance on such algorithms.

We recognize that this is a complex and evolving area that may be challenging for covered entities to evaluate for potential violations of Section 1557. The Department shares a responsibility in working with recipients, Department components, and Title I entities to identify and prevent discrimination based upon the use of clinical decision tools and technological innovation in health care. Covered entities should take steps to ensure that the use of clinical algorithms does not result in discrimination on the basis of race, color, national origin, sex, age, or disability in their health programs and activities.[571] For example, covered entities may choose to establish written policies and procedures governing how information from clinical algorithms will be used in decision-making; monitor any potential impacts; and train staff on the proper use of such systems in decision-making.[572]

The American Medical Association (AMA) has been active in this area and issued a framework to guide the health care community in evaluating, integrating, using, and monitoring augmented intelligence systems that enhance capabilities of human decision-making with computational methods and systems (which includes clinical algorithm tools).[573] We recognize that ''augmented intelligence systems'' are different in scope from clinical algorithm tools, yet believe that the AMA research provides helpful guidance when covered entities are considering the use of clinical algorithm tools. The AMA framework suggests that providers should understand enough about the tools they are using in order to evaluate, select, and implement them, and should forgo the use of such tools if the provider does not adequately understand how they work.[574] Providers should also ensure that the tool addresses a meaningful clinical goal and works as intended, develop a clear protocol to identify and correct for potential bias, have the ability to override the tool, ensure meaningful oversight is in place for ongoing monitoring, and ensure clear protocols exist for enforcement and accountability, including a clear protocol to ensure equitable implementation.[575] When evaluating a tool, a provider should ask whether the tool was properly validated and validated for the specific case and use, whether it was tested in different populations to identify hidden bias, and whether it allows barriers to access to be found and rectified, among other things.[576]

Given the increasing reliance on clinical algorithms to inform decision-making in the area of health care, and the reality that the implementation of these tools may be discriminatory under Section 1557, the Department proposes § 92.210 to make explicit that covered entities are prohibited from discriminating through the use of clinical algorithms on the basis of race, color, national origin, sex, age, or disability under Section 1557. If OCR receives a complaint alleging discrimination resulting from the use of a clinical algorithm in decision-making against a covered entity, it will conduct a fact-specific analysis of the allegation. OCR's analysis will consider, among other things, what decisions and actions were taken by the covered entity in reliance upon a clinical algorithm in its decision-making, and what measures the covered entity took to ensure that its decisions and actions resulting from using a clinical algorithm were not discriminatory. OCR would, as required by statute and this proposed rule, work with the covered entity to achieve voluntary compliance.[577]

Applicants and Employees, EEOC–NVTA–2022–2 (2022), *https://www.eeoc.gov/laws/guidance/americans-disabilities-act-and-use-software-algorithms-and-artificial-intelligence* (discussing how employers' use of software that relies on algorithmic decision-making may violate existing requirements under Title I of the ADA).

[570] *See* U.S. Dep't of Just., *supra* note 569, at pp. 2–3 (discussing how an employer's use of algorithms and artificial intelligence in hiring technologies may still lead to unlawful discrimination even where the employer does not mean to discriminate); U.S. Equal Emp't Opportunity Comm'n, Americans with Disabilities Act and the Use of Software, *supra* note 569, at p. 6 (discussing how an employers' use of software that relies on algorithmic decision-making may violate existing requirements under Title I of the ADA and that an employer may still be liable under the ADA for its use of such tools even if the tools are designed or administered by another entity).

[571] For information on promising practices to reduce bias and discrimination in clinical algorithms, *see generally* Fed. Trade Comm'n, Using Artificial Intelligence and Algorithms (Apr. 8, 2020), *https://www.ftc.gov/news-events/blogs/business-blog/2020/04/using-artificial-intelligence-algorithms;* Fed. Trade Comm'n, Aiming for Truth, Fairness, and Equity in Your Company's Use of AI (Apr. 19, 2021), *https://www.ftc.gov/news-events/blogs/business-blog/2021/04/aiming-truth-fairness-equity-your-companys-use-ai;* Fed. Trade Comm'n, Big Data: A Tool for Inclusion or Exclusion? (Jan. 2016), *https://www.ftc.gov/system/files/documents/reports/big-data-tool-inclusion-or-exclusion-understanding-issues/160106big-data-rpt.pdf;* Nat'l Inst. of Standards & Tech., NIST Special Publ'n 1270, Towards a Standard for Identifying and Managing Bias in Artificial Intelligence (2022), *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1270.pdf.;* Gen. Accountability Off., Artificial Intelligence: An Accountability Framework for Federal Agencies and Other Entities (2021), *https://www.gao.gov/assets/gao-21-519sp.pdf;* U.S. Food & Drug Admin., Good Machine Learning Practice for Medical Device Development: Guiding Principles (Oct. 2021), *https://www.fda.gov/medical-devices/software-medical-device-samd/good-machine-learning-practice-medical-device-development-guiding-principles;* U.S. Equal Emp't Opportunity Comm'n, Americans with Disabilities Act and the Use of Software, *supra* note 569, at pp. 12–14; Takshi, *supra* note 546, at 234–39; Robert Bartlett et al., *Algorithmic Discrimination and Input Accountability Under the Civil Rights Acts* (preprint) (2020), *https://ssrn.com/abstract=3674665;* Nicol Turner Lee et al., Brookings Inst., Algorithmic Bias Detection and Mitigation: Best Practices and Policies to Reduce Consumer Harms (2019), *https://www.brookings.edu/research/algorithmic-bias-detection-and-mitigation-best-practices-and-policies-to-reduce-consumer-harms/;* Ada Lovelace Inst., AI Now Inst. & Open Gov't P'ship, Executive Summary: Algorithmic Accountability for the Public Sector, (2021), *https://www.opengovpartnership.org/wp-content/uploads/2021/08/executive-summary-algorithmic-accountability.pdf;* Ziad Obermeyer et al., Chicago Booth, Ctr. For Applied Artificial Intelligence, Algorithmic Bias Playbook (2021), *https://www.chicagobooth.edu/research/center-for-applied-artificial-intelligence/research/algorithmic-bias/playbook;* Mei Chen & Michel Decary, *Artificial Intelligence in Healthcare: An Essential Guide for Health Leaders,* 33 Healthcare Mgmt. F. 10, (2020), *https://pubmed.ncbi.nlm.nih.gov/31550922/;* Genevieve Smith & Ishita Rustagi, Berkeley Haas Ctr. for Equity, Gender, & Leadership, Mitigating Bias in Artificial Intelligence: An Equity Fluent Leadership Playbook (2020), *https://haas.berkeley.edu/wp-content/uploads/UCB_Playbook_R10_V2_spreads2.pdf; Trishan Panch et al., Artificial Intelligence and Algorithmic Bias: Implications for Health Systems, 9 J. Global Health, Dec. 2019, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6875681/pdf/jogh-09-020318.pdf.*

[572] *See, e.g.,* Takshi, *supra* note 546, at 234–35; Nat'l Inst. of Standards & Tech., NIST Special Publ'n 1270, *supra* note 571, at pp. 42–47; Gen. Accountability Off., *supra* note 571.

[573] *See, e.g.,* Crigger, *Trustworthy Augmented Intelligence in Health Care, supra* note 568.

[574] *Id.* at p. 6.

[575] *Id.*

[576] *Id.* at pp. 7–8.

[577] *See* 42 U.S.C. 2000d–1 (enforcement action may not be taken until the department has

Continued

OCR is committed to working with partners throughout the Department and other Executive Agencies [578] to develop responsive technical assistance to support covered entities in complying with their civil rights obligations. We seek comment on the inclusion of this provision; whether it is appropriately limited to clinical algorithms or should include additional forms of automated or augmented decision-making tools or models, such as artificial intelligence or machine learning; whether a provision such as this should include more specificity, including actions covered entities should take to mitigate potential discriminatory outcomes and what those actions should be; what promising practices could be used by covered entities to ensure that clinical algorithms are not discriminatory; and what type of technical assistance or guidance would be most helpful to covered entities for compliance with this section. We seek comment on what factors would be relevant to determine whether a covered entity is in violation of this provision and what possible defenses a covered entity may have when using a clinical algorithm in its decision-making that results in discrimination. We seek comment on governance measures, such as transparency mechanisms, reporting requirements, and impact assessments, that would assist in compliance with civil rights obligations. We also seek comment on what types of clinical algorithms are being used in covered health programs and activities; how such algorithms are being used by covered entities; whether they are more prevalent in certain health settings; when clinical algorithms and variables based on protected grounds under Section 1557 are useful (or not); and what mechanisms are in place or should be in place to detect, address, and remediate possible discriminatory effects of their usage. Finally, we seek comment requesting resources and recommendations on how to identify and mitigate discrimination resulting from the usage of clinical algorithms and other forms of automated decision-making tools and models.

**Nondiscrimination in the Delivery of Health Programs and Activities Through Telehealth Services (§ 92.211)**

Proposed § 92.211 specifically addresses nondiscrimination in the delivery of health programs and activities through telehealth services. Telehealth is a means by which covered entities provide their health programs and activities, and this provision clarifies the affirmative duty that covered entities have to not discriminate in their delivery of such services through telehealth. This duty includes ensuring that such services are accessible to individuals with disabilities and provide meaningful program access to LEP individuals. Specifically, proposed § 92.211 provides that a covered entity must not, in delivery of its health programs and activities through telehealth services, discriminate on the basis of race, color, national origin, sex, age, or disability. Telehealth has not been addressed in previous Section 1557 rulemaking but has become widely used as a result of the COVID–19 pandemic.

As defined by the Health Resources Services Administration within the Department, telehealth means the use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and professional health-related education, public health, and health administration.[579] Technologies include videoconferencing, the internet, store-and-forward imaging, streaming media, and terrestrial and wireless communications.[580]

Since 2016, the use of telemedicine at self-contained clinics and the use of telehealth provided to patients at home has grown significantly. This is particularly true of the use of telehealth at home due to the COVID–19 pandemic, with one recent study showing a 63-fold increase in Medicare telehealth utilization during the pandemic.[581] The increased availability of telehealth has been a benefit to many, including transgender individuals who have been able to access gender-affirming care without geographical constraints or fear of stigma and discrimination.[582] However, studies also indicate disparities in access based on race and disability. One study found ''significant'' racial disparities in telehealth use during the COVID–19 pandemic, which the authors believe may lead to the worsening of pre-existing health disparities.[583]

One study in 2016 on telehealth among Medicare beneficiaries found that individuals with disabilities accounted for 65 percent of telehealth use and 66 percent of all telehealth services. Individuals with disabilities using telehealth increased by 37.7 percent between the years 2014 and 2016. During that same time period, individuals with disabilities accounted for an increase of 53.7 percent of total telehealth services used.[584] Another more recent study looked at the broader

''determined that compliance cannot be secured by voluntary means''); 18116(a) (adopting the enforcement mechanisms provided for an available under Title VI).

[578] Many Federal agencies are taking steps to address discrimination in clinical algorithms and artificial intelligence. *See, e.g.,* U.S. Dep't of Health & Human Servs., Agency for Healthcare Research & Quality, 86 FR 12948 (Mar. 5, 2021) (Request for Information on the Use of Clinical Algorithms That Have the Potential to Introduce Racial/Ethnic Bias Into Healthcare Delivery); .S. Dep't of Justice, Nat'l Inst. of Just., *Predicting Recidivism: Continuing To Improve the Bureau of Prisons' Risk Assessment Tool, PATTERN* (Apr. 19, 2022), *https://nij.ojp.gov/topics/articles/predicting-recidivism-continuing-improve-bureau-prisons-risk-assessment-tool;* Kristen Clarke, Assistant Att'y Gen., U.S. Dep't of Just., Keynote Address at the Dep't. of Com.'s Nat'l Telecomm. & Info. Admin.'s Virtual Listening Session (Dec. 14, 2021), *https://www.justice.gov/opa/speech/assistant-attorney-general-kristen-clarke-delivers-keynote-ai-and-civil-rights-department;* Press Release, U.S. Equal Emp't Opportunity Comm'n, EEOC Launches Initiative on Artificial Intelligence and Algorithmic Fairness (Oct. 28, 2021), *https://www.eeoc.gov/newsroom/eeoc-launches-initiative-artificial-intelligence-and-algorithmic-fairness;* Bureau of Consumer Fin. Protection, Adverse Action Notification Requirements in Connection with Credit Decisions Based on Complex Algorithms (May 26, 2022), *https://www.consumerfinance.gov/compliance/circulars/circular-2022-03-adverse-action-notification-requirements-in-connection-with-credit-decisions-based-on-complex-algorithms/;* Bd. of Governors of the Fed. Reserve System, Bureau of Consumer Fin. Protection, Fed. Deposit Ins. Corp., Nat'l Credit Union Admin., & Office of the Comptroller of the Currency, 86 FR 16837 (Mar. 31, 2021) (Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, Including Machine Learning, Identifying Unlawful Discrimination as a Potential Risk of Using Artificial Intelligence); Fed. Trade Comm'n, Using Artificial Intelligence and Algorithms, *supra* note 571; Fed. Trade Comm'n, Aiming for Truth, Fairness, and Equity in Your Company's Use of AI, *supra* note 571; U.S. Dep't of Com., Nat'l Inst. of Standards & Tech., *supra* note 571.

[579] *What Is Telehealth?,* U.S. Dep't of Health & Human Servs., Health Rsch. & Servs. Admin. (last updated Mar. 2022), *https://www.hrsa.gov/rural-health/telehealth/what-is-telehealth.*

[580] *What Is Telehealth? How Is It Different from Telemedicine?, HealthIT.gov,* (last updated Oct. 17, 2019), *https://www.healthit.gov/faq/what-telehealth-how-telehealth-different-telemedicine.*

[581] Lok Wong Samson et al., U.S. Dep't of Health & Human Servs., Off. of the Assistant Sec'y for Planning & Evaluation, Issue Brief: Medicare Beneficiaries' Use of Telehealth Services in 2020: Trends by Beneficiary Characteristics and Location (2021), *https://aspe.hhs.gov/sites/default/files/documents/a1d5d810fe3433e18b192be42dbf2351/medicare-telehealth-report.pdf.*

[582] Ole-Petter R. Hamnvik et al., *Telemedicine and Inequities in Health Care Access: The Example of Transgender Health,* Transgender Health (pre-print) (2022), *https://www.liebertpub.com/doi/epdf/10.1089/trgh.2020.0122.*

[583] Robert P. Pierce & James J. Stevermer, *Disparities in the Use of Telehealth at the Onset of the COVID–19 Public Health Emergency,* J. Telemed & Telecare, Oct. 21, 2020, at p. 5, *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7578842/pdf/10.1177_1357633X20963893.pdf.*

[584] U.S. Dep't of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., Information on Medicare Telehealth Report (2018), *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Information-on-Medicare-Telehealth-Report.pdf.*

noninstitutionalized population and found that 39.8 percent of individuals with disabilities used telehealth during the second year of the pandemic.[585]

While there are benefits to be gained from telehealth for individuals with disabilities, including lower cost of care and transportation costs, lower exposure to communicable diseases, and access to specialized care including care provided across state lines, barriers persist around access.[586] Some of these challenges include inaccessible telehealth platforms and other barriers to communication with individuals who are deaf, blind, or have cognitive disabilities.[587] For example, telehealth platforms have been found to not have the ability to incorporate third-party services, including real-time captioning and any additional video feeds that may be required for the provision of qualified interpreters, direct service providers, or supportive decision makers.[588] Telehealth may also not include considerations for usability, compatibility with external assistive technology, and reduction on cognitive burden.[589] Remote patient monitoring devices used in telehealth may be challenging for individuals with manual dexterity or physical mobility disabilities to use.[590] Telehealth platforms may also not be compatible with screen reading software.[591] Purportedly accessible mobile health (mHealth) applications, such as applications offered by healthcare organizations to their patients, have also been found to be inaccessible.[592]

Although telehealth services are a means by which a covered entity may provide access to a health program or activity, and thus are clearly covered under Section 1557 and this proposed rule, the Department has decided to also include a specific provision regarding telehealth due to the increasing prevalence of telehealth and the numerous related accessibility challenges. Thus, covered entities are required to provide telehealth services in a manner that does not discriminate on a protected basis under Section 1557, including through the accessibility of telehealth platforms (proposed § 92.204) and by providing effective communication for individuals with disabilities through the provision of appropriate auxiliary aids and services (proposed § 92.202) and language assistance services for LEP individuals (proposed § 92.201). Such requirements broadly apply to all health programs and activities provided, including those via telehealth. Such services would include communications about the availability of telehealth services, the process for scheduling telehealth appointments, (including the process for accessing on-demand unscheduled telehealth calls), and the telehealth appointment itself.

OCR seeks comment on this approach and whether covered entities and others would benefit from a specific provision addressing accessibility in telehealth services, for individuals with disabilities and LEP individuals. We seek comment on what such a provision should include, and why the proposed provisions related to ICT, effective communication for individuals with disabilities, and meaningful access for LEP individuals are insufficient. Further, we seek comment on challenges with accessibility specific to telehealth and recommendations for telehealth accessibility standards that would supplement the ICT standards (proposed § 92.204) and effective communication requirements (proposed § 92.202) of this part. We encourage commenters to consider the range of technology available for accessing telehealth, including user-friendly design, as well as security and privacy requirements (for example, when using public Wi-Fi access).

**Subpart D—Procedures**

**Enforcement Mechanisms (§ 92.301)**

Proposed § 92.301 provides that the enforcement mechanisms available for and provided under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 shall apply for purposes of Section 1557 as implemented by this part. This is consistent with the statutory text of Section 1557, which provides that ''[t]he enforcement mechanisms provided for and available under such title VI, title IX, section 794, or such Age Discrimination Act shall apply for purposes of violations of this subsection.'' [593] Additionally, this provision is consistent with the 2016 Rule at former § 92.301(a) and § 92.5(a) of the 2020 Rule. Enforcement mechanisms include a private right of action, as recognized by the Supreme Court in *Cummings* v. *Premier Rehab Keller, P.L.L.C.*.[594]

**Notification of Views Regarding Application of Federal Conscience and Religious Freedom Laws (§ 92.302)**

In proposed § 92.302, the Department specifically addresses the application of Federal conscience and religious freedom laws. This is a newly proposed provision, as neither the 2016 nor 2020 Rule provided a specific means for recipients to notify the Department of their views regarding the application of Federal conscience or religious freedom laws.

Proposed paragraph (a) provides that a recipient may raise with the Department its belief that the application of a specific provision or provisions of this regulation as applied to it would violate Federal conscience or religious freedom laws. Such laws include but are not limited to the Coats-Snowe Amendment, Church Amendments, RFRA, section 1553 of the ACA, section 1303 of the ACA, and the Weldon Amendment. Recipients are also reminded that they can file complaints regarding Federal conscience laws with OCR, as provided in 45 CFR part 88.

Proposed paragraph (b) provides that once OCR receives a notification pursuant to proposed paragraph (a), OCR shall promptly consider those views in responding to any complaints

[585] Carli Friedman & Laura VanPuymbrouck, *Telehealth Use by Persons with Disabilities During the COVID–19 Pandemic,* 13 Int'l J. Telerehabilitation 2 (2021), *https://doi.org/10.5195/ijt.2021.6402*.

[586] Thiru M. Annaswamy et al., *Telemedicine Barriers and Challenges for Persons with Disabilities: COVID–19 and Beyond,* 13 Disability Health J., July 9, 2020, at p. 2, *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7346769/pdf/main.pdf;* Daniel Young & Elizabeth Edwards, *Telehealth and Disability: Challenges and Opportunities for Care,* Nat'l Health Educ. Law Program, (May 6, 2020), *https://healthlaw.org/telehealth-and-disability-challenges-and-opportunities-for-care/*.

[587] Annaswamy, *supra* note 586, at p. 2; Young, *supra* note 586; Rupa S. Valdez et al., *Ensuring Full Participation of People with Disabilities in an Era of Telehealth,* 28 J. Am. Med. Inform. Ass'n 389 (Feb. 2021), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7717308/*.

[588] Valdez, *supra* note 587.

[589] *Id.;* Daihua X. Yu et al., *Accessibility Needs and Challenges of a mHealth System for Patients with Dexterity Impairments,* 12 Disabil. Rehabil. Assist. Technol. 56–64 (2015), *https://doi.org/10.3109/17483107.2015.1063171;* Erin Beneteau et al., *Telehealth Experiences of Providers and Patients Who Use Augmentative and Alternative Communication,* 29 J. Am. Med. Inform. Ass'n 481–488 (2022), *https://doi.org/10.1093/jamia/ocab273*.

[590] Annaswamy, *supra* note 586, at p. 2.

[591] *Id.;* Young, *supra* note 586; Valdez, *supra* note 587.

[592] Keith M. Christensen & Jill Bezyak., Rocky Mountain ADA Center, Telehealth Use Among Rural Individuals with Disabilities (2020), *https://rockymountainada.org/sites/default/files/2020-02/Rural%20Telehealth%20Rapid%20Response%20Report.pdf;* Lauren R. Milne et al., *The Accessibility of Mobile Health Sensors for Blind Users,* 2 J. Tech. Persons Disabilities 166–175 (2014), *https://scholarworks.calstate.edu/downloads/xs55mg57v#page=173*.

[593] 42 U.S.C. 18116.

[594] 142 S. Ct. 1562, 1569–70 (2022) (''it is 'beyond dispute that private individuals may sure to enforce' [Section 504 and Section 1557]'').

or otherwise determining whether to proceed with any investigation or enforcement activity regarding that recipient's compliance with the relevant provisions of this regulation. Any relevant ongoing investigation or enforcement activity regarding the recipient shall be held in abeyance until a determination has been made under paragraph (c). Considering recipients' religious- or conscience-based concerns in the context of an open case (*i.e.,* when OCR first has cause to consider the recipient's compliance), will allow OCR to make an informed, case-by-case decision and, where applicable, protect a recipient's conscience or religious freedom rights. Similarly, holding ongoing investigations and enforcement activity in abeyance is designed to alleviate the burden of a recipient having to respond to an investigation or enforcement action until a recipient's objection has been considered by OCR.

Proposed paragraph (c) makes clear OCR's discretion to determine at any time whether a recipient is wholly exempt from or entitled to a modification of the application of certain provisions of this part, or whether modified application of the provision is required under a Federal conscience or religious freedom law. Proposed paragraph (c) requires that, in determining whether a recipient is exempt from the application of the specific provision or provisions raised in its notification, OCR must assess whether there is a sufficiently concrete factual basis for making a determination and apply the applicable legal standards of the referenced statute. Proposed paragraph (c) further provides that, upon making a determination regarding whether a particular recipient is exempt from—or subject to a modified requirement under—a specific provision of this part, OCR will communicate that determination to the recipient.

Proposed paragraph (d) provides that if OCR determines that a recipient is entitled to an exemption or modification of the application of certain provisions of this rule based on the application of such laws, that determination does not otherwise limit the application as to any other provision of this part to the recipient.

OCR maintains an important civil rights interest in the proper application of Federal conscience and religious freedom protections. In enforcing Section 1557, OCR is thus committed to complying with RFRA and all other legal requirements. The Department believes that the proposed approach in this section will assist the Department in fulfilling that commitment by providing the opportunity for recipients to raise concerns with the Department, such that the Department can determine whether an exemption or modification of the application of certain provisions is appropriate under the corresponding Federal conscience or religious freedom law. As noted above, the Department also maintains a strong interest in taking a case-by-case approach to such determinations, which will allow it to account for any harm an exemption could have on third parties[595] and, in the context of RFRA, to consider whether the application of any substantial burden on a person's exercise of religion is in furtherance of a compelling interest and is the least restrictive means of advancing that compelling interest.[596]

The Department seeks comment on this approach, including whether such a provision should include additional procedural information, the potential burdens of such a provision on recipients and potential third parties, and additional factors that the Department should take into account when considering the relationship between Federal conscience and religious freedom laws and Section 1557's civil rights protections. We also seek comment on what alternatives, if any, the Department should consider.

**Procedures for Health Programs and Activities Conducted by Recipients and State Exchanges (§ 92.303)**

Proposed § 92.303 provides for the enforcement procedures related to health programs and activities conducted by recipients and State Exchanges, consistent with former § 92.302 of the 2016 Rule. The 2020 Rule does not include this provision, and instead relies on § 92.5, the general Enforcement Mechanisms section discussed above, which includes a paragraph (b) that notes that the Director has been delegated authority to enforce Section 1557, including the authority to conduct investigations and compliance reviews, make enforcement referrals to the DOJ, and take any other appropriate remedial action the Director deems necessary.

The 2020 Rule does not make sufficiently clear for either covered entities or individuals protected by Section 1557 what procedures will apply in OCR's enforcement of Section 1557. As OCR has clear procedures that apply under Title VI, Title IX, Section 504, and the Age Act, OCR similarly needs to have clear procedures that apply under Section 1557.

Proposed paragraph (a) applies the procedural provisions in the Title VI regulation with respect to administrative enforcement actions concerning discrimination on the basis of race, color, national origin, sex, and disability under Section 1557. Since the effective date of the ACA, OCR has enforced Section 1557 according to the procedural provisions of Title VI. The Title VI procedures have applied to discrimination on the basis of race, color, and national origin for decades, as well as to discrimination on the basis of sex and disability, as the Title VI procedures have been incorporated into the regulations implementing Title IX and Section 504.[597] In the Department's view, therefore, it is logical and appropriate to similarly apply these procedures in enforcement with respect to race, color, national origin, sex, and disability discrimination under Section 1557.

Proposed paragraph (b) applies Age Act procedures to enforce Section 1557 with respect to age discrimination complaints against recipients and State Exchanges. The Age Act has its own set of procedures, and OCR has been applying those procedures in enforcement with respect to age discrimination under Section 1557 from the effective date of the ACA to the present.

Proposed paragraph (c) provides that when a recipient fails to provide OCR with requested information in a timely, complete, and accurate manner, OCR may, after attempting to reach a voluntary resolution, find noncompliance with Section 1557 and initiate the appropriate enforcement procedure, found at 45 CFR 80.8. This provision was found at former § 92.302(c) in the 2016 Rule. The 2020 Rule repealed the provision, stating that when a recipient fails to provide OCR with requested information in a timely, complete, and accurate manner, OCR may find noncompliance with Section 1557 and initiate appropriate enforcement procedures, absent the need to attempt to effectuate voluntary compliance. The preamble to the 2020 Rule stated that the existing authorities already contain parallel provisions.[598] Yet, the preamble cites a number of provisions that do not support the statement but rather address seeking

[595] *See Cutter* v. *Wilkinson,* 544 U.S. 709, 720 (2005) (in addressing religious accommodation requests, ''courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries'').

[596] *Cf. Gonzales* v. *O Centro Espírita Beneficente União do Vegetal,* 546 U.S. 418, 439 (2006) (''[C]ourts should strike sensible balances, pursuant to a compelling interest test that requires the Government to address *the particular practice at issue.*'') (emphasis added).

[597] 45 CFR 84.61; § 86.71.

[598] 85 FR 37160, 37203 (June 19, 2020).

resolution through voluntary means when there is a failure to comply with the regulation.[599] We believe that the provision we propose at paragraph (c) is helpful in clarifying for recipients and individuals covered by Section 1557 that, should OCR's attempt to effectuate voluntary compliance be unsuccessful, the consequences of failing to provide OCR with information necessary for OCR to determine compliance with the law may include the initiation of the appropriate enforcement procedures, found at 45 CFR 80.8.

**Procedures for Health Programs and Activities Administered by the Department (§ 92.304)**

Proposed § 92.304 addresses procedures for all claims of discrimination against the Department under Section 1557 or this part. Proposed paragraph (b) makes the existing procedures under the Section 504 federally conducted regulation at 45 CFR 85.61 through 85.62 applicable to all such claims under Section 1557 for all protected bases (*i.e.,* race, color, national origin, sex, age, and disability). This is the only procedure that is currently in place for any discrimination claims against the Department under the laws that OCR enforces. Proposed paragraph (c) requires the Department to provide OCR access to information relevant to determining compliance with Section 1557 or this part, and proposed paragraph (d) prohibits the Department from retaliating against an individual or entity for the purpose of interfering with any right secured by Section 1557 or this part, or because such individual or entity has participated in an investigation, proceeding, or hearing under Section 1557 or this part. This is consistent with the 2016 Rule at former § 92.303.

The 2020 Rule does not include any specific provision for the processing of claims of race, color, national origin, sex, age, or disability discrimination against any covered Departmental program, having rescinded former § 92.303 in its entirety. The other statutes that OCR enforces—Title VI, Title IX, and the Age Act—do not directly apply to the Department. The 2016 Rule adopted the Section 504 procedure for all claims of discrimination against any Departmental health program under Section 1557, a procedure that has been in place for decades, is familiar to the Department and has worked effectively. We believe it is important in this rule to identify the procedure that we will use in enforcing Section 1557 with respect to Departmental health programs and activities and therefore are proposing to do so by reinstating the provision from the 2016 Rule at proposed paragraph (b).

The 2020 Rule also does not include the provision of the 2016 Rule that required the Department to provide OCR access to information necessary to determine compliance with Section 1557. The reason provided was that ''regulations implementing Section 1557's four underlying statutes already contain provisions addressing access to review of covered entities' records of compliance,'' [600] and thus the language in the 2016 Rule to this effect was unnecessary. However, apart from the Section 504 regulation applicable to the Department, none of the other regulations apply to the Department; therefore, provisions under those regulations do not apply to the Department. Consequently, the Department is proposing to reinstate this provision at proposed § 92.304(c).

The 2020 Rule also does not include a prohibition on retaliation that applies to the Department, which was provided at former § 92.303(d). In repealing this provision, the preamble to the 2020 Rule stated that ''regulations implementing Section 1557's four underlying statutes already contain provisions against intimidation and retaliation as appropriate . . . The language in the 2016 Rule to this effect was unnecessary.'' [601] As we have noted, regulations implementing three of the four underlying regulations do not apply to the Department; therefore, we now disagree with the Department's reasoning in 2020.

We are including a retaliation provision at proposed paragraph (d) to make clear that the Department, including Federally-facilitated Exchanges, must not intimidate, threaten, coerce, retaliate, or otherwise discriminate against any individual or entity for the purpose of interfering with any right or privilege secured by Section 1557 or this part, or because such individual or entity has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Section 1557 or this part. The ADA similarly prohibits such retaliation, interference, coercion, and intimidation,[602] and, as discussed *supra* in relation to proposed § 92.3 (relationship to other laws), the ADA and Section 504 are generally understood to impose substantially the same requirements. The Department is thus prohibited from engaging in retaliation, intimidation, coercion, or interferences with rights under Section 504. We are proposing to similarly prohibit the Department from such discrimination under Section 1557. Further, this proposed provision would hold the Department and Federally-facilitated Exchanges to the same standards to which the Department holds all recipients of Federal financial assistance.

**IV. Change in Interpretation—Medicare Part B Meets the Definition of Federal Financial Assistance**

The Department's longstanding position has been that Medicare Part B funding does not constitute Federal financial assistance for the purpose of Title VI, Title IX, Section 504, the Age Act, and Section 1557.[603] For the reasons discussed below, and after reevaluating the Department's position on Medicare Part B, we are proposing to change that position and treat Medicare Part B funds as Federal financial assistance to the providers and suppliers subsidized by those funds.

To constitute Federal financial assistance, the Federal funds or assistance must confer a benefit or subsidy on the recipient; compensation from the government for services provided to the government is not Federal financial assistance.[604] Further, Congress or the department administering the funds must intend for the assistance to subsidize the entity.[605]

Building on these principles, this rule proposes to define ''Federal financial assistance,'' at proposed § 92.4, in relevant part as ''any grant, loan, credit, subsidy, contract (other than a procurement contract but including a contract of insurance), or any other

[599] *Id.* at n. 253 (discussing 45 CFR 80.7(d) (which requires the Department to seek resolution through informal means where there is a failure to comply with the regulation); § 80.8(c)(1) (note: § 80.8(c) does not include a paragraph (1), but § 80.8(c) requires the Department to seek voluntary compliance and take other steps prior to taking action to terminate Federal financial assistance); § 84.6(b) (stating the right of a recipient to take voluntary action to overcome the effects of conditions that have resulted in limited participation by qualified individuals with disabilities); § 90.49(c) (stating that the provision of special benefits to children or the elderly is generally presumed to be voluntary affirmative action)).

[600] 85 FR 37203.

[601] *Id.*

[602] 42 U.S.C. 12203.

[603] 81 FR 31375, 31383 (May 18, 2016).

[604] *See, e.g., DeVargas* v. *Mason & Hanger-Silas Mason Co., Inc.,* 911 F.2d 1377, 1382 (9th Cir. 1990), *cert. denied,* 498 U.S. 1074 (1991); *Jacobson* v. *Delta Airlines,* 742 F.2d 1202, 1209 (9th Cir. 1984); *Hunter.* v. *D.C.,* 64 F. Supp. 3d 158, 172 (D.D.C. 2020).

[605] *U.S. Dep't of Transport.* v. *Paralyzed Veterans Ass'n,* 477 U.S. 597, 606–07 (1986); *Grove City Coll.* v. *Bell,* 465 U.S. 555, 564 (1984).

arrangement by which the Federal Government provides assistance or otherwise makes assistance available in the form of: (i) Funds; (ii) Services of Federal personnel; or (iii) Real and personal property or any interest in or use of such property, including: (A) Transfers or leases of such property for less than fair market value or for reduced consideration; and (B) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.'' This proposed definition is similar to the definition in HHS' regulations implementing the Title VI, Title IX, Section 504, and the Age Act, with the exception of the phrase ''otherwise makes assistance available.'' [606] Similar to the Department's definition of ''recipient'' under the implementing regulations for Title VI, Title IX, Section 504, and the Age Act, the Department proposes to define ''recipient'' as ''any State or its political subdivision, or any instrumentality of a State or its political subdivision, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or indirectly, including any subunit, successor, assignee, or transferee of a recipient, but such term does not include any ultimate beneficiary.'' [607]

In the Department's view, Medicare Part B payments constitute Federal financial assistance and providers subsidized as a result of those payments are recipients. The Department's long-held view that Medicare Part A constitutes Federal financial assistance is instructive.[608] Like Medicare Part A, Medicare Part B is a Department program that provides payment for health services to eligible individuals.[609] Eligible individuals choose to enroll in Medicare Part B and pay a monthly fee for coverage; in exchange, the program covers the services provided by medical providers and suppliers [610] for the services and supplies they provide to these individuals. In addition to fee payments made by beneficiaries, Federal funds are used to subsidize the entities that provide Part B services. The Federal funding benefits Part B beneficiaries by assisting them in paying for necessary health care services; and providers, in turn, receive the benefit of a reliable source of payment for the services provided to eligible patients, at least some of whom may have been unable to afford services otherwise. As in *Grove City College* v. *Bell,* discussed below, the government is assisting providers of services by making available to them a segment of the patient population that either (a) would not have been able to afford any medical services, or (b) would not have been able to afford these specific providers. In these respects, Part B is no different than Part A because Part B is financial assistance to providers that subsidizes their provision of health care to Part B beneficiaries. Further, providers are recipients of these funds because they are entities that operate health programs and activities to whom Federal financial assistance is provided.

Despite these clear similarities, the Department has previously considered Medicare Part A to constitute Federal financial assistance, while analyzing Part B differently. When the Department's Title VI regulation was first published, the Department included an Appendix, titled *Federal Assistance to Which These Regulation Apply.*[611] Although the Appendix is to the Department's Title VI regulation, the Department and courts have relied on it in determining whether Department funds are Federal financial assistance in claims under Title IX, Section 504, and the Age Act, as well.[612] The Appendix contains two lists: ''Assistance Other than Continuing Assistance to States,'' and ''Continuing Assistance to States.'' In the former list, the Department included Medicare Part A, but not Medicare Part B.[613] The omission reflected the Department's position that Medicare Part B did not constitute Federal financial assistance.[614] Many courts have held that Medicare Part A is Federal financial assistance for the purpose of coverage under the Spending Clause civil rights statutes.[615]

In explaining its position that Medicare Part B was not Federal financial assistance in proposing the regulations implementing Section 504, the Department relied on the fact that Medicare Part B is ''provided by way of a contract,'' and thus is a contract of

[606] 45 CFR 80.13(f) (Title VI); § 84.3(h) (Section 504); § 86.2(g) (Title IX); § 91.4 (Age Act).

[607] Proposed § 92.4.

[608] 45 CFR pt. 80 app. A pt. I, No. 121 (Federal Assistance to which these Regulations Apply; Assistance other than continuing assistance to States; Supplementary medical insurance benefits for the aged (Title XVIII, Part A, Social Security Act, 42 U.S.C. 1395c–1395i–2)).

[609] Medicare Part A also pays for hospital coverage and care in skilled nursing facilities. *Parts of Medicare, Medicare.gov, https://www.medicare.gov/basics/get-started-with-medicare/medicare-basics/parts-of-medicare* (last visited June 15, 2022). Medicare Part B provides coverage for outpatient care by physicians and other health care providers, lab tests, home health care, durable medical equipment, and many preventive services. *Id. See also What Medicare Covers, Medicare.gov, https://www.medicare.gov/what-medicare-covers* (last visited June 15, 2022).

[610] We use the term ''providers'' to refer to physician's offices and other entities that provide Part B services, consistent with the use of the term ''provider'' elsewhere in this rule. We acknowledge that this term has a different meaning in the Medicare program.

[611] 45 CFR pt. 80 app. A, pt. I, No. 121.

[612] *See, e.g., Chowdury* v. *Reading Hosp. & Med. Ctr.,* 677 F.2d 317, 318–19 (3d Cir. 1982), *cert. denied,* 463 U.S. 1229 (1983) (Title VI); *Doe* v. *League Sch. of Greater Boston, Inc.,* No. 16–cv–1194, 2017 WL 3594257, at *4 (D. Mass. Aug. 21, 2017) (Title IX).

[613] 45 CFR pt. 80 app. A., pt. I, No. 121.

[614] *See* 81 FR 31375, 31383 (May 18, 2016) (proposing that, ''consistent with OCR's enforcement of other civil rights authorities, the definition of Federal financial assistance does not include Medicare Part B'' under Section 1557). The Department provided the following explanation in its Section 504 final rule: ''In its May 1976 Notice of Intent, the Department suggested that the arrangement under which individual practitioners, hospitals, and other facilities receive reimbursement for providing services to beneficiaries under Part B of title XVIII of the Social Security Act (Medicare) constitutes a contract of insurance or guaranty and thus falls within the exemption from the regulation. This explanation oversimplified the Department's view of whether Medicare Part B constitutes Federal financial assistance. The Department's position has consistently been that, whether or not Medicare Part B arrangements involve a contract of insurance or guaranty, no Federal financial assistance flows from the Department to the doctor or other practitioner under the program, since Medicare Part B—like other social security programs—is basically a program of payments to direct beneficiaries.'' 45 CFR pt. 84 app. A (Analysis of Final Regulation); 42 FR 22676, 22685 (May 4, 1977).

[615] *See, e.g., U.S.* v. *Baylor Univ. Med. Ctr.,* 736 F.2d 1039, 1042 (5th Cir. 1984), *cert. denied,* 469 U.S. 1189 (1985); *Bernard B.* v. *Blue Cross & Blue Shield,* 528 F. Supp. 125, 132 (S.D.N.Y. 1981), *aff'd,* 679 F.2d 7 (2d Cir. 1982); *Bob Jones Univ.* v. *Johnson,* 396 F. Supp. 597, 603 n. 21 (D.S.C. 1974), *aff'd,* 529 F.2d 514 (4th Cir.1975); *Austin* v *Blue Cross Blue Shield of Ala.,* No. 4:09–cv–1647, 2009 WL 10703738, at *1, n.1 (N.D. Ala. Oct. 16, 2009); *Waris* v. *HCR Manor Care,* No. 07–cv–3344, 2009 WL 330990, at *19 (E.D. Pa. Feb. 10, 2009), *aff'd, on other gr.,* 365 Fed. App'x. 402 (3d Cir. 2021); *Campen* v. *Portland Adventist Med. Ctr.,* No. 3:16–cv–00792; 2016 WL 5853736, at * 4 (D. Or. Sept. 2, 2016), *adopted by* 2016 WL 5858670 (D. Or. Oct. 5, 2016); *Zamora-Quezada* v. *HealthTexas Med. Group. of San Antonio,* 34 F. Supp. 2d 433, 440 (W.D. Tex. 1998); *People by Vacco* v. *Mid Hudson Med. Group, P.C.,* 877 F. Supp. 143, 149–40 (S.D.N.Y. 1995); *Glanz* v *Vernick,* 756 F. Supp. 632, 636 (D. Mass. 1991); *Doe* v. *Centinela Hosp.,* No. 87–cv–2514 PAR, 1988 WL 81776 (C.D. Cal. June 30, 1988); *Bhatt* v. *Uniontown Hosp.,* No. 83–2455, 1986 WL 30681, at *4 (W.D. Pa. Mar. 20, 1986); *U.S.* v. *Univ. Hosp. of the State Univ. of N.Y. at Stony Brook,* 575 F. Supp. 607, 612 (E.D.N.Y. 1983), *aff'd on other gr.,* 729 F.2d 144 (2d Cir. 1984); *U.S.* v *Cabrini Med. Ctr.,* 497 F. Supp. 95, 96 n. 1 (S.D.N.Y. 1980), *rev'd on other gr.,* 639 F.2d 908, 910–11 (2d Cir. 1981); *NAACP* v. *Wilmington Med. Ctr., Inc.,* 453 F. Supp. 280, 329 (D. Del. 1978), *Flora* v. *Moore,* 461 F. Supp. 1104, 1115 (N.D. Miss. 1978). Because many hospitals receive funds under Medicare and Medicaid, many of these cases address both types of funding together. Some of these cases refer specifically to Part A of Medicare in holding that the funds are Federal financial assistance; others refer to Medicare but given that the defendant is a hospital or other facility that Part A funding covers, the funds at issue have been Part A funds.

insurance or guaranty that falls within the exception to ''Federal financial assistance'' in Title VI.[616] In 1977, the Department subsequently clarified, however, that this ''explanation oversimplified the Department's view of whether Medicare Part B constitutes Federal financial assistance.'' [617] In adopting this position in its final rule implementing Section 504, the Department explained that ''its position has consistently been that, whether or not Medicare Part B arrangements involve a contract of insurance or guaranty, no Federal financial assistance flows from the Department to the doctor or other practitioner under the program, since Medicare Part B—like other social security programs—is basically a program of payments to direct beneficiaries.'' [618] Given this clarification, we will focus primarily here on the Department's 1977 rationale that no Federal financial assistance flows from the Department to a provider under the program.

The Department's 1977 rationale regarding the payment to beneficiaries no longer reflects how Medicare Part B operates. When the Medicare Part B program was first enacted in 1965, program beneficiaries generally paid for services out of pocket and received partial reimbursement from the program. That is no longer the most common method by which providers receive funds. The Medicare and Medicaid Act (the ''Medicare Act'') currently allows physicians and many other Part B providers and suppliers to ''accept assignment'' for Medicare Part B claims.[619] Providers thereby accept Medicare's approved amount for a service and can only charge a beneficiary co-insurance and a deductible.[620] Providers bill the Medicare program directly for services they provide to Part B program beneficiaries and are paid directly by the Department.[621]

Significantly, at the present time, approximately two-thirds of providers enrolled in the Medicare Part B program are ''participating providers,'' [622] *i.e.,* providers that bill and are paid by the Medicare program. Thus, the Department's primary historical rationale for its position that Medicare Part B was not Federal financial assistance does not reflect the current operation of the program for the majority of providers participating in the program. Those providers have become direct recipients of Federal financial assistance. This significant change in facts provides ample support for the Department's change of interpretation as applied to those providers.[623]

Providers commonly known as ''non-participating providers'' also provide services to Medicare beneficiaries, but they do not agree to accept Medicare's approved amount as full payment, and can charge up to 15 percent more than Medicare's approved amount.[624] They also receive a lower payment rate through the program.[625] Non-participating providers must enroll in the Part B program for their services to be covered by the program, but do not receive direct payment from the Part B program.[626] Thus, whereas they are referred to as ''non-participating'' because they do not receive direct Medicare assignment and are not subject to the usual participating provider fee limitations like participating providers, non-participating providers do participate in the Part B program overall, and enroll in the program so that the services they provide to Part B beneficiaries will be subsidized by the program. (In contrast, providers referred to as ''opt-out providers'' opt out of Medicare Part B entirely, and Medicare does not pay for the services these providers provide to Part B beneficiaries, either directly to providers themselves, or by reimbursing Part B beneficiaries after the fact for these services.) [627]

Given this relationship of non-participating providers to the Medicare Part B program, the Department believes that non-participating providers are also recipients of Federal financial assistance under the principles set forth by the Supreme Court in *Grove City College* v. *Bell,* where the Court held that Federal assistance loans provided to students to cover education-related expenses is Federal financial assistance to educational institutions under Title IX.[628] The Court explained that ''[n]othing . . . [] suggests that Congress elevated form over substance by making the application of the nondiscrimination principle dependent on the manner in which a program or activity receives Federal assistance. There is no basis in the statute for the view that only institutions that themselves apply for Federal aid or receive checks directly from the Federal Government are subject to regulation.'' [629]

Critically, the Court noted that the Federal financial assistance in question ''was structured to ensure that it effectively supplements the College's own financial aid program.'' [630] In doing so, it rejected the argument that student loans were akin to general assistance programs such as ''food stamps, Social Security benefits, welfare payments, and other forms of general-purpose governmental assistance to low-income families.'' [631] Among the reasons the Court cited for this rejection were the fact that ''general assistance programs, unlike student aid programs, were not designed to assist colleges and universities'' and that ''educational institutions have no control over, and indeed perhaps no knowledge of, whether they ultimately receive Federal funds made available to individuals under general assistance programs [like Social Security], but they remain free to opt out of Federal student assistance programs.'' [632] Entities such as non-participating providers are aware of the flow of Federal financial assistance to them and are permitted to opt out.

In the Department's view, the rationale set forth in *Grove City College* counsels in favor of considering non-participating providers under Medicare Part B to be indirect recipients of Federal financial assistance. Part B funds, like the Federal student aid provided to students at issue in *Grove City College,* are ''designed'' to effectively subsidize health care providers and suppliers for the health services and supplies they provide to program beneficiaries. Program beneficiaries who see a non-participating provider receive a Part B payment from the program for one reason only: they have received health services or supplies from a provider that has enrolled in the Part B program and paid for the service out of pocket. The amount that the provider may charge is controlled by the terms of the provider's

[616] 41 FR 20296, 20298 (May 17, 1976) (discussing 42 U.S.C. 2000d–1, d–4).

[617] 42 FR 22685.

[618] *Id.;* 41 FR 20298.

[619] 42 U.S.C. 1395u(h)–(i).

[620] *Lower Costs with Assignment, Medicare.gov, https://www.medicare.gov/your-medicare-costs/part-a-costs/lower-costs-with-assignment* (last visited June 15, 2022).

[621] *Id.*

[622] Medicare Provider Enrollment Chain and Ownership System (PECOS), *https://pecos.cms.hhs.gov/pecos/login.do#headingLv1* (last visited June 15, 2022).

[623] *See Nat'l Cable & Telecomms. Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 981 (2005) (''[a]n initial agency interpretation is not instantly carved in stone. On the contrary, the agency . . . must consider varying interpretations and the wisdom of its policy on a continuing basis, for example, in response to changed factual circumstances . . .'').

[624] 42 U.S.C. 1395w–4(g)(1); *Lower Costs with Assignment, supra* note 620.

[625] *Lower Costs with Assignment, supra* note 620.

[626] 42 CFR 424.510.

[627] *Lower Costs with Assignment, supra* note 620.

[628] *Grove City Coll.* v. *Bell,* 465 U.S. 555, 565 (1984).

[629] *Id.* at 564.

[630] *Id.* at 565.

[631] *Id.* at n.13

[632] *Id.*

enrollment agreement in Medicare Part B. Accordingly, even though a non-participating provider does not accept assignment, it remains a willing participant in the Medicare Part B program and it agrees to treat patients receiving Medicare Part B with the awareness that its services that will be subsidized by the Department. In contrast to general assistance programs, and similar to the student aid program at issue in *Grove City College,* non-participating providers thus have knowledge and control of whether they receive Federal funds and their participation status, and remain free to opt out.[633] Further, Title VI, Section 504, Title IX, the Age Act, and this proposed rule all require entities to sign an assurance of compliance with these laws as a condition of receiving Federal funds.[634] Thus both participating and non-participating providers will have a choice as to whether to accept the funds and comply with these civil rights laws or decline the funds.

Accordingly, the Department's principal 1977 rationale regarding the flow of Federal assistance can no longer justify excluding Medicare Part B payments from the definition of Federal financial assistance. Participating providers are the direct recipients of Federal financial assistance; and non-participating providers are the indirect recipients of such assistance.

A second rationale that the Department has mentioned as potential support for its past position that Medicare Part B is not Federal financial assistance is that Medicare Part B is a ''contract of insurance or guaranty.'' [635] The Title VI statute [636] and regulations, and Section 504, Title IX, and Age Act regulations [637] exclude a contract of insurance from the definition of ''Federal financial assistance.'' Significantly, after initially relying on this rationale, the Department clarified that its position did not depend on this rationale.[638] Moreover, this prior rationale does not provide a strong basis for interpreting Medicare Part B as something other than Federal financial assistance.

First, with respect to Section 1557 in particular, Congress made clear in the text of the statute that a ''contract of insurance'' *can* constitute Federal financial assistance, expressly declining to include the exception from Title VI.[639] Thus, whatever the meaning of that exception might be in Title VI, and in the Title IX, Section 504, and Age Act regulations, it does not apply to Section 1557.

Second, the Department now is of the view that Medicare Part B funding is not covered by that Title VI exception, because it is not a ''contract of insurance or guaranty.'' It is instructive, in this regard, to consider how the Department has analyzed Medicare Part A with respect to the question of what constitutes Federal financial assistance. Medicare Part A and Part B are fundamentally similar in many respects. Both are Federal programs providing health-related coverage to eligible individuals. In both, providers agree to meet conditions of participation or coverage in exchange for receiving payments for their services to eligible enrolled individuals. In both, payments come from a Federal trust fund. In both, the services covered, fees paid, and other aspects of the program are governed by a variety of statutes and regulations. That participation in Part B is voluntary for eligible individuals does not make Part B funds a ''contract of insurance or guaranty,'' particularly since some individuals who do not qualify for ''premium-free'' Part A coverage can ''buy-in'' to Medicare Part A.[640] Part A buy-in has been a feature of Medicare since 1972, though the statute has subsequently been amended to expand eligibility for this option.[641] Both Parts contain the word ''insurance'' in their Titles; [642] yet Medicare Part A has always been considered Federal financial assistance by the Department, notwithstanding this denomination. Thus, the use of this term in Part B has no more significance than it does in Part A. In both programs, insurance companies serve as Medicare Administrative Contractors, processing claims and paying providers [643] as agents of the Department, not as insurers of individuals. We note as well that most of the funding for the Part B fund comes from Federal and State tax revenue and interest on investments, not ''premium'' payments.[644]

The Department seeks comment on the impact that this proposed change may have on recipients subsidized only by Medicare Part B funds and no other sources of Federal financial assistance from the Department. We also seek comment on the time that should be allowed for recipients of Part B funds to come into compliance with the applicable statutes and their implementing regulations and what resources the Department can provide to assist newly covered entities in coming into compliance.

## V. CMS Amendments

The 2020 Rule amended ten provisions in CMS regulations, at least some of which cover entities that are also subject to Section 1557, to delete language that prohibited discrimination on the basis of sexual orientation and gender identity.[645] These provisions included regulations governing

[633] *Id.*

[634] 45 CFR 80.4 (Title VI); § 84.5 (Section 504); § 86.4 (Title IX); § 91.33 (Age Act); proposed § 92.5.

[635] 41 FR 20296, 20298 (May 17, 1976).

[636] 42 U.S.C. 2000d *et seq.* The legislative history of Title VI indicates that the ''contract of insurance or guaranty'' exclusion was added to the bills that became Title VI to address the concern of some members of Congress that without the exclusion, federally insured banks providing housing mortgages would be covered by Title VI and be prohibited from denying mortgages based on ''the choice of a neighbor,'' *i.e.,* engaging in redlining, a practice now prohibited by the Federal Fair Housing Act. 110 Cong. Rec. 1345–6 (Statement of Sen. Pastore); 110 Cong. Rec. 1497–1500 (colloquy between Rep. Cramer, and Willard W. Wirtz, Secretary of Labor); 110 Cong. Rec. 1519 (Statement of Rep. Heller); 110 Cong. Rec. 13377–78 (June 10, 1964) (Statement of Sen. Long),110 Cong. Rec. 13435 (June 10, 1964) (Statement of Sen. Humphrey). 110 Cong. Rec. 13454–6 (Statement of Sen. Pastore); 110 Cong. Rec. 13435 (June 10, 1964) (Statement of Sen. Humphrey). When Medicare was being enacted, some indications in the legislative history suggest that Congress assumed that Title VI would apply to it. *See, e.g.,* 111 Cong. Rec. 15813 (July 7, 1965) (Statement of Sen. Hart).

[637] 45 CFR 80.13(f) (Title VI); § 84.3(h) (Section 504); § 86.2(g) (Title IX); § 91.4 (Age Act).

[638] 42 FR 22685.

[639] 42 U.S.C. 18116(a).

[640] *Part A Costs, Medicare.gov, https://www.medicare.gov/your-medicare-costs/part-a-costs* (last visited June 15, 2022).

[641] Public Law 92–603, 202, 86 Stat. 1329 (Oct. 30, 1972), *as amended by,* The Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, 6013, 103 Stat. 2106 (Dec. 19, 1989).

[642] 42 U.S.C. ch. 7, subch. XVIII, pt. A (Hospital Insurance Benefits for Aged and Disabled); 42 U.S.C. ch. 7, subch. XVIII, pt. B (Supplementary Insurance Benefits for Aged and Disabled).

[643] 42 U.S.C. 1395kk–1; *Medicare Administrative Contractors,* Ctrs. for Medicare & Medicaid Servs., *https://www.cms.gov/Medicare/Medicare-Contracting/Medicare-Administrative-Contractors/MedicareAdministrativeContractors* (last visited June 15, 2022).

[644] Tax Policy Ctr., Tax Policy Center Briefing Book: Key Elements of the U.S. Tax System, *https://www.taxpolicycenter.org/briefing-book/what-medicare-trust-fund-and-how-it-financed* (last visited June 15, 2022) (indicating SMI trust fund received over 70% of its 2017 year assets from general revenue, including individual income taxes, corporate taxes, and excise taxes).

[645] *See* 85 FR 37160, 37162 (June 19, 2020) (the provisions that were amended included: Medicaid and CHIP (42 CFR 438.3(d)(4), § 438.206(c)(2), § 440.262); PACE (42 CFR 460.98(b)(3), § 460.112(a)); issuers offering coverage in the group and individual markets (45 CFR 147.104(e)); Exchange-related programs (45 CFR 155.120(c)(1)(ii), § 155.220(j)(2)(i), § 156.200(e), § 156.1230(b)(2)). 45 CFR 147.104 applies not only to issuers subject to Section 1557, but to all health insurance issuers offering non-grandfathered individual, small group, and large group health insurance, and § 156.125(b) applies not only to issuers subject to Section 1557, but to all health insurance issuers offering non-grandfathered individual and small group health insurance.

Medicaid and CHIP;[646] PACE;[647] health insurance issuers including issuers providing essential health benefits (EHB) and issuers of qualified health plans (QHPs), and their officials, employees, agents, and representatives; States and the Exchanges carrying out Exchange requirements; and agents, brokers, or web-brokers that assist with or facilitate enrollment of qualified individuals, qualified employers, or qualified employees.[648] The 2020 Rule stated that in light of the overarching applicability of Section 1557 to these programs and entities, the Department was making these amendments to ensure greater consistency in civil rights enforcement across the Department's different programs.[649] See *supra* section II.B. for additional detail.

The Department is committed to ensuring that all persons should be able to access health care without being subjected to sex discrimination, and that all persons should receive equal treatment under the law, no matter their gender identity or sexual orientation. Accordingly, in this proposed rule, the Department proposes to amend these CMS regulations[650] so that they again identify and recognize discrimination on the basis of sexual orientation and gender identity as prohibited forms of discrimination based on sex. In addition, the Department proposes to amend a regulation applying these protections in CHIP to also apply to Medicaid fee-for-service programs and managed care programs. These proposals are consistent with those elsewhere in this proposed rule and would ensure that sexual orientation and gender identity are added and promote consistency across HHS programs of policies and requirements that prohibit discrimination based on sexual orientation or gender identity. In the ''Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023'' published in the **Federal Register** on January 5, 2022 (2023 Payment Notice proposed rule),[651] HHS proposed similar amendments to some of those same regulations applicable to Exchanges, QHPs, and certain issuers to prohibit discrimination based on sexual orientation and gender identity.[652] These provisions were not finalized in the Final Rule published on May 6, 2022.[653] Commenters that provided comments on the 2023 Payment Notice proposed rule should not submit duplicative comments to this proposed rule as the Department will consider all comments previously submitted regarding these proposals in issuing its final rule.

Prohibiting sex discrimination based on sexual orientation and gender identity can lead to improved health outcomes for members of the LGBTQI+ community. Without such protection, individuals will likely continue facing barriers to accessing medically necessary health care. For example, without protection from discrimination, transgender individuals may face barriers or be denied clinically appropriate gender-affirming care.

On June 15, 2020, the U.S. Supreme Court held that Title VII's prohibition on employment discrimination based on sex encompasses discrimination based on sexual orientation and gender identity.[654] The *Bostock* majority concluded that the plain meaning of ''because of sex'' in Title VII necessarily included discrimination because of sexual orientation and gender identity.[655] Subsequently, DOJ's Civil Rights Division issued a memorandum[656] concluding that the Supreme Court's reasoning in *Bostock* applies to Title IX. As made clear by the ACA, Section 1557 prohibits discrimination ''on the ground prohibited under . . . Title IX.''[657]

Consistent with *Bostock,* HHS OCR issued its Bostock Notification, interpreting Section 1557's prohibition on discrimination on the basis of sex to include discrimination on the basis of sexual orientation and gender identity. Based on this and the statutory authorities identified below, the Department also relies on Section 1557 as authority for the proposed amendments to 45 CFR 155.120, 155.220, 156.200, and 156.1230 as well as 42 CFR 438.3(d)(4), 42 CFR 438.206(c)(2), and 42 CFR 440.262 in this proposed rule. CMS is also proposing a parallel amendment to 45 CFR 147.104 that would prohibit discrimination on the basis of sex (including on the basis of sexual orientation or gender identity) consistent with the Section 1557 implementing regulations proposed in this rule but is relying on the separate authorities identified later in this discussion. We are also including a discussion at 45 CFR 156.125 that clarifies how the proposed change to 45 CFR 156.200 would impact the nondiscrimination requirements for plans providing EHB such that plans subject to EHB requirements would be prohibited from discriminating on the basis of sex (including sexual orientation or gender identity) relying on separate authorities identified below. Subpart B of this NPRM discusses the Section 1557's prohibition on discrimination on the basis of sex (including pregnancy, sex characteristics, sexual orientation, and gender identity). This portion of the preamble focuses on the CMS freestanding, independent provisions that have long provided for nondiscrimination on the basis of sex in its programs and services. While the Section 1557 NPRM proposes to include sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity as enumerated forms of sex discrimination, CMS limits the explicit mention to gender identity and sexual orientation, while understanding that discrimination on the basis of sex stereotypes, sex characteristics, and pregnancy or related conditions is prohibited sex discrimination. We seek comment on this approach for all of the CMS provisions addressed in this section.

### *A. Medicaid and Children's Health Insurance Program (CHIP)*

In the Medicaid and CHIP managed care final rule published in the **Federal Register** on May 6, 2016,[658] CMS explicitly included prohibitions on discrimination based on sexual orientation or gender identity. In that rulemaking, CMS explained that adopting protections against discrimination on these bases was necessary to assure that care and services are provided in a manner consistent with the best interest of beneficiaries under section 1902(a)(19)

[646] The 2020 Rule, at 85 FR 37221, removed references to sexual orientation and gender identity as a prohibited basis of discrimination from 42 CFR 438.3(d)(4), § 438.206(c)(2), and § 440.262.

[647] The 2020 Rule, at 85 FR 37220–21, removed references to sexual orientation from 42 CFR 460.98(b)(3) and § 460.112(a). However due to a publishing error, the text of § 460.112(a) still states that PACE participants have the right not to be discriminated against on the basis of sexual orientation.

[648] The 2020 Rule, at 85 FR 37221, removed references to sexual orientation and gender identity as a prohibited basis of discrimination from 45 CFR 147.104(e), § 155.120(c)(1)(ii), § 155.220(j)(2)(i), § 156.200(e), and § 156.1230(b)(2).

[649] 85 FR 37162.

[650] See 85 FR 37162 (the provisions that were amended included: Medicaid and CHIP (42 CFR 438.3(d)(4), § 438.206(c)(2), § 440.262); PACE (42 CFR 460.98(b)(3), § 460.112(a)); issuers offering coverage in the group and individual markets (45 CFR 147.104(e)); Exchange-related programs (45 CFR 155.120(c)(1)(ii), § 155.220(j)(2)(i), § 156.200(e), § 156.1230(b)(2)).

[651] 87 FR 584 (Jan. 5, 2022).

[652] 45 CFR 147.104(e); § 155.120(c)(1)(ii); § 155.220(j)(2)(i); § 156.200(e); § 156.1230(b)(2).

[653] 87 FR 27208, 27209 (May 6, 2022).

[654] *Bostock* v. *Clayton Cnty.,* 140 S. Ct. 1731 (2020).

[655] *Id.* at 1753–54.

[656] Karlan Memo, *supra* note 46.

[657] 42 U.S.C. 18116(a).

[658] 81 FR 27498 (May 6, 2016).

of the Social Security Act (''the SSA'') and relied on authority under section 1902(a)(4) of the SSA to adopt regulatory antidiscrimination protections and obligations for managed care plans.[659] We amended 42 CFR 438.3(d)(4), which prohibits enrollment discrimination in contracts with managed care organizations, prepaid inpatient health plans, prepaid ambulatory health plans, primary care case managers, and primary care case management entities, as well as 42 CFR 438.206(c)(2), which, as amended, required each managed care organization, prepaid inpatient health plan, and prepaid ambulatory health plan to participate in a ''State's efforts to promote the delivery of services in a culturally competent manner to all enrollees, . . . regardless of gender, sexual orientation or gender identity.'' We also explained that the obligation for the state plan to promote access and delivery of services without discrimination was necessary to assure that care and services were provided in a manner consistent with the best interest of beneficiaries under section 1902(a)(19) of the SSA.[660] Therefore, in the Medicaid and CHIP managed care 2016 final rule, we created a new provision entitled ''Access and cultural considerations'' at 42 CFR 440.262, requiring states to have methods to ''promote access and delivery of services in a culturally competent manner to all beneficiaries, including those with limited English proficiency, diverse cultural and ethnic backgrounds, disabilities, and regardless of gender, sexual orientation or gender identity.'' In addition, 42 CFR 438.3(f) (which is also applicable to CHIP managed care entities per § 457.1201(f)), requires compliance with all applicable Federal and State laws and regulations, including Section 1557. The antidiscrimination provision in § 438.3(d)(4) also applied to CHIP managed care entities under § 457.1201(d); those CHIP managed care regulations apply the terms of the Medicaid managed care regulations through existing cross-references. As explained in the Medicaid and CHIP managed care 2016 final rule, CMS believes it is appropriate to align the requirements for managed care programs in the Medicaid and CHIP contexts, including with regard to beneficiary protections and access to services.[661]

Due to an oversight, the Medicaid and CHIP managed care 2016 final rule did not apply the provisions requiring nondiscrimination as described in 42 CFR 440.262 to fee-for-service CHIP programs. In the Department's view, providing access to services in a non-discriminatory manner is in the best interest of all CHIP beneficiaries. CMS therefore now proposes to rectify that omission by incorporating 42 CFR 440.262 into CHIP regulations through a cross-reference at 42 CFR 457.495(e). Taken together, these protections further the purpose of CHIP to provide child health assistance in an effective and efficient manner that is consistent with section 2101(a) of the SSA.

CMS now proposes, based on Section 1557 as discussed previously, and its separate statutory authority under sections 1902(a)(4) of the SSA (codified at 42 U.S.C. 1396a(a)(4)) and 2101(a) of the SSA (codified at 42 U.S.C. 1397aa(a)), to amend 42 CFR 438.3(d)(4), 42 CFR 438.206(c)(2), and 42 CFR 440.262 to again prohibit Medicaid and CHIP managed care organizations, prepaid inpatient health plans, prepaid ambulatory health plans, primary care case managers, and primary care case management entities in managed care programs from discriminating on the basis of sexual orientation and gender identity, and to require managed care plans and State fee-for-service Medicaid and CHIP programs to promote access and delivery of services in a culturally competent manner to all beneficiaries, including those with limited English proficiency, diverse cultural and ethnic backgrounds, disabilities, and regardless of gender, sexual orientation or gender identity. As noted above, the managed care contracting and service delivery provisions would also apply to CHIP managed care entities based on existing regulations, creating an alignment in the Medicaid and CHIP managed care requirements.

As HHS noted in its 2016 Medicaid CHIP managed care final rule,[662] CMS possesses statutory authority to amend 42 CFR 438.3(d)(4), 42 CFR 438.206(c)(2), and 42 CFR 440.262 under section 1902(a)(4) of the SSA, which authorizes the Secretary to adopt methods of administration necessary for the proper and efficient operation of the Medicaid state plan; section 1902(a)(19) of the SSA (codified at 42 U.S.C. 1396a(a)(19)), which requires the Medicaid state plan to provide safeguards as necessary to assure that covered services are provided in a manner consistent with the best interests of the recipients; and section 2101(a) of the SSA (codified at 42 U.S.C. 1397aa(a)), which permits provision of funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner. CMS interprets section 1902(a)(19) of the SSA as prohibiting discrimination in the delivery of services because such discrimination is inconsistent with the best interests of the Medicaid beneficiaries who are eligible for and receive services. CMS interprets sections 1902(a)(4) and 2101(a) of the SSA as authorizing CMS to adopt regulations prohibiting discrimination on the basis of gender identity or sexual orientation because such prohibitions on discrimination are necessary for the proper and efficient operation of a state plan, are in the best interest of beneficiaries, and enable states to provide child health assistance in an effective and efficient manner. Adopting regulations to ensure that eligible beneficiaries receive services under these programs is consistent with the purpose of the Medicaid and CHIP programs to furnish and expand access to medical assistance. The proposed amendments to 42 CFR 438.3(d)(4), 438.206(c)(2), 440.262, and 457.495(e) would explicitly prohibit discrimination on the basis of sexual orientation and gender identity in addition to the existing prohibitions imposed on Medicaid and CHIP under Section 1557. Importantly, adopting a broader interpretation of what is necessary and appropriate to ensure proper and efficient Medicaid and CHIP programs and to ensure services are delivered in a manner that is in the best interest of the beneficiary is warranted in light of the existing trends in health care discrimination [663] and to better address barriers to health equity. Section II.D. of this NPRM includes an extensive discussion of LGBTQI+ health disparities. These CMS conforming amendments, in addition to the broad prohibition on discrimination required under Section 1557, allow CMS to ensure that its programs and services are operated without discrimination and would help address those disparities. While we are restoring 42 CFR 438.3(d)(4), 438.206(c)(2), 440.262, and adding 457.495(e), as part of using our longstanding program authority, Section 1557 requires nondiscrimination in these programs and services.

[659] 80 FR 31097, 31147–48 (June 1, 2015); 81 FR 27538–39, 27666.

[660] 81 FR 27666.

[661] 80 FR 31169–71, 31173; 81 FR 27757–58, 27765.

[662] 81 FR 27498.

[663] Thu T. Nguyen et al., *Trends for Reported Discrimination in Health Care in a National Sample of Older Adults with Chronic Conditions,* 33 J. Gen. Intern. Med. 291 (2018), *https://doi.org/10.1007/s11606-017-4209-5.*

Section 1557 prohibits discrimination on the basis of sex, importantly including sexual orientation and gender identity. CMS is proposing to amend 42 CFR 440.262 to restore the explicit prohibition against discrimination in the delivery of services on the basis of sexual orientation and gender identity. We also propose to replace ''gender'' with ''sex'' and add ''(including sexual orientation and gender identity)'' for consistency with the proposals elsewhere in this proposed rule, to ensure that sexual orientation and gender identity are added, and to promote consistency across HHS programs. As adopted in 2016, the regulation at 42 CFR 440.262 was described by CMS as an obligation for the state Medicaid plan to promote access and delivery of services without discrimination [664] and the proposal here reiterates the meaning and scope for this regulation. By reinstating the explicit references to sexual orientation and gender identity as forms of sex discrimination, this proposal would amend 42 CFR 440.262 to protect individuals from discrimination on those bases in the same way that discrimination on the basis of limited English proficiency, disabilities, and cultural and ethnic backgrounds is prohibited. We also propose to change ''unique needs'' in 42 CFR 440.262 to ''individualized needs'' to more accurately reflect Medicaid's goal of providing person-centered care. As adopted in 2016, the regulation at 42 CFR 438.206(c)(2) required Medicaid managed care plans to participate in the State efforts to promote the delivery of services in a manner required by 42 CFR 440.262,[665] so CMS is proposing to amend 42 CFR 438.206(c)(2) to reinstate the references to sexual orientation and gender identity to align the Medicaid managed care regulation with the proposal to amend 42 C.F.R 440.262. Similarly, CMS is proposing to reinstate references to sexual orientation and gender identity in the Medicaid managed care regulation at 42 CFR 438.3(d)(4) that prohibits Medicaid managed care plans from discriminating against individuals eligible to enroll and from using any policy or practice that has the effect of discriminating on the basis of listed characteristics, which currently include race, color, national origin, sex, or disability. For consistency with the proposals elsewhere in this proposed rule to ensure that sexual orientation and gender identity are added and promote consistency across HHS programs for how protections against discrimination on the basis of sexual orientation or gender identify are reflected in regulation, we propose to revise the term ''sex'' in the current regulation text to ''sex (including sexual orientation and gender identity)'' at 42 CFR 438.206(c)(2) and 42 CFR 438.3(d)(4).

CMS also proposes to add a similar nondiscrimination provision for CHIP, to apply to fee-for-service and managed care delivery systems, by incorporating 42 CFR 440.262 into CHIP regulations through a cross-reference at 42 CFR 457.495(e). Because of existing cross-references in 42 CFR 457.1201(d) and 457.1230(a), the amendments to the Medicaid managed care regulations at 42 CFR 438.3(d)(4) and 438.206(c)(2) would also apply to CHIP managed care entities.

Finally, the Department proposes that if any of the provisions at CFR 457.495(e), 42 CFR 440.262, 42 CFR 438.206(c)(2) and 42 CFR 438.3(d)(4) is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it shall be severable from its respective sections and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances. In enforcing the nondiscrimination provisions in these CMS regulations, HHS will comply with laws protecting the exercise of conscience and religion, including RFRA and all other applicable legal requirements.

*B. Programs of All-Inclusive Care for the Elderly (PACE)*

CMS issued an interim final rule implementing the Programs of All-Inclusive Care for the Elderly (PACE) on November 24, 1999.[666] In response to comments received on the November 24, 1999 interim final rule, in a December 8, 2006 Final Rule,[667] CMS added references to ''sexual orientation'' to several PACE regulations intended to prevent discrimination against PACE participants, consistent with CMS' authority under sections 1894(f) and 1934(f) of the SSA. Specifically, CMS amended 42 CFR 460.98(b)(3) to prohibit PACE organizations from discriminating against any participant in the delivery of required PACE services based on sexual orientation, among other bases. Similarly, CMS modified § 460.112(a) to affirmatively state that each PACE participant has the right not to be discriminated against in the delivery of required PACE services based on sexual orientation, among other bases.

Congress authorized PACE under both Medicare and Medicaid, in sections 1894 and 1934 of the SSA, codified at 42 U.S.C. 1395eee and 42 U.S.C. 1396u–4, respectively. For a description of the relevant legislative history, we direct readers to the December 8, 2006 Medicare and Medicaid Programs; Programs of All-Inclusive Care for the Elderly (PACE); Program Revisions final rule.[668] Sections 1894(f) and 1934(f) of the SSA set forth the requirements for issuing regulations to carry out sections 1894 and 1934. Sections 1894(f)(2) and (3) and 1934(f)(2) and (3) include certain provisions relating to beneficiary and program protections under PACE. Sections 1894(f)(4) and 1934(f)(4) however, provide in identical terms that ''[n]othing in this subsection shall be construed as preventing the Secretary from including in regulations provisions to ensure the health and safety of individuals enrolled in a PACE program under this section that are in addition to those otherwise provided under paragraphs (2) and (3).'' This authority allows CMS to implement regulations to provide additional protections to ensure the health and safety of PACE participants in addition to those specified in sections 1894(f)(2) and (3) and 1934(f)(2) and (3).

PACE participants are some of CMS's most vulnerable and frail beneficiaries, with the vast majority dually eligible for both Medicare and Medicaid. To be eligible to enroll in a PACE program an individual must be determined to need the level of care required under the state Medicaid plan for coverage of nursing facility services.[669] One of the purposes of the PACE program is to enable PACE participants to live in the community with the support of PACE services as long as medically and socially feasible, instead of residing in a nursing facility or other institutional setting.[670] While PACE participants receive care in a wide range of settings, including the PACE center, the home, and inpatient facilities, given the general characteristics of the PACE population, PACE organization staff interact with PACE participants in much the same way that nursing facility staff work with long-term care residents who are not PACE participants. Given the role of the PACE organization and the frequent interactions between PACE staff and PACE participants, the need to ensure

[664] 81 FR 27666.

[665] *Id.*

[666] 64 FR 66234 (Nov. 24, 1999).

[667] 71 FR 71244 (Dec. 8, 2006).

[668] *Id.*

[669] 42 CFR 460.150(b)(2).

[670] *Id.* at § 460.4(b)(3).

discrimination does not occur is even greater.

As addressed above, CMS now proposes, using its authority under section 1557 of the ACA and its authorities under sections 1894(f)(4) and 1934(f)(4) of the SSA, to amend PACE regulations at 42 CFR 460.98(b)(3) and 460.112(a) to explicitly prohibit discrimination on the basis of sexual orientation or gender identity.

Revised § 460.98(b)(3) would state that PACE organizations may not discriminate against any participant in the delivery of required PACE services based on race, ethnicity, national origin, religion, sex (including sexual orientation and gender identity), age, mental or physical disability, or source of payment. Similarly, we are proposing to revise 42 CFR 460.112(a) to add references to ''sexual orientation'' and ''gender identity'' to establish a right for each PACE participant not to be discriminated against in the delivery of required PACE services on the basis of sexual orientation or gender identity. Revised § 460.112(a) will provide in relevant part that each PACE participant has the right not to be discriminated against in the delivery of required PACE services based on race, ethnicity, national origin, religion, sex (including sexual orientation and gender identity), age, mental or physical disability, or source of payment.

In addition, in the proposed rule, ''Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023'' published in the **Federal Register** on January 5, 2022 (2023 Payment Notice proposed rule),[671] HHS proposed to amend certain regulations applicable to Exchanges, qualified health plans (QHPs), and certain issuers to prohibit discrimination based on sexual orientation and gender identity.[672] That proposed rule discussed that LGBTQI+ individuals face pervasive health and health care disparities,[673] and are at higher risk for many concomitant conditions and that overall, LGBTQI+ people report being in poorer health than non-LGBTQI+ individuals.[674] The 2015 report, *LGBT Older Adults in Long-Term Care Facilities,* found that elders in this community are more likely to be single, childless, estranged from their biological family, and reliant on families of choice, such as friends and other loved ones, for informal support.[675] Available research indicates that nursing home staff may be unfamiliar with the challenges and stigma faced by the LGBTQI community.[676] Many of these nursing facilities studied also failed to have care plans in place that ensured the safety of their LGBTQ residents and lacked a meaningful appreciation for their specific history.[677] One survey of nursing home social workers suggested that more than half of nursing home staff were ''either intolerant of homosexuality . . . or openly negative and condemnatory.'' [678] Research suggests that nursing home staff may also fail to provide equal care to the LGBTQI+ community. For instance, research has shown that nursing home staff sometimes fail to provide basic care such as bathing, toileting, and feeding for LGBTQI+ residents at higher rates than for residents who are not, because of staff refusal to touch LGBTQI+ residents.[679]

As described earlier in this section, the functions filled by PACE organization staff are often similar to those filled by nursing home staff (*e.g.,* bathing, toileting, and feeding). Since the functions are similar, PACE organizations would typically employ people with the same training and education as nursing home staff. Therefore, it is reasonable to assume that nursing home staff and PACE staff might treat individuals in much the same way. In fact, since PACE staff are generally required to have one year of experience working with the frail or elderly population,[680] which is similar to the population with which nursing home staff work, it is also reasonable to assume that nursing home staff might transfer to a PACE organization. As a result, we believe that PACE participants, regardless of the care setting, may encounter the same or similar issues as nursing home residents when receiving services from the PACE organization.

As explained earlier in this section of this proposed rule, research on nursing home care indicates that LGBTQI+ individuals often do not receive the health care needed to maintain and improve their overall health status. Since PACE participants have similarities to nursing home residents, we believe many of the same nursing home concerns might affect the provision of the benefits PACE organizations are required to provide under § 460.92(a). As discussed *supra* section II.B., LGBTQI+ individuals experience high rates of health disparities.

The PACE benefit package for all participants, regardless of the source of payment, must include all Medicare-covered services; all Medicaid-covered services, as specified in the State's approved Medicaid plan; and other services determined necessary by the participant's interdisciplinary team (IDT) to improve and maintain the participant's overall health status.[681] Decisions by the IDT to provide or deny services must be based on an evaluation of the participant's current medical, physical, emotional and social needs and current clinical practice guidelines and professional standards of care applicable to the particular service.[682] Furthermore, the IDT must perform an initial in-person comprehensive assessment of each participant.[683] This includes evaluating the physical and cognitive function and ability of each participant, the participant's and caregiver's preferences for care, socialization and availability of family support, current health status and treatment needs, and other factors. These requirements are intended to ensure that the IDT makes decisions based on the unique needs of each

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[671] 87 FR 584 (Jan. 5, 2022).

[672] As discussed *infra* section V.C., the Department did not finalize these provisions in the Payment Notice final rule (87 FR 27208, 27209 (May 6, 2022)) because this proposed rule addressing Section 1557 also would address issues related to prohibited discrimination based on sex. Therefore, the Department determined that it would be most prudent to address the nondiscrimination proposals related to sexual orientation and gender identity in this Section 1557 proposed rule to ensure consistency across the policies and requirements applicable to entities subject to Section 1557.

[673] *See, e.g., Lesbian, Gay, Bisexual, and Transgender Health, Healthy People 2020, HealthyPeople.gov, https://www.healthypeople.gov/2020/topics-objectives/topic/lesbian-gay-bisexual-and-transgender-health* (last visited June 15, 2022); Hudaisa Hafeez et al., *Healthcare Disparities Among Lesbian, Gay, Bisexual, and Transgender Youth: A Literature Review,* 9 Cureus e1184 (2017), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5478215/;* Karen I. Fredriksen-Goldsen et al., *Health Disparities Among Lesbian, Gay, and Bisexual Older Adults: Results from a Population-Based Study,* 103 A.m. J. Pub. Health 1802 (2013), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3770805/;* Billy A. Caceres et al., *A Systematic Review of Cardiovascular Disease in Sexual Minorities,* 107 A.m. J. Public Health e13–e21 (2017), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5343694/.*

[674] Daniel, *supra* note 119.

[675] Nat'l Senior Citizens Law Center et al., LGBT Older Adults in Long-Term Care Facilities (last updated 2015), *https://www.lgbtagingcenter.org/resources/pdfs/NSCLC_LGBT_report.pdf.*

[676] Alan Moses, *A Second ''Closet'' for Some LGBTQ Seniors Entering Nursing Homes,* U.S. News (Aug. 10, 2021), *https://www.usnews.com/news/health-news/articles/2021-08-10/a-second-closet-for-some-lgbtq-seniors-entering-nursing-homes.*

[677] *Id.*

[678] David Henry Wolfenson, *The Risks to LGBT Elders in Nursing Homes and Assisted Living Facilities and Possible Solutions,* 26 Tul. J. L. & Sexuality 123 (2017), *https://journals.tulane.edu/tjls/article/view/3020/2812.*

[679] *Id.*

[680] *See* 42 CFR 460.64(a)(3).

[681] *Id.* at § 460.92(a).

[682] *Id.* at § 460.92(b).

[683] *Id.* at § 460.104(a).

PACE participant. Discriminatory decision-making is inconsistent with these overall standards for how PACE organizations must furnish services.

We believe that expressly prohibiting discrimination based on sexual orientation or gender identity in these regulations could lead to improved health outcomes for PACE participants.[684] Without robust protection from such discrimination, PACE participants may face, or continue to face, barriers to accessing medically necessary health care, and PACE participants who are transgender individuals may face additional barriers to, or be denied, clinically appropriate gender-affirming care.

Sections 1894(f)(4) and 1934(f)(4) of the SSA provide authority for the establishment of beneficiary safeguards to ensure the health and safety of all PACE participants, including ensuring they have access to all required PACE items and services. We are proposing changes to 42 CFR 460.98(b)(3) and 460.112(a) to ensure the health and safety of PACE participants by establishing express protections against discriminatory actions based on sexual orientation and gender identity.

Finally, the Department proposes that if any of the provisions at 42 CFR 460.98(b)(3) and 460.112(a) is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it shall be severable from its respective sections and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances. In enforcing the nondiscrimination provisions in these CMS regulations, HHS will comply with laws protecting the exercise of conscience and religion, including RFRA and all other applicable legal requirements.

*C. Insurance Exchanges and Group and Individual Health Insurance Markets*

LGBTQI+ people face barriers to obtaining appropriate health care, including access to insurance and coverage for needed services. For these reasons—as discussed in greater detail throughout this preamble related to access to nondiscriminatory health coverage—and given the Department's goal to ensure consistency across its nondiscrimination policies and programs and entities subject to Section 1557 as discussed previously, the Department here proposes to amend 45 CFR 147.104, 155.120, 155.220, 156.200, and 156.1230, so that they explicitly identify and recognize discrimination on the basis of sexual orientation and gender identity as prohibited forms of discrimination based on sex.

The Department proposed similar amendments to these same regulations in the 2023 Payment Notice proposed rule. However, because this proposed rule addressing Section 1557 also would address issues related to prohibited discrimination based on sex, the Department determined that it would be most prudent to address the nondiscrimination proposals related to sexual orientation and gender identity in this proposed rule to ensure consistency across the policies and requirements applicable to entities subject to Section 1557. When issuing a final rule on the provisions proposed in this rule, we intend to also respond to the comments already submitted on the similar proposal included in the 2023 Payment Notice proposed rule. Accordingly, there is no need for entities that commented on these proposals in the 2023 Payment Notice proposed rule to submit duplicative comments.

As described above, Section 1557 prohibits discrimination in health programs or activities, any part of which receives Federal financial assistance. Similarly, as the Department noted in the 2020 Rule, CMS also possesses statutory authority to prohibit discrimination in the Exchanges. CMS relies on these authorities for the proposed revisions discussed in section V.C.1 of the preamble.[685] In the respective preambles to §§ 155.120(c), 155.220(j), 156.200(e), and 156.1230(b), CMS identifies and discusses the specific statutory authorities (in addition to Section 1557) that CMS relies upon for the proposals to prohibit discrimination based on sexual orientation and gender identity. Relying on authority separate from Section 1557, CMS also re-proposes the revision and clarification discussed in section V.C.2 of the preamble, related to §§ 147.104 and 156.125. Section 147.104 applies to issuers offering non-grandfathered health insurance coverage in the group and individual markets, and § 156.125 applies to issuers offering non-grandfathered health insurance coverage in the small group and individual markets. Both of these provisions therefore apply to issuers that may not be entities covered by Section 1557. For this reason, CMS does not rely on Section 1557 authority with respect to these provisions.

Finally, the Department proposes that if any of the provisions at 45 CFR 147.104(e), 155.120(c), 155.220(j), 156.200(e), or 156.1230(b) is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it shall be severable from its respective sections and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances. In enforcing the nondiscrimination provisions in these CMS regulations, HHS will comply with laws protecting the exercise of conscience and religion, RFRA and all other applicable legal requirements.

1. Health Insurance Exchanges

a. Non-interference With Federal Law and Nondiscrimination Standards (§ 155.120)

Section 155.120(c) currently provides that in order to avoid interference and comply with applicable nondiscrimination statutes, the states and the Exchanges must not discriminate based on race, color, national origin, disability, age, or sex. Previously, in the final rule ''Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers'' (Exchange Standards final rule), pursuant to the authority provided in section 1321(a)(1)(A) of the ACA to regulate the establishment and operation of an Exchange, the Department finalized § 155.120(c) to also prohibit discrimination based on sexual orientation and gender identity.[686] The 2020 Rule removed the terms ''sexual orientation'' and ''gender identity'' from the regulation text. For the reasons stated earlier in section V.C. of the preamble, for consistency with the proposals elsewhere in this proposed rule, to ensure that sexual orientation and gender identity are added, and to promote consistency across HHS programs, we propose to amend 45 CFR 155.120(c) by revising ''sex'' to ''sex (including sexual orientation and gender identity)''.

In addition to the Section 1557 authority discussed above, section 1312(a)(1)(A) of the ACA also authorizes CMS to prohibit discrimination in Exchanges pursuant to the authority to establish requirements with respect to the operation of Exchanges.[687] Pursuant

[684] Brian W. Ward et al., U.S. Dep't of Health & Human Servs., Ctrs. for Disease Control & Prevention, National Health Statistics Report: Sexual Orientation & Health Among U.S. Adults: National Health Interview Survey, 2013 (2014), *https://www.cdc.gov/nchs/data/nhsr/nhsr077.pdf.*

[685] 85 FR 37160, 37219, 37218–21 (June 19, 2020).

[686] 77 FR 18310 (Mar. 27, 2012).

[687] 85 FR 37218–21.

to this authority, HHS finalized in the Exchange Standards final rule that a State must comply with any applicable nondiscrimination statutes, specifically finalizing that a State must not operate an Exchange in such a way as to discriminate on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation. CMS proposes to exercise that same authority here to amend § 155.120(c) to again prohibit states and Exchanges carrying out Exchange requirements from discriminating based on sexual orientation and gender identity. Section 1321(a)(1)(A) of the ACA is the same authority CMS relies upon for implementation of existing nondiscrimination protections at § 155.120(c) that currently prohibit discrimination on the basis of race, color, national origin, disability, age, or sex.

We seek comment on this proposal. However, we note that the Department proposed similar amendments to this section in the 2023 Payment Notice proposed rule. Accordingly, there is no need for entities that commented on these proposals in the 2023 Payment Notice proposed rule to submit duplicative comments.

b. Federally-Facilitated Exchange Standards of Conduct (§ 155.220)

Section 155.220(j)(2)(i) currently states that an agent, broker or web-broker that assists with or facilitates enrollment through a Federally-facilitated Exchange or assists individuals in applying for advance payment of the premium tax credit and cost-sharing reductions for QHPs sold through a Federally-facilitated Exchange must provide consumers with correct information, without omission of material fact, regarding the Federally-facilitated Exchange, QHPs offered through the Federally-facilitated Exchange, and insurance affordability programs, and refrain from marketing or conduct that is misleading (including by having a direct enrollment website that HHS determines could mislead a consumer to believe they are visiting HealthCare.gov), coercive, or discriminates based on race, color, national origin, disability, age, or sex. This provision also applies to agents, brokers, and web-brokers in State-based Exchanges on the Federal platform under § 155.220(l). Previously, in the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017 (2017 Payment Notice final rule),[688] we finalized § 155.220(j)(2)(i) to also prohibit discrimination based on sexual orientation and gender identity. The 2020 Rule removed the terms ''sexual orientation'' and ''gender identity'' from the regulation text. For the reasons stated earlier in section V.C. of the preamble, for consistency with the proposals elsewhere in this proposed rule, to ensure that sexual orientation and gender identity are added, and to promote consistency across HHS programs, the Department proposes to amend 45 CFR 155.220(j)(2)(i) by revising ''sex'' to ''sex (including sexual orientation and gender identity)''.

In addition to Section 1557 authority discussed above, section 1312(e) of the ACA grants CMS independent statutory authority to establish procedures for States to permit agents and brokers to enroll consumers in QHPs through the Federally-facilitated Exchanges, as described in Sections 1312(e) of the ACA, and the authority to establish requirements with respect to the operation of Exchanges, the offering of QHPs through such Exchanges, and other requirements as the Secretary determines appropriate under Sections 1321(a)(1)(A), (B), and (D) of the ACA. Pursuant to this authority, in the 2017 Payment Notice final rule, HHS finalized at § 155.220 standards of conduct for agents and brokers that assist consumers to enroll in coverage through the Federally-facilitated Exchanges to protect consumers and ensure the proper administration of the Federally-facilitated Exchanges, including nondiscrimination standards at § 155.220(j)(2)(i) that prohibited agents, brokers and web-brokers described in paragraph (j)(1) from discriminating based on sexual orientation and gender identity. CMS further explained that such standards of conduct were necessary to protect against agent and broker conduct that is harmful towards consumers, or that prevents the efficient operation of the Federally-facilitated Exchanges. CMS proposes to exercise that same authority here to amend § 155.220(j)(2)(i) to again prohibit an individual or entity described in paragraph (j)(1) from discriminating based on sexual orientation and gender identity. Sections 1312(e) and 1321(a)(1)(A), (B), and (D) of the ACA are the same authorities CMS relies upon for implementation of existing nondiscrimination protections at § 155.220(j)(2)(i).

We seek comment on this proposal. However, we note that the Department proposed similar amendments to this section in the 2023 Payment Notice proposed rule. Accordingly, there is no need for entities that commented on these proposals in the 2023 Payment Notice proposed rule to submit duplicative comments.

c. QHP Issuer Participation Standards (§ 156.200)

Section 156.200(e) states that a QHP issuer must not, with respect to its QHP, discriminate on the basis of race, color, national origin, disability, age, or sex. Previously, in the Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers'' (2012 Exchange Standards) final rule, we finalized § 156.200(e) to also prohibit discrimination based on sexual orientation and gender identity.[689] In the ''Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation; Final Rule'' (EHB final rule), we finalized at § 156.125 that the nondiscrimination requirements in § 156.200 also apply to all issuers required to provide coverage of EHB, thereby prohibiting discrimination based on factors such as sexual orientation and gender identity.[690] (See further discussion of § 156.125 in section V.C.2 of this preamble.) The 2020 Rule removed the terms ''sexual orientation'' and ''gender identity'' from the regulation text. For the reasons stated earlier in section V.C. of the preamble, for consistency with the proposals elsewhere in this proposed rule, to ensure that sexual orientation and gender identity are added, and to promote consistency across HHS programs, we propose to amend 45 CFR 156.200(e) by revising ''sex'' to ''sex (including sexual orientation and gender identity)''.

In addition to the Section 1557 authority discussed above, section 1311(c)(1)(A) of the ACA gives CMS the statutory authority to prohibit discrimination by QHP issuers. Accordingly, CMS requires QHP issuers to comply with applicable state laws and regulations regarding marketing by health insurance issuers and not employ marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with significant health needs. CMS is authorized to interpret and implement this requirement, and to set additional requirements for QHPs under its authority to establish requirements with respect to the offering of QHPs through the Exchanges in section 1321(a)(1)(B) of the ACA.[691] Pursuant to this authority to set QHP standards in

[688] 81 FR 12204 (May 9, 2016).

[689] 77 FR 18310.

[690] 78 FR 12834 (Feb. 25, 2013).

[691] 85 FR 37218–37221.

section 1321(a)(1)(B) of the ACA, HHS finalized in the 2012 Exchange Standards final rule requirements at § 156.200(e) intended to protect enrollees and potential enrollees from discriminatory practices, including on the basis of sexual orientation and gender identity. CMS proposes to exercise that same authority here to amend § 156.200(e) to again prohibit QHPs from discriminating based on sexual orientation and gender identity. Section 1321(a)(1)(B) of the ACA is the same authority CMS relies upon for implementation of existing nondiscrimination protections at § 156.200(e).

We seek comment on this proposal. However, we note that the Department proposed similar amendments to this section in the 2023 Payment Notice proposed rule. Accordingly, there is no need for entities that commented on these proposals in the 2023 Payment Notice proposed rule to submit duplicative comments.

d. Direct Enrollment With the QHP Issuer in a Manner Considered To Be Through the Exchange (§ 156.1230)

Section 156.1230(b)(2) states that the QHP issuer must provide consumers with correct information, without omission of material fact, regarding the Federally-facilitated Exchange, QHPs offered through the Federally-facilitated Exchange, and insurance affordability programs, and refrain from marketing or conduct that is misleading a consumer into believing they are visiting *HealthCare.gov,* coercive, or discriminates based on race, color, national origin, disability, age, or sex. Previously, in the 2017 Payment Notice final rule (81 FR 12203 (May 9, 2016)), HHS finalized at § 155.220(j)(2)(i) standards that prohibited agents, brokers and web-brokers from discriminating on the basis of sexual orientation and gender identity, among other factors. In the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2018 (2018 Payment Notice final rule), we added this nondiscrimination standard from § 155.220(j) to § 156.1230(b), so that the nondiscrimination protections on the basis of sexual orientation and gender identity also applied to issuers using direct enrollment on a Federally-facilitated Exchange.[692] The 2020 Rule removed the terms ''sexual orientation'' and ''gender identity'' from the regulation text. For the reasons stated earlier in section V.C. of the preamble, for consistency with the proposals elsewhere in this proposed rule, to ensure that sexual orientation and gender identity are added, and to promote consistency across HHS programs, we propose to amend 45 CFR 156.1230(b)(2) by revising ''sex'' to ''sex (including sexual orientation and gender identity)''.

In addition to Section 1557 authority discussed above, section 1321(a)(1)(A), (B), and (D) of the ACA gives CMS statutory authority to prohibit discrimination in enrollment through the Exchanges by issuers of QHPs—namely the authority to establish requirements with respect to the operation of Exchanges, the offering of QHPs through such Exchanges, and other requirements as the Secretary determines appropriate. Pursuant to this authority, in the 2018 Payment Notice final rule, HHS finalized at § 156.1230(b)(2) standards applicable to issuers using direct enrollment on a Federally-facilitated Exchange to require that issuers refrain from marketing or conduct that is misleading, coercive, or discriminatory, including on the basis of sexual orientation or gender identity. HHS explained it was adding this nondiscrimination standard from § 155.220(j) to § 156.1230(b) so that the nondiscrimination protections on the basis of sexual orientation and gender identity also applied to issuers using direct enrollment on a Federally-facilitated Exchange. HHS proposes to exercise that same authority here to amend § 156.1230(b) to again prohibit issuers using direct enrollment on a Federally-facilitated Exchange from discriminating based on sexual orientation and gender identity. Sections 1321(a)(1)(A), (B), and (D) of the ACA are the same authority CMS relies upon for implementation of existing nondiscrimination protections at § 156.200(e).

We seek comment on this proposal. However, we note that the Department proposed similar amendments to this section in the 2023 Payment Notice proposed rule. Accordingly, there is no need for entities that commented on these proposals in the 2023 Payment Notice proposed rule to submit duplicative comments.

2. Prohibition of Discrimination—Group and Individual Health Insurance Markets

a. Guaranteed Availability of Coverage (§ 147.104)

Section 147.104(e) states that a health insurance issuer and its officials, employees, agents, and representatives must not employ marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with significant health needs in health insurance coverage or discriminate based on an individual's race, color, national origin, present or predicted disability, age, sex, expected length of life, degree of medical dependency, quality of life, or other health conditions. Pursuant to section 1311(c)(1)(A) of the ACA, the HHS Secretary was required to establish by regulation criteria for certification that require QHP issuers to meet marketing requirements and not employ marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with significant health needs in QHPs. As discussed in section V.C.2.c. of this preamble, under the authority of section 1321(a) of the ACA, which provides the HHS Secretary broad rulemaking authority with respect to the establishment and operation of Exchanges and the offering of QHPs through such Exchanges, in the 2012 Exchange Standards final rule, CMS codified a regulation implementing prohibitions on discrimination by QHP issuers at §§ 156.200(e) and 156.225(b).[693] Under the authority in section 2702 of the PHS Act as well as the general rulemaking authority in section 2792 of the PHS Act, which provides the HHS Secretary broad rulemaking authority to promulgate regulations as may be necessary or appropriate to carry out the provisions of title XXVII of the PHS Act, the ''Patient Protection and Affordable Care Act; Health Insurance Market Rules; Rate Review'' final rule adopted a similar standard in § 147.104(e), applying this requirement market-wide to issuers offering non-grandfathered plans in the group and individual health insurance markets, regardless of whether the coverage is offered through or outside of an Exchange.[694]

For the proposal to amend § 147.104, CMS relies on its authorities under sections 2702 and 2792 of the PHS Act, which provide the HHS Secretary broad rulemaking authority to promulgate regulations as may be necessary or appropriate to carry out the provisions of title XXVII of the PHS Act. These are the same authorities CMS relies upon for implementation of existing nondiscrimination protections at § 147.104(e). Utilizing these same authorities to again prohibit discrimination based on sexual orientation and gender identity would be consistent with the authority CMS relies upon for those existing

[692] 81 FR 94058 (Dec. 22, 2016).

[693] 77 FR 18310.

[694] 78 FR 13406 (Feb. 27, 2013).

protections at § 147.104(e) that currently prohibit discrimination on the basis of race, color, national origin, present or predicted disability, age, sex, expected length of life, degree of medical dependency, quality of life, or other health conditions.

CMS does not propose to rely on Section 1557 authority for this amendment for two primary reasons. First, § 147.104 applies to non-grandfathered health insurance coverage in the individual or group market, and not all of such issuers will receive Federal financial assistance such that they would be subject to Section 1557. Second, under PHS Act section 2723, states have primary enforcement authority over issuers with respect to regulations implementing title XXVII of the PHS Act, including § 147.104. If CMS determines that a state is not substantially enforcing a provision in title XXVII, then CMS may enforce the provision's requirements. Because states would not have authority to enforce Section 1557, CMS is of the view that partial reliance on Section 1557 authority could unnecessarily complicate enforcement efforts.

For the reasons stated earlier in section V.C. of the preamble, for consistency with the proposals elsewhere in this proposed rule, to ensure that sexual orientation and gender identity are added, and to promote consistency across HHS programs, we propose to amend 45 CFR 147.104(e) by revising ''sex'' to ''sex (including sexual orientation and gender identity)''.

We seek comment on this proposal. However, we note that the Department proposed similar amendments to this section in the 2023 Payment Notice proposed rule. Accordingly, there is no need for entities that commented on these proposals in the 2023 Payment Notice proposed rule to submit duplicative comments.

b. Prohibition on Discrimination (§ 156.125)

Elsewhere in this rule, we propose to amend § 156.200(e) to prohibit discrimination based on sexual orientation and gender identity. If these proposed nondiscrimination protections are finalized, § 156.125(b) would accordingly require issuers providing EHB to comply with such nondiscrimination requirements. Specifically, § 156.125(b) states that an issuer providing EHB must comply with the requirements of § 156.200(e), which currently states that a QHP issuer must not, with respect to its QHP, discriminate on the basis of race, color, national origin, disability, age, or sex. HHS previously codified nondiscrimination protections based on sexual orientation and gender identity at § 156.200(e), simultaneously requiring that issuers providing EHB comply with such requirements by virtue of the cross-reference in § 156.125(b) to § 156.200(e). The 2020 Rule amendments removed from § 156.200(e) any reference to sexual orientation and gender identity. As discussed in section V.C.1.c of the preamble, we propose to amend 45 CFR 156.200(e) by revising ''sex'' to ''sex (including sexual orientation and gender identity)''.

If the proposals at § 156.200(e) are finalized, issuers providing EHB would again be required under § 156.125(b) to comply with nondiscrimination protections in § 156.200(e) that prohibit discrimination on the basis of sexual orientation and gender identity.

Section 1302(b) of the ACA also gives CMS the statutory authority to prohibit discrimination in the small group and individual markets pursuant to the authority to define EHB at section 1302(b) of the ACA. The statute specifies that in defining EHB the Secretary must take into account the health care needs of diverse segments of the population, including women, children, persons with disabilities, and other groups. The EHB requirements apply to non-grandfathered health insurance coverage in the individual and small group markets under section 2707(a) of the PHS Act. CMS has the authority to interpret and implement these provisions under its general rulemaking authorities in sections 1321(a)(1)(B) and (D) of the ACA and section 2792 of the PHS Act. Pursuant to those authorities, HHS finalized in the EHB final rule that § 156.125 prohibits benefit discrimination on the grounds articulated by Congress in section 1302(b)(4) of the ACA, as well as those in § 156.200(e), which at the time included race, color, national origin, disability, age, sex, gender identity, and sexual orientation. It is under that same exercise of authority here that § 156.125 would again prohibit discrimination on the basis of sexual orientation and gender identity if the proposed changes to include such factors in the nondiscrimination protections at § 156.200(e) are finalized. Sections 1302(b) and 1321(a)(1)(B) and (D) of the ACA and sections 2707(a) and 2792 of the PHS Act are the same authorities CMS relies upon for implementation of existing nondiscrimination protections at § 156.125. Relying on these same authorities to again prohibit discrimination based on sexual orientation and gender identity at § 156.125 by cross-reference to the nondiscrimination protections at § 156.200(e) would be consistent with the authority CMS relies upon for the existing protections at § 156.125 that prohibit discrimination on the basis of race, color, national origin, disability, age, or sex by cross-reference to § 156.200(e).

CMS does not rely on Section 1557 authority for this amendment for the same two primary reasons described in section V.C.2.a of this preamble. First, § 156.125 applies to issuers offering non-grandfathered health insurance coverage in the individual or small group market, and not all of such issuers will receive Federal financial assistance such that they would be subject to Section 1557. Second, under PHS Act section 2723, states have primary enforcement authority over issuers with respect to regulations implementing title XXVII of the PHS Act, including § 156.125. If CMS determines that a state is not substantially enforcing a provision in title XXVII, then CMS may enforce the provision's requirements. Because states would not have authority to enforce Section 1557, CMS is of the view that partial reliance on Section 1557 authority could unnecessarily complicate enforcement efforts.

We seek comment on this proposal. However, we note that the Department proposed similar amendments to this section in the 2023 Payment Notice proposed rule. Accordingly, there is no need for entities that commented on these proposals in the 2023 Payment Notice proposed rule to submit duplicative comments.

## VI. Executive Order 12866 and Related Executive Orders on Regulatory Review

### *A. Regulatory Impact Analysis*

We have examined the impacts of the proposed rule under E.O. 12866, E.O. 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). E.O.'s 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). This proposed rule is an economically significant regulatory action as defined by E.O. 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the costs of the proposed rule

are small relative to the revenue of covered entities, including covered small entities, and because even the smallest affected entities would be unlikely to face a significant impact, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) generally requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $165 million, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. This proposed rule is not subject to the Unfunded Mandates Reform Act because it falls under an exception for regulations that establish or enforce any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.[695]

The Background and Reasons for the Proposed Rulemaking sections at the beginning of this preamble contain a summary of this proposed rule and describe the reasons it is needed.

1. Summary of Costs and Benefits

This analysis quantifies several categories of costs to covered entities and to the Department under the proposed rule. Specifically, we quantify costs associated with covered entities training employees, revising policies and procedures, and costs associated with notices, including the notice of nondiscrimination and notice of availability of language assistance services and auxiliary aids and services. We quantify costs associated with provisions of the proposed rule related to documenting training activities performed under the proposed rule. We also quantify incremental costs associated with expanded coverage for gender-transition-related medical care. We conclude that the proposed rule would result in annualized costs over a 5-year time horizon of $560 million or $551 million, corresponding to a 7% or a 3% discount rate. This analysis also addresses uncertainty in costs associated with notices and expanded gender-transition-related medical care, which is discussed in greater detail in the main body of the analysis. We separately report a full range of cost estimates of about $427 million to $1,093 million using a 7% discount rate, and a full range of cost estimates of about $417 million to $1,084 million using a 3% discount rate.

In addition to these quantified cost estimates, the main analysis includes a discussion of costs that we do not quantify, and a discussion of the potential benefits under the rule that we similarly do not quantify. In addition to the impacts that we quantify, this proposed rule could also result in increases in premiums, which would result in increases in Exchange user fees and Federal expenditures for advance payments of the premium tax credit. We request comments on our estimates of the cost and benefits of this proposed rule, including the impacts that are not quantified in this analysis.

TABLE 1—ANNUALIZED COSTS OF THE PROPOSED RULE

[$ millions/year (percent)]

| Primary estimate | Low estimate | High estimate | Year dollars | Discount rate | Period covered (percent) |
|---|---|---|---|---|---|
| $560 | $427 | $1,093 | 2020 | 7 | 2024–2028 |
| 551 | 417 | 1,084 | 2020 | 3 | 2024–2028 |

a. Baseline Conditions

Section 1557 prohibits an individual from being excluded from participation in, denied the benefits of, or otherwise subjected to discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities. It applies to any health program or activity, any part of which is receiving Federal financial assistance, and to any program or activity that is administered by an Executive Agency or any entity established under Title I of the ACA.[696] On May 18, 2016, the Department published a final rule to implement Section 1557 under the statute and 5 U.S.C. 301. On June 19, 2020, the Department published a final rule that revised the Department's approach to implementing Section 1557. As described in the Background section of this preamble in greater detail, neither final rule was fully implemented as published, and certain provisions of the 2020 Rule remain the subject of ongoing litigation. The Background section of the preamble also discusses the Department's May 10, 2021 Bostock Notification, in accordance with the Supreme Court's decision in *Bostock* and based on the plain language of Title IX, that the Department would interpret Section 1557's prohibition on sex discrimination to include (1) discrimination on the basis of sexual orientation and (2) discrimination on the basis of gender identity.[697]

The baseline scenario of no further regulatory action is substantially informed by the RIAs published with the 2016 and 2020 Rules. The 2016 RIA identified five sources of monetized costs: training and familiarization, enforcement, notice publication, sex discrimination policy and procedure changes, and language access plans. The bulk of the monetary impacts identified in the 2016 RIA occur in the first two years under the final rule, with costs continuing in future years only for enforcement and language access plans.

The 2020 RIA adopted many of the assumptions contained in the 2016 RIA. For example, it assumed that many of the initial activities anticipated under the 2016 rule were performed, and that the first two years of costs attributable to the 2016 Final Rule were incurred.[698] The 2020 RIA identifies cost savings only ''from the repeal of (1) the provision on the incentive for covered entities to develop language access plans and (2) the provisions on notice and taglines.'' The 2020 RIA also identifies costs in the first year ''on covered entities' voluntary actions to re-train their employees on, and adopt policies and procedures to implement, the legal requirements of this final rule.''

In establishing a baseline scenario, this analysis similarly maintains a number of assumptions and estimates contained in prior analyses. For

[695] 2 U.S.C. 1503(2).

[696] 42 U.S.C. 18116.

[697] 86 FR 27984 (May 25, 2021).

[698] *E.g.,* 85 FR 37160, 37235 (June 19, 2020) (''The Department assumes sunk costs cannot be recovered by this rule, and therefore that initial language access plan development costs attributable to the 2016 Rule cannot be recovered.'').

example, the baseline scenario includes some ongoing costs that are attributable to the 2016 Rule, such as the costs of enforcement. The 2016 RIA estimated that the costs of enforcement would be $98.2 million (reported in 2020 dollars), which we adopt as the costs under both the baseline and proposed rule scenarios. Similarly, we adopt the assumption in the 2020 RIA that covered entities continue to provide ongoing training attributable to the 2016 Rule, which was not impacted by the 2020 Rule. We include these ongoing training activities, including annual refresher training for returning employees and training for new employees, in the baseline scenario of no regulatory action. In the next section, we discuss the incremental costs of the proposed rule, which exclude ongoing costs attributable to prior rulemaking.

b. Costs of the Proposed Rule

This analysis anticipates that the proposed rule would result in one-time costs to covered entities to train employees and revise policies and procedures. The proposed rule would result in costs associated with a revised approach to notices, including the notice of nondiscrimination and notice of availability of language assistance services and auxiliary aids and services. The proposed rule would also result in costs associated with provisions related to documenting training activities performed under the proposed rule. The proposed rule might result in additional costs associated with expanded coverage for gender-transition-related medical care. We discuss the potential costs associated with this expanded coverage and the potential that some or all of these costs would be offset by reductions in spending on other types of care. The analysis also discusses other potential costs of the proposed rule that we do not quantify.

Training

The Department anticipates that some covered entities would incur costs to train or retrain employees under the proposed rule. To calculate the costs related to training, we follow an approach common to both the 2016 and 2020 RIAs. Both analyses adopted an estimate of 275,002 covered entities that would train their employees on the requirements and used this figure as the basis for calculating the total costs. The 2020 RIA adjusted this figure downwards by 50%, anticipating that some covered entities would not modify their procedures in response to the 2020 Final Rule, and would therefore not need to offer new training. Both RIAs anticipated that employers would most likely train employees who interact with the public and recognized that the percentage of employees that interact with patients and the public vary by covered entity. To account for this, the analyses adopted a central estimate of 50% of staff at covered entities that received one-time training on the requirements of the regulation.

Both RIAs reported the number of employees at covered entities by occupation category. To monetize the total costs of training, the RIAs adopted a value of time based on the average fully loaded wage rate for each occupation, combined with an assumption about the duration of the training. The 2016 RIA assumed that 50% of total employees at covered entities would receive training, while the 2020 RIA assumed that 25% of employees would receive training. Both RIAs assumed the typical training would last one (1) hour. For the purpose of this analysis, we assume that 75% of total employees at covered entities would receive training, and that this training would last one (1) hour. This estimate is consistent with an assumption that all covered entities would revise their policies and procedures under the proposed rule, and that most employees at covered entities would receive training.

As a necessary first step in calculating the incremental total costs of training attributable to the proposed rule, we have collected the most recent available data on the number of employees that would likely undergo training under the proposed rule, and data on the average wage rate by occupation for these employees.

The first category of health care staff that may receive training comprises health diagnosing and treating practitioners. This category includes physicians, dentists, optometrists, physician assistants, occupational, physical, speech and other therapists, audiologists, pharmacists, registered nurses, and nurse practitioners. The U.S. Bureau of Labor Statistics (BLS) Occupational code for this grouping is 29–1000, and the 2020 reported count for this occupational group is approximately 5.6 million, with average loaded wages of $101.16 per hour.

The second category of health care staff that the Department assumes will receive training comprises degreed technical staff (Occupation code 29–2000) and accounts for 2.9 million workers with average loaded wages of $47.10 per hour. Technicians work in almost every area of health care: x-ray, physical, speech, psychiatric, dietetic, laboratory, nursing, and records technicians, to name but a few areas.

The third category of health care staff that the Department assumes will receive training comprises non-degreed medical assistants (Occupation code 31–0000), and includes psychiatric and home health aides, orderlies, dental assistants, and phlebotomists. Health care support staffs (technical assistants) operate in the same medical disciplines as technicians, but often lack professional degrees or certificates. The Department refers to this workforce as non-degreed, compared to medical technicians who generally have degrees or certificates. There are approximately 5.9 million individuals employed in these occupations in the health care and social assistance sector, with average loaded wages of $30.72 per hour.

The fourth category of health care staff that the Department assumes will receive training is health care managers (approximately 0.4 million individuals based on BLS data for Occupation code 11–9111), with average loaded wages of $114.24 per hour.

The fifth category of health care staff that the Department assumes will receive training is office and administrative assistants—Office and Administrative Support Occupation (Occupation code 43–0000). These workers are often the first staff patients encounter in a health facility and, because of this, covered entities might find it important that staff, such as receptionists and assistants, receive training on the regulatory requirements. Approximately 2.7 million individuals were employed in these occupations in health facilities in 2020, with average loaded wages of $38.50 per hour. The Department assumes that outreach workers are included in the five categories listed above.

These figures sum to 17.4 million employees at covered entities, of which we assume 13.1 million would receive training attributable to the proposed rule. Across the five occupation categories, we compute a weighted hourly wage rate of $29.59, or a weighted fully loaded hourly wage rate of $59.18. Assuming that the average training takes one (1) hour and adopting a value of time based on fully loaded wage rates, we estimate the total cost of training of about $775 million, which would be incurred in the first year. As a sensitivity analysis, we considered the scenario of covered entities providing training to all employees, not just employees who interact with the public. Under this scenario, the total cost of training would increase, to about $1.0 billion. These costs are likely overstated since this training may supplement or replace expected annual or other ongoing training activities at covered

entities. To the extent that covered entities reduce time spent on other training activities, these costs would offset some of the total costs attributable to the proposed rule.

In addition to the first-year training costs, we anticipate that the proposed rule would result in additional costs associated with ongoing training, including annual refresher training for returning employees or and training for new employees. As discussed in the Baseline Conditions section, we assume that many covered entities are routinely carrying out these activities, absent further regulatory action. However, we anticipate that the proposed rule would result in a larger share of employees at covered entities receiving such training. To quantify the change in training activities between the baseline scenario and the proposed rule scenario, we take the difference between the share of employees receiving training under the baseline scenario and the proposed rule scenario. We carry through an assumption from the 2016 RIA, which assumed that 50% of total employees at covered entities receive training and compare this to an assumption in this proposed RIA that 75% of total employees at covered entities would receive training. This yields an estimate of 25% of total employees at covered entities that would receive training in subsequent years under the proposed rule. We adopt the same weighted hourly wage estimate, number of employees, and estimate the total cost of ongoing annual training costs of $258 million. These costs would occur in years two through five in the time horizon of this analysis.

**Revising Policies and Procedures**

As discussed above, the Department anticipates that all covered entities, or approximately 275,002 entities, would revise their policies and procedures under the proposed rule, with half of these entities requiring fewer revisions. For covered entities with more extensive revisions, we adopt the estimates contained in the 2020 RIA, with four (4) total hours spent on revisions per entity. Of these, three would be spent by a mid-level manager equivalent to a first-line supervisor (Occupation code 43–1011), at a cost of $56.96 per hour after adjusting for non-wage benefits and the indirect costs, while an average of one hour would be spent by executive staff equivalent to a general and operations manager (Occupation code 11–1021), at a cost of $104.80 per hour after adjusting for non-wage benefits and indirect costs. For covered entities with less extensive revisions, we assume two total hours spent on revisions per entity. Of these, one would be spent by a mid-level manager, and one would be spent by executive staff.

We monetize the time spent on revising policies and procedures by estimating a total cost per entity of $275.68 or $161.76, depending on the extent of the revisions. For the 137,501 covered entities with more extensive revisions, we estimate a cost of about $37.9 million. For the 137,501 covered entities with less extensive revisions, we estimate a cost of about $22.2 million. We estimate the total cost associated with revisions to policies and procedures under the proposed rule of $60.1 million.

The above estimates of time and number of entities that would choose to revise their policies under the regulation are approximate estimates based on general BLS data. Due to the wide range of types and sizes of covered entities, from complex multi-divisional hospitals to small neighborhood clinics and physician offices, the above estimates of time and number of entities that would choose to revise their policies under the regulation is difficult to calculate precisely.

Notices

The proposed rule would require a covered entity to provide a notice of nondiscrimination to participants, beneficiaries, enrollees, and applicants of its health program or activity, and members of the public. It also would require the 275,002 covered entities to provide a notice of availability of language assistance services and auxiliary aids and services. These provisions resemble elements of the 2016 Rule that were repealed in the 2020 Rule; however, the approach under the proposed rule provides a narrower set of situations where covered entities would be required to provide these notices. Both types of notices are required (1) on an annual basis; (2) upon request; (3) at a conspicuous location on the covered entity's health program or activity website; and (4) in clear and prominent physical locations where the health program or activity interacts with the public.

The notice of availability of language assistance services and auxiliary aids and services is required in the following electronic and written communications related to the covered entity's health programs and activities: (1) notice of nondiscrimination required by proposed § 92.10; (2) notice of privacy practices required by 45 CFR 164.520; (3) application and intake forms; (4) notices of denial or termination of benefits or services, including Explanations of Benefits (EOBs) and notices of appeal and grievance rights; (5) communications related to a person's rights, eligibility benefits, or services that require or request a response from a participant, beneficiary, enrollee, or applicant; (6) communications related to a public health emergency; (7) consent forms and instructions related to medical procedures or operations, medical power of attorney, or living will (with an option of providing only one notice for all documents bundled together); (8) discharge papers; (9) complaint forms; and (10) patient and member handbooks.

For the purposes of the analysis, we base our estimates of the number of communications containing these notices on a subset of the communications identified in the 2020 RIA. We include communications that are EOBs. The Department received feedback regarding the financial burden imposed by applying the notice and tagline requirements to EOBs. EOBs are typically an individual's first, and often only, notice of a denial or termination of benefits or services, and as such the notice and tagline requirements are essential in this context to ensure timely and equitable access to appeals processes. Covered entities may provide individuals with the option to opt out of receiving these notices on an annual basis, which will reduce the cost and burden associated with these requirements. In addition, as enrollees, participants, and beneficiaries increasingly elect to receive EOBs electronically, we expect the cost of these requirements to decrease over time. We adopt the other estimates as a reasonable proxy for the number of communications that would be anticipated under the proposed rule. These estimates are intended to encompass all categories of notices required under the proposed rule. Table 2 below reports the number of communications containing notices anticipated under the proposed rule and presents the costs of these communications. Our cost estimates reflect a wide range of uncertainty in the cost per communication. For our primary scenario, we adopt a central estimate of the average costs to print and fold paper forms containing prescribing information of $0.05 (calculated as the midpoint estimate of a range from $0.03 to $0.07), reported in 2010 dollars.[699] We explore the

[699] U.S. Dep't of Health & Human Servs., Food & Drug Admin., Electronic Distribution of Prescribing Information for Human Prescriptions Drugs, Including Biological Products (Proposed Rule), 79 FR 75506 (Dec. 18, 2014).

sensitivity of the overall cost estimates under a low-cost ($0.035 per unit) and high-cost ($0.32 per unit) scenario, reported in 2018 dollars, which matches the range contained in the 2020 RIA. We adjust these per-unit cost inputs for inflation to 2020 price levels using the Implicit Price Deflator, resulting in a primary per-unit cost estimate of about $0.06 and a full range of about $0.04 to $0.33.[700] Combining these per-unit cost estimates with the count of each notice results in a primary estimate of $78.4 million, with a range of estimates between $47.8 million and $437.2 million. Following the approach in the 2020 RIA, we adjust this figure downwards by 50% to account for the lower cost of electronic communications. For this adjustment, we adopt a measure of the share of respondents reporting that they used a ''Digital (mobile app or website)'' method to contact or interact with their health care insurer in the last year when viewing an online statement.[701] We anticipate that the share of communications occurring online will increase over time, but have not accounted for a trend for the 5-year time horizon of this analysis. This adjustment results in a primary estimate of the adjusted annual total of $78.4 million, with a range of costs between $23.9 million and $218.6 million. These costs would occur in each year of the time horizon of the analysis.

TABLE 2—COST OF NOTICE PROVISIONS

[2020 dollars]

| Cost element | Count (millions) | Cost scenario ($ millions) | | |
|---|---|---|---|---|
| | | Low | Primary | High |
| Eligibility and enrollment communications | 17.7 | $0.7 | $1.1 | $6.0 |
| Annual notice of benefits | 123.0 | 4.6 | 7.5 | 41.8 |
| Explanations of benefits—hospital admissions | 96.0 | 3.6 | 5.8 | 32.6 |
| Explanations of benefits—physician visits | 941.0 | 34.9 | 57.3 | 319.5 |
| Medical bills—hospital admissions | 11.0 | 0.4 | 0.7 | 3.7 |
| Medical bills—physician visits | 99.0 | 3.7 | 6.0 | 33.6 |
| Total, Unadjusted | 1287.7 | 47.8 | 78.4 | 437.2 |
| Total, Adjusted for Electronic Delivery | 1030.2 | 23.9 | 39.2 | 218.6 |

Documentation Requirements

The proposed rule would require covered entities to contemporaneously document certain other activities performed under the proposed rule. This includes activities such as employees' completion of the training required by this section in written or electronic form. The proposed rule also requires covered entities to retain certain records. These and other requirements, and the associated cost estimates, are discussed in greater detail in the PRA Section.

The costs associated with retaining records related to grievances filed with a covered entity is the time spent by the staff of covered entities to store the complaints for no less than three (3) years. We calculate the costs of labor as one (1) employee per covered entity with more than 15 employees (41,250)[702] spending 10 hours to store complaints and the associated records required under proposed § 92.8(c)(2) each year. We assume that administrative or clerical support personnel would perform these functions. The mean hourly wage for this occupation is $17.38 per hour, which we double to account for overhead and other indirect costs. We estimate the costs of retaining records related to grievances filed at all covered entities would be $14.3 million annually ($17.38 × 2 × 10 × 41,250). This estimation approach will overstate the costs if many covered entities already retain complaint information.

The costs associated with documenting employee training is the time spent by the staff of covered entities to (a) create training attendance forms; and (b) store the training sign-up sheet. We calculate the costs of labor as one (1) employee spending 15 minutes (0.25 hours) to create the sign-up sheet during the first year and one (1) employee spending one (1) hour collecting and storing the attendance forms the first year and subsequent years. We assume that administrative or clerical support personnel would perform these functions. The mean hourly wage for this occupation is $17.38 per hour, which we double to account for overhead and other indirect costs. We estimate the costs of documenting employee training would be $11.9 million in the first year ($17.38 × 2 × 1.25 × 275,002) and $9.6 million in subsequent years ($1.738 × 2 × 1 × 275,002).

Expanding Coverage for Gender-Transition-Related Medical Care

In addition to the cost some covered health insurance issuers and plans may incur for revising policies and procedures to comply with the rule, there is a possibility that such issuers and plans may incur a *de minimis* cost related to the cost of coverage for gender-transition-related medical care. Various studies, however, suggest that any such increased costs will likely be negligible, and that any increases may be offset by savings from decreased utilization of other services.

In April 2012, the California Department of Insurance conducted an Economic Impact Assessment on Gender Nondiscrimination in Health Insurance that found that covering transgender individuals under California's private and public health insurance plans would have an ''insignificant and immaterial'' impact on costs.[703] This conclusion was based

[700] *Gross Domestic Product: Implicit Price Deflator (GFPDEF),* Fed. Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/GDPDEF* (last visited June 15, 2022).

[701] Saurabh Gupta et al., HFS Res. & Cognizant, Health Consumers Want Digital: It's Time for Health Plans to Deliver, p. 4 (2021), *https://www.cognizant.com/us/en/documents/hfs-health-consumers-want-digital-its-time-for-health-plans-to-deliver.pdf.*

[702] This estimate is consistent with the 2016 Rule's Regulatory Impact Analysis: ''Of the 275,002 covered entities, approximately 15% employ more than 15 employees, resulting in approximately only slightly more than 41,250 covered entities being required to have grievance procedures and designate a responsible official.'' 81 FR 31375, 31452 (May 18, 2016).

[703] State of Cal., Dep't of Ins., Economic Impact Assessment Gender Nondiscrimination in Health Insurance, p. 1 (Apr. 13, 2012), *http://translaw.wpengine.com/wp-content/uploads/2013/04/Economic-Impact-Assessment-Gender-Nondiscrimination-In-Health-Insurance.pdf.*

on evidence of low utilization and the estimated number of transgender individuals in California. The transgender population of California was estimated to range between 0.0022% and 0.0173%.[704] The study revealed that, contrary to common assumptions, not all transgender individuals seek surgical intervention, and that gender-affirming health care differs according to the needs and pre-existing conditions of each individual.[705] Despite expecting a possible spike in demand for benefits due to former or current unmet demand, the California Insurance Department concluded that any increased utilization that might occur over time is likely to be so low that any resulting costs remain actuarially immaterial.[706] The Assessment notes the experience of one employer that initially established premium surcharges to cover the anticipated cost of transition-related care, reporting that the employer subsequently eliminated the surcharges because they found that the funds collected were nearly 15 times the amount expended on care.[707] While it did not analyze any original data, a 2018 analysis by the state of Wisconsin's Department of Employee Trust Funds cited numerous studies finding that the cost of coverage was minimal, and noted that ''[w]hile it is challenging to predict the costs of care averted for any condition, there is some evidence that the costs associated with providing transgender-inclusive plans is met with reduced costs related to comorbidities.'' [708]

Other studies looking at both public and private sector plans have reached similar conclusions. One study published in the New England Journal of Medicine projected that the cost for providing gender-transition-related health care benefits to members of the military would result in an annual increase of 0.012% of health care costs, ''little more than a rounding error in the military's $47.8 billion annual health care budget.'' [709] A 2013 study of 34 public and private sector employers that provided nondiscriminatory health care coverage found that providing gender-transition-related benefits to treat gender dysphoria had ''zero to very low costs.'' [710] A study comparing costs and potential savings associated with covering gender-transition-related care concluded that projected ''additional expenses hold good value for reducing the risk of negative endpoints—HIV, depression, suicidality, and drug abuse'' and noted that ''provider coverage was cost-effective in 85% of simulations.'' [711] More recently, a 2021 survey of employers conducted by the Human Rights Campaign noted that most employers who covered gender-transition-related care reported only ''marginal increases'' in cost, on the order of ''a fraction of a decimal point of cost calculations.'' [712]

In recent years, some courts hearing challenges to coverage exclusions have also considered issues of cost and concluded that covering gender-transition-related care does not significantly increase costs for plans. In discussing the parties' experts on the issue of the cost, one court noted that, ''[f]rom an actuarial perspective, there appears to be no dispute that the cost of coverage is immaterial.'' [713] Another court reviewing expert testimony called any cost savings from excluding coverage for gender-affirming care ''both practically and actuarially immaterial.'' [714]

Based on the studies discussed above, we estimate that providing transgender individuals nondiscriminatory insurance coverage and treatment would have a small impact on the overall cost of care and on health insurance premiums in terms of the percentage of overall spending. The utilization rate of newly covered services is likely to be extremely low because the transgender individuals represent a small minority in the general population, because not all transgender individuals will seek medical care in the course of their transition, and because most entities will provide such care regardless of this proposed rule (*i.e.,* they will not otherwise have engaged in prohibited sex discrimination).[715]

As described in this section, the costs associated with additional coverage of services are likely to be small on a percentage basis; however, when these estimates are combined with measures of overall health care spending, they would likely result in incremental costs that could be substantial. As an initial estimate, we pair the Belkin (2015) estimate of 0.012% of incremental health care costs with $3,931.3 billion in total health consumption expenditures in calendar year 2020.[716] Combining these yields our upper-bound estimate of $472 million in annual costs associated with additional coverage. As a lower-bound estimate, we adopt an assumption that these costs will be fully offset by reductions in spending on other medical care. This lower bound of $0 is broadly consistent with a cost-effectiveness analysis that includes the probability of negative incremental costs associated with coverage.[717] For our primary estimate, we start with the midpoint of the lower-bound and upper-bound cost estimate of about $236 million annually. We reduce this figure by half to account for several factors, such as some covered entities already covering transition-related services under the baseline scenario, whether or not this is in response to an existing requirement. This results in a primary estimate of about $118 million per year in incremental annual costs associated with additional coverage under the proposed rule, with a full range of cost estimates including $0 million and $472 million.

[704] *Id.* at p. 3. More recent estimates indicate that a higher share of the population in the United States identifies as transgender (0.6% of the U.S. adult population), Andrew R. Flores et al., The Williams Inst., UCLA Sch. of Law, Race and Ethnicity of Adults Who Identify as Transgender in the United States, p. 2 (2016), *https://williamsinstitute.law.ucla.edu/wp-content/uploads/Race-Ethnicity-Trans-Adults-US-Oct-2016.pdf.*

[705] State of Cal., Dep't of Ins., *supra* note 703, at p. 8.

[706] *Id.* at p. 9.

[707] *Id.* at pp. 6–7.

[708] State of Wis., Dep't of Employee Trust Funds, Correspondence Memorandum Re: Transgender Services Coverage, p. 6–8 (Aug. 14, 2018), *https://etf.wi.gov/boards/groupinsurance/2018/08/22/item6a1/download?inline=.*

[709] Aaron Belkin, *Caring for Our Transgender Troops—The Negligible Cost of Transition-Related Care,* 373 New Eng. J. Med. 1089 (2015), *https://www.nejm.org/doi/pdf/10.1056/NEJMp1509230?articleTools=true.*

[710] Jody Harman, The Williams Inst., UCLA Sch. of Law, Cost and Benefits of Providing Transition-Related Health Care Coverage in Employee Health Benefits Plans: Findings from a Survey of Employers, p. 2 (Sept. 2013), *http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Cost-Benefit-of-Trans-Health-Benefits-Sept-2013.pdf.*

[711] William V. Padula et al., *Societal Implications of Health Insurance Coverage for Medically Necessary Services in the U.S. Transgender Population: A Cost-Effectiveness Analysis,* 31 J. of Ged. Internal Med. 394 (2015),

[712] Human Rights Campaign, Corporate Equality Index 2021 (2021), *https://reports.hrc.org/corporate-equality-index-2021?_ga=2.206988627.1166715317.1639876655-819100514.1639876655.*

[713] *Boyden* v. *Conlin,* 341 F. Supp. 3d 979, 1000 (W.D. Wis. 2018).

[714] *Flack* v. *Wisconsin Dep't of Health Servs.,* 395 F. Supp. 3d 1001, 1021 (W.D. Wis. 2019); *see also Kadel* v. *Folwell,* No. 1:19–cv–00272, 2022 WL 2106270, at *22 (''in comparison to the [Defendant state health plan]'s billion-dollar cash balance and saves each of the Plan's 740,000 members about one dollar each'').

[715] State of Cal., Dep't of Ins., *supra* note 703, at pp. 2, 5.

[716] U.S. Dep't of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., Table 1. National Health Expenditures; Aggregate and Per Capita Amounts, Annual Percent Change and Percent Distribution: Selected Calendar Years 1960–2020, *https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NHE-Fact-Sheet* (last modified Dec. 15, 2021, 4:06 p.m.).

[717] Padula, *supra* note 711, at 399 fig. 2.

c. Total Quantified Costs

Table 4 below presents the total costs anticipated under the proposed rule for which estimates have been developed. For the purposes of this analysis, we assume that the regulatory requirements begin to take effect at the start of 2024. In the first year under the proposed rule, these costs include $774.5 million in training and $60.1 million to revise policies and procedures. For all years in the analysis, we estimate recurring costs of $39.2 million related to notices. We estimate a first-year cost of $26.3 million related to documentation, with ongoing costs in future years of $4.8 million. We also report a primary cost estimate of $117.9 million associated with expanded coverage of gender-transition-related care. The total costs in year 1 amount to $1,018.1 million, with ongoing costs of $424.9 million in subsequent years. Table 3 reports these costs by year, with all estimates presented in millions of year-2020 dollars.

TABLE 3—PRIMARY ESTIMATE OF TOTAL ANNUAL COSTS

[$ millions, 2020 dollars]

| Cost element | 2024 | 2025 | 2026 | 2027 | 2028 |
|---|---|---|---|---|---|
| Training | $774.5 | $258.2 | $258.2 | $258.2 | $258.2 |
| Policies and Procedures | 60.1 | 0.0 | 0.0 | 0.0 | 0.0 |
| Notices | 39.2 | 39.2 | 39.2 | 39.2 | 39.2 |
| Documentation | 26.3 | 9.6 | 9.6 | 9.6 | 9.6 |
| Expanded Coverage | 117.9 | 117.9 | 117.9 | 117.9 | 117.9 |
| Total Costs | 1,018.1 | 424.9 | 424.9 | 424.9 | 424.9 |

We also identify a cost related to covered entities submitting a request for an exemption based on Federal conscience or religious freedom laws. We model this potential cost associated with exemption requests as the time spent by covered entities to (a) assess the need for an exemption; (b) write the exemption request; and (c) submit the exemption request to OCR. As an initial calculation, we assume that this would involve two (2) employees spending two (2) hours each assessing the need for an exemption and one employee spending three (3) hours writing and submitting the exemption request to OCR. We further assume that legal personnel, including lawyers and legal assistants, would perform these functions. The mean hourly wage for these occupations is $63.02 per hour for each employee, which we double to account for overhead and other costs. We multiply these factors together and estimate the cost per exemption request of $882.28 ($63.02 × 2 × 7).

OCR receives an average of 428 Section 1557 complaints per year, covering all areas addressed under the statute and regulations. We estimate that about a quarter of these are sex discrimination complaints and anticipate that only a fraction of these correspond to religiously affiliated covered entities, and that not all of these complaints would relate to provision or coverage to which religiously affiliated covered entities would have a religious or conscience objection. As an initial calculation, we estimate that OCR would receive fewer than 27 exemption requests (428 × 0.25 × 0.5 × 0.5), and that these would result in costs to covered entities of $23,601 (multiplying the previous product by $882.28). We include these costs in our assessment of the likely impacts of the proposed rule, but do not itemize these costs in Table 3 as they represent a rounding error compared to other costs we identify. We request public comment on the assumptions in this calculation.

The proposed rule would also explicitly extend the requirements of Section 1557 and other civil rights statutes to entities that are enrolled in Medicare Part B. We are currently unable to quantify the number of covered entities that are enrolled in Part B but that receive no other forms of Federal financial assistance. The 2016 Rule discussed several of the challenges associated with estimating the number of these entities. For example, the 2016 Rule notes that, ''although we have data, by program, for the number of physicians receiving payment from each program, there is no single, unduplicated count of physicians across multiple programs.'' We tentatively adopt the finding of the 2016 Rule that almost all practicing physicians were likely covered by the rule because they accept Federal financial assistance from sources other than Medicare Part B.[718] We request comment and data on the number of entities who are enrolled in Medicare Part B but do not otherwise receive any form of Federal financial assistance.

2. Discussion of Benefits

Quantifying benefits for this proposed rule presents significant challenges. One notable challenge relates to attribution: several sources of benefits discussed in the preambles of the 2016 and 2020 Rules overlap with and may be attributable to prior existing civil rights regulation, to the ACA rather than the 2016 and 2020 rulemakings that implement Section 1557, or to nondiscrimination policies based on state law or institutional policies prohibiting discrimination generally.

A second challenge relates to identifying a quantitative relationship between nondiscrimination policies and important outcomes such as improvements in public health outcomes. For example, we anticipate that this regulation would reduce the incidence of providers refusing to treat patients based on the patient's gender identity. This would result in fewer instances of delayed or denied care, which in turn would lead to reductions in mortality and morbidity risks. However, we are not able to estimate the changes in the magnitude of these discriminatory events that would be attributable to the proposed rule, and thus are unable to quantify or monetize these health improvements. Similarly, we anticipate that the proposed rule will result in other sources of benefits that we are unable to quantify. These include a reduction in suicidal ideation and attempts, improvements to mental health, reductions in substance use, and generally align with a discussion of the economic impacts of a California regulation relating to gender nondiscrimination in health insurance.[719] In addition, the prohibition on discrimination through the use of clinical algorithms is also likely to have a direct benefit on the health of individuals who are suffering from delayed or denied medical care

[718] 81 FR 31375, 31445–46 (May 18, 2016).

[719] State of Cal., Dep't of Ins., *supra* note 703, at pp. 9–11.

due to discriminatory clinical algorithms, though we are unable to quantify this benefit.

These challenges were not resolved in the RIAs associated with the 2016 or 2020 Rules, which only qualitatively reported benefits. We request comments, including data and quantitative estimates of health and quality-of-life improvements attributable to nondiscrimination regulations, that could inform a quantitative analysis, should the Department finalize this proposed rule.

In addition to these health improvements, we anticipate benefits to covered entities from additional regulatory clarity on how OCR will enforce the ACA's nondiscrimination protections, particularly in light of ongoing litigation related to the 2020 Rule, the *Bostock* decision, and the Department's Bostock Notification. The training provisions represent one mechanism by which the proposed rule would reduce discriminatory events. This would, in turn, reduce the number of enforcement actions, representing a potential cost-saving benefit for covered entities. We also anticipate benefits to covered entities from the establishment of a grievance process, which would reduce the number of complaints filed with OCR, though this may be offset somewhat from covered entities with fewer than 15 employees referring complaints to OCR in lieu of adopting their own grievance procedure.

We also anticipate benefits to individuals from reduced obstacles to accessing health care, including fewer language barriers and a reduction in discriminatory behavior related to sexual orientation and gender identity. These benefits relate to individuals' ability to access care and the quality of care they receive. For example, the provisions related to language access for LEP individuals and accessibility for individuals with disabilities could reduce instances of negative outcomes, including death, due to a lack of understanding between patient and doctor or between patient and pharmacist, as well as lack of access to services. We also anticipate that the process by which individuals and recipients may seek an exemption based on Federal conscience and religious freedom laws will result in benefits from reduced litigation, which we do not capture in the cost analysis.

3. Analysis of Regulatory Alternatives to the Proposed Rule

The Department considered various alternatives in the course of developing this regulation. The following are a representative sample of some of those various alternatives considered.

The Department analyzed several regulatory alternatives to the proposed rule related to the notice requirements. The first alternative considered retaining the 2020 Rule repeal of the notices and taglines provisions. The Department considered concerns raised in response to the 2016 Rule notice and tagline requirements, as well as concerns raised in response to the removal of those requirements in the 2020 Rule. Though the Department acknowledges the burden placed on covered entities through the 2016 Rule notice requirements, the Department believes the 2020 Rule did not adequately consider the confusion and uncertainty placed on individuals or the unnecessary ambiguity that covered entities face by the 2020 Rule's repeal of the notices and taglines provisions in their entirety. As described earlier, we estimate that these provisions under the proposed rule would cost covered entities, as an aggregate, $39.2 million for each year. While excluding the provisions relating to the notices would reduce the cost of the proposed rule by $39.2 million, the Department rejected this option because it believes that the proposed provisions strike an appropriate balance between providing greater access for beneficiaries and consumers, while maximizing efficiency and economics of scale for covered entities.

The second alternative considered by the Department would require covered entities to provide notices only at their first encounter with a beneficiary. For this alternative, we adopt the quantity and cost estimates associated with eligibility and enrollment communication included in Table 3 above. Under our primary cost scenario, this policy alternative would result in annual costs of notices of $0.5 million, which is about $38.6 million lower than the proposed rule. The Department rejected this option however, because this policy alternative, while posing a significantly reduced burden on covered entities, would be too narrow and substantially reduce the information available to beneficiaries, likely resulting in beneficiaries not being aware of their civil rights, including whether they have experienced a prohibited discriminatory practice by a covered entity.

The third alternative considered by the Department would require a more expansive notice provision, extending the requirements to include pharmacy-related notices. For this alternative, we adopt the 2020 RIA estimate of 2.9 billion annual pharmacy-related notices. This would result in $127.4 million in costs per year, or an increase of $88.2 million compared to the proposed rule. While this alternative related to notices would increase the number of notices available to beneficiaries, and therefore increase beneficiaries' opportunity to receive information regarding nondiscrimination and civil rights protections, the Department believes this alternative would neither address nor remedy the burden placed on covered entities through the 2016 Rule notice requirements. For this reason, the Department rejected this alternative.

Finally, the Department also considered not including a process for covered entities to submit a request for a religious or conscience exemption. As described in the cost section, we estimate that this policy alternative would reduce the quantified costs by $23,601. Previous Departmental rulemakings have indicated that this policy alternative could also result in providers with religious and conscience objections leaving the profession, or covered entities exiting the market. We request comment on this potential impact, including any data or studies that provide quantitative evidence that the Department's May 10, 2021 Bostock Notification ''that the Office for Civil Rights will interpret and enforce Section 1557 and Title IX's prohibitions on discrimination based on sex to include: (1) discrimination on the basis of sexual orientation; and (2) discrimination on the basis of gender identity''—or subsequent actions consistent with the Bostock Notification—have resulted in impacts of this nature.

We have not quantified the benefits associated with this information for the proposed rule or for these policy alternatives.

Table 4 reports the total costs of these policy alternatives in present value and annualized terms, adopting a 3% and 7% discount rate. Table 5 reports the difference between the total cost of the alternatives compared to the provisions of the proposed rule, using the same accounting methods and discount rates. All estimates are presented in millions of year-2020 dollars, using 2024 as the base year for discounting.

TABLE 4—TOTAL COST OF POLICY ALTERNATIVES CONSIDERED

[$ millions, 2020 dollars]

| Accounting method discount rate | Present value | | Annualized | |
|---|---|---|---|---|
| | 3% | 7% | 3% | 7% |
| Proposed Rule | $2,521.7 | $2,296.4 | $550.6 | $560.1 |
| Alternative 1: No Notice Provision | 2,342.2 | 2,135.8 | 511.4 | 520.9 |
| Alternative 2: Single Notice Provision | 2,344.7 | 2,138.0 | 512.0 | 521.4 |
| Alternative 3: Pharmacy-Related Notices | 2,925.9 | 2,658.3 | 638.9 | 648.3 |

TABLE 5—COMPARISON OF ALTERNATIVES TO PROPOSED RULE

[$ millions, 2020 dollars]

| Accounting method discount rate | Present Value | | Annualized | |
|---|---|---|---|---|
| | 3% | 7% | 3% | 7% |
| Alternative 1: No Notice Provision | −$179.5 | −$160.7 | −$39.2 | −$39.2 |
| Alternative 2: Single Notice Provision | −177.0 | −158.5 | −38.6 | −38.6 |
| Alternative 3: Pharmacy-related Notices | 404.1 | 361.8 | 88.2 | 88.2 |

The Department also considered whether to require covered entities to collect the self-identified race, ethnicity, primary language (spoken and written), sex, age, and disability status data for participants, beneficiaries, enrollees, and applicants in any health program or activity. The Department believes, however, that our current authorities under Section 1557, Title VI, Section 504, Title IX, and the Age Act already provide us sufficient ability to collect these data.

*B. Regulatory Flexibility Act—Initial Small Entity Analysis*

The Department has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act. This analysis, as well as other sections in this Regulatory Impact Analysis, serves as the Initial Regulatory Flexibility Analysis, as required under the Regulatory Flexibility Act.

1. Description and Number of Affected Small Entities

The U.S. Small Business Administration (SBA) maintains a Table of Small Business Size Standards Matched to North American Industry Classification System Codes (NAICS).[720] We replicate the SBA's description of this table:

''This table lists small business size standards matched to industries described in the North American Industry Classification System (NAICS), as modified by the Office of Management and Budget, effective January 1, 2017. The latest NAICS codes are referred to as NAICS 2017.

The size standards are for the most part expressed in either millions of dollars (those preceded by ''$'') or number of employees (those without the ''$''). A size standard is the largest that a concern can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the average annual receipts or the average employment of a firm.''

This initial small entity analysis adopts a finding from the 2016 Final Rule that almost all businesses under the scope of the proposed rule are small businesses. In that analysis, the total small entities numbered 254,998, which accounts for about 93% of the 275,002 covered entities under the proposed rule. The covered entities not considered small businesses include about 10% of physician practices that exceed the SBA size standard for physicians (excluding mental health specialists) (North American Industry Classification System code 62111); about 12% of pharmacies that exceed the SBA size standard for pharmacy and drug store firms (North American Industry Classification System code 44611); health insurance issuers; and local government entities.

2. Description of the Potential Impacts of the Rule on Small Entities

The Department generally considers a rule to have a significant impact on a substantial number of small entities if it has at least a 3% impact on revenue on at least 5% of small entities. We performed a threshold analysis to determine whether the proposed rule is likely to exceed these thresholds. As described earlier in this analysis, we estimate the total annualized costs of the proposed rule would be about $551 million. Dividing these total costs by the 254,998 small entities gives a cost per entity of $2,159. This cost estimate would only exceed the 3% ''significant impact'' threshold on revenue for any covered small businesses with revenue below $71,978. We tentatively conclude that very few small businesses covered by the proposed rule have revenue below $71,978, and that this number is very likely to be smaller than the 5% ''substantial number'' threshold.

As an additional consideration, we note that the costs of the proposed rule are mostly proportional to the size of the covered entity. For example, the costs associated with training, which account for more than 70% of the total costs of the proposed rule, are proportional to the number of employees receiving training. In the main analysis, we estimate an incremental impact of one (1) hour per employee trained. The opportunity cost of training each employee represents 0.05% of a full-time employee's annual labor productivity, assuming a full-time employee works 2,087 hours per year. This finding, that the cost of training represents 0.05% of the share of employees receiving training, is constant across firm size.

Because the costs of the proposed rule are small relative to the revenue of covered entities, including covered small entities, and because even the smallest affected entities would be unlikely to face a significant impact, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

*C. Executive Order 13132: Federalism*

As required by E.O. 13132 on Federalism, the Department has examined the effects of provisions in the

[720] U.S. Small Bus. Admin., Table of Size Standards, (last updated May 2, 2022), *https://www.sba.gov/document/support--table-size-standards.*

proposed regulation on the relationship between the Federal Government and the States. The Department has concluded that the proposed regulation has Federalism implications but preempts State law only where the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.

The proposed regulation attempts to balance State autonomy with the necessity to create a Federal benchmark that will provide a uniform level of nondiscrimination protection across the country. The proposed regulation restricts regulatory preemption of State law to the minimum level necessary to achieve the objectives of the underlying Federal statute, Section 1557 of the ACA.

It is recognized that the States generally have laws that relate to nondiscrimination against individuals on a variety of bases. State laws continue to be enforceable, unless they prevent application of the proposed rule. The proposed rule explicitly provides that it is not to be construed to supersede State or local laws that provide additional protections against discrimination on any basis articulated under the regulation. Provisions of State law relating to nondiscrimination that are ''more stringent'' than the proposed Federal regulatory requirements or implementation specifications will continue to be enforceable.

Section 3(b) of E.O. 13132 recognizes that national action limiting the policymaking discretion of States will be imposed only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance. Discrimination issues in relation to health care are of national concern by virtue of the scope of interstate health commerce. The ACA's provisions reflect this position.

Section 3(d)(2) of E.O. 13132 requires that where possible, the Federal Government defer to the States to establish standards. Title I of the ACA authorized the Secretary to promulgate regulations to implement Section 1557, and we have done so accordingly.

Section 4(a) of E.O. 13132 expressly contemplates preemption when there is a conflict between exercising State and Federal authority under a Federal statute. Section 4(b) of the Executive Order authorizes preemption of State law in the Federal rule making context when ''the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.'' The approach in this regulation is consistent with these standards in the Executive Order in superseding State authority only when such authority is inconsistent with standards established pursuant to the grant of Federal authority under the statute.

Section 6(b) of E.O. 13132 includes some qualitative discussion of substantial direct compliance costs that State and local governments would incur as a result of a proposed regulation. We have determined that the costs of the proposed rule would not impose substantial direct compliance costs on State or local governments. We have considered the cost burden that this proposed rule would impose on State and local health care and benefit programs, and estimate State and local government costs will be in the order of $5.7 million in the first two years of implementation. The $1.9 million represents the sum of the costs of training State workers and enforcement costs attributable to State agencies analyzed above.

*D. Executive Order 12250 on Leadership and Coordination of Nondiscrimination Laws*

Pursuant to E.O. 12250, the Attorney General has the responsibility to ''review . . . proposed rules . . . of the Executive agencies'' implementing nondiscrimination statutes such as Section 1557 ''in order to identify those which are inadequate, unclear or unnecessarily inconsistent.'' [721] The Attorney General has delegated that function to the Assistant Attorney General for the Civil Rights Division for purposes of reviewing and approving proposed rules, 28 CFR 0.51, and the Assistant Attorney General has reviewed and approved this proposed rule.

*E. Paperwork Reduction Act*

This proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA).[722] Under the PRA, agencies are required to submit to OMB for review and approval any reporting or record-keeping requirements inherent in a proposed or final rule and are required to publish such proposed requirements for public comment. The PRA requires agencies to provide a 60-day notice in the **Federal Register** and solicit public comment on a proposed collection of information before it is submitted to OMB for review and approval. Section 3506(c)(2)(A) of the PRA requires that the Department solicit comment on the following issues:

1. Whether the information collection is necessary and useful to carry out the proper functions of the agency;
2. The accuracy of the agency's estimate of the information collection burden;
3. The quality, utility, and clarity of the information to be collected; and
4. Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The PRA requires consideration of the time, effort, and financial resources necessary to meet the information collection requirements referenced in this section. The Department invites public comment on its assumptions as they relate to the PRA requirements summarized in this section and explicitly invites comment from potential respondents regarding the burden estimate we ascribe to these requirements, including a discussion of respondents' basis for their computation.

The collections of information proposed by this Notice of Proposed Rulemaking relate to § 92.5 (Assurances required); § 92.7 (Designation and responsibilities of a Section 1557 Coordinator); § 92.8 (Section 1557 Policies and Procedures); § 92.9 (Training); § 92.10 (Notice of nondiscrimination); and § 92.11 (Notice of availability of language assistance services and auxiliary aids and services). Respondents to this proposed information collection would include a variety of covered entities with a health program or activity including hospitals, ambulatory surgical centers, skilled nursing facilities, and physicians' offices. For a more detailed discussion concerning the potential costs implications related to these proposed collections of information, please see the Preliminary Economic Analysis of Impacts directly below.

Proposed § 92.5 retains the assurances obligation from the 2016 and 2020 Rules for covered entities to submit an assurance of compliance to the Department. OCR has previously obtained PRA approval (OMB control # 0945–0008) for this reporting requirement via an updated HHS Form 690 (Consolidated Civil Rights Assurance Form), separate from this rulemaking. The requirement to sign and submit an assurance of compliance currently exists under Section 1557 and other civil rights regulations (Title VI, Section 504, Title IX, and the Age Act). Since the Department provides an online portal through which covered entities submit an attestation of

[721] E.O. 12250, sec. 1–202; 45 FR 72995 (Nov. 2, 1980).

[722] 44 U.S.C. 3501 *et seq.*

Assurance of Compliance, the Department has determined that this requirement imposes no additional reporting or recordkeeping requirements under the PRA.

Proposed § 92.7 requires covered entities with 15 or more employees to designate a Section 1557 Coordinator to coordinate their efforts to comply with and carry out their responsibilities under Section 1557. The burden to coordinate efforts to comply with and carry out the responsibilities under Section 1557 is estimated at an annualized burden of 10 hours per covered entity to store complaints and the associated records required under proposed § 92.8(c)(2) each year. We assume that administrative or clerical support personnel would perform these functions. The mean hourly wage for this occupation is $17.38 per hour. The Department estimates the number of covered entities with more than 15 employees to be approximately 15% or 41,250. We estimate the costs of retaining records related to grievances filed at all covered entities would be $14.3 million annually ($17.38 × 2 × 10 × 41,250). This estimation approach will overstate the costs if many covered entities already retain complaint information.

The burden for documenting employee training as required under proposed § 92.9(c) is the cost of covered entity staff time to (a) create training attendance forms; and (b) store the training sign-up sheet. The labor cost would include one (1) employee spending 15 minutes (0.25 hours) to create the sign-up sheet during the first year and one (1) employee spending one (1) hour collecting and storing the attendance forms during the first year and subsequent years. We estimate that administrative or clerical support personnel would perform these functions. The mean hourly wage for this occupation is $17.38 per hour. The labor cost is $6.0 million in the first year (($17.38 × 1.25) × 275,002 covered entities). We estimate that the cost in subsequent years would be $4.8 million, which would represent an annual allotment of one (1) hour ($17.38 × 1) × 275,002 covered entities).

Proposed § 92.10 and § 92.11 require covered entities to notify the public of their nondiscrimination requirements, as well as the availability of language assistance services and auxiliary aids and services.

Proposed § 92.10 requires covered entities to provide a notice of nondiscrimination relating to its health programs or activities, to participants, beneficiaries, enrollees, and applicants of its health programs and activities, and members of the public. To minimize burden on covered entities, the provision proposes a covered entity may combine the content of the notice required by this section with the notice required by Title VI, Section 504, Title IX, and the Age Act implementing regulations.

Proposed § 92.11 requires covered entities to notify the public of their nondiscrimination requirements, as well as availability of language assistance services and auxiliary aids and services. A covered entity must provide a notice that, at minimum, states that the covered entity provides language assistance services and auxiliary aids and services free of charge in its health programs and activities, in compliance with Section 1557. This notice must be provided to participants, beneficiaries, enrollees, and applicants of the covered entity's health program or activity, and members of the public. The notice must be provided in English and at least the most common 15 languages spoken by LEP individuals of the relevant state or states and must be provided in alternate formats for individuals with disabilities who require auxiliary aids and services to ensure effective communication.

Both types of notices are required (1) on an annual basis; (2) upon request; (3) at a conspicuous location on the covered entity's health program or activity website; and (4) in clear and conspicuous physical locations where the health program or activity interacts with the public.

The Department estimates the burden for responding to the proposed notice requirement would be 34 minutes and that administrative or clerical support personnel would perform these functions. Because it is difficult to determine the exact number of communications which would be required to contain the notices anticipated under the proposed rule, our cost estimates reflect a wide range of uncertainty in the cost. The Department estimates an adjusted annual primary costs total of $4.5 million, with a range of costs between $2.7 million and $25.0 million. These costs would occur in each year of the time horizon of the analysis.

TABLE 1—PROPOSED ANNUAL BURDEN OF RESPONSE IN YEAR ONE/SUBSEQUENT YEARS FOLLOWING PUBLICATION OF THE FINAL RULE

| Regulation burden | Type of respondent | Number of respondents | Number of responses per respondent | Total responses | Average burden per hours response | Total annual burden (hours) [723] |
|---|---|---|---|---|---|---|
| § 92.7 Coordination Efforts ..... | Covered entities with 15 or more employees/all covered entities. | [724] 41,250/275,002 | 1 | 316,252 | [725] 10/1.25 | 756,252 |
| § 92.10 & § 92.11 Notice ..... | All covered entities ..... | 275,002 | [726] 1 | 275,002 | 34/60 | 93,501 |
| Total Annual Burden Hours .... | ..... | ..... | ..... | ..... | ..... | 849,753 |

* The figures in this column are averages based on a range. Small entities may require fewer hours to conduct certain compliance activities, while large entities may require more hours than those provided here due to their size and complexity.

** We monetize the time spent on revising policies and procedures, depending on the extent of the revisions. For the 137,501 covered entities with less extensive revisions, we estimate two (2) total hours spent on revisions per entity. For the 137,501 covered entities with more extensive revisions, we estimate four (4) total hours spent on revision per entity.

[723] The figures in this column are averages based on a range. Small entities may require fewer hours to conduct certain compliance activities, while large entities may require more hours than those provided here due to their size and complexity.

[724] Covered entities with 15 or more employees would be required to coordinate the retention of grievance complaints for no less than three years. We have estimated that this provision would apply to approximately 41,250 covered entities. All covered entities would be required to document employee training on Section 1557. We estimated that this would apply to approximately 275,002 covered entities.

[725] We have estimated that covered entities with 15 or more employees would spend approximately 10 hours on efforts to coordinate their compliance efforts under Section 1557 as required under § 92.7. We estimate that all covered entities would spend approximately 1.25 hours documenting employee training as required under § 92.9.

[726] Because it is difficult to determine the exact number of communications which would be required to contain the notices anticipated under the proposed rule, our number of responses per respondent estimate reflects this uncertainty. The Department invites potential respondents to comment on its assumption regarding number of responses per respondent and the ultimate burden estimate we ascribe to this requirement, including a discussion of respondents' basis for their computation.

*** Because it is difficult to determine the exact number of communications which would be required to contain the notices anticipated under the proposed rule, our number of responses per respondent estimate reflects this uncertainty. The Department invites potential respondents to comment on its assumption regarding a number of responses per respondent and the ultimate burden estimate we ascribe to this requirement, including a discussion of respondents' basis for their computation.

## VII. Request for Comment

The Department seeks comment on all issues raised by the proposed regulation. Specifically, in addition to issues on which it has already requested comments above, the Department requests comment on:

- The financial impact of the proposed rule on the health care sector, with any detailed supporting information, facts, surveys, audits, or reports;
- Whether the application of this rule to health programs and activities that receive Federal funding, to health programs and activities of executive agencies, and to all programs and activities of executive agencies should be considered in a different manner;
- Whether, and if so how, the proposed rule addresses clarity and confusion over compliance requirements and rights of people to be free from discrimination on protected bases;
- Whether covered entities that employ fewer than 15 people should be required to have a Section 1557 Coordinator and grievance procedures, and any benefits and burdens associated with such a requirement;
- Whether, and if so how, new and developing technologies can assist covered entities with their compliance obligations and enhance access to quality health care;
- The costs to provide the notice of nondiscrimination and the Notice of Availability and the impact of such notices on the utilization of language assistance services for LEP individuals and auxiliary aids and services for individuals with disabilities with any detailed supporting information, facts, surveys, audits, or reports;
- Whether the list of communications that require a Notice of Availability captures those most critical for LEP individuals and individuals with disabilities, and any detailed supporting information, facts, surveys, audits, or reports pertaining to the benefit of such notices or the related cost of their inclusion in the listed communications;
- Whether standards set pursuant to Section 510 of the Rehabilitation Act on ensuring the availability of accessible medical diagnostic equipment, should be incorporated as an enforceable standard for covered entities into the proposed rule for purposes of Section 1557;
- How best to address challenges accessing accessible medical diagnostic equipment and whether lack of access to such equipment constitutes discriminatory benefit design or network inadequacy;
- Whether Section 1557 should include a provision requiring covered entities to comply with specific accessibility standards for web content such as Section 508 standards, the WCAG 2.0 standards, the WCAG 2.1 standards, or other standards that provide equal or greater accessibility to individuals with disabilities. Additionally, OCR seeks comments on whether to adopt a safe harbor provision under which covered entities that are in compliance with established specific accessibility standards are deemed in compliance with proposed § 92.204; whether OCR should require covered entities to comply with the most recent edition of a published standard; and the timeline necessary for covered entities to come into compliance with a new standard.
- What steps the Department can take to assist covered entities in meeting their language access and effective communication responsibilities, such that these services are provided in the most efficient and effective manner for participants, beneficiaries, enrollees, and applicants of covered health programs and activities.
- Unaddressed discrimination on the basis of race, color, national origin (including limited English proficiency and primary language), sex (including pregnancy, sexual orientation, gender identity, and sex characteristics), age, and disability as applied to State and Federally-facilitated Exchanges, with any detailed supporting information, facts, surveys, audits, or reports; and
- Whether covered entities seek guidance on best practices for compliance with Section 1557, and on what topics.

## List of Subjects

*42 CFR Part 438*

Civil rights, Discrimination, Grant programs—health, Individuals with disabilities, Medicaid, National origin, Nondiscrimination, Reporting and recordkeeping requirements, Sex discrimination.

*42 CFR Part 440*

Civil rights, Discrimination, Grant programs—health, Individuals with disabilities, Medicaid, National origin, Nondiscrimination, Sex discrimination.

*42 CFR Part 457*

Civil rights, Discrimination, Grant programs—health, Individuals with disabilities, Medicaid, National origin, Nondiscrimination, Sex discrimination.

*42 CFR Part 460*

Age discrimination, Aged, Civil rights, Discrimination, Health, Individuals with disabilities, Medicare, Medicaid, National origin, Nondiscrimination, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

*45 CFR Part 80*

Administrative practice and procedure, Civil rights, Discrimination, Medicare, Nondiscrimination.

*45 CFR Part 84*

Administrative practice and procedure, Civil rights, Discrimination, Individuals with disabilities, Medicare, Nondiscrimination.

*45 CFR Part 86*

Administrative practice and procedure, Civil rights, Discrimination, Education, Medicare, Nondiscrimination, Sex discrimination.

*45 CFR Part 91*

Administrative practice and procedure, Civil rights, Discrimination, Elderly, Medicare, Nondiscrimination.

*45 CFR Part 92*

Administrative practice and procedure, Civil rights, Discrimination, Elderly, Health care, Health facilities, Health insurance, Health programs and activities, Individuals with disabilities, Medicare, Nondiscrimination, Reporting and recordkeeping requirements, Sex discrimination.

*45 CFR Part 147*

Aged, Citizenship and naturalization, Civil rights, Health care, Health insurance, Individuals with disabilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sex discrimination.

*45 CFR Part 155*

Administrative practice and procedure, Advertising, Aged, Brokers, Citizenship and naturalization, Civil rights, Conflict of interests, Consumer protection, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organizations (HMO), Health records,

Hospitals, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs-health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, Sex discrimination, State and local governments, Taxes, Technical assistance, Women, Youth.

*45 CFR Part 156*

Administrative practice and procedure, Advertising, Advisory committees, Brokers, Conflict of interests, Consumer protection, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs-health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, State and local governments, Sunshine Act, Technical assistance, Women, Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 42 CFR parts 438, 440, 457, and 460 and 45 CFR parts 80, 84, 92, 147, 155, and 156 as follows:

**Title 42—Public Health**

## PART 438—MANAGED CARE

■ 1. The authority citation for part 438 continues to read as follows:

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

■ 2. Amend § 438.3 by revising paragraph (d)(4) to read as follows:

**§ 438.3 Standard contract requirements.**

* * * * *

(d) * * *

(4) The MCO, PIHP, PAHP, PCCM or PCCM entity will not discriminate against individuals eligible to enroll on the basis of race, color, national origin, sex (including sexual orientation and gender identity), or disability and will not use any policy or practice that has the effect of discriminating on the basis of race, color, national origin, sex (sexual orientation and gender identity), or disability.

* * * * *

■ 3. Amend § 438.206 by revising paragraph (c)(2) to read as follows:

**§ 438.206 Availability of services.**

* * * * *

(c) * * *

(2) *Access and cultural considerations.* Each MCO, PIHP, and PAHP participates in the State's efforts to promote the delivery of services in a culturally competent manner to all enrollees, including those with limited English proficiency and diverse cultural and ethnic backgrounds, disabilities, and regardless of sex (including sexual orientation and gender identity).

* * * * *

## PART 440—SERVICES: GENERAL PROVISIONS

■ 4. The authority citation for part 440 continues to read as follows:

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

■ 5. Revise § 440.262 to read as follows:

**§ 440.262 Access and cultural conditions.**

The State must have methods to promote access and delivery of services in a culturally competent manner to all beneficiaries, including those with limited English proficiency, diverse cultural and ethnic backgrounds, disabilities, and regardless of sex (including sexual orientation and gender identity). These methods must ensure that beneficiaries have access to covered services that are delivered in a manner that meets their individualized needs.

## PART 457—ALLOTMENTS AND GRANTS TO STATES

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

**Authority:** Section 1102 of the Social Security Act (42 U.S.C. 1302).

■ 7. Section 457.495 is amended by adding paragraph (e) to read as follows:

**§ 457.495 State assurance of access to care and procedures to assure quality and appropriateness of care.**

* * * * *

(e) Access to and delivery of services in a culturally competent manner to all beneficiaries, as described in 42 CFR 440.262.

## PART 460—PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

■ 8. The authority citation for part 460 continues to read as follows:

**Authority:** 42 U.S.C. 1302, 1395*l,* 1395eee(f), and 1396u–4(f).

■ 9. Amend § 460.98 by revising paragraph (b)(3) to read as follows:

**§ 460.98 Service delivery.**

* * * * *

(b) * * *

(3) The PACE organization may not discriminate against any participant in the delivery of required PACE services based on race, ethnicity, national origin, religion, sex (including sexual orientation and gender identity), age, mental or physical disability, or source of payment.

* * * * *

■ 10. Amend § 460.112 by revising paragraph (a) introductory text to read as follows:

**§ 460.112 Specific rights to which a participant is entitled.**

(a) *Respect and nondiscrimination.* Each participant has the right to considerate, respectful care from all PACE employees and contractors at all times and under all circumstances. Each participant has the right not to be discriminated against in the delivery of required PACE services based on race, ethnicity, national origin, religion, sex (including sexual orientation and gender identity), age, mental or physical disability, or source of payment. Specifically, each participant has the right to the following:

* * * * *

**Title 45—Public Health**

## PART 80—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 11. The authority citation for part 80 continues to read as follows:

**Authority:** Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1.

■ 12. Amend part 1 of appendix A to part 80 by adding paragraph 155 to read as follows:

**Appendix A to Part 80—Federal Financial Assistance to Which These Regulations Apply**

Part 1 * * *

■ 155. Supplementary medical insurance benefits for the aged (Title XVIII, Part B, Social Security Act, 42 U.S.C. 1395j–1395w–6).

* * * * *

## PART 84—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 13. The authority citation for part 84 continues to read as follows:

**Authority:** 20 U.S.C. 1405; 29 U.S.C. 794; 42 U.S.C. 290dd–2; 21 U.S.C. 1174.

**Appendix A to Part 84 [Amended]**

■ 14. Amend appendix A to part 84 under subpart a by removing the third

paragraph in ''2. Federal financial assistance''.

■ 15. Revise part 92 to read as follows:

## PART 92—NONDISCRIMINATION IN HEALTH PROGRAMS OR ACTIVITIES

### Subpart A—General Provisions



### Subpart B—Nondiscrimination Provisions



### Subpart C—Specific Applications to Health Programs and Activities.



### Subpart D—Procedures



**Authority:** 42 U.S.C. 18116

## Subpart A—General Provisions

§ 92.1 Purpose and applicability date.

(a) *Purpose.* The purpose of this part is to implement Section 1557 of the Patient Protection and Affordable Care Act (ACA) (42 U.S.C. 18116), which prohibits discrimination on the basis of race, color, national origin, sex, age, and disability in certain health programs and activities. Section 1557 provides that, except as otherwise provided in Title I of the ACA, an individual shall not, on the grounds prohibited under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, or Section 504 of the Rehabilitation Act of 1973, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under Title I of the ACA. This part applies to health programs or activities administered by recipients of Federal financial assistance from the Department, Department-administered health programs or activities, and Title I entities that administer health programs or activities.

(b) *Applicability date.* The regulations in this part are applicable beginning [DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], except to the extent that provisions of this part require changes to health insurance or group health plan benefit design (including covered benefits, benefit limitations or restrictions, and cost-sharing mechanisms, such as coinsurance, copayments, and deductibles); such provisions, as they apply to health insurance or group health plan benefit design, have an applicability date of the first day of the first plan year (in the individual market, policy year) beginning on or after [DATE ONE YEAR AFTER EFFECTIVE DATE OF FINAL RULE].

### § 92.2 Application.

(a) Except as otherwise provided in this part, this part shall apply to:

(1) Every health program or activity, any part of which receives Federal financial assistance, directly or indirectly, from the Department;

(2) Every health program or activity administered by the Department; and

(3) Every program or activity administered by a Title I entity.

(b) The provisions of this part shall not apply to any employer with regard to its employment practices, including the provision of employee health benefits.

(c) Any provision of this part held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be severable from this part and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other, dissimilar circumstances.

### § 92.3 Relationship to other laws.

(a) Neither section 1557 nor this part shall be construed to apply a lesser standard for the protection of individuals from discrimination than the standards applied under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, or the regulations issued pursuant to those laws.

(b) Nothing in this part shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available under Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, or the Age Discrimination Act of 1975.

(c) Nothing in this part shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals under Federal conscience or religious freedom laws.

### § 92.4 Definitions.

As used in this part, the term—

*1991 Standards* means the 1991 ADA Standards for Accessible Design, published at Appendix A to 28 CFR part 36 on July 26, 1991, and republished as Appendix D to 28 CFR part 36 on September 15, 2010.

*2010 Standards* means the 2010 ADA Standards for Accessible Design, as defined at 28 CFR 35.104.

*ACA* means the Patient Protection and Affordable Care Act (Pub. L. 111–148, 124 Stat. 119 (2010) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, 124 Stat. 1029) (codified in scattered sections of U.S.C.)).

*ADA* means the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), as amended.

*Age* means how old a person is, or the number of elapsed years from the date of a person's birth.

*Age Act* means the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), as amended.

*Applicant* means a person who applies to participate in a health program or activity.

*Auxiliary aids and services* include, for example:

(1) Qualified interpreters on-site or through video remote interpreting (VRI)

services, as defined in 28 CFR 35.104 and 36.303(b); note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible information and communication technology (ICT); or other effective methods of making aurally delivered information available to persons who are deaf or hard of hearing;

(2) Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible information and communication technology; or other effective methods of making visually delivered materials available to persons who are blind or have low vision;

(3) Acquisition or modification of equipment and devices; and

(4) Other similar services and actions.

*Companion* means a family member, friend, or associate of an individual seeking access to a service, program or activity of a covered entity, who along with such individual, is an appropriate person with whom a covered entity should communicate.

*Covered entity* means:

(1) A recipient of Federal financial assistance;

(2) The Department; and

(3) An entity established under Title I of the ACA.

*Department* means the U.S. Department of Health and Human Services.

*Director* means the Director of the Office for Civil Rights (OCR) of the Department, or their designee(s).

*Disability* means, with respect to a person, a physical or mental impairment that substantially limits one or more major life activities of such person; a record of such an impairment; or being regarded as having such an impairment, as defined and construed in the Rehabilitation Act, 29 U.S.C. 705(9)(B), which incorporates the definition of disability in the ADA, 42 U.S.C. 12102, as amended and adopted at 28 CFR 35.108.

*Exchange* means the same as ''Exchange'' defined in 45 CFR 155.20.

*Federal financial assistance.* (1) Federal financial assistance means any grant, loan, credit, subsidy, contract (other than a procurement contract but including a contract of insurance), or any other arrangement by which the Federal Government, directly or indirectly, provides assistance or otherwise makes assistance available in the form of:

(i) Funds;

(ii) Services of Federal personnel; or

(iii) Real or personal property or any interest in or use of such property, including:

(A) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(B) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(2) Federal financial assistance the Department provides or otherwise makes available includes Federal financial assistance that the Department plays a role in providing or administering, including advance payments of the premium tax credit and cost-sharing reduction payments under Title I of the ACA, as well as payments, subsidies, or other funds extended by the Department to any entity providing health insurance coverage for payment to or on behalf of a person obtaining health insurance coverage from that entity or extended by the Department directly to such person for payment to any entity providing health insurance coverage.

*Federally-facilitated Exchange* means the same as ''Federally-facilitated Exchange'' defined in 45 CFR 155.20.

*Health program or activity* means:

(1) Any project, enterprise, venture, or undertaking to

(i) Provide or administer health-related services, health insurance coverage, or other health-related coverage;

(ii) Provide assistance to persons in obtaining health-related services, health insurance coverage, or other health-related coverage;

(iii) Provide clinical, pharmaceutical, or medical care;

(iv) Engage in health research; or

(v) Provide health education for health care professionals or others;

(2) All of the operations of any entity principally engaged in the provision or administration of any health projects, enterprises, ventures, or undertakings described in paragraph (1) of this definition, including, but not limited to, a State or local health agency, hospital, health clinic, health insurance issuer, physician's practice, pharmacy, community-based health care provider, nursing facility, residential or community-based treatment facility, or other similar entity or combination thereof.

*Information and communication technology (ICT)* means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include, but are not limited to: computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; telehealth interfaces or applications; customer premises equipment; multifunction office machines; software; mobile applications; websites; videos; and electronic documents.

*Language assistance services* may include, but are not limited to:

(1) Oral language assistance, including interpretation in non-English languages provided in-person or remotely by a qualified interpreter for a limited English proficient individual, and the use of qualified bilingual or multilingual staff to communicate directly with limited English proficient individuals;

(2) Written translation, performed by a qualified translator, of written content in paper or electronic form into or from languages other than English; and

(3) Written notice of availability of language assistance services.

*Limited English proficient individual* means an individual whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English. A limited English proficient individual may be competent in English for certain types of communication (*e.g.,* speaking or understanding), but still be limited English proficient for other purposes (*e.g.,* reading or writing).

*Machine translation* means automated translations, without the assistance of or review by a qualified human translator, that is text-based and provides instant translations between various languages, sometimes with an option for audio input or output.

*National origin* includes, but is not limited to, a person's, or their ancestor's, place of origin (such as country or world region) or a person's manifestation of the physical, cultural, or linguistic characteristics of a national origin group.

*OCR* means the Office for Civil Rights of the Department.

*Qualified bilingual/multilingual staff* means a member of a covered entity's

workforce who is designated by the covered entity to provide in-language oral language assistance as part of the person's current, assigned job responsibilities and who has demonstrated to the covered entity that they are:

(1) Proficient in speaking and understanding both spoken English and at least one other spoken language, including any necessary specialized vocabulary, terminology and phraseology; and

(2) Able to effectively, accurately, and impartially communicate directly with limited English proficient individuals in their primary languages.

*Qualified individual with a disability* means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the covered entity.

*Qualified interpreter for an individual with a disability* means an interpreter who, via a video remote interpreting service (VRI) or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

*Qualified interpreter for a limited English proficient individual* means an interpreter who via a remote interpreting service or an on-site appearance:

(1) Has demonstrated proficiency in speaking and understanding both spoken English and at least one other spoken language;

(2) Is able to interpret effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original oral statement; and

(3) Adheres to generally accepted interpreter ethics principles, including client confidentiality.

*Qualified reader* means a person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.

*Qualified translator* means a translator who:

(1) Has demonstrated proficiency in writing and understanding both written English and at least one other written non-English language;

(2) Is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original written statement; and

(3) Adheres to generally accepted translator ethics principles, including client confidentiality.

*Recipient* means any State or its political subdivision thereof; or any instrumentality of a State or political subdivision thereof; any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or indirectly, including any subunit, successor, assignee, or transferee of a recipient. Such term does not include any ultimate beneficiary.

*Section 504* means Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112; 29 U.S.C. 794), as amended.

*Section 1557* means Section 1557 of the ACA (42 U.S.C. 18116).

*State Exchange* means an Exchange established by a State and approved by the Department pursuant to 45 CFR part 155, subpart B.

*Title I entity* means any entity established under Title I of the ACA, as amended, including State Exchanges and Federally-facilitated Exchanges.

*Title VI* means Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352; 42 U.S.C. 2000d *et seq.*), as amended.

*Title VII* means Title VII of the Civil Rights Act of 1964 (Pub. L. 88–352; 42 U.S.C. 2000e *et seq.*), as amended.

*Title IX* means Title IX of the Education Amendments of 1972 (Pub. L. 92–318; 20 U.S.C. 1681 *et seq.*), as amended.

### § 92.5 Assurances required.

(a) *Assurances.* An entity applying for Federal financial assistance to which this part applies must, as a condition of any application for Federal financial assistance, submit an assurance, on a form specified by the Director, that the entity's health programs and activities will be operated in compliance with Section 1557 and this part. A health insurance issuer seeking certification to participate in an Exchange or a State seeking approval to operate a State Exchange to which Section 1557 or this part applies must, as a condition of certification or approval, submit an assurance, on a form specified by the Director, that the health insurance issuer's or State's health program or activity will be operated in compliance with Section 1557 and this part. An applicant or entity may incorporate this assurance by reference in subsequent applications to the Department for Federal financial assistance or requests for certification to participate in an Exchange or approval to operate a State Exchange.

(b) *Duration of obligation.* The duration of the assurances required by this section is the same as the duration of the assurances required in the Department's regulations implementing Section 504, 45 CFR 84.5(b).

(c) *Covenants.* When Federal financial assistance is provided in the form of real property or interest, the same conditions apply as those contained in the Department's regulations implementing Section 504, at 45 CFR 84.5(c), except that the nondiscrimination obligation applies to discrimination on all bases covered under Section 1557 and this part.

### § 92.6 Remedial action and voluntary action.

(a) *Remedial action.* (1) If the Director finds that a recipient or State Exchange has discriminated against an individual on the basis of race, color, national origin, sex, age, or disability, in violation of Section 1557 or this part, such recipient or State Exchange must take such remedial action as the Director may require to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against an individual on the basis of race, color, national origin, sex, age, or disability, in violation of Section 1557 or this part, and where another recipient exercises control over the recipient that has discriminated, the Director, where appropriate, may require either or both entities to take remedial action.

(3) The Director may, where necessary to overcome the effects of discrimination in violation of Section 1557 or this part, require a recipient, in its health programs and activities, or State Exchange to take remedial action with respect to:

(i) Persons who are no longer participants in the recipient's or State Exchange's health program or activity but who were participants in the health program or activity when such discrimination occurred; or

(ii) Persons who would have been participants in the health program or activity had the discrimination not occurred.

(b) *Voluntary action.* A covered entity may take nondiscriminatory steps, in addition to any action that is required by Section 1557 or this part, to overcome the effects of conditions that

result or resulted in limited participation in the covered entity's health programs or activities by persons on the basis of race, color, national origin, sex, age, or disability.

**§ 92.7 Designation and responsibilities of a Section 1557 Coordinator.**

(a) *Section 1557 Coordinator and designees.* A covered entity that employs fifteen or more persons must designate and authorize at least one employee, referred to herein as ''Section 1557 Coordinator,'' to coordinate the covered entity's compliance with its responsibilities under Section 1557 and this part in its health programs and activities, including the investigation of any grievance communicated to it alleging noncompliance with Section 1557 or this part or alleging any action that would be prohibited by Section 1557 or this part. As appropriate, a covered entity may assign one or more designees to carry out some of these responsibilities, but the Section 1557 Coordinator must retain ultimate oversight for ensuring coordination with the covered entity's compliance with this part.

(b) *Responsibilities of a Section 1557 Coordinator.* A covered entity must ensure that, at minimum, the Section 1557 Coordinator:

(1) Receives, reviews, and processes grievances, filed under the grievance procedure as set forth in § 92.8(c);

(2) Coordinates the covered entity's recordkeeping requirements as set forth in § 92.8(c);

(3) Coordinates effective implementation of the covered entity's language access procedures as set forth in § 92.8(d);

(4) Coordinates effective implementation of the covered entity's effective communication procedures as set forth in § 92.8(e);

(5) Coordinates effective implementation of the covered entity's reasonable modification procedures as set forth in § 92.8(f); and

(6) Coordinates training of relevant employees as set forth in § 92.9 of this part, including maintaining documentation required by such section.

**§ 92.8 Policies and procedures.**

(a) *General requirement.* A covered entity must implement written policies and procedures in its health programs and activities that are designed to comply with the requirements of this part. The policies and procedures must include an effective date and be reasonably designed, taking into account the size, complexity, and the type of health programs or activities undertaken by a covered entity, to ensure compliance with this part.

(b) *Nondiscrimination policy.* A covered entity must implement a written policy in its health programs and activities that, at minimum, states the covered entity does not discriminate on the basis of race, color, national origin (including limited English proficiency and primary language), sex (including pregnancy, sexual orientation, gender identity, and sex characteristics), age, or disability; that the covered entity provides language assistance services and appropriate auxiliary aids and services free of charge, when necessary for compliance with Section 1557 or this part; that the covered entity will provide reasonable modifications for individuals with disabilities; and provides the contact information for the Section 1557 Coordinator required by § 92.7 (if applicable).

(c) *Grievance procedures.* (1) A covered entity that employs fifteen or more persons must implement written grievance procedures in its health programs and activities that provide for the prompt and equitable resolution of grievances alleging any action that would be prohibited by Section 1557 or this part.

(2) A covered entity to which this paragraph applies must retain records related to grievances filed with it that allege discrimination on the basis of race, color, national origin, sex, age, or disability for no less than three (3) calendar years from the date of the filing of the grievance. The records must include the grievance; the name and contact information of the complainant (if provided by complainant); the alleged discriminatory action and alleged basis (or bases) of discrimination; the date the grievance was filed; grievance resolution; and any other pertinent information.

(3) A covered entity to which this paragraph applies must keep confidential the identity of an individual who has filed a grievance under this part except as required by law or to the extent necessary to carry out the purposes of this part, including the conduct of any investigation.

(d) *Language access procedures.* A covered entity must implement written language access procedures in its health programs and activities describing the covered entity's process for providing language assistance services to limited English proficient individuals when required under § 92.201 of this part. At a minimum, the language access procedures must include current information detailing the contact information for the Section 1557 Coordinator (if applicable); how an employee identifies whether an individual is limited English proficient; how an employee obtains the services of qualified interpreters and translators the covered entity uses to communicate with a limited English proficient individual; the names of any qualified bilingual staff members; and a list and the location of any electronic and written translated materials the covered entity has and the languages they are translated into, and the publication date.

(e) *Effective communication procedures.* A covered entity must implement written effective communication procedures in its health programs and activities describing the covered entity's process for ensuring effective communication for individuals with disabilities when required under § 92.202. At a minimum, a covered entity's effective communication procedures must include current contact information for the Section 1557 Coordinator (if applicable); how an employee obtains the services of qualified interpreters the covered entity uses to communicate with individuals with disabilities, including the names of any qualified interpreter staff members, and how to access appropriate auxiliary aids and services.

(f) *Reasonable modification procedures.* A covered entity must implement written procedures in its health programs and activities describing its process for making reasonable modifications to its policies, practices, or procedures when necessary to avoid discrimination on the basis of disability as required under § 92.205. At a minimum, the reasonable modification procedures must include contact information for the covered entity's Section 1557 Coordinator (if applicable); a description of the covered entity's process for responding to requests from individuals with disabilities for changes, exceptions, or adjustments to a rule, policy, practice, or service of the covered entity; and a process for determining whether making the modification would fundamentally alter the nature of the health program or activity, including identifying an alternative modification that does not result in a fundamental alteration to ensure the individual with a disability receives the benefits or services in question.

(g) *Combined policies and procedures.* A covered entity may combine the content of the policies and procedures required by paragraphs (b) through (f) of this section with any policies and procedures pursuant to Title VI, Section 504, Title IX, and the

Age Act if Section 1557 and the provisions in this part are clearly addressed therein.

**§ 92.9 Training.**

(a) A covered entity must train relevant employees of its health programs and activities on the civil rights policies and procedures required by § 92.8, as necessary and appropriate for the employees to carry out their functions within the covered entity consistent with the requirements of this part.

(b) A covered entity must provide training that meets the requirements of paragraph (a) of this section, as follows:

(1) To each relevant employee of the health program or activity as soon as possible, but no later than [DATE ONE YEAR AFTER EFFECTIVE DATE OF FINAL RULE];

(2) Thereafter, to each new relevant employee of the health program or activity within a reasonable period of time after the employee joins the covered entity's workforce; and

(3) To each relevant employee of the health program or activity whose functions are affected by a material change in the policies or procedures required by § 92.8 of this part and any other civil rights policies or procedures the covered entity has implemented within a reasonable period of time after the material change has been made.

(c) A covered entity must contemporaneously document its employees' completion of the training required by paragraphs (a) and (b) of this section in written or electronic form and maintain said documentation for no less than three (3) calendar years.

**§ 92.10 Notice of nondiscrimination.**

(a) A covered entity must provide a notice of nondiscrimination to participants, beneficiaries, enrollees, and applicants of its health programs and activities, and members of the public.

(1) The notice required under this paragraph (a) must include the following information relating to its health programs and activities:

(i) The covered entity does not discriminate on the basis of race, color, national origin (including limited English proficiency and primary language), sex (including pregnancy, sexual orientation, gender identity, and sex characteristics), age, or disability;

(ii) The covered entity provides reasonable modifications for individuals with disabilities, and appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats, such as braille or large print, free of charge and in a timely manner, when such modifications, aids, and services are necessary to ensure accessibility and an equal opportunity to participate to individuals with disabilities;

(iii) The covered entity provides language assistance services, including electronic and written translated documents and oral interpretation free of charge and in a timely manner, when such services are necessary to provide meaningful access to a limited English proficient individual;

(iv) How to obtain from the covered entity the reasonable modifications, appropriate auxiliary aids and services, and language assistance services in paragraphs (a)(1)(ii) and (iii) of this section;

(v) The contact information for the covered entity's Section 1557 Coordinator designated pursuant to § 92.7 of this part (if applicable);

(vi) The availability of the covered entity's grievance procedure pursuant to § 92.8(c) of this part and how to file a grievance (if applicable);

(vii) Details on how to file a discrimination complaint with OCR in the Department; and

(viii) How to access the covered entity's website, if it has one, that provides the information required under paragraph (a)(1) of this section.

(2) The notice must be provided in a covered entity's health program or activity, as follows:

(i) On an annual basis to participants, beneficiaries, enrollees (including late and special enrollees), and applicants of its health program or activity;

(ii) Upon request;

(iii) At a conspicuous location on the covered entity's health program or activity website, if it has one; and

(iv) In clear and prominent physical locations where it is reasonable to expect individuals seeking service from the health program or activity to be able to read or hear the notice.

(b) A covered entity may combine the content of the notice required by paragraph (a) of this section with the notices required by 45 CFR 80.6(d), 84.8, 86.9, and 91.32 if the combined notice clearly informs individuals of their civil rights under Section 1557 and this part, so long as it includes each of the elements required by paragraph (a)(1) of this section.

**§ 92.11 Notice of availability of language assistance services and auxiliary aids and services.**

(a) A covered entity must provide a notice of availability of language assistance services and auxiliary aids and services that, at minimum, states that the covered entity, in its health programs or activities, provides language assistance services and appropriate auxiliary aids and services free of charge, when necessary for compliance with Section 1557 or this part, to participants, beneficiaries, enrollees, and applicants of its health program or activities, and members of the public.

(b) This notice of availability of language assistance services and auxiliary aids and services must be provided in English and at least the 15 languages most commonly spoken by limited English proficient individuals of the relevant state or states and must be provided in alternate formats for individuals with disabilities who require auxiliary aids and services to ensure effective communication.

(c) The notice required under paragraph (a) of this section must be provided in a covered entity's health program or activity, as follows:

(1) On an annual basis to participants, beneficiaries, enrollees (including late and special enrollees), and applicants of its health program or activity;

(2) Upon request;

(3) At a conspicuous location on the covered entity's health program or activity website, if it has one;

(4) In clear and prominent physical locations where it is reasonable to expect individuals seeking service from the health program or activity to be able to read or hear the notice; and

(5) In the following electronic and written communications when these forms are provided by a covered entity:

(i) Notice of nondiscrimination required by § 92.10;

(ii) Notice of privacy practices required by 45 CFR 164.520;

(iii) Application and intake forms;

(iv) Notices of denial or termination of eligibility, benefits or services, including Explanations of Benefits, and notices of appeal and grievance rights;

(v) Communications related to a person's rights, eligibility, benefits, or services that require or request a response from a participant, beneficiary, enrollee, or applicant;

(vi) Communications related to a public health emergency;

(vii) Consent forms and instructions related to medical procedures or operations, medical power of attorney, or living will (with an option of providing only one notice for all documents bundled together);

(viii) Discharge papers;

(ix) Complaint forms; and

(x) Patient and member handbooks.

(d) A covered entity shall be deemed in compliance with this section with respect to an individual if it exercises the option to:

(1) On an annual basis, provide the individual with the option to opt out of receipt of the notice required by this section in their primary language and through any appropriate auxiliary aids and services, and:

(i) Does not condition the receipt of any aid or benefit on the individual's decision to opt out;

(ii) Informs the individual that they have a right to receive the notice upon request in their primary language and through the appropriate auxiliary aids and services;

(iii) Informs the individual that opting out of receiving the notice is not a waiver of their right to receive language assistance services and any appropriate auxiliary aids and services as required by this part;

(iv) Documents, on an annual basis, that the individual has opted out of receiving the notice required by this section for that year; and

(v) Does not treat a non-response from an individual as a decision to opt out; or

(2) Document the individual's primary language and any appropriate auxiliary aids and services and:

(i) Provides all materials and communications in that individual's primary language and through any appropriate auxiliary aids and services; or

(ii) Provides the notice required by paragraph (a) of this section in that individual's primary language and through any appropriate auxiliary aids and services in all communications that are identified in paragraph (c)(5) of this section.

## Subpart B—Nondiscrimination Provisions

### § 92.101 Discrimination prohibited.

(a) *General.* (1) Except as provided in Title I of the ACA, an individual must not, on the basis of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any health program or activity operated by a covered entity.

(2) Discrimination on the basis of sex includes, but is not limited to, discrimination on the basis of sex stereotypes; sex characteristics, including intersex traits; pregnancy or related conditions; sexual orientation; and gender identity.

(b) *Specific prohibitions on discrimination.* (1) In any health program or activity to which this part applies:

(i) A recipient and State Exchange must comply with the specific prohibitions on discrimination in the Department's implementing regulations for Title VI, Section 504, Title IX, and the Age Act, found at parts 80, 84, 86 (subparts C and D), and 91 (subpart B) of this subchapter, respectively. Where this paragraph cross-references regulatory provisions that use the term ''recipient,'' the term ''recipient or State Exchange'' shall apply in its place. Where this paragraph cross-references regulatory provisions that use the term ''student,'' ''employee,'' or ''applicant,'' these terms shall be replaced with ''individual.''

(ii) The Department, including Federally-facilitated Exchanges, must comply with specific prohibitions on discrimination in the Department's implementing regulations for Title VI, Section 504, Title IX, and the Age Act, found at parts 80, 85, 86 (subparts C and D), and 91 (subpart B) of this subchapter, respectively. Where this paragraph cross-references regulatory provisions that use the term ''a recipient,'' the term ''the Department or a Federally-facilitated Exchange'' shall apply in its place. Where this paragraph cross-references regulatory provisions that use the term ''student,'' ''employee,'' or ''applicant,'' these terms shall be replaced with ''individual.''

(2) The enumeration of specific prohibitions on discrimination in paragraph (b)(1) of this section does not limit the general applicability of the prohibition in paragraph (a) of this section.

## Subpart C—Specific Applications to Health Programs and Activities

### § 92.201 Meaningful access for limited English proficient individuals.

(a) *General requirement.* A covered entity must take reasonable steps to provide meaningful access to each limited English proficient individual eligible to be served or likely to be directly affected by its health programs and activities.

(b) *Language assistance services requirements.* Language assistance services required under paragraph (a) of this section must be provided free of charge, be accurate and timely, and protect the privacy and the independent decision-making ability of the limited English proficient individual.

(c) *Specific requirements for interpreter and translation services.* (1) When interpretation services are required under this part, a covered entity must offer a qualified interpreter in its health programs and activities.

(2) When translation services are required under this part, a covered entity must use a qualified translator in its health programs and activities.

(3) If a covered entity uses machine translation when the underlying text is critical to the rights, benefits, or meaningful access of a limited English proficient individual, when accuracy is essential, or when the source documents or materials contain complex, non-literal or technical language, the translation must be reviewed by a qualified human translator.

(d) *Evaluation of compliance.* In evaluating whether a covered entity has met its obligation under paragraph (a) of this section, the Director shall:

(1) Evaluate, and give substantial weight to, the nature and importance of the health program or activity and the particular communication at issue, to the limited English proficient individual; and

(2) Take into account other relevant factors, including the effectiveness of the covered entity's written language access procedures for its health programs and activities, that the covered entity has implemented pursuant to § 92.8(d).

(e) *Restricted use of certain persons to interpret or facilitate communication.* A covered entity must not, in its health programs and activities:

(1) Require a limited English proficient individual to provide their own interpreter, or to pay the cost of their own interpreter;

(2) Rely on an adult, not qualified as an interpreter, accompanying a limited English proficient individual to interpret or facilitate communication, except:

(i) As a temporary measure, while finding a qualified interpreter in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter for the limited English proficient individual immediately available and the qualified interpreter that arrives confirms or supplements the initial communications with the accompanying adult; or

(ii) Where the limited English proficient individual specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, the request and agreement by the accompanying adult is documented, and reliance on that adult for such assistance is appropriate under the circumstances.

(3) Rely on a minor child to interpret or facilitate communication, except as a temporary measure while finding a qualified interpreter in an emergency involving an imminent threat to the safety or welfare of an individual or the

public where there is no qualified interpreter for the limited English proficient individual immediately available and the qualified interpreter that arrives confirms or supplements the initial communications with the minor child; or

(4) Rely on staff other than qualified interpreters, qualified translators, or qualified bilingual/multilingual staff to communicate directly with limited English proficient individuals.

(f) *Video remote interpreting services.* A covered entity that provides a qualified interpreter for a limited English proficient individual through video remote interpreting services in the covered entity's health programs and activities must provide:

(1) Real-time full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;

(2) A sharply delineated image that is large enough to display the interpreter's face and the participating person's face regardless of the person's body position;

(3) A clear, audible transmission of voices; and

(4) Adequate training to users of the technology and other involved persons so that they may quickly and efficiently set up and operate the video remote interpreting.

(g) *Audio remote interpreting services.* A covered entity that provides a qualified interpreter for a limited English proficient individual through audio remote interpreting services in the covered entity's health programs and activities must provide:

(1) Real-time audio over a dedicated high-speed, wide-bandwidth connection or wireless connection that delivers high-quality audio without lags or irregular pauses in communication;

(2) A clear, audible transmission of voices; and

(3) Adequate training to users of the technology and other involved persons so that they may quickly and efficiently set up and operate the remote interpreting services.

(h) *Acceptance of language assistance services is not required.* Nothing in this section shall be construed to require a limited English proficient individual to accept language assistance services.

**§ 92.202 Effective communication for individuals with disabilities.**

(a) A covered entity must take appropriate steps to ensure that communications with individuals with disabilities (including companions with disabilities), are as effective as communications with non-disabled individuals in its health programs and activities, in accordance with the standards found at 28 CFR 35.130 and 28 CFR 35.160 through 35.164. Where the regulatory provisions referenced in this section use the term ''public entity,'' the term ''covered entity'' shall apply in its place.

(b) A covered entity must provide appropriate auxiliary aids and services to individuals with impaired sensory, manual, or speaking skills, where necessary to afford such individuals an equal opportunity to benefit from the service in question.

**§ 92.203 Accessibility for buildings and facilities.**

(a) No qualified individual with a disability shall, because a covered entity's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any health program or activity to which this part applies.

(b) Each facility or part of a facility in which health programs or activities are conducted that is constructed or altered by or on behalf of, or for the use of, a recipient or State Exchange must comply with the 2010 Standards if the construction or alteration was commenced on or after July 18, 2016, except that if a facility or part of a facility in which health programs or activities are conducted that is constructed or altered by or on behalf of, or for the use of, a recipient or State Exchange, was not covered by the 2010 Standards prior to July 18, 2016, such facility or part of a facility must comply with the 2010 Standards if the construction was commenced after January 18, 2018. Departures from particular technical and scoping requirements by the use of other methods are permitted where substantially equivalent or greater access to and usability of the facility is provided. All newly constructed or altered buildings or facilities subject to this section must comply with the requirements for a ''public building or facility'' as defined in section 106.5 of the 2010 Standards.

(c) Each facility or part of a facility in which health programs or activities under this part are conducted that is constructed or altered by or on behalf of, or for the use of, a recipient or State Exchange in conformance with the 1991 Standards at appendix D to 28 CFR part 36 or the 2010 Standards shall be deemed to comply with the requirements of this section and with 45 CFR 84.23(a) and (b) with respect to those facilities, if the construction or alteration was commenced on or before July 18, 2016. Each facility or part of a facility in which health programs or activities are conducted that is constructed or altered by or on behalf of, or for the use of, a recipient or State Exchange in conformance with UFAS shall be deemed to comply with the requirements of this section and with 45 CFR 84.23(a) and (b), if the construction was commenced on or before July 18, 2016, and such facility was not covered by the 1991 Standards or 2010 Standards.

**§ 92.204 Accessibility of information and communication technology for individuals with disabilities.**

(a) A covered entity must ensure that its health programs and activities provided through information and communication technology are accessible to individuals with disabilities, unless doing so would result in undue financial and administrative burdens or a fundamental alteration in the nature of the health programs or activities. If an action required to comply with this section would result in such an alteration or such burdens, a covered entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services of the health program or activity provided by the covered entity.

(b) A recipient or State Exchange shall ensure that its health programs and activities provided through websites and mobile applications comply with the requirements of Section 504 of the Rehabilitation Act, as interpreted consistent with Title II of the ADA (42 U.S.C. 12131 through 12165).

**§ 92.205 Requirement to make reasonable modifications.**

A covered entity must make reasonable modifications to policies, practices, or procedures in its health programs and activities when such modifications are necessary to avoid discrimination on the basis of disability, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the health program or activity. For the purposes of this section, the term ''reasonable modifications'' shall be interpreted in a manner consistent with the term as set forth in the ADA Title II regulation at 28 CFR 35.130(b)(7).

**§ 92.206 Equal program access on the basis of sex.**

(a) A covered entity must provide individuals equal access to its health programs and activities without discriminating on the basis of sex.

(b) In providing access to health programs and activities, a covered entity must not:

(1) Deny or limit health services, including those that are offered exclusively to individuals of one sex, to an individual based upon the individual's sex assigned at birth, gender identity, or gender otherwise recorded;

(2) Deny or limit a health care professional's ability to provide health services on the basis of an individual's sex assigned at birth, gender identity, or gender otherwise recorded if such denial or limitation has the effect of excluding individuals from participation in, denying them the benefits of, or otherwise subjecting them to discrimination on the basis of sex under a covered health program or activity;

(3) Adopt or apply any policy or practice of treating individuals differently or separating them on the basis of sex in a manner that subjects any individual to more than *de minimis* harm, including by adopting a policy or engaging in a practice that prevents an individual from participating in a health program or activity consistent with the individual's gender identity; or

(4) Deny or limit health services sought for purpose of gender transition or other gender-affirming care that the covered entity would provide to an individual for other purposes if the denial or limitation is based on a patient's sex assigned at birth, gender identity, or gender otherwise recorded.

(c) Nothing in this section requires the provision of any health service where the covered entity has a legitimate, nondiscriminatory reason for denying or limiting that service, including where the covered entity typically declines to provide the health service to any individual or where the covered entity reasonably determines that such health service is not clinically appropriate for a particular individual. However, a provider's belief that gender transition or other gender-affirming care can never be beneficial for such individuals (or its compliance with a state or local law that reflects a similar judgment) is not a sufficient basis for a judgment that a health service is not clinically appropriate.

(d) The enumeration of specific forms of discrimination in paragraph (b) of this section does not limit the general applicability of the prohibition in paragraph (a) of this section.

**§ 92.207 Nondiscrimination in health insurance and other health-related coverage.**

(a) A covered entity must not, in providing or administering health insurance coverage or other health-related coverage, discriminate on the basis of race, color, national origin, sex, age, or disability.

(b) A covered entity must not, in providing or administering health insurance coverage or other health-related coverage:

(1) Deny, cancel, limit, or refuse to issue or renew health insurance coverage or other health-coverage, or deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, on the basis of race, color, national origin, sex, age, or disability;

(2) Have or implement marketing practices or benefit designs that discriminate on the basis of race, color, national origin, sex, age, or disability in health insurance coverage or other health-related coverage;

(3) Deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, to an individual based upon the individual's sex at birth, gender identity, or gender otherwise recorded;

(4) Have or implement a categorical coverage exclusion or limitation for all health services related to gender transition or other gender-affirming care;

(5) Otherwise deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, for specific health services related to gender transition or other gender-affirming care if such denial, limitation, or restriction results in discrimination on the basis of sex; or

(6) Have or implement benefit designs that do not provide or administer health insurance coverage or other health-related coverage in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(c) Nothing in this section requires coverage of any health service where the covered entity has a legitimate, nondiscriminatory reason for determining that such health service fails to meet applicable coverage requirements, such as medical necessity requirements, in an individual case.

(d) The enumeration of specific forms of discrimination in paragraph (b) of this section does not limit the general applicability of the prohibition in paragraph (a) of this section.

**§ 92.208 Prohibition on sex discrimination related to marital, parental, or family status.**

In determining whether an individual satisfies any policy or criterion regarding access to its health programs or activities, a covered entity must not take an individual's sex into account in applying any rule concerning an individual's current, perceived, potential, or past marital, parental, or family status.

**§ 92.209 Nondiscrimination on the basis of association.**

A covered entity must not exclude from participation in, deny the benefits of, or otherwise discriminate against an individual in its health programs and activities on the basis of the respective race, color, national origin, sex, age, or disability of the individual and another person with whom the individual has a relationship or association.

**§ 92.210 Nondiscrimination in the use of clinical algorithms in decision-making.**

A covered entity must not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs and activities through the use of clinical algorithms in its decision-making.

**§ 92.211 Nondiscrimination in the delivery of health programs and activities through telehealth services.**

A covered entity must not, in delivery of its health programs and activities through telehealth services, discriminate on the basis of race, color, national origin, sex, age, or disability.

## Subpart D—Procedures

**§ 92.301 Enforcement mechanisms.**

The enforcement mechanisms available for and provided under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 shall apply for purposes of Section 1557 as implemented by this part.

**§ 92.302 Notification of views regarding application of Federal conscience and religious freedom laws.**

(a) A recipient may notify OCR of the recipient's view that it is exempt from certain provisions of this part due to the application of a Federal conscience or religious freedom law.

(b) Once OCR receives such notification from a particular recipient, OCR shall promptly consider those views in responding to any complaints or otherwise determining whether to

proceed with any investigation or enforcement activity regarding that recipient's compliance with the relevant provisions of this part. Any relevant ongoing investigation or enforcement activity regarding the recipient shall be held in abeyance until a determination has been made under paragraph (c) of this section.

(c) Based on the information provided in the notification under paragraph (a) of this section, OCR may determine at any time whether a recipient is exempt from the application of certain provisions of this part, or whether modified application of the provision is required as applied to specific contexts, procedures, or health care services, based on a Federal conscience or religious freedom law. OCR will assess whether there is a sufficiently concrete factual basis for making a determination and will apply the applicable legal standards of the relevant law. OCR will communicate its determination to the recipient.

(d) If OCR determines that a recipient is exempt from the application of certain provisions of this part or modified application of certain provisions is required as applied to specific contexts, procedures, or health care services, based on a Federal conscience or religious freedom law, that determination does not otherwise limit the application of any other provision of this part to the recipient or to other contexts, procedures, or health care services.

**§ 92.303 Procedures for health programs and activities conducted by recipients and State Exchanges.**

(a) The procedural provisions applicable to title VI apply with respect to administrative enforcement actions concerning discrimination on the basis of race, color, national origin, sex, and disability discrimination under Section 1557 or this part. These procedures are found at 45 CFR 80.6 through 80.11 and part 81 of this subchapter.

(b) The procedural provisions applicable to the Age Act apply with respect to administrative enforcement actions concerning age discrimination under Section 1557 or this part. These procedures are found at 45 CFR 91.41 through 91.50.

(c) When a recipient fails to provide OCR with requested information in a timely, complete, and accurate manner, OCR may, after attempting to reach voluntary resolution, find noncompliance with Section 1557 and initiate appropriate enforcement procedures, found at 45 CFR 80.8, including beginning the process for fund suspension or termination and taking other action authorized by law.

**§ 92.304 Procedures for health programs and activities administered by the Department.**

(a) This section applies to discrimination on the basis of race, color, national origin, sex, age, or disability in health programs and activities administered by the Department, including the Federally-facilitated Exchanges.

(b) The procedural provisions applicable to Section 504 at 45 CFR 85.61 through 85.62 shall apply with respect to administrative enforcement actions against the Department concerning discrimination on the basis of race, color, national origin, sex, age, or disability under Section 1557 or this part. Where this section cross-references regulatory provisions that use the term ''handicap,'' the term ''race, color, national origin, sex, age, or disability'' shall apply in its place.

(c) The Department must permit access by OCR to its books, records, accounts, other sources of information, and facilities as may be pertinent to ascertain compliance with Section 1557 or this part. Where any information required of the Department is in the exclusive possession of any other agency, institution or person, and the other agency, institution or person fails or refuses to furnish this information, the Department shall so certify and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar OCR from evaluating or seeking to enforce compliance with Section 1557 or this part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary under the law.

(d) The Department must not intimidate, threaten, coerce, retaliate, or otherwise discriminate against any individual or entity for the purpose of interfering with any right or privilege secured by Section 1557 or this part, or because such individual or entity has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Section 1557 or this part. The identity of complainants must be kept confidential by OCR in accordance with applicable Federal law.

## PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 16. The authority citation for part 147 continues to read as follows:

**Authority:** 42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92, 300gg–111 through 300gg–139, as amended, and section 3203, Pub. L. 116–136, 134 Stat. 281.

**§ 147.104 [Amended]**

■ 17. Amend § 147.104 in paragraph (e) by removing the term ''sex'' and adding in its place the phrase ''sex (including sexual orientation and gender identity)''.

## PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 18.The authority citation for part 155 is amended to read as follows:

**Authority:** 42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, 18081–18083, and 18116.

**§ 155.120 [Amended]**

■ 19. Amend § 155.120 in paragraph (c)(1)(ii) by removing the term ''sex'' and adding in its place the phrase ''sex (including sexual orientation and gender identity)''.

**§ 155.220 [Amended]**

■ 20. Amend § 155.220 in paragraph (j)(2)(i) by removing the term ''sex'' and adding in its place the phrase ''sex (including sexual orientation and gender identity)''.

## PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 21. The authority citation for part 156 is amended to read as follows:

**Authority:** 42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 18116, and 26 U.S.C. 36B.

**§ 156.200 [Amended]**

■ 22. Amend § 156.200 in paragraph (e) by removing the term ''sex'' and adding in its place the phrase ''sex (including sexual orientation and gender identity)''.

**§ 156.1230 [Amended]**

■ 23. Amend § 156.1230 in paragraph (b)(2) by removing the term ''sex'' and adding in its place the phrase ''sex (including sexual orientation and gender identity)''.

Dated: July 25, 2022.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2022–16217 Filed 7–28–22; 4:15 pm]

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**Last List August 2, 2022**

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